

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

IN THE MATTER OF A A	IN REMOVAL PROCEEDINGS CASE A# 079-853-486
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**BRIEF IN SUPPORT OF APPLICATION FOR WITHHOLDING OF REMOVAL
AND CONVENTION AGAINST TORTURE**

A A, by and through his counsel, hereby submits this brief in support of his request for withholding of removal pursuant to INA Section 241(b), 8 U.S.C. § 1231(b)(3), or in the alternative, withholding and deferral of removal under the United Nations Convention Against Torture pursuant to 8 C.F.R. 208.16(c) or 8 C.F.R. 208.17. A meets the test for withholding of removal under both provisions.

I. PRELIMINARY STATEMENT

A A (hereinafter, "A") is a national and citizen of the African nation of Sudan. A is originally from Wad Madani in the Central Region of Sudan, and entered the United States as a refugee of Sudan on [REDACTED], along with his family. He was then thirteen years old. A qualifies for withholding of removal because there is a clear probability that he will be persecuted for his political beliefs, through torture and other means, if he is returned to Sudan. A has substantial grounds for believing that he would be subject to torture if returned to Sudan. Moreover, there is a clear probability that the Sudanese government will use A as a "hostage" in order to coerce his mother, a political dissident, to return to Sudan.

A has also not committed a "serious crime," as defined by 8 U.S.C. § 1231(b)(3)(A) and (B)(ii). As he will readily admit, he made a mistake in the heat of the moment that he deeply

regrets and wishes he could take back. As discussed further below, A accidentally injured a man in self-defense and pled guilty to the charge of unlawful wounding. While acknowledging that he put himself in a difficult position and showing genuine remorse for his actions, A's has not committed a "serious crime" and is entitled to withholding of removal.

II. PROCEDURAL HISTORY

A entered the United States on [REDACTED] as a relocated United Nations refugee from the African nation of Sudan, eventually settling in the Richmond, Virginia area. He became a permanent resident on [REDACTED]. On [REDACTED], A was involved in an incident that resulted in the wounding of another man at his ex-girlfriend's house. The Commonwealth of Virginia charged A with malicious bodily injury, and on [REDACTED] he pled guilty to the charge of unlawful wounding in the Circuit Court of Henrico County, Virginia, and was sentenced to a three-year suspended sentence, with a minimum of eight months in jail.

A was then put in removal proceedings before this Court. A conceded removability and admitted the charges on the Notice to Appear. He appeared before this Court for Master Calendar Hearings on April 23, May 7, June 4, and June 18, 2009 before obtaining counsel. Counsel appeared at the Master Calendar Hearing on August 20, 2009, at which an Individual Hearing was scheduled for January 11, 2010. Through counsel, A submitted his I-589 Application for Withholding of Removal and CAT protection on September 21, 2009 (the "Application"). This pleading supplements the Application.

III. COUNTRY CONDITIONS

The government of Sudan is without question among the world's most repressive. It is ruled by General Omar al-Bashir – a man who has been ordered arrested by the International

Criminal Court for “war crimes and crimes against humanity.”¹ The character of Bashir’s twenty-year-old dictatorship was signaled early and has never wavered. Shortly after seizing power in a military coup in 1989, he addressed a rally of his supporters from the National Islamic Front with these words:

I vow here before you to purge from our ranks the renegades, the hirelings, the enemies of the people and enemies of the armed forces. Anyone who betrays the nation does not deserve the honor of living.²

Bashir’s vow was not an idle one. The coup that brought him to power “marked [only] the beginning of an Islamist dictatorship that [has] dealt ruthlessly with Muslim and non-Muslim opponents alike.”³ All of the country’s chief institutions – the army, the civil service, the courts, the trade unions, the professional associations, the universities – were immediately purged of any dissent.⁴ Non-Islamist Muslim groups were silenced; Christian activities were curtailed and suppressed; the press was muzzled; and many hundreds of politicians, journalists, doctors, trade unionists and other citizens were detained without trial.⁵ Many of them, like A’s father and mother, *see* pp. 8-10 below, “were taken to ‘ghost houses’ – houses whose existence the government denied – where they were tortured.”⁶ As confirmed by a 1994 report by the UN Commission on Human Rights, detainees in these “ghost houses” were routinely subject to burnings, beatings, electric shock and rape at the hands of the security forces.⁷

¹ See April 23, 2009 Press Release of Internal Criminal Court, Ex. A hereto.

² Martin Meredith, *The Fate of Africa*, at 588 (Public Affairs™ 2005), Ex. G hereto.

³ *Id.*

⁴ *Id.* at 588-89

⁵ *Id.* at 589.

⁶ *Id.*

⁷ *Id.*

The Bashir regime’s oppression of its own citizens, moreover, has been carried out on a massive scale. In the Christian and animist south, the government prosecuted the ongoing civil war, which it deemed a “jihad,” with extraordinary ruthlessness, effectively reducing southern Sudan to a “wasteland.”⁸ Villages and relief centers were bombed indiscriminately; the government-sponsored militia, the PDF, massacred civilians and plundered their property at will; thousands of women and children were captured and forced into slavery; and much of the population, uprooted from their homes, was faced with starvation.⁹ The regime implemented a campaign of “ethnic cleansing” in wide areas surrounding the southern oil fields, and it used its helicopter gunships to attack at least one World Food Program distribution center.¹⁰ As summarized by President Bush in late 2001: “For nearly two decades, the government of Sudan has waged a brutal and shameful war against its own people The government has targeted civilians for violation and terror. It permits and encourages slavery. And the responsibility to end the war is on [its] shoulders.”¹¹

In Darfur – the world’s “worst humanitarian crisis,” according to the U.N.¹² – the government has carried out a wanton policy of genocide against the dark-skinned Fur, Masaalit and Zaghawa peoples, resulting in at least 450,000 deaths, more than two million displaced people, countless burned or bombed villages and untold numbers of raped and brutalized women and girls. See Ted Dagne, Congressional Research Service Report for Congress, *Sudan: The Crisis in Darfur and Status of the North-South Peace Agreement*, at 15 (updated July 23, 2008).

⁸ *Id.* at 589, 593-94.

⁹ *Id.* at 593.

¹⁰ *Id.* at 594, 596-97.

¹¹ *Id.* at 596

¹² *Id.* at 599.

The regime has harbored international terrorists from Carlos the Jackal to Sheikh Omar Abdel Rahman to Osama bin Laden; it has supported the Lord's Resistance Army, a group led by a messianic psychopath, Joseph Kony, who specialized in the abduction, rape and mutilation of children; and, according to the Commission for International Religious Freedom, a U.S. government agency, "the government of Sudan is the world's most violent abuser of the right of freedom of religion and belief."¹³

In sum, "[t]he combination of Sudan's record of supporting international terrorism, its savage conduct of the war in the south [and the genocide in Darfur] and its repression of all opposition [has] made Bashir's government one of the most reviled in the world."¹⁴ Nor has the regime's relentless oppression of its own people in any way abated.

According to the State Department's 2008 Human Rights Report: Sudan (the "State Department Report," Ex. B hereto), issued on February 25, 2009:

The government's human rights record remained poor, and there were numerous serious abuses, including: abridgement of citizens' right to change their government; extrajudicial and other unlawful killings by government forces and other government-aligned groups throughout the country; disappearances...; torture, beatings, rape, and other cruel, inhumane treatment or punishment by security forces; harsh prison conditions; arbitrary arrest and detention, incommunicado detention of suspected government opponents, and prolonged pretrial detention; executive interference with the judiciary and denial of due process; obstruction of the delivery of humanitarian assistance; restrictions on privacy; restrictions on freedom of speech; increased restrictions on the press, including direct censorship; restrictions on freedoms of assembly, association, religion, and movement; harassment of IDPs and of local and international human rights and humanitarian organizations; violence and discrimination against women, including female genital mutilation (FGM); child abuse, including sexual violence and recruitment of child soldiers, particularly in Darfur; preventing international human rights observers from traveling to/within Sudan; trafficking in persons; discrimination and violence against ethnic minorities; denial of workers' rights; and forced and child labor.

¹³ *The Fate of Africa*, at 590, 594-95.

¹⁴ *Id.* at 595.

Exhibit B, at 1-2.

Among other things, the State Department Report makes clear that in the most recent one-year reporting period the Sudanese government has continued to:

- bear responsibility for hundreds of politically and ethnically-motivated disappearances;
- allow its security forces, including the National Intelligence and Security Services (“NISS”), to harass suspected political opponents and to beat and torture persons in detention, including members of the political opposition, civil society activists and journalists;
- routinely mistreat persons in custody, including the beating of detainees and intentionally depriving them of food, water and toilets;
- subject prisoners to lack of health care, sometimes resulting in their death;
- allow government security forces, including the NISS, the Central Reserve Police, and forces controlled by the Ministry of Defense and the Ministry of the Interior, to commit arbitrary arrests and to hold detainees incommunicado for long periods in unknown locations without access to lawyers or family members;
- allow government security services to conduct searches without warrant and to target people suspected of political crimes;
- through the NISS, censor print and broadcast media, ban the printing of newspapers, and harass critics of the government;
- prohibit opposition political parties, including the Umma Party and the Democratic Unionist Party, from holding large public gatherings;
- use excessive force to disperse demonstrators, often resulting in deaths and injuries;
- obstruct access to justice for rape victims, which continues to be a serious problem throughout the country;
- allow the abuse, abduction and enslavement of children;
- actively promote hatred and discrimination; and
- operate “information camps” for vagrant children, including homeless children who have committed crimes, where living conditions are “primitive” and where such children are typically detained for “indefinite periods.”

State Department Report, Ex. B, at 1-7, 10, 16, 24, 25-27.

As detailed below, both of A's parents and at least two close relatives were victims of the appalling and ongoing practices set forth above.

IV. STATEMENT OF FACTS

A. A's Family is Severely Persecuted by the Government of Sudan.

1. A's Family Was Active in Opposing the Military Dictatorship of President al-Bashir.

A was born in Wad Madani, a city in the Central Region of Sudan. His father, S A ("S"), was a businessman and a member of the Democratic Unionist Party ("DUP"), which opposes the current government of Sudan. *See* State Department Report, Ex. B, at 18; *see also* Affidavit of So ██████ ("█████ Affidavit," Ex. C hereto) at ¶¶ 2-3.¹⁵ He was married to A's mother, So ██████ ("So"). S and So lived and worked in Khartoum, Sudan. S's cousin, Amin Mahi Madani, was a senior minister in a former government of Sudan, headed by Gaafer Numeiri ("Numeiri"). The family was strongly tied to the Numeiri government, and they were viewed with suspicion when the government of Sadiq al-Mahdi, which had replaced Numeiri's government, was overthrown in the military coup led by Bashir in 1989. *See* Section III above.

In 1990, S A's younger brother A (after whom A is named) was killed in a political protest against the Bashir government. S, both because of his close ties to the former government and continued pressure from Bashir's secret police to pay increasingly high levels of "baksheesh," spoke out against the Bashir government.¹⁶ He accused the government of being corrupt and unjust, and met with prominent political figures and fellow dissidents, including his

¹⁵ Section A of this Statement of Facts is grounded in the ██████ Affidavit. We respectfully refer the Court to that affidavit in its entirety and, in the interests of economy, we do not include a separate citation to that affidavit after each sentence of paragraph of Section A of the Statement of Facts.

¹⁶ "Baksheesh" is sometimes referred to as bribe or payoff money from a business owner to the authorities in countries without well-regulated governmental agencies. The "baksheesh" is paid to prevent the disruption, destruction, or seizure of the business by the state or secret police.

cousin Amin Madani and Atif Bashir (no relation), in order to discuss ways to resist the military dictatorship of Bashir.

2. **S A is Abducted and Beaten in Front of his Family, Then Kidnapped and Tortured.**

In the early 1990's, when A was just a small child, more than a dozen Sudanese secret police raided the A home looking for S. In front of So and her two young sons, the secret police stuck a gun to S's head and then beat him severely. They destroyed all the furniture in the family home, stole all the money and So's considerable dowry, and took all of the family official papers – birth certificates, wills, insurance policies, and deeds. The police took S away, where he was imprisoned. As they left, they locked A's family inside the home and told So, "You can all rot and die now."

The A family believed S to be dead, because they did not see him again for at least three months. When he returned, S told So that he had been taken to the main underground torture center in Khartoum, where he had been imprisoned and tortured for approximately three months. He had been beaten to a point where he nearly went crazy. As he was released, his captors vowed to S, "Rest assured, you will be back."

3. **The A Family Escapes to Egypt for the First Time and Remains Active in Dissident Sudanese Politics, Then Returns to Sudan.**

In the wake of the destruction of the family's property and S's torture, the A family escaped to Egypt at the end of 1992. S was active in the DUP, and remained in contact with other DUP members of the former government in Khartoum. So joined the Sudanese Women's Union – a group of female Sudanese exiles. While the family was exiled in Egypt, A's grandparents were harassed by government security forces attempting to determine S and So's whereabouts. And in 1995, S A's brother ██████ was kidnapped in Khartoum and never seen nor heard from again. Nonetheless, missing her homeland and struggling with the appalling living

conditions in Cairo, Egypt, So decided to bring her now three children (A, M, and O) back to live in Sudan with her parents.

4. So is Brutally Tortured by the Sudanese Government.

Once back in Sudan, So was forced to register her children, including A, in schools using her husband's name. A was nine years old at the time. However, the Sudanese government had not forgotten the A family and was actively seeking them. Shortly after the children returned to school, three secret policemen followed the children home from school and asked if this was "the home of ██████." The A children yelled at the men, but the police forced their way into the home and threatened So with torture and death if she did not tell the police the whereabouts of S, where they had lived in Egypt, how the family escaped Sudan the first time, and what role she played within the Sudanese Women's Union. Despite the threats of torture, So did not answer the questions.

So was then blindfolded and taken to the principal torture center in Medani, Sudan. There she was brutally tortured. So was kept in a dark and dirty room without access to food, water, or a bathroom. She was repeatedly interrogated, and when she did not give the government agents information, she was beaten and burned with cigarettes, including on her genitals. Every time she was interrogated she was beaten and tortured. During one particularly bad beating, So lost consciousness. The captors cut all her hair off. She was given only small quantities of hot water and food to keep her alive, but basically So was kept in a condition near death.

So is unsure of how long she was tortured and interrogated in this prison. But one day, the secret police blindfolded her, drove her out into the desert in the middle of the night and dumped her body there, leaving her to die. However, So was able to pick herself up and a car

spotted her and took her to a hospital, where she spent two days before she was able to recover enough to return home.

5. So Is Tortured Again on Multiple Occasions and Flees Back to Egypt.

After So returned home, the secret police returned on three different occasions. Each time, So was kidnapped, interrogated, and severely beaten and kicked during her interrogations.

After the third of this series of kidnappings and interrogations, So decided to leave Sudan and flee back to Egypt. The A family returned to Cairo, where they were reunited with S. Once back in Egypt, So applied for refugee status with the United Nations. She showed the United Nations her torture scars and told her story of kidnapping and torture, and ultimately the U.N. granted her refugee application and relocated So and her children to the United States in

██████████

6. S is “Disappeared.”

S chose to stay behind and did not relocate with the rest of his family. The family heard from friends that he returned to Sudan in 2005 to look after his gravely ill mother, and was reportedly seen at his mother’s funeral, but the A family has never heard from S again.

B. A Is Involved in an Incident at His Ex-Girlfriend’s Home.

The circumstance that led to A’s presence before this Court was an argument between two teenagers that got out of control. A was involved in a very serious relationship with his then-girlfriend, K ██████████ (“K”). On July 13, 2008, K and A agreed to break-up, an event that was obviously very distressing to A. Earlier in the day, A and K agreed that he would stop by her apartment later in the day to pick up some of his belongings that he had been keeping at her home.

When A returned to K’s home later that night, he went in and found another man, about his age, watching television in her living room. That man was G ██████████ (“G”). A saw G, and said

“What’s up?” G, however, immediately became aggressive with A. They began exchanging words, as two assertive male teenagers do on occasion, especially where there is a girl involved.

The verbal jousting escalated, to the point where G and A began shoving and got into a physical altercation. During this altercation, A was thrown to the floor and dislocated his shoulder.¹⁷ Once injured, A panicked and ran into the kitchen, which was close by, and grabbed the first weapon he could find, which was a knife. In a defensive posture, A brandished the knife and yelled at G, telling him not to come any closer. Despite the presence of the knife, G continued to pursue A and lunged at him. As he lunged towards A, A held out the knife in an attempt to defend himself, resulting in G sustaining a minor cut across his upper arm. Once A saw that G was cut, he dropped the knife and fled from K’s house.

A did not go to K’s house on [REDACTED] with the intention of injuring anyone. He did not even know G would be there; however, once he was injured in the physical altercation, he sought a way to defend himself and regrettably ended up with a knife. Even once the altercation began, A had no intent to aggressively cause harm to anyone else – his only thought was his own well-being.

Although A maintained his innocence of the charge of malicious wounding, under advice of counsel he accepted a guilty plea to the charge of unlawful wounding. He did so because he had already been imprisoned for eight months awaiting trial and could not secure bail to get out of jail, and the plea agreement essentially limited his sentence to time already served. A has maintained throughout his ordeal that he acted in self-defense.

¹⁷ A has suffered from a chronically weak shoulder since early childhood, and it is prone to dislocation if excess pressure is applied to the shoulder joint.

C. **Dr. Kh Believes That A Will be Tortured or Killed as S's Son and/or Kept as a Hostage to Lure So Back to Sudan.**

Dr. Kh is a well-known advocate for peace in Africa and the Middle East, and in particular Sudan. The nephew of a late Sudanese defense minister under the previous government, Dr. Kh is now the executive director of the [REDACTED] and an expert on Sudanese politics and country conditions. Ex. D, Declaration of Dr. Kh. Dr. Kh has traveled to Sudan on numerous occasions seeking peace and relief for Sudan's oppressed citizens, most recently in 2008 to promote a [REDACTED] peace initiative. *Id.* at ¶¶ 8-9. He has a broad-based and first-hand knowledge of current conditions in Sudan, including the government's inhumane treatment of political dissidents and their family members. *Id.* at ¶¶ 6-9.

Dr. Kh first became aware of the A family when he was contacted by another DUP member, a [REDACTED], to discuss Dr. Kh's assistance in obtaining U.N. refugee status for the A family. *Id.* at ¶¶ 11-14. Since then, Dr. Kh has assisted the family with its transition to the United States.

It is Dr. Kh's conviction that A's parents, So and S, were tortured and persecuted by the Sudanese government because of the current government's belief that both were involved in political activities in opposition to the El-Bashir government. *Id.* at ¶ 16. Certainly, the U.N., which does not grant many refugee applications, must have believed So's account of torture and persecution. *Id.* at ¶ 14. Although So and her family successfully escaped from Sudan, S returned to Sudan to visit his ailing mother and was "disappeared." *Id.* at ¶ 19. Given the A family's history and political involvement, the Sudanese government is likely to be seeking So's whereabouts, and if possible, her forced return to Sudan. *Id.* at ¶ 20.

If A is returned to Sudan, his identity will rapidly become known, either when he passes through customs or, in the unlikely event he is allowed to enter the country unmolested, when he

is required to present Sudanese identification and/or attempts to secure a Sudanese identification card. *Id.* at ¶ 21-22. In order to do anything in Sudan, such as work or attend school, a citizen is required to have identification, and A will have to obtain such identification. When he does, his name and personal history – particularly his living abroad – will raise serious questions that will ultimately result in the government linking him to his parents, S and So. *Id.* at ¶ 23-24. Once this happens, the Sudanese government will interrogate and torture A about So’s activities and whereabouts. *Id.* at ¶ 25-26.

In addition to the interrogation and torture A will likely face in Sudan, it is also likely that the Sudanese government will use A as a “hostage” – promising his release only if So returns to Sudan for him. *Id.* at ¶ 27. If So returns to Sudan, she will almost certainly be tortured and in all likelihood killed. *Id.* at ¶ 28. Thus, Dr. Kh, an expert on Sudanese politics and country conditions, believes that A and/or his family are likely to suffer extreme persecution and torture if he is returned to Sudan. As soon as his identity is ascertained, he will be detained and brutally interrogated about himself and his family, consistent with the past persecution and torture suffered by his parents.

V. ARGUMENT

A. A Should be Granted Withholding of Removal.

The burden of proof is on the Respondent to establish that he is eligible for withholding of removal. *Matter of Tossinou*, 21 Immigr. Rptr. B1-169 (BIA 1999). To qualify for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (INA), the Respondent must show a clear probability that his life or freedom would be threatened in the country directed for removal on account of race, religion, nationality, membership in a particular social group or political opinion. *INS v. Stevic*, 467 U.S. 407 (1984); 8 U.S.C.A. § 1231(b)(3). This means that the Respondent’s facts must establish that it is more likely than not

that he would be subject to persecution for one of the grounds specified. *Matter of Tossinou*, 21 Immigr. Rptr. B1-169 (BIA 1999). A finding of past persecution gives rise to a presumption in favor of withholding of removal. 8 C.F.R. § 208.16(b)(1). A has suffered past persecution, and thus is entitled to a presumption in favor of withholding of removal. Even if A had not suffered past persecution, he would be entitled to withholding of removal because it is more likely than not that his life or freedom would be threatened on account of his political opinions if he were returned to Sudan.

1. A and His Family Have Suffered Past Persecution Based on Their Political Opinions.

The term “persecution” is interpreted broadly. *See, e.g., INS v. Stevic*, 467 U.S. 407, 428 n. 22 (1983) (noting that persecution “is seemingly a broader concept than threats to life or freedom”). A and his family suffered past persecution on account of their political opinions. S was a member of the DUP known to have been strongly tied to the Numeiri government, to have spoken out against the Bashir government, and to have met with both political figures and dissidents to discuss resistance to Bashir’s military dictatorship. *See* § IV(A), *infra*. Because of S’s support of the former government and his active resistance to the Bashir dictatorship, A and his family were persecuted in the following instances:

- More than a dozen Sudanese secret policemen raided the A home in the early 1990s, put a gun to S’s head in front of So, A, and his older brother, and beat S severely. The secret police destroyed all of the family’s furniture, money, and official papers, and kidnapped, imprisoned, and beat S for roughly three months.
- Shortly after the family’s return from Egypt in 1997, three Sudanese secret policemen followed A and his siblings home from school, forced their way into the family home, and threatened So with torture and death if she did not divulge S’s whereabouts. So was then interrogated and brutally tortured in the principal torture center in Medani, losing consciousness during one in a series of beatings, and hovering near death.
- The secret police kidnapped, interrogated, and severely beat So on three subsequent occasions.

These events constitute past persecution of A and his family based on his family's political opinions. According to the Board of Immigration Appeals, threats alone, without physical harm, can rise to the level of past persecution. *See Matter of Filipov*, 19 Immig. Rptr. B1-281 (BIA 1998). Here, however, A suffered far more than mere threats as a child in Sudan. He was made to witness his father's brutal beating at the hands of the secret police; he was made to endure the separate disappearances of each of his parents as a result of their political opinions; he assimilated the lasting psychic scars and bitter lessons of his parents' torture; and he was uprooted twice from the land of his birth because of the ongoing persecution and torture of his family due to their political beliefs. There can be no doubt that A and his family have suffered past persecution based on political opinions.

2. A's Life and Freedom Will be Threatened if He is Returned to Sudan.

Both the Declaration of Dr. Kh and current Sudanese country conditions demonstrate a clear probability that A's life or freedom will be threatened by the Sudanese government if he is returned to Sudan. As attested to by Dr. Kh in his Declaration, A "will very likely be tortured and imprisoned, and most likely held hostage to secure the return of So" if he is returned to Sudan. Ex. D, Declaration of Kh, ¶ 18. Dr. Kh further attested that A is not likely to evade government detention if he is returned to Sudan, as A's identity will almost certainly be discovered due to being questioned in customs and/or needing to apply for identification. *Id.* at ¶ 22, 23. The most recent State Department Report documents the routine mistreatment of persons in custody, including the beating of detainees. Exhibit B, at 1-7, 10. Because A can almost certainly not avoid detention and interrogation concerning his mother's whereabouts, and because government torture and mistreatment of detainees remains widespread, A will likely be

unable to return to Sudan without his life or freedom being threatened by the Sudanese government.

The secret police's interrogations, kidnapping, and beatings of A's family, and continued government practices of torture and other cruel and inhumane treatment show that the Sudanese government remains a threat to both A's life or freedom. The Sudanese government's past and current actions demonstrate both acceptance of and participation in the torture of Sudanese citizens. The documentation provided herein regarding government participation in the torture of detainees supports a finding that the Sudanese government will likely threaten A's life or freedom if he is detained. Because of evidence demonstrating A's inability to enter Sudan without being detained, A has demonstrated a clear probability that his life or freedom will be threatened if he is returned to Sudan.

3. In the Alternative, A Should be Granted Withholding Based on his Social Group.

In addition to persecution for political opinions, A may also be granted removal based on his social group. At least one circuit considers family to be a cognizable social group within the meaning of immigration law. *Torres v. Mukasey*, 551 F.3d 616, 629 (7th Cir. 2008) (citing *Iliev v. INS*, 127 F.3d 638, 642 & n.4 (7th Cir. 1997)). “[V]iolence against members of an alien’s family is sufficient to support the conclusion that the alien’s life or freedom is endangered[.]” *Alvarez-Urias v. Gonzales*, 150 Fed. Appx. 695, 515 (9th Cir. 2005) (citation and internal quotations omitted). For example, in *Rodriguez v. INS*, Petitioners, a Salvadoran mother and son, were found to have demonstrated a clear probability of persecution when the mother submitted an affidavit detailing the kidnappings and killings of various family members which she attributed to Salvadoran guerrillas in retaliation against her family’s association with the government-supported rural militia. 841 F.2d 865, 870-71 (9th Cir. 1987). The Ninth Circuit

stated that the Petitioner mother had “described numerous specific incidents in which members of her family – a small, readily identifiable group – have been the victims of threats and acts of violence.” *Id.* at 871 (citation and internal quotations omitted). The court concluded that Petitioners clearly established a *prima facie* case under the “clear probability” test. *Id.*

A has demonstrated a clear probability that his life or freedom would be threatened in Sudan on account of membership in a particular social group, *i.e.*, his family. As stated in the Affidavit of So ██████, A’s family members suffered threats, beatings and even death after speaking out against the Bashir government and leveling accusations that the government was corrupt and unjust. As in *Rodriguez*, So’s Affidavit has detailed various incidents in which members of her and A’s family have been victims of threats and acts of violence, such as the death of S A’s younger brother A in a political protest against the Bashir government, S A’s beating by secret police, the harassment of A’s grandparents by government security forces, So’s four instances of brutal torture and interrogation at the hands of secret police, and the disappearance of S’s brother ██████ an opponent of the Bashir regime, in 1995. As in *Rodriguez*, “the fact that there have been a number of threats or acts of violence against members of [A’s] family is sufficient to support the conclusion that [his] life or freedom is endangered.” *Id.* (citation omitted).

As confirmed by Dr. Kh’s Declaration, and the A’s family past experiences, A has met his burden of demonstrating that it is more likely than not that his life or freedom would be threatened on account of his political opinion and/or his social group if he were returned to Sudan. A should be granted withholding of removal.

B. A Did Not Commit a “Particularly Serious Crime” Such That He Should be Excepted from Withholding of Removal.

On [REDACTED], A pled guilty to and was convicted of unlawful wounding in violation of §18.2-51 of the 1950 Code of Virginia, as amended. On [REDACTED], he was sentenced to three years incarceration, suspended on condition that he serve an eight-month term, keep the peace and be of good behavior, be placed on probation, participate in anger management or counseling deemed appropriate by his probation officer, and pay the costs of the case in the amount of \$535.00.

By his sentencing date, A had served most of his eight-month term, with only three weeks of his sentence remaining. Upon completing the remaining three weeks of his sentence, A was taken into Immigration and Customs Enforcement custody for the duration of the removal proceedings that are the subject of this action.

A has unwaveringly maintained throughout his criminal prosecution and these removal proceedings that he accidentally wounded G [REDACTED] while holding up a knife in self defense to deter [REDACTED] from attacking him; and that on the advice of counsel, he pled guilty to the charge of unlawful wounding because he was offered a reduced charge¹⁸ and a sentence of time already served with three weeks remaining, in exchange for his guilty plea.

While 8 U.S.C. §1231(b)(3)(A) provides that an alien may not generally be removed to a country if the alien’s life or freedom would be threatened there, there is an exception when the alien is convicted of a “particularly serious crime” and is a danger to the community of the United States. 8 USC §1231(b)(3)(B)(ii). Title 8 does not define the term “particularly serious crime” other than to state that “an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least

¹⁸ The charge was reduced from malicious wounding to unlawful wounding.

5 years shall be considered to have committed a particularly serious crime.” In A’s case, which does *not* meet those criteria, the Attorney General has discretion to determine whether his conviction rises to the level of a “particularly serious crime.” A Court should analyze the offense itself to determine whether it is, in fact, “particularly serious.” *In re NAM*, 24 I&N Dec. 336, 344 (BIA 2007), citing *Matter of Babaisakov*, 24 I&N Dec. 306 (BIA 2007). In making its determination, the Court may consider all reliable information, including information outside the confines of the record of conviction. *In re NAM* 24 I&N Dec. at 342.

In *Matter of Frentescu*, the Board of Immigration Appeals established criteria for determining whether a given crime amounts to a “particularly serious” one. The Board emphasized that “the record in most proceedings will have to be analyzed on a case-by-case basis” and listed the following factors to be considered in “judging the seriousness” of a crime: “[1] the nature of the conviction, [2] the circumstances and underlying facts of the conviction, [3] the type of sentence imposed, and, [4] most importantly, whether the type and circumstances of the crime indicate that the alien will be a danger to the community.” *Matter of Frentescu*, 18 I&N Dec. 244, 247 (BIA 1982).

1. The nature of the conviction.

A’s conviction was the result of his guilty plea, which he made on the advice of counsel in exchange for a lesser charge and sentence. He was not tried by a judge or jury and did not present a defense describing the events that resulted in his conviction. The only evidence presented by the prosecution was the testimony of [REDACTED], which A has always maintained is entirely false. *See* Virginia Department of Corrections Presentence Investigation Report, Current Offense Information at Page 2-1 to 2-2, attached as Exhibit E.

The facts pertaining to the nature of A's conviction do not support a finding that the conviction was for a particularly serious crime. A conviction for unlawful wounding, as defined in §18.2-51 of the 1950 Code of Virginia, as amended, requires that a perpetrator unlawfully wound or cause a person bodily injury with the intent to maim, disfigure, disable, or kill. A's Personal Statement, which is appended to his I-589 Application, provides a description of the events leading to his conviction in direct contradiction of the version told to the policy by [REDACTED]. See Presentence Investigation Report at 2-1. A's Personal Statement demonstrates that he did not possess the intent required by the statute. Further, such intent was not proven in a trial for the criminal conviction because A pled guilty to the charge. Although a guilty plea is, in essence, an admission of the elements of the crime charged, the evidence, including the Sentencing Records and A's Personal Statement, demonstrates that the nature of A's conviction does not warrant this Court's finding that his crime was particularly serious. This Court should consider the facts and circumstances surrounding A's guilty plea and conclude that those facts and circumstances are not, in fact, the equivalent of a judge or jury finding A guilty of unlawful wounding, beyond a reasonable doubt.

2. The circumstances and underlying facts of the conviction.

A's Personal Statement, describing the circumstances and underlying facts of the conviction, demonstrates, in particular, that he had no intent to harm [REDACTED]. Though A's testimony is in direct conflict with [REDACTED]'s story, the Court should consider that the only evidence of the facts and circumstances underlying A's conviction, aside from A's Personal Statement, is the story of his accuser. [REDACTED] as the initial aggressor in the events that led to A's conviction, had an evident self-interest in protecting himself when giving his story. A, for his part, had an incentive to plead guilty – *i.e.*, if he did so, *he would only have to serve an additional three*

weeks of incarceration. A's testimony, the lack of substantial evidence contradicting it, and the obvious incentives that drove his plea agreement all support a finding that he did not commit a particularly serious crime.

3. The type of sentence imposed.

The relatively short sentence imposed in this case – three weeks shy of time already served, amounting to eight months in prison – indicates that the sentencing judge did not find a compelling need to keep A out of the community and should further influence this Court to determine that A's conviction was not for a particularly serious crime. *See Matter of Frentescu*, 18 I&N Dec. at 247.

4. Whether the type and circumstances of the crime indicate that the alien will be a danger to the community.

The Board found, in *Matter of Frentescu*, that this element is the most important in a particularly serious crime determination. *Id.*; *see also Abulfeilat v. Gonzales*, No. 04-74863, 2007 U.S. App. LEXIS 18974 at *4-5 (9th Cir. 2007). The evidence that A acted in self defense, that he had no intention of harming [REDACTED], and that he was not the initial aggressor, all favor a finding that A's conviction was not for a particularly serious crime and that he is not a danger to the community of the United States. Further, the underlying subtext of A's Personal Statement and the Presentencing Report indicates that K [REDACTED], A's former girlfriend, intentionally created a situation of jealousy and competition between two teenage boys. *See A Personal Statement* at 4-5; *Presentence Investigation Report* at 2-1. The evidence demonstrates that A was unwittingly placed in a situation that was highly volatile and likely to result in conflict. Having experienced the consequences of succumbing to such pressure, A is very likely to respond differently and peacefully, if and when – if ever – he is presented with these circumstances again.

Considering the totality of the circumstances, A is not a danger to the community and the crime for which he was convicted was not particularly serious. This Court should, therefore, withhold removal.

C. In the Alternative, A Should be Granted Protection Under the Convention Against Torture.

Article 3 of the Convention Against Torture (CAT) prohibits refoulement of an alien to a country where it is more likely than not that he will be subject to torture by a public official, or at the instigation or with the acquiescence of such an official. *In re G-A-*, 23 I&N Dec. 366, 367 (citing 8 C.F.R. §§ 208.16(c)(4), 208.18(a)).

In determining whether an alien is entitled to protection under CAT, all evidence relevant to the possibility of future torture in the proposed country of removal shall be considered, including, but not limited to: past torture inflicted upon the applicant; evidence that the applicant could relocate to another part of the country of removal where he or she is not likely to be tortured; gross, flagrant, or mass violations of human rights; and other relevant information regarding conditions in the country of deportation.

Id. at 367-68 (citing 8 C.F.R. § 208.16(c)(3)).

“Torture” is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information or a confession, imposing punishment for an actual or suspected act, intimidation or coercion, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation, or with the consent or acquiescence, of a public official or other person acting in an official capacity.

Id. at 368 (citing 8 C.F.R. § 208.18(a)(1)).

“Acquiescence” requires that the public official prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity. *In re J-E-*, 23 I&N Dec. 291, 299 (BIA 2002) (citing 8 C.F.R. § 208.18(a)(7)) (additional citations omitted). The BIA has held that for an applicant to establish acquiescence, he must demonstrate that government officials are “willfully accepting” of the

torturous activities. *Matter of Doisan*, 26 Immig. Rptr. B1-127 (BIA 2003) (citing *Matter of S-V-*, 22 I&N Dec. 1306, 1312 (BIA 2000)).

In assessing a claim under the CAT, a court must consider “all evidence relevant to the possibility of future torture” and cannot rely solely on an adverse credibility determination to deny relief. *Camara v. Ashcroft*, 378 F.3d 361 (4th Cir. 2004). Moreover, while a petitioner may be ineligible for *withholding* of removal if it is determined that he committed a particularly serious crime, he is nonetheless eligible for *deferral* of removal if he can establish his entitlement to CAT protection. *See* 8 C.F.R. § 208.17(a).

In this case, substantial evidence weighs in favor of this Court finding that it is more likely than not that A will be subject to torture by a public official, or at the instigation or with the acquiescence of such an official. Based on current country conditions, A could not likely relocate to another part of Sudan where he is not likely to be tortured. Country profiles submitted by the Department of State are entitled to considerable deference in the absence of contradictory evidence, *see Gonahasa v. INS*, 181 F.3d 538, 542 (4th Cir. 1999) (noting that State Department reports are the best resource for gleaning information about the political situation in foreign nations); *Matter of T-M-B*, 21 I&N Dec. 775, 779 (BIA 1997), *rev'd on other grounds*, *Borja v. INS*, 175 F.3d 732 (9th Cir. 1999), and, as outlined earlier, the most recent State Department Report indicates that in the last one-year reporting period alone, the Sudanese government has continued to allow security forces to harass suspected political opponents and to torture individuals in detention, allow the abuse, abduction and enslavement of children, routinely mistreat persons in custody, including the beating of detainees and intentional deprivation of food, water, and toilets, and place vagrant or homeless children in primitive “information camps” for indefinite periods.

As Dr. Kh discusses in his Declaration, given A's family history and its political involvement, A will likely be detained, imprisoned, and tortured upon his entry to Sudan in connection with the government seeking So's whereabouts or forcing So to return to Sudan. Ex. D, Declaration of Kh, ¶¶ 18, 20, 24. Because A's chances of avoiding immediate detention upon entry are practically non-existent, and because government torture and mistreatment of detainees continues to be commonplace, A will likely not have the opportunity to relocate to another part of Sudan to avoid such torture. Furthermore, the Sudanese government will likely discover A's identity due to the requirement that he provide his family name and history in order to obtain identification upon entry to Sudan, which in turn will pose a risk of A's detention, torture, and being held hostage should he refuse to divulge information in government interrogations. *Id.* at ¶¶ 22-26. As attested to by Dr. Kh, "A is very likely to face severe persecution and torture if he returns to . . . Sudan[.]" *id.* at ¶ 29, as "[t]he Sudanese government is in all likelihood looking for So and/or her family[.]" *Id.* Because of his ties to family members that likely remain of interest to the Sudanese government, and because A faces potential detention and brutal interrogation should his identity be discovered, he is personally at very significant risk of being subjected to torture.

Past actions by the secret police against A's family and current continued government practices of abridgement of citizens' rights to criticize their government, extrajudicial and other unlawful killings by government forces, torture, beatings, rape, and other cruel, inhumane treatment or punishment by security forces, demonstrate acquiescence such that public officials both have awareness of such activity and continue to breach their legal responsibility to intervene to prevent such activity. Indeed, such widespread government involvement in these activities not only shows a breach of public officials' responsibility to intervene, but an active participation in

and endorsement of such practices. The Sudanese government's actions greatly exceed "willful acceptance" and show both acceptance of and participation in the torture of Sudanese citizens. The substantial documentation regarding government participation in the torture of detainees provided here supports A's claim that the Sudanese government acquiesces in such torture. The BIA has previously found that such objective documentation evidences a government's acquiescence to torture. *See Matter of Doisan*, 26 Immig. Rptr. B1-127 (BIA 2003) (finding that substantial objective documentation respondent presented to support her CAT claim tended to indicate the Ukraine government acquiesced to domestic violence situations).

Because of evidence demonstrating A's inability to relocate to another part of Sudan, current documented country conditions detailing the Sudanese government's awareness of and participation in torture of detainees, and specific grounds indicating that A is personally at risk, A should be granted withholding or deferral of removal under CAT.

VI. CONCLUSION

For the foregoing reasons, A requests that the Court grant his request for withholding of removal, or in the alternative, withholding or deferral of removal under the Convention Against Torture.

Respectfully submitted,

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By: _____

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