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VIA HAND DELIVERY

**Brief in Support of [REDACTED]'s Application for Asylum,
Withholding of Removal, and Protection Under the Convention Against Torture**

I. INTRODUCTION

[REDACTED] is a Colombian citizen of Afro-Colombian descent who has endured years of threats and attempts on his life by paramilitary and guerrilla groups in Colombia because of his race, political beliefs, and human rights activism. As president of the [REDACTED] in Colombia for more than six years, Mr. [REDACTED] has been a vocal defender of the human rights of Afro-Colombians and the need for their protection from death, injury, and forced displacement by paramilitary and guerilla groups in Colombia. Because of Mr. [REDACTED]'s work, he was repeatedly threatened by these groups and warned to stop his activities or he would be killed. Years of intimidation and threats culminated in an attempt on Mr. [REDACTED]'s life on April 29, 2009 at his office at [REDACTED] in Bogota, Colombia, a day after paramilitaries had stopped Mr. [REDACTED] in the street to inform him that he had been targeted for assassination. Shortly thereafter, Mr. [REDACTED] traveled to the United States, where his family joined him several months later. In view of Mr. [REDACTED]'s past persecution, and his well-founded fear of future persecution if he returns to Colombia, Mr. [REDACTED] respectfully requests a grant of asylum under § 208 of the Immigration and Nationality Act ("INA"). Alternatively, Mr. [REDACTED] is entitled to withholding of removal

under § 241(b)(3)(A) of the INA as well as protection under Article 3 of the Convention Against Torture (“CAT”).

II. STATEMENT OF FACTS

A. Country Conditions in Colombia

1. Internal Armed Conflict in Colombia and Forced Displacement

For over 40 years, internal armed conflict has ravaged Colombia, fueled by the struggle between guerillas,¹ paramilitary groups,² and military forces for territory, resources, and control.³ All three parties to the conflict have been responsible for widespread human rights abuses and violations of international law, including killings, disappearances, abductions, torture, and forced displacement.⁴ The parties have used forced displacement to gain control over economically valuable land and to weaken their opponents’ base of support.⁵ Millions of civilians have been forcibly displaced from their land over the last few decades, making Colombia’s population of displaced persons one of the largest in the world.⁶ A significant percentage of these displaced

¹ Two of the main guerilla groups active today are the National Liberation Army (“ELN”) and the Revolutionary Armed Forces of Colombia (“FARC”). Jennifer S. Easterday, *Deciding the Fate of Complementarity: A Colombian Case Study*, 26 Ariz. J. Int’l & Comp. L. 49, *65 (2009).

² The Colombian government instituted a paramilitary demobilization process in 2003, but the process was not entirely successful. These groups continue to operate in Colombia, often with the approval of government forces. United States Dept. of State, Bureau of Democracy, Human Rights and Labor, 2008 Human Rights Reports: Colombia (February 25, 2009) (hereinafter “State Dept. Report on Colombia”); Human Rights Watch, World Report 2010 (hereinafter “HRW World Report”) at 212-217 (2010); Amnesty International, *Everything Left Behind: Internal Displacement in Colombia* (hereinafter “*Everything Left Behind*”), AMR 23/015/2009 (June 2009)

³ State Dept. Report on Colombia, *supra* note 2; Daniel Suman, *Globalization and the Pan-American Highway: Concerns for the Panama-Colombia Border Region of Darien-Coco and its Peoples*, 38 U. Miami Inter-Am. L. Rev. 549 (2007); Easterday, *supra* note 2 at *49; HRW World Report, *supra* note 2 at 212-217.

⁴ Amnesty International, 2009 Country Report on Colombia (2009); HRW World Report, *supra* note 2, at 213-217; Easterday, *supra* note 1, at *65-71; *Everything Left Behind*, *supra* note 2.

⁵ State Dept. Report on Colombia, *supra* note 2; *Everything Left Behind*, *supra* note 2.

⁶ State Dept. Report on Colombia, *supra* note 2; Immigration of Refugee Board of Canada, *Colombia: The Situation of Afro-Colombians Who Have Been Internally Displaced by Civil Conflict* (2008) (hereinafter “*The Situation of Afro-Colombians*”), available at <http://www.unhcr.org/refworld>.

persons have been of Afro-Colombian descent because of the natural-resource rich land that the Afro-Colombians inhabit, and their relative lack of economic and political power as a racial minority group in Colombia.⁷ Indigenous peoples have also been targeted by the armed groups.⁸ Some estimate that 4 to 6 million hectares of land owned by Afro-Colombians and indigenous peoples have been stolen through violence and threat of violence.⁹

2. Afro-Colombian Property Rights

In 1991, Colombia enacted a new Constitution that recognized the collective property rights of the Afro-descendant communities to the land they had inhabited for centuries.¹⁰ These rights were codified by the passage of Colombian Law No. 70 in 1993, which provided a means by which Afro-Colombians could obtain collective legal title to their land.¹¹ Unfortunately, these legal victories sparked more violence against Afro-Colombians by guerilla and paramilitary groups trying to prevent the communities from obtaining land titles.¹² Any resistance by the Afro-Colombians was met with extremely violent acts including decapitations, disappearances, quartering of bodies, rape, and murder.¹³ For example, in May 2002, a massacre occurred in the town of Bojayá where guerrillas seized the town and, in an armed battle with

⁷ Amnesty International, *The Curvardo and Jinguamiando Humanitarian Zones: Communities in Resistance in Colombia* (hereinafter "*Communities in Resistance*"), ARM 23/001/2009 (March 2009); *The Situation of Afro-Colombians*, *supra* note 6.

⁸ *Everything Left Behind*, *supra* note 2.

⁹ *Id.*

¹⁰ *Communities in Resistance*, *supra* note 7.

¹¹ Suman, *supra* note 3, at 561, 562; see Colombian Law No. 70, English version available at http://www.benedict.edu/exec_admin/intnl_programs/other_files/bc-intnl_programs-law_70_of_colombia-english.pdf.

¹² Suman, *supra* note 3, at 561, 567.

¹³ *Denuncian Control de Paramilitares al Comercia en Choco*, *Semana Magazine*, available at http://www.semana.com/wf_imprimirarticulo.aspx?Idart+133684; Affidavit in Support of Application for Asylum by [REDACTED] (hereinafter "[REDACTED] Aff."), Ex. 11.

paramilitaries, a bomb was thrown at a church in which the community was seeking refuge.¹⁴ The explosion killed 119 innocent Afro-Colombians and wounded 98 others.¹⁵ Similar violent attacks against Afro-Colombians and indigenous peoples over their land have continued to the present day.¹⁶

3. Threats, Attacks, and Killings of Afro-Colombian and Indigenous Leaders

Despite the danger involved, Afro-Colombian and indigenous leaders have stood up to the paramilitary and guerilla groups to defend the rights of their people. As a result of their courageous advocacy, however, these leaders have become the victims of assassination, torture, and threats by the armed groups in Colombia.¹⁷ The number of attacks on these leaders continues to escalate, and in its most recent country report on Colombia, the United States State Department expressly acknowledged the current danger to Afro-Colombian leaders.¹⁸ More than 30 representative recent examples of such threats, attacks, and killings of Afro-Colombian and indigenous leaders in 2008, 2009, and January 2010 alone, as reported by several non-

¹⁴ Wikipedia, "Afro-Colombians," available at http://en.wikipedia.org/wiki/Bojay%C3%A1_massacre; Office in Colombia of the UN High Commissioner for Human Rights, Report Regarding Bojayá (Romaña Aff. Ex. 12.).

¹⁵ *Id.*; see also United Nations Human Rights, *The Story of* [redacted] available at <http://www.ohchr.org/FN/NewsEvents/Pages/Storyof.aspx> (recounting on the UN website how M. [redacted] family's house was taken over by the paramilitaries).

¹⁶ More recently, in February 2009, more than 400 indigenous people were forced to flee from their homes in Narino Department after 17 people were killed by guerillas. *Communities in Resistance*, *supra* note 7; HRW World Report, *supra* note 2, at 213. In March 2007, conflict between security forces and guerillas in Rio Tapaje led to the displacement of between 8,000 and 10,000 civilians. *Id.*

¹⁷ *Id.*; see also Brookings Institute, *Listening to the Voices of the Displaced* (hereinafter "*Listening to the Displaced*") (September 2008) ("Leaders of displaced persons organizations, especially in the Americas, have been threatened, targeted and in some cases killed because of the advocacy for IDP rights and their defense of IDP land victims. Sometimes they are branded as subversives or terrorists by governments, paramilitary forces, and government security forces; sometimes they have been targeted by insurgent groups.").

¹⁸ State Dept. Report on Colombia, *supra* note 2; Letter from U.S. Congressman Henry "Hank" Johnson (Aff. Ex. 19.); [redacted] USA, Letter to US Department of State, US Embassy in Colombia, Colombian Authorities and International Solidarity, available at <http://www.afrocolombians.com/pdfs/StatementonGeneralHHRRSituationI-2010.pdf>.

governmental organizations, are detailed in Exhibit A. In addition, a copy of a death-threat email sent to organizations supporting the rights of displaced persons is attached as Exhibit B.

B. Mr. [REDACTED]'s Family History

Mr. [REDACTED] was born in Quibdó, in the Department of Chocó, a coastal region of Colombia where Afro-Colombians have historically lived. ([REDACTED] Aff. at ¶¶ 1,5.) Mr. [REDACTED] is married to [REDACTED] and they have one biological son, [REDACTED], and one daughter, [REDACTED] who is Ms. [REDACTED]'s biological daughter and Mr. [REDACTED]'s stepdaughter. Mr. [REDACTED] his wife, and children are all Afro-Colombians. (*Id.* at ¶ 1.)

While growing up in the Department of Chocó, Mr. [REDACTED] personally witnessed and experienced racial discrimination and violence against Afro-Colombians at the hands of the guerilla and paramilitary groups. (*Id.* at ¶ 5.) In 1998, paramilitary groups took over his father's house in Tagachi, in the Department of Chocó, and set up a military base on the property. (*Id.* at ¶ 9.) From there they planned criminal activities against the civilian population. Mr. [REDACTED]'s father was threatened to be killed because he spoke out against the presence of the paramilitaries on his property. (*Id.*)

In May 2002, a massacre occurred in the town of Bojayá. FARC guerillas seized the town and, in an armed battle with the paramilitaries, a bomb was thrown at a church in which the community was seeking refuge. The explosion killed 119 innocent Afro-Colombians and wounded 98 others.¹⁹ At the time of the massacre, Mr. [REDACTED]'s mother, father, and several siblings were living in Tagachi. (*Id.* at ¶ 12.) Tagachi is a neighboring town of Bojayá, where the massacre took place. (*Id.*) Because of the violence in Bojayá, Mr. [REDACTED] traveled to

¹⁹ Office on Colombia of the UN High Commissioner for Human Rights, Report Regarding Bojayá ([REDACTED] Aff. at ¶ 11.)

Tagachi to move his family to safety. (*Id.*) Mr. [REDACTED] knew that his family was in particular danger because of his work on behalf of Afro-Colombians, as detailed below. (*Id.*)

C. Mr. [REDACTED]'s Political Beliefs and Activism on Behalf of Afro-Colombians

Mr. [REDACTED] has been active in human rights groups his entire adult life. (*Id.* at ¶¶ 3, 10.) From February 2003 to June 2009, he served as the president of [REDACTED], a human rights organization dedicated to raising awareness and speaking out in defense of the rights of Afro-Colombians. (*Id.* at ¶ 3.) Mr. [REDACTED] continues to work on behalf of [REDACTED] today. (*Id.*) Advocating for Afro-Colombians' land rights is one of [REDACTED]' primary objectives. (*Id.* at ¶ 13.) [REDACTED] is also devoted to fighting racism against Afro-Colombians. (*Id.*)

As president of [REDACTED], Mr. [REDACTED] traveled throughout Colombia to educate the Colombian authorities and Afro-Colombians about their rights. (*Id.* at ¶ 14.) He also attended numerous meetings abroad to address these issues, and has worked closely with well-known organizations and governmental bodies and offices such as the United Nations Office of the High Commissioner on Human Rights, the Inter-American Commission on Human Rights, U.S. Congressional Offices, the Washington Office on Latin America, and the Brookings Institute.²⁰ (*Id.* at ¶ 4, 15.)

As a highly visible champion of the rights of Afro-Colombians on both the national and international stage, Mr. [REDACTED] is a direct threat to the guerilla and paramilitary groups in Colombia. (*Id.* at ¶ 16) Accordingly, like many other Afro-Colombian leaders, Mr. [REDACTED] has

²⁰ Mr. [REDACTED]'s Afro-Colombian advocacy efforts have been clearly documented in, and are corroborated by, the testimony of numerous human rights professionals; the many letters of support filed with his Affidavit; articles and publications evidencing Mr. [REDACTED]'s activities on behalf of [REDACTED]; and photographs of M. [REDACTED]'s participation at various meetings and conferences; among other evidence submitted with Mr. [REDACTED]'s Affidavit. ([REDACTED] Aff. Ex. 23-29.)

been specifically targeted for assassination, and he and his family have been threatened on numerous occasions.²¹ (*Id.* at ¶ 17.)

D. The Persecution of [REDACTED] Leaders, Including Mr. [REDACTED] and His Family

Ever since [REDACTED] was founded in 1999, its leaders have been subjected to intimidation and violence because of the organization's opposition to the illegal activities of the guerilla and paramilitary groups. (*Id.*) [REDACTED] leaders have been threatened, kidnapped, and even murdered because of their pro-Afro-Colombian activities. (*Id.*) For example, Mr. [REDACTED] became the president of [REDACTED] after [REDACTED], the former president, was forced to flee Colombia for his safety in 2002. (*Id.* at ¶ 30.) Five different assassination attempts had been made on Mr. [REDACTED], one of which resulted in him getting shot in the leg. (*Id.*) Mr. [REDACTED] was granted asylum in the United States.²² (*Id.*)

Mr. [REDACTED] and his family have also suffered years of threats and attempts on his life because of his work on behalf of Afro-Colombians. (*Id.* at ¶¶ 17-20.)

- In 2002, Mr. [REDACTED]'s home was ransacked, forcing Mr. [REDACTED] to move to another part of town for fear of his safety and that of his family. (*Id.* at ¶ 18.) The perpetrators told Mr. [REDACTED]'s neighbor that they were paramilitaries and that they wanted to search his house for information on his activities with [REDACTED] as a human rights defender. (*Id.*) Mr. [REDACTED] filed a complaint with the government, but nothing was done to provide additional protection to Mr. [REDACTED] and his family. (*Id.*)
- In 2003, paramilitaries came to Mr. [REDACTED]'s office at [REDACTED] and said that if he continued his human right activities, they would kill him. One person arrived at his office in Bogota saying that he was a displaced person as a result of the violence and

²¹ *Listening to the Displaced*, *supra* note 17, at 12 (“[REDACTED] current president, [REDACTED], continues to receive death threats and has been forced to take security precautions.”)

²² *Id.* (“In Colombia, [REDACTED], the founder of [REDACTED], had to flee the country in 2002 because of threats to this life. He had been outspoken in calling the government to implement Law No. 70 of 1993, which gave land title to Afro Colombians. Even though the Inter-American Commission on Human Rights of the Organization of American States called upon the Colombian government to protect [REDACTED], the steps taken by the government were not sufficient to ensure his safety.”)

needed his assistance claiming rights. As soon as Mr. [REDACTED] began explaining to him what he should do, he indicated that he did not come for help, but to tell Mr. [REDACTED] to stop his human rights activities against the paramilitaries or else he would be murdered. (*Id.* at ¶19.)

- In 2004, Mr. [REDACTED]'s wife received a telephone call at his home threatening his life if he continued his human rights activities. Around the same time, a number of individuals on [REDACTED] Board of Directors received threatening calls at the [REDACTED] office. Fearing for his and his family members' lives, he moved again. (*Id.* at ¶ 20.) Mr. [REDACTED] documented these incidents by again reporting it to the authorities. (*Id.* at Ex 14.)

Finally, on April 28, 2009, paramilitaries stopped Mr. [REDACTED] in the street and told him that he had been marked for assassination and that his family also was in danger. (*Id.* at ¶ 22.) The next day, while he was in his office, Mr. [REDACTED] personally saw that a man had entered the reception area. (*Id.*) The man surveyed the office with his hand in the pocket of his leather jacket, which Mr. [REDACTED] believed concealed a gun. (*Id.*) The man told Mr. [REDACTED]'s secretary that he was there in connection with "a project." Recognizing the danger at hand, Mr. [REDACTED]'s secretary lied and told the man that no one was in the office, and the man left. (*Id.*) Later that day, however, when Mr. [REDACTED]'s secretary left the office, the same man was in front of the building with two other men. (*Id.*) Mr. [REDACTED]'s secretary overheard the men saying that she was not the one they were supposed to kill because she was not on the Board of Directors of [REDACTED]. (*Id.*) Mr. [REDACTED]'s secretary called Mr. [REDACTED] to warn him and the other [REDACTED] directors that their lives were in danger. (*Id.*) After this incident, [REDACTED] filed a complaint with the public prosecutor describing what occurred. (*Id.*) However, no action has been taken, and [REDACTED] leaders have continued to receive threats from the armed groups. (*Id.* at ¶ 25.) Mr. [REDACTED]'s colleagues in the [REDACTED] office have also reported that since Mr. [REDACTED] left for the United States, suspicious persons have visited the [REDACTED] office and have asked for him. (*Id.* at ¶ 29.)

On May 17, 2009, Mr. [REDACTED] left Colombia for the United States. (*Id.* at ¶ 23.) At that time, although fearful after the recent attempt on his life, Mr. [REDACTED] intended to return to Colombia to continue his work on behalf of Afro-Colombians. (*Id.*) While in the United States, however, Mr. [REDACTED] met with several human rights experts who advised him that he should not return to Colombia because of the increase in violence there. (*Id.*) Mr. [REDACTED] also learned that his wife, who was still in Colombia, had seen suspicious people around his house. (*Id.* at ¶ 26.) Out of fear for her and her children's lives, she had left the home to stay with her relatives. (*Id.* at ¶ 27.) After she discussed her fear with Mr. [REDACTED] they decided that the only option left was for her to bring their children to the United States for safety and to unite the family (*Id.* at ¶ 28.)

II. ARGUMENT

A. Legal Standard for a Grant of Asylum

Section 208(a) of the Immigration and Nationality Act ("INA") governs the grant of asylum in the United States. *See* INA § 208(a), *as amended*, 8 U.S.C. § 1158(a). To be eligible for asylum, an applicant must qualify as a "refugee." *See* INA § 101(a)(42)(A), *as amended*, 8 U.S.C. § 1101(a)(42)(A). The INA defines a "refugee" as:

[A]ny person who is outside any country of such person's nationality...and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Id. Thus, to qualify as a refugee, an applicant must demonstrate that he is "outside" his country of nationality and that either: (1) he was persecuted in the past, or (2) he has a well-founded fear of future persecution on account of his race, religion, nationality, membership in a social group, or political opinion. *See* 8 C.F.R. § 208.13(b). "Persecution" means the infliction of suffering or

harm upon an individual as punishment for possessing a belief or characteristic a persecutor seeks to overcome. *See Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA Mar. 1, 1985).

An applicant has a "well-founded fear of persecution" if: (a) the applicant has fear of persecution in his or her country of nationality or, if stateless, in his or her country of last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion; (b) there is a reasonable possibility of suffering such persecution, if he or she were to return to that country; and (c) he or she is unable or unwilling to return to, or avail himself or herself of, the protection of that country because of such fear. 8 C.F.R. § 208.13(b)(2).

For the reasons discussed below, Mr. [REDACTED] clearly meets the requirements of § 101(a)(42)(A) and should be granted asylum in the United States.

B. Mr. [REDACTED] Should Be Granted Asylum Because He Is A Refugee Under the INA

1. Mr. [REDACTED] is a Colombian Citizen

Mr. [REDACTED] was born in Quibdó, Chocó, Colombia, on April 30, 1971, and resided in Colombia until he came to the United States in May 2009. ([REDACTED] Aff. ¶ 1, 23.) Since then, he has lived in the United States. (*Id.* at ¶ 23.) Mr. [REDACTED] is thus a Colombian citizen "outside" his country of nationality under 8 U.S.C. § 1101(a)(42)(A).

2. Mr. [REDACTED] Was Persecuted in Colombia As a Result of His Race, Political Opinions, and Membership in a Human Rights Group

Mr. [REDACTED] has been persecuted by guerilla and paramilitary groups as a result of his race, his political opinions regarding the rights of Afro-Colombians, and his membership in a human rights group opposed to these armed groups. (*Id.* at ¶ 5.) In addition to the threats and attacks against Mr. [REDACTED] in 2002, 2003, and 2004, less than one month before Mr. [REDACTED] left for the United States, an attempt was made on his life because of his activities on behalf of

(*Id.* at ¶¶ 17-22.) Formal reports were filed by Mr. [REDACTED] documenting several of these incidents, which corroborate Mr. [REDACTED]'s testimony. (*Id.*)

This past persecution that Mr. [REDACTED] endured was directly connected to his race, his political opinions, and his membership in a human rights group advocating for the rights of Afro-Colombians in Colombia. On several occasions, the perpetrators expressly told Mr. [REDACTED] that he was to stop his advocacy on behalf of Afro-Colombians or be killed. (*Id.* at ¶¶ 19-20; 22.) When the attempt on his life was made in April 2009, Mr. [REDACTED]'s secretary heard the assailants state that they had been instructed to kill the directors of [REDACTED], the human rights organization that Mr. [REDACTED] headed. (*Id.* at ¶ 22.)

3. Mr. [REDACTED] Also Has a Well-Founded Fear of Future Persecution If He Is Returned to Colombia

Where, as here, an applicant has proven past persecution, it is presumed that the applicant has a well founded fear of future persecution. See 8 C.F.R. § 208.13(b)(1)(ii); *In re Chen*, Interim Decision 3104, at 4 (BIA Apr. 25, 1989). Thus, Mr. [REDACTED]'s direct and credible evidence of past persecution alone establishes his well-founded fear of future persecution.

4. The Government Cannot Rebut the Presumption of Mr. [REDACTED]'s Well-Founded Fear of Future Persecution If He is Returned to Colombia

The above presumption is rebuttable only where the government can show by a preponderance of the evidence that: (1) there has been a "fundamental change in circumstances" such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality; or (2) the applicant could avoid future persecution by relocating to another part of the applicant's home country. 8 C.F.R. § 208.13(b)(1)(i)(A)-(B).

Here, the government cannot establish either of these elements. First, the violence against Afro-Colombian leaders has not only continued, but has escalated since Mr. [REDACTED] fled to the United States. Numerous attacks on Afro-Colombians have been reported in late 2009 and

early 2010. ([REDACTED] Aff. at ¶ 27.) Further, the plot to assassinate Mr. [REDACTED] has not been called off, as evidenced by the suspicious persons who were seen by his wife lurking about his home. (*Id.* at ¶ 26.) Second, relocation to another part of Colombia will not protect Mr. [REDACTED]. (*Id.* at ¶ 34.) Violence against Afro-Colombians has occurred throughout Colombia. (*Id.* at ¶ 24.) Furthermore, as discussed above, Mr. [REDACTED] has already moved in response to threats to him and his family on multiple occasions. (*Id.* at ¶ 18, 20.) The armed forces have tracked him down each time. (*Id.* at ¶ 20, 26.) This will undoubtedly happen again if he is returned to Colombia, with dire consequences for Mr. [REDACTED] and his family.

5. Mr. [REDACTED] Has a Well-Founded Fear of Future Persecution If He is Returned to Colombia

Even assuming the government could rebut the above presumption, the evidence clearly establishes that Mr. [REDACTED] has a well-founded fear of persecution in the future. The Board of Immigration Appeals (“BIA”) has held that an asylee has demonstrated a well-founded fear if he can show that “a reasonable person in his circumstances would fear persecution.” *See Matter of Mogharrabi*, 19 I. & N. Dec. 439, 446 (BIA June 12, 1987). A reasonable person may fear persecution “where its likelihood is significantly less than clearly probable,” or even where there is as little as a 10% chance of the fear eventually materializing. *See Mogharrabi*, 19 I. & N. Dec. at 446; *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987). A well-founded fear may also be based on evidence documenting the experiences of those who are similarly situated. *See* 8 C.F.R. 208.13; *Mogharrabi*, 19 I. & N. Dec. at 447.

Mr. [REDACTED] has testified credibly in his Affidavit that he has a genuine fear that he will be killed if forced to return to Colombia and, thus, he is unwilling to do so. His fear is supported by the United States State Department’s most recent human rights report on Colombia, which confirms that human rights leaders like Mr. [REDACTED] have been tortured and killed. Additionally, human rights organizations have documented dozens of attacks on Afro-Colombian leaders who

[REDACTED]

have taken stances on political and human rights issues identical to those voiced by Mr. [REDACTED]. These reports illustrate the increase in violent attacks on Afro-Colombian and indigenous leaders in late 2009 and early 2010.


Several human rights experts on Colombia have also submitted direct testimony that Mr. [REDACTED] will be in grave danger if he is returned to Colombia. Significantly, in addition to Mr. [REDACTED], other members of [REDACTED] have been the targets of attacks by the guerilla and paramilitary groups. Mr. [REDACTED], the president of [REDACTED] before Mr. [REDACTED], was the target of five assassination attempts and was shot in the leg before fleeing to the United States and being granted asylum. Like many others, Mr. [REDACTED] was advised Mr. [REDACTED] not to return to Colombia for fear of his safety. ([REDACTED] Aff. at ¶ 31, Ex. 34.)

Finally, there has been no change in circumstances that would increase Mr. [REDACTED]'s security if returned to Colombia. His attackers have been looking for him since he left Colombia, as detailed in his wife's Affidavit. And because Mr. [REDACTED] has continued his advocacy work in the United States, the threat to him and his family has likely only increased.

In view of this evidence, and the past threats and attempts on Mr. [REDACTED]'s life, if he is forced to return to Colombia, he will clearly meet the same fate of many other Afro-Colombian leaders who have been tortured and killed by the guerilla and paramilitary groups because of their race, political beliefs, and human rights activism.

C. In the Alternative, Mr. [REDACTED] is Entitled to Withholding of Removal

An application for asylum is also regarded as an application for withholding of removal. *See* 8 C.F.R. § 208.16(a). The INA provides that an applicant who is seeking withholding of removal from any country must show that his life or freedom would be threatened in such country on account of race, religion, nationality, and/or membership in a particular social group or political opinion. *See* 8 U.S.C. § 1253(h)(1). To make this showing, the applicant must



establish a clear probability of persecution on account of one of the foregoing grounds. *See INS v. Stevic*, 467 U.S. 407, 414 (1984). The clear probability standard is met if the applicant demonstrates that it is more likely than not that he would be subject to persecution if returned to his country. *Id.* at 429-30. Withholding of removal is not discretionary, and the adjudicator must grant the applicant withholding if he carries his burden of proof. *See* 8 C.F.R. § 208.16(c)(1).

Mr. [REDACTED] has shown by credible and direct evidence that he has been persecuted due to his race, political opinions, and membership in a human rights group. He also has testified credibly that he has a genuine fear that he may be killed if he is forced to return to Colombia. Mr. [REDACTED]'s testimony is corroborated by several reports filed with the Colombian government documenting threats and attacks made against him; the direct testimony of numerous human rights experts on Colombia; and human rights reports issued by the United States State Department and international organizations, among other evidence. It is thus clear that Mr. [REDACTED]'s and his family's personal freedom and safety would be threatened if they were forced to return to Colombia. Mr. [REDACTED] is thus entitled to the withholding of removal from the United States.

D. Mr. [REDACTED] Is Entitled to Protection Under the Convention Against Torture

Article 3 of the Convention against Torture prohibits the removal of an alien to a country in which it is more likely than not that he would be subject to torture. *See* 8 C.F.R. § 208.16(b). Testimony of the applicant may be sufficient to sustain the burden of proof without corroboration. 8 C.F.R. § 208.16(c)(2). Once a determination is made that the alien is more likely than not to be tortured in the country of removal, protection will be granted. 8 C.F.R. § 208.16(c)(4).

Pursuant to Article 1 of the Convention and the relevant regulations, "torture" is:

[REDACTED]

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

8 C.F.R. § 208.18(a)(1). In assessing whether it is more likely than not that an applicant would be tortured in the country of removal, all evidence relevant to the possibility of torture must be considered, including evidence of past torture inflicted upon the applicant and conditions in the country of removal, including evidence of gross or mass violations of human rights. *See* 8 C.F.R. §208.16(c)(3). Mr. [REDACTED] has presented direct and credible evidence that he was tortured by guerilla and paramilitary groups in Colombia and would be subject to torture if he was forced to return there. He has also introduced evidence of mass violations of the human rights of Afro-Colombian leaders in Colombia. Accordingly, Mr. [REDACTED] has met the requirements for protection under the CAT and is entitled to withholding or deferral of removal under CAT.


E. There Are No Statutory Bars to Granting Mr. [REDACTED] Asylum

None of the Section 208(a)(2) statutory bars apply here. Mr. [REDACTED] applied for asylum on January 14, 2010, well within one year from when he entered the United States on May 17, 2009. ([REDACTED] Aff. at ¶ 23.) He has never been denied asylum before by any United States tribunal and, to date, the United States has only signed a safe-country agreement with Canada. *See* 69 Fed. Reg. 69479 (Nov. 29, 2004). Because Mr. [REDACTED] entered the United States on a valid visa, without traveling through Canada, he cannot be removed to Canada.

None of the Section 208(b)(2) statutory bars apply either. Mr. [REDACTED] has never persecuted anyone, and does not pose any danger to the security of the United States. Further, Mr. [REDACTED] was not firmly resettled in a third country after he was persecuted in Colombia before arriving in the United States. “[A]n alien is considered to be firmly resettled if, prior to

arrival in the United States he entered into another nation with, or while in that nation received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement.” 8 C.F.R. § 208.15. Although Mr. [REDACTED] spent short periods of time abroad to carry out his duties on behalf of [REDACTED], he was not offered permanent resident status, citizenship, or any other type of permanent resettlement in those countries. (Aff. at ¶ 15.)


Nor has Mr. [REDACTED] committed a “serious nonpolitical crime” outside the United States (*Id.* at ¶ 33.) As discussed in detail in his Affidavit, although Mr. [REDACTED] was arrested for allegedly possessing (not using) a firearm in Colombia 17 years ago, he did not actually own the gun and was never tried or convicted. (*Id.* at ¶ 32.) Mr. [REDACTED] falsely confessed to owning the gun to avoid being tortured and killed while in prison, but he had actually been framed for the crime because of his race and his family’s political actions on behalf of Afro-Colombians. (*Id.* at ¶ 32.) Moreover, even assuming Mr. [REDACTED] had actually owned the firearm (which was not the case), mere possession of a firearm does not rise to the level of a “serious nonpolitical crime” for purposes of denying Mr. [REDACTED] asylum. *The Handbook on Procedures and Criteria for Determining Refugee Status* states that “a ‘serious’ crime must be a capital crime or a very grave punishable act.” Office of the United Nations High Commissioner for Refugees, *Handbook*, para. 155, at 25, HCR/IP/4/ENG/REV.1 (Jan. 1992). For example, the BIA has held that robbery and embezzlement constitute serious nonpolitical crimes. *Matter of Ballester-Garcia*, 17 I. & N. Dec. 592, 595-96 (BIA 1980) (robbery); *In re Castellon*, 17 I. & N. Dec. 616 (BIA 1981) (embezzlement). The mere possession of a firearm is a very minor offense, it did not occur in the United States, and it does not come close to meeting the threshold required in order to be considered “serious.”



III. Conclusion

For the foregoing reasons, it is respectfully requested that Mr. [REDACTED] be granted asylum in the United States. In the alternative, Mr. [REDACTED] qualifies for and must be granted withholding of removal or protection under the Convention Against Torture.

Respectfully submitted,



LRH/SHB

