**NON-DETAINED**

**Human Rights First**

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**UNITED STATES DEPARTMENT OF JUSTICE**

**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

**BOARD OF IMMIGRATION APPEALS**

**FALLS CHURCH, VA**

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In the Matter of: )

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) **File No.**

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Removal Proceedings )

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**RESPONDENT’S LEGAL MEMORANDUM AND, IN THE ALTERNATIVE, MOTION FOR REMAND**

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10. **INTRODUCTION**

Respondent, through counsel, submits this brief after the United States Court for the Ninth Circuit (“Ninth Circuit Court of Appeals”) ordered remand to the Board of Immigration Appeals (“BIA”) for further consideration of the BIA’s July 8, 2020, denial of Respondent’s application for protection from removal under the Convention Against Torture (“CAT”). Mr. Respondent’s case was previously on appeal at the Ninth Circuit Court of Appeals after the BIA issued a decision affirming the Immigration Judge’s (“IJ”) order denying his application for asylum, withholding of removal (“withholding” or “withholding of removal”), and protection under the CAT.

Mr. Respondent is a native of Cameroon, a country in the midst of civil unrest and political division. Mr. Respondent, members of his family, and the community have been harmed, imprisoned, and killed on account of political affiliation and involvement with the Anglophone separatist movement. Mr. Respondent was forced to flee Cameroon after being arbitrarily arrested, detained, beaten, threatened, and tortured on account of the government’s suspicion to his involvement in the Anglophone separatist movement. The Cameroonian authorities cannot or will not protect him from this harm because the Cameroonian government is dominated by the Francophone authorities and is the persecutor in this case.

In the unpublished decision, the Ninth Circuit remanded for further consideration of Mr. Respondent’s CAT claim. As argued below, the record is sufficiently developed, and Mr. Respondent has satisfied his burden of proof with country condition reports and other supporting documents that both the IJ and the Board did not take into consideration when deciding Mr. Respondent’s CAT claim. Additionally, Mr. Respondent requests the Board to remand his proceedings to the IJ to consider new evidence, including more recent country condition evidence and new evidence showing that persons in Cameroon have posted on Facebook looking for Mr. Respondent and his brother.

1. **STATEMENT OF FACTS**
2. **Mr. Respondent’s Past Persecution in Cameroon**

[Redacted]

1. **Mr. Respondent’s Flight from Cameroon to Seek Asylum in the United States**

[Redacted]

1. **PROCEDURAL HISTORY**

On September 4, 2019, the Department of Homeland Security (“DHS”) processed Mr. Respondent at the San Ysidro Port of Entry. Exh. 1. Mr. Respondent had a brief interview with an immigration officer and was then transferred to the Adelanto Detention Facility. Exh. 7. On October 8, 2019, Mr. Respondent had his Credible Fear Interview (“CFI”) at the Adelanto ICE Processing facility and successfully established credibility and a reasonable fear of persecution, explaining to the officer that he fears return to Cameroon because he will be arrested, beaten, and killed by the Francophone government. *See* Credible Fear Determination Checklist and Written Analysis. On October 17, 2019, DHS served a Notice to Appear on Mr. Respondent commencing removal proceedings before the Immigration Court. Exh. 1. Mr. Respondent was charged as removable under INA § 212(a)(7)(A)(i)(I). *Id*.

On November 5, 2019, Mr. Respondent appeared *pro se* for his Master Calendar hearing. Mr. Respondent then filed his Form I-589, Application for Asylum, Withholding of Removal, and protection under the Convention Against Torture *pro se* on November 20, 2019. IJ at 2. Mr. Respondent had a third Master Calendar hearing on November 27, 2019, where he filed his declaration. IJ at 2.

On January 6, 2020, Mr. Respondent appeared *pro se* on the detained docket for his Individual Hearing before the Immigration Court. Tr. At 25. Mr. Respondent’s applications were all denied, and he was ordered removed. I.J. at 13. The Immigration Judge denied Mr. Respondent’s application based on the Third Country Transit Rule 8 C.F.R. § 208.13(c)(4). I.J. at 8. In the alternative, the Immigration Judge denied the application on a finding of adverse credibility for supposed inconsistencies and implausibility in Mr. Respondent’s testimony. I.J. at 9-10. Further, the Immigration Judge held that Mr. Respondent’s violent arrest and physical abuse, which led to five months of detention without any due process to challenge his imprisonment, was not persecution. I.J. at 10. Lastly, the Immigration Judge denied Mr. Respondent’s application for protection under the Convention Against Torture and found his testimony not credible. I.J. at 12. The Immigration Judge did not consider country conditions in Cameroon in denying Mr. Respondent’s CAT claim.

On January 21, 2020, Mr. Respondent timely filed an appeal of the Immigration Judge’s decision to the Board of Immigration Appeals. EOIR-26. Mr. Respondent secured representation and submitted briefing on March 23, 2020. Respondent’s Brief in Support of Appeal. On July 8, 2020, the Board dismissed Mr. Respondent’s appeal, adopting the Immigration Judge’s findings. BIA Dismissal notice.

On August 7, 2020, Mr. Respondent timely filed a Petition for Review of the Board’s decision before the Ninth Circuit Court of Appeals. Form 3. Petition for Review of Order of a Federal Agency, Board, Commission, or Officer. On January 6, 2022, the Ninth Circuit, in an unpublished memorandum, denied the petition for review of Mr. Respondent’s Asylum and Withholding of Removal claims and remanded Mr. Respondent’s Convention Against Torture claim to the Board for proceedings. *See* Tab. The Ninth Circuit Court decided that the failure of the IJ and BIA to consider evidence of country conditions constitutes reversible error and that the Court cannot assume that the BIA considered matters upon which its opinion is silent.

1. **ISSUES PRESENTED**
2. Whether evidence presented satisfied the legal standard for CAT relief as provided by the Ninth Circuit.
3. Additionally, whether remand to the immigration judge is warranted for consideration of new evidence that is material to Mr. Respondent’s claim for relief.
4. **STANDARD OF REVIEW**

This Board may review all questions of law, discretion, and judgment in appeals from decisions of Immigration Judges *de novo*.[[1]](#footnote-2) The Board may review an Immigration Judge’s factual findings if they are clearly erroneous.[[2]](#footnote-3) The Board reviews the issue of an exercise of discretion and mixed questions of law and fact *de novo*.[[3]](#footnote-4) Because Respondent filed his asylum application after May 11, 2005, it is governed by the provisions of the REAL ID Act.[[4]](#footnote-5)

1. **ARGUMENT**
2. **Under the legal standards provided by the Ninth Circuit, Mr. Respondent has met his burden of proof to establish eligibility for CAT relief.**

The Ninth Circuit remanded this case for the Board to consider Mr. Respondent’s submitted evidence in support of his CAT claim. To be eligible for protection under the CAT, Mr. Respondent must show that it is more likely than not that he will be tortured in the country of removal.[[5]](#footnote-6) In addition, the act of torture must be committed “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”[[6]](#footnote-7) The Ninth Circuit has found that “country conditions alone could satisfy CAT applicant’s burden.” [[7]](#footnote-8) In Mr. Respondent’s case, neither the IJ nor the BIA discussed country conditions in the record. *See* Tab A. As the Ninth Circuit noted, Mr. Respondent submitted evidence on this issue that both the IJ and BIA erroneously ignored. These documents provide powerful evidence that Mr. Respondent will more likely than not be tortured with the participation, consent, or acquiescence of a public official in Cameroon. Mr. Respondent submitted country conditions reports, including the Cameroon 2018 Human Rights Report (Exh. 2), the CIA World Factbook report on Cameroon (Exh. 3) and additional corroborating evidence, including a photo of his arrest and an affidavit by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Mr. Respondent’s family lawyer, among other country condition reports. Exh. 4.

The country reports and other supporting documents in the record demonstrate that Mr. Respondent experienced torture at the hands of the Cameroonian government and is likely to be tortured again in the future:

* [redacted][[8]](#footnote-9)
* [redacted][[9]](#footnote-10)
* “Human Rights Watch found that the government forces responded to the growing separatist insurgency by carrying out abusive security operations against communities suspected of supporting separatist groups. Security forces committed extrajudicial executions, used excessive force against civilians, tortured and abused suspected separatists and other detainees […].” [[10]](#footnote-11)
* “[P]rolonged arbitrary detentions including of suspected Anglophone separatists by security forces; harsh and life-threatening prison conditions […].”[[11]](#footnote-12)
* “Amnesty International and Human Rights Watch documented several cases in which security forces severely mistreated suspected separatists and detainees.”[[12]](#footnote-13)

The IJ and BIA ignored the above evidence, focusing instead on Mr. Respondent’s credibility. But credible testimony is not required to establish a CAT claim; rather the Board must also consider country conditions and other evidence independent of the applicant’s testimony, as “country conditions alone can play a decisive role in granting relief under the Convention.”[[13]](#footnote-14) The Ninth Circuit has held that “a CAT applicant may satisfy his burden with evidence of country conditions alone.”[[14]](#footnote-15) The country condition reports that Mr. Respondent submitted in support of his asylum, withholding and CAT claim show that treatment of detained people in Cameroon are similar to the torture experienced by Mr. Respondent, and that authorities use at least 24 different methods used to beat, break, and humiliate detainees, usually with the aim of forcing confessions or gaining information but also to punish, terrify, and intimidate. Most commonly, detainees are beaten with various objects, including electric cables, machetes, and wooden sticks; forced into stress positions and suspended from poles in ways that caused extreme pain to joints and muscles; and subjected to simulated drowning.”[[15]](#footnote-16)

Mr. Respondent submitted the U.S. Department of State 2017 and 2018 Country Reports on Human Rights Practices in Cameroon, which highlight the government’s prolonged detention of those suspected of separatist activities. As the Ninth Circuit has held, “a petitioner can demonstrate eligibility for CAT relief despite an adverse credibility finding if the State Department reports, standing alone, compel [ ] the conclusion that [petitioner] is more likely than not to be tortured upon return.”[[16]](#footnote-17) Based on the State Department report, it is not contested that torture occurs in Cameroon, where “Government security forces were widely believed to be responsible for disappearances of suspected Anglophone separatists, with reports of bodies dumped far from the site of killings to make identification difficult.”[[17]](#footnote-18) The report added that “[t]here were credible reports that members of government forces physically abused and killed prisoners in their custody.”[[18]](#footnote-19) Such behavior certainly constitutes torture under the applicable regulation.[[19]](#footnote-20)

The IJ also found that, even if Mr. Respondent’s testimony had been credible “there is insufficient evidence here to find that respondent suffered harm rising to the level of torture.” IJ at 12. However, the Ninth Circuit has “never held that CAT relief requires a finding of past torture […] but instead identifies evidence of past torture as one item in a non-exclusive list of relevant factors.” [[20]](#footnote-21) The IJ further noted that “it is unclear why [the government] will be looking for him due to his ties to his brother,” ignoring the country conditions which show that suspected separatists are severely mistreated. IJ at 12. Based solely on Mr. Respondent’s testimony, the IJ found that Mr. Respondent has failed “to meet his burden of proof.” IJ at 12. However, the Ninth Circuit has held that “[a]n adverse credibility determination is not necessarily a death knell to CAT protection.”[[21]](#footnote-22) The IJ’s failure to consider country condition evidence and other evidence in the record was error, and the Board’s failure to address this issue upon appeal was likewise erroneous. Upon remand, the agency must consider all evidence Mr. Respondent submitted. As demonstrated above, the supporting documents submitted in the record are sufficient to establish Mr. Respondent’s eligibility for CAT regardless of whether Mr. Respondent’s testimony is credible.[[22]](#footnote-23) Because the IJ never considered the issue in the first instance, the Board should remand proceedings to the IJ in accordance with the Ninth Circuit’s decision in this matter.

In sum, Mr. Respondent’s supporting documents in this case establish that Mr. Respondent is more likely than not to be tortured by the Cameroonian government if forced to return to Cameroon, and it is clear that the torture will be by or at the instigation of a public official or other person acting in an official capacity. Applying the legal standards set by the Ninth Circuit, the IJ’s failure to consider the supporting documents was a reversible error. Therefore, the Board should remand proceedings to the IJ to consider country condition evidence and other evidence independent of Mr. Respondent’s testimony in determining whether he is eligible to CAT relief.

1. **Additionally, the Board should remand Mr. Respondent’s case to consider new evidence that is material to Mr. Respondent’s claim for relief.**

The Board may remand a case to the IJ where the respondent has submitted new evidence that otherwise complies with the requirements of a motion to reopen.[[23]](#footnote-24) In particular, the motion must “state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material” and must show that the “evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing.”[[24]](#footnote-25) Mr. Respondent moves the Board to remand proceedings for additional fact finding with respect to new, material evidence that is presented with this motion.

Enclosed are affidavits from Mr. Respondent’s brother in support of Mr. Respondent’s asylum application, discussing his own experiences when arrested and detained by the Cameroonian government along with his father. *See* Tab C. Mr. Respondent’s sister submits an affidavit. *See* Tab D. Mr. Respondent’s cousin submits a supporting affidavit as well. *See* Tab E. This evidence was previously unavailable to Mr. Respondent because he did not have representation during his removal proceedings, which occurred while he was detained, and he was unaware that he could request a declaration in support of his claim from family members. *See* Tab B. Additionally, Mr. Respondent is submitting two additional photos of his arrest, which were initially not available to him prior to his individual hearing. *See* Tab F and Tab B.

Aside from the corroborating declarations and photos, Mr. Respondent is submitting an expert affidavit written by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ discussing current country conditions in Cameroon. *See* Tab H. \_\_\_\_\_\_\_\_\_\_\_\_ discusses how “anyone even remotely associated with anglophone secessionist groups – particularly the SCNC – have been heavily targeted […]” [[25]](#footnote-26)*Id.* \_\_\_\_\_\_\_\_\_\_\_\_\_ also highlights the danger Mr. Respondent continues to face if forced to return to Cameroon because to this day “any declared or suspected members of associated face immediate arrest.” Since “[t]here is no due process of law in Cameroon, […] security forces are capable of arresting and detaining indefinitely whomever they please” just as the military has already unlawfully arrested and detained Mr. Respondent on two occasions.[[26]](#footnote-27) Mr. Respondent is also submitting a Facebook post dated \_\_\_\_\_\_\_\_\_\_\_\_from persons who are still looking for him and his brother. *See* Tab G. This new evidence shows that Mr. Respondent’s life and freedom would likely be threatened and that he would likely be tortured if he is returned to Cameroon.

Accordingly, the new evidence is material in determining whether Mr. Respondent’s life or freedom will more likely than not be threatened if he is removed to Cameroon and whether he would be tortured by or with the consent or acquiescence of a public official in Cameroon. Remand, therefore, would be appropriate.

Additionally, at the time of the Individual Hearing, *Matter of L-E-A-II* was controlling case law.[[27]](#footnote-28) Some courts considered *Matter of L-E-A-II* to create a presumption against asylum claims based on familial ties, requiring the claimant to show a heightened level of social distinction for family based particular social groups. On June 16, 2021, Attorney General Garland vacated *Matter of L-E-A-II* in its entirety.[[28]](#footnote-29) Under these circumstances, Mr. Respondent’s claim for asylum protection is even stronger and clearly merits to be remanded.

Not to be overlooked, the Ninth Circuit made it plain that the family is a quintessential particular social group.[[29]](#footnote-30) The court held that family ties are immutable characteristics, and a case-by-case analysis is necessary to establish whether the elements of particularity and social distinction are met.[[30]](#footnote-31) In the present case, Mr. Respondent’s would like the opportunity to develop the proposed particular social group consisting of “immediate family members of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.” Mr. Respondent has submitted a declaration and already testified that the persecution he suffered in Cameroon was because of his familial relationship with his brother. Mr. Respondent’s persecutors tortured him to obtain information about his brother and his whereabouts. The supporting affidavit written by Mr. Respondent’s family lawyer also makes the connection regarding Mr. Respondent’s unlawful arrests and prolonged detention being based on his familial ties to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, noting that “military men came to the house, questioned Mr. Respondent on the whereabouts of his brother.” [[31]](#footnote-32)

The new evidence submitted also discusses how Mr. Respondent was persecuted by the Cameroonian government because of his brother being a member of SCNC. \_\_\_\_\_\_\_\_\_\_\_\_ highlights that “it is common for security forces to harass and even detain friends and relatives of SCNC members if they suspect them of aiding or abetting the friend or relative.”[[32]](#footnote-33)

Accordingly, remand is warranted in this case to consider new evidence under the current legal standards. As noted above, remand is required for the IJ to consider country conditions not considered in the first instance. Upon remand, the parties should have the opportunity to submit additional evidence, including the new evidence submitted with this filing, for the Immigration Judge’s consideration.

1. **CONCLUSION**

Applying the standards of the Ninth Circuit, the Board should remand Mr. Respondent’s case to the IJ to consider his eligibility for protection under the CAT. Additionally, Mr. Respondent moves the Board to remand his case to the IJ to consider the new, material evidence he has presented, including supporting declarations from family members, additional photos of his arrest, a country conditions expert declaration, additional country conditions, and Facebook posts of people still looking for Mr. Respondent and his brother. Mr. Respondent’s life is still in danger should he be removed to Cameroon, and he respectfully asks this Board to provide him with protection as required by law.

Respectfully submitted, this 2nd day of July 2022.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**In Re: File No.:**

**RESPONDENT**

**PROOF OF SERVICE**

On July 2, 2022, I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, e-served a copy of the foregoing “RESPONDENT’S LEGAL MEMORANDUM AND, IN THE ALTERNATIVE, MOTION FOR REMAND” to DHS Counsel at the following address:

DHS/ICE Office of the Principal Legal Advisor

10250 Rancho Road

Adelanto Detention Facility

Adelanto, CA 92301

By E-Service   <https://eservice.ice.gov/>

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. 8 C.F.R. § 1003.1(d)(3)(ii). [↑](#footnote-ref-2)
2. 8 C.F.R. § 1003.1(d)(3)(i). [↑](#footnote-ref-3)
3. 8 C.F.R. §§ 1003.1(d)(3)(ii) and (iii); *Ai Jun Zhi v. Holder*, 751 F.3d 1088, 1091 (9th Cir. 2014); *Cordoba v. Holder*, 726 F.3d 1106, 1113 (9th Cir. 2013) (reviewing de novo both purely legal questions and mixed questions of law and fact requiring the court to exercise judgment about legal principles). [↑](#footnote-ref-4)
4. *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006). [↑](#footnote-ref-5)
5. *Matter of M-B-A-*, 23 I&N Dec. 474, 477-78 (BIA 2002); 8 C.F.R. § 1208.16(c)(2) [↑](#footnote-ref-6)
6. 8 C.F.R. § 1208.18(a)(1) [↑](#footnote-ref-7)
7. *Aguilar-Ramos v. Holder*, 594 F3d. 701, 705 (9th Cir. 2010). [↑](#footnote-ref-8)
8. In The Matter of an Affidavit on the Situation of Mr. Respondent, Exh. 4. [↑](#footnote-ref-9)
9. In The Matter of an Affidavit on the Situation of Mr. Respondent, Exh. 4. [↑](#footnote-ref-10)
10. Human Rights Watch, World Report 2019: Cameroon, Exh. 4 at 3. [↑](#footnote-ref-11)
11. U.S. Department of State, 2018 Country Reports on Human Rights Practices: Cameroon, Exh. 2. [↑](#footnote-ref-12)
12. U.S. Department of State, 2018 Country Reports on Human Rights Practices: Cameroon, Exh. 2. [↑](#footnote-ref-13)
13. *Kamalthas v. I.N.S,* 251 F.3d 1279, 1280 (9th Cir. 2001) (holding that a negative credibility finding for the purposes of an asylum claim does not preclude relief under CAT where documented country conditions corroborate a claim of torture). [↑](#footnote-ref-14)
14. *Aguilar-Ramos v. Holder,* 594 F.3d 701, 705 (9th Cir. 2010). [↑](#footnote-ref-15)
15. U.S. Department of State, 2017 Country Reports on Human Rights Practices: Cameroon, Exh. 4. [↑](#footnote-ref-16)
16. *Konou v. Holder,* 750 F.3d 1120, 1125 (9th Cir. 2014) (quoting *Jie Cui v. Holder*, 712 F.3d 1332 (9th Cir. 2013). [↑](#footnote-ref-17)
17. U.S. Department of State, 2018 Country Reports on Human Rights Practices: Cameroon, Exh. 2. [↑](#footnote-ref-18)
18. U.S. Department of State, 2018 Country Reports on Human Rights Practices: Cameroon, Exh. 2. [↑](#footnote-ref-19)
19. 8 C.F.R. § 1208.18(a)(1). [↑](#footnote-ref-20)
20. *Yvette Ngmenang Akosung v. Barr*, 970 F.3d 1095, 1105 (9th Cir. 2020). [↑](#footnote-ref-21)
21. *Shrestha v. Holder,* 590 F.3d 1034, 1048 (9th Cir. 2010). [↑](#footnote-ref-22)
22. *Matter of M-B-A-*, 23 I&N Dec. 474, 477-78 (BIA 2002); 8 C.F.R. § 1208.16(c)(2). [↑](#footnote-ref-23)
23. *Matter of Coehlo*, 20 I&N Dec. 464, 471 (BIA 1992). [↑](#footnote-ref-24)
24. 8 C.F.R. § 1003.2(c)(1). [↑](#footnote-ref-25)
25. Affidavit of \_\_\_\_\_\_\_\_\_, Ph.D. Tab H ¶13. [↑](#footnote-ref-26)
26. Affidavit of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Ph.D. Tab H ¶13. [↑](#footnote-ref-27)
27. *Matter of L-E-A-,* 27 I&N Dec, 581 (A.G. 2019) (“L-E-A-II”). [↑](#footnote-ref-28)
28. *Matter of L-E-A-,* 28 I&N Dec. 304 (A.G. 2021). [↑](#footnote-ref-29)
29. *Flores-Rios v. Lynch*, No. 12-72551 (9th Cir. 2015). [↑](#footnote-ref-30)
30. *Id.*  [↑](#footnote-ref-31)
31. In the Matter of an Affidavit on the Situation of Mr. Respondent. Exh. 4. [↑](#footnote-ref-32)
32. Affidavit of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, Ph.D. Tab H ¶13. [↑](#footnote-ref-33)