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**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
180 SPRING STREET, SUITE 241
ATLANTA, GEORGIA 30303**

In the Matter of:)

) File No.: A XXX-XXX-XXX

RESPONDENT,)

In Removal Proceedings)

Immigration Judge: Baird

Individual Hearing Date: November 10, 2016 at 10:00 a.m.

**RESPONDENT'S PRE-HEARING BRIEF IN SUPPORT OF APPLICATION FOR
ASYLUM**

I. INTRODUCTION

COMES NOW, Respondent, RESPONDENT, by and through her undersigned counsel of record, Peter M. Isbister, Esq. and Massiel Silva, Esq. and submits this, her “Pre-Hearing Brief in Support of Application for Asylum.” Ms. RESPONDENT, a twenty-nine-year-old woman from Venezuela, is before this Court seeking asylum as a result of her well-founded fear of persecution on account of her political opinion. Ms. RESPONDENT is both eligible for and merits a grant of asylum.

Ms. RESPONDENT meets all the legal requirements for a grant of asylum. In order to qualify for asylum, a person must establish that she is “a person outside her country of nationality ... who is unable or unwilling to return to, and is unable or unwilling to avail herself of the protection of that country, because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group or political opinion.” INA §101(a)(42)(A) and INA §208(b); INS v. Elias-Zacarias, 502 U.S. 478, 481 (1992); Ruiz v. U.S. Att’y Gen., 440 F.3d 1247,1257 (11th Cir. 2006). Ms. RESPONDENT' experience of past persecution on account of her political opinion affords her a presumption of a well-founded fear of future persecution. 8 C.F.R. §208.13(b)(1).

The persecution that Ms. RESPONDENT has suffered was on account of her political opinion. Specifically, Ms. RESPONDENT was persecuted by government actors and a group supported by the government because of her active involvement in opposition political parties called Primero Justicia and Voluntad Popular. Ms. RESPONDENT meets all of the eligibility requirements under the relevant case law for granting her asylum: she suffered past persecution, there is a nexus between Ms. RESPONDENT’s political opinion and the persecution she

suffered, her fear of being harmed upon returning to Venezuela is well-founded, the circumstances in Venezuela have not changed since she left, in fact, treatment towards the opposition has worsened, and she cannot be expected to relocate to a safer area because the general state of Venezuela is dangerous for members of the opposition. In addition, the government of Venezuela is unwilling to protect her from her persecutors because the government of Venezuela supports and encourages her persecutors. See: Lopez v. Att’y Gen. of the U.S. 504 F.3d 1341, 1345(11th Cir. 2007). Finally, Ms. RESPONDENT can also show that she merits asylum as an exercise of discretion. INA §208(b)(1)(A); 8 C.F.R. §208.13(b)(1)(i).

II. STATEMENT OF JURISDICTION

The Immigration Judge has jurisdiction to hear this case. See 8 C.F.R. §208.2

III. BURDEN OF PROOF

The burden of proof is on Ms. RESPONDENT to establish that she is a refugee. Her testimony, without corroboration, is sufficient to sustain this burden. See: INA §208(b)(1)(B)(“The testimony of the applicant may be sufficient to sustain the applicant’s burden without corroboration ... if the applicant satisfies the trier of fact that [her] testimony is credible, persuasive and refers to sufficient specific facts to demonstrate that [she] is a refugee.”)

IV. PROCEDURAL POSTURE

Ms. RESPONDENT is a national and citizen of Venezuela. Ms. RESPONDENT first arrived to the United States most recently in July 21, 2016. On July 26, 2016 Ms. RESPONDENT was interviewed by asylum officer via telephone while she was detained at the Atlanta Detention Center. Officer Chambers found Ms. RESPONDENT to have a credible fear of persecution on

account of her political opinion. Ms. RESPONDENT was served with a Notice to Appear on July 29, 2016. She filed her original asylum application with this Court on October 21, 2016. Her Individual Hearing is scheduled for November 10, 2016.

V. FACTS OF THE CASE

The facts asserted herein that relate to the biography of Ms. RESPONDENT are substantiated by her credible fear interview as well as her previously filed Form I -589 application for asylum. In addition, they will be testified to under oath at the individual hearing in this case scheduled for November 10, 2016.

Ms. RESPONDENT left Venezuela on April 21, 2015 after lawfully securing a B1/B2 visa and has never returned. She left Venezuela after experiencing several instances of persecution on the basis of her political opinion. Ms. RESPONDENT is a 29-year-old woman who has been involved in politics since a very young age. She was born in [Redacted], Venezuela, to a middleclass family who have been clear supporters of the Venezuelan opposition. She has family members who have been opposition politicians. When she was approximately eighteen years old, Ms. RESPONDENT moved to Caracas to pursue a career in Production and Television. Her activism against the Chavistas and their ideals began when she was a college student in Caracas. She attended several demonstrations against the then President Hugo Chavez. She remembers the national police and the National Guard throwing tear gas and rubber bullets to disperse the demonstrators. Once she completed her film and video studies she was forced to return to [Redacted] because neither she nor her mother could support her in Caracas, as her mother's business had run into some difficulties. She returned to [Redacted], where all her family still resided.

In March 2012, Ms. RESPONDENT started working at TELEVISION STATION, a state run television network. She worked for TELEVISION STATION for about three months. She took the job because she wanted the experience in her field. She was well aware that she did not support the political orientation of the network. In the three months that she worked in TELEVISION STATION, her colleagues quickly noticed that she was not a supporter of the government. At first she laughed off the critical comments, but later she voiced her opinions in a meeting with the network President, Mr. REDACTED. Her superiors told Ms. RESPONDENT that she was not committed to the goals and ideals of the “revolutionary process.” She was then fired from her position at TELEVISION STATION.

Around the same time she was fired from TELEVISION STATION, Ms. RESPONDENT joined the political party Primero Justicia (Justice First). Primero Justicia is a center-right political party led by Henrique Capriles, two time presidential candidate and current governor of Miranda. (Ex. I36: *United Nations High Commissioner for Refugees. "Refworld | Venezuela: The First Justice Party (Primero Justicia, PJ); the Date the Party Was Founded; Its Leaders; Its Political Leanings; Its Headquarters; Its Activities; Treatment of Its Members; the Activities and Names of the Members on Its National Propaganda Committee and Its Propaganda Committee in Colón (State of Zulia) (1998 - September 2003)." Refworld. Canada: Immigration and Refugee Board of Canada, n.d. Web. 21 Oct. 2016*). Current Venezuelan President Nicolas Maduro narrowly defeated Capriles in the 2013 presidential elections, continuing the reign of the United Socialist Party and the “Bolivarian Revolution” led by late President Hugo Chavez. Id.

Ms. RESPONDENT volunteered for Primero Justicia in LOCATION, regional group led by REDACTED. (Ex. G4: *Letter verifying Ms. RESPONDENT's membership in political organization "First Justice Movement."*) Her duties were to photograph and record opposition

demonstrations to disseminate in social media platforms. Id. While covering many of the demonstrations, Ms. RESPONDENT wore the bright yellow t-shirt often worn by Primero Justicia members. Ms. RESPONDENT also worked as the manager of a convenience store owned by her mother, REDACTED. (Ex. K1: *Affidavit of Respondent's Mother, Ms. REDACTED with English Translation*). The convenience store is located inside a gas station owned by Ms. RESPONDENT's uncle, an opposition politician. Id. The gas station is in a central area of the city, meters from the gathering place where most opposition demonstrations take place. Id. On many occasions, Ms. RESPONDENT spent her day both covering the demonstrations and working in the convenience store. She would work an afternoon shift usually. She was an active member of Primero Justicia and participated in many pacifist demonstrations.

In February 2014, a series of anti-government protests and political demonstrations erupted all throughout Venezuela. (Ex. I1 – I37: *Additional Country Condition Documents*). The protests were led by students who demanded increased security due to the country's high levels of urban violence. Id. The protests also focused on inflation, and chronic shortages of basic goods attributed to the economic policies of the Maduro government. Hundreds of protesters were detained and many were injured. Id.

On March 2014, Ms. RESPONDENT and a group of other anti-government protestors were attacked by a group of ten to twelve people who were members of a government allied group known as the Tupamaro. (Ex. N1: *The Tupamaro Gang of Venezuela* & Ex. N2: *Awe and Fear, Politicized gangs of Venezuela*). The Tupamaro groups across the country work with the Venezuelan government to “defend the Bolivarian Revolution.” (Ex. N2 at 699). The Tupamaro use violence as a tool to quiet the opposition. The group started as a gang organization and has

transitioned into state sponsorship. In many occasions, it has been known to enjoy of government protection against prosecution. (Ex. N1).

Ms. RESPONDENT and other protesters were walking towards the convenience store where she worked at the end of the demonstration. As they walked towards the convenience store, they noticed a group of Tupamaro gathered close to the store. Ms. RESPONDENT and the group of protesters began singing a song about the impending fall of the current government. The Tupamaro group began yelling at Ms. RESPONDENT and her group derogatory names, telling them that the government would never fall. Ms. RESPONDENT saw that the Tupamaro group became belligerent. She became scared and went inside the store where her mother, Ms. REDACTED, was still working. A Tupamaro woman who Ms. RESPONDENT recognized from the demonstrations, yelled at her to come out so that she would disfigure her face. She identified Ms. RESPONDENT as “the girl with the red sweater.” Ms. RESPONDENT did not leave the convenience store. Ms. REDACTED heard one of the Tupamaros tell her daughter something along the lines of: “we are always everywhere; we are watching you.” (Ex. K1).

The Tupamaro began throwing objects at the door of the convenience store, which was made of glass. Police officers accompanied by officers of the National Guard had been circulating the streets following the demonstration. (Ex. K1). Several officers were present witnessing the incident. Id. They did not react to the situation until the Tupamaro broke the glass of the convenience store. Id.

Several days later, in March 2014, Ms. RESPONDENT was physically assaulted by the Tupamaro. Ms. RESPONDENT, was covering a demonstration as a member of Primero Justicia, taking pictures and recording the protesters and the actions taken by the police, National Guard

and the Tupamaro against the protesters. As she was recording a protestor who had been beaten by the Tupamaro, the same Tupamaro woman who had threatened to disfigure her face approached her. The woman then screamed at Ms. RESPONDENT and called her derogatory names. The woman grabbed forcefully at Ms. RESPONDENT's camera and pulled it from her hands. At the same time, the woman kicked Ms. RESPONDENT in the abdomen. She bent to the floor and the woman took her camera. Ms. RESPONDENT's friend went to her aid and they fled towards her mother's convenience store to hide from the police and National Guard officers as well as the Tupamaro.

Ms. RESPONDENT and a group of protesters all hid in the convenience store. Ms. REDACTED saw her daughter going in the store crying and hurt. (Ex. K1). The officers went after the protesters and demanded that they come out and surrender to them. The officers could not enter the store because the doors were made of glass. (Ex. K1). Ms. Sanchez saw how the officers started pointing a cannon at the convenience store to pressure the protesters to surrender to them. *Id.* The following day, Ms. REDACTED took Ms. RESPONDENT to a clinic where a doctor prescribed her analgesic and anti-inflammatory medicine. (Ex. G5: *Record of Respondent's treatment by Dr. REDACTED following assault on March 8, 2014*).

Since Ms. RESPONDENT's departure in 2015, the government's efforts to quash the opposition have intensified. Anti-government demonstrations erupted again at the end of October 2016 following the government's successful postponement of the recall referendum supported by the constitution, which would have allowed the opposition to run against Maduro before the end of his presidential term. (Ex. M2: BBC, News. "*Venezuela crisis: What is behind the Turmoil*", dated October 26, 2016 & Ex. M3: The Huffington post. "*Opposition Rally in Venezuela against President Maduro*", dated October 26, 2016). On October 26, 2016, hundreds of thousands of

people took to the streets of Venezuela to push the government to allow the referendum. Id. Dozens of people were reported injured and about 200 were reported detained across the country. Id. At least one death was reported. Id.

The human rights violations perpetrated by the government of Venezuela against the opposition have gained significant attention from international organizations and many world leaders, including the U.S. The 2014 protests left more than 43 people dead and more than 878 people injured. (Ex. I33: “*Venezuela: The Faces of Impunity-One Year Since the Protests, Victims are still Waiting for Justice*”, *Amnesty International, March 2015*). In addition, 3,351 people were detained, 27 of whom were still awaiting trial more than a year after their detention. Id. As a result of the “persecution of political opponents, curtailment of press freedoms, use of violence and human rights violations and abuses in response to antigovernment protests...” the U.S. called on the government of Venezuela to disarm and dismantle the “colectivos” such as the Tupamaro and to allow an impartial, third party investigation in the excessive and unlawful force against peaceful demonstrations. (Ex. I14: “*Executive Order—Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela,*” *The White House, Office of the Press Secretary, March 9, 2015*). In addition, the U.S. blocked property and suspended entry of certain persons contributing to the situation in Venezuela. Id. The illegal detentions continue – since May 2016, 21 people were detained by the Bolivarian National Intelligence Service and the National Guard on the allegations that they had participated in violence anti-government actions. (Ex. I34: “*Venezuela: Dissidents Allege Torture, Coerced Confessions.*” *Human Rights Watch. N.p., 27 July 2016. Web. 21 Oct. 2016*). Many of the detainees have suffered physical abuse that amount to torture, including electric shocks and brutal beatings. Id.

The current political turmoil in Venezuela is largely due to the dire economic crisis facing the country. Venezuela's inflation rate is the highest in the world and it is expected to rise to a staggering 1,660% in 2017. (Ex. M1: *BBC, News. "Venezuela crisis: What is behind the Turmoil", dated October 26, 2016*). The collapse of international oil prices and government mismanagement of resources has led to the spiraling inflation, food shortages, power cuts and lack of medical supplies. (Ex. M7: World Bank, *Venezuela Overview*, last updated September 30, 2016). International organizations describe Venezuela's situation as a "profound humanitarian crisis." (Ex. M4: *Human Rights Watch. "Venezuela's Humanitarian Crisis", date October 24, 2016*). A Human Rights Watch report done through extensive field research, indicates that severe shortages of food and other goods prevent families from covering their very basic nutrition and medical needs. Id. Shortages significantly increased since 2014. Id. Lower and middle income families can only afford food submitted to price controls set by the government, most which are now in short supply. Id. Families are forced to wait in line for hours to purchase items like rice, pasta and flour. (Ex. M5: *BBC, News. "Venezuela Crisis: Jobless and hungry in industrial city of Valencia", dated October 15, 2016*). Items such as toilet paper and sugar have not been available for months in many cities. (Ex. M4). Government officials do not acknowledge the existence of a crisis and refuse take significant measures to address the shortages. *Id.*

As raw materials become more and more unavailable, industries are shutting down or downsizing and people are losing their jobs. Wages are in significant decline. (Ex. M5). The average weekly wage for an industrial worker is enough to buy "the equivalent of 1kg (2.2lb) of ham, two tubs of margarine and 2kg of corn flour on the black market." Id. The salary of middle class jobs such as office workers, and civil servants have been obliterated by the inflation, forcing this group to desperately flock to dangerous jobs such as mining. (Ex. M9: *The New York*

Times, “*Hard Times in Venezuela Breed Malaria as Desperate Flock Mines*”, dated August 5, 2016). Tens of thousands of working and middle class people, including college graduates, are being forced to work in mining and other dangerous jobs in order to survive. Id.

Around 76% of all public hospitals lack in the World Health Organization’s (WHO) List of Essential Medicines, such as antibiotics, muscle relaxants and painkillers. (Ex. M4 & Ex. M6: *BBC, News*. “*Venezuela crisis: Caracas hospital shows sorry state of health system*” dated October 09, 2016). Hospitals are unable to function, lacking sterile gloves and gauze, antiseptics, medical alcohol, scalpels, needles, among other basic materials. Id. This in turn has sharply raised in-hospital infections, and the rates of infant and maternal mortality in 2016. Id.

Ms. RESPONDENT suffered past persecution, has a well-founded fear of future persecution and of other serious harm.

V. LEGAL ARGUMENT

A. Ms. RESPONDENT has a Well-founded fear of Persecution Based on the Past Persecution she has Suffered at the Hands of the Venezuelan Government and its Allies and Supporters.

Ms. RESPONDENT has a well-founded fear of persecution based on the harm she has suffered at the hands of the Venezuelan government and its supporters. An alien who establishes past persecution is "entitled to a presumption that his life or freedom will be threatened if he returns."¹ Persecution is defined as "a threat to the life or freedom of, or infliction of suffering or harm upon those who differ in a way regarded as offensive."² This definition includes physical harm, threats of physical harm, and a range of non-physical harms and deliberate deprivations,

¹ See Gabuniya v. Attorney General, 463 F.3d 316, 321 (3d Cir. 2006). See also 8 C.F.R. § 208.13(b); INS v. Cardoza-Fonseca, 480 U.S. 421, 428 (1987).

² Matter of Acosta, 19 I&N Dec. 211, 222 (BIA 1985).

such as deprivations of liberty or economic deprivations.³ Threats to life and freedom always constitute persecution.⁴

i. The Harm That Ms. RESPONDENT Suffered Rise to the Level of Persecution

The harms that Ms. RESPONDENT suffered rise to the level of persecution. Physical harm is consistently recognized as amounting to persecution, and beatings are a common basis for persecution.⁵ Permanent or serious injury is not required for physical harm to rise to the level of persecution.⁶ Persecution "encompasses a variety of forms of adverse treatment, including non-life threatening violence and physical abuse or non-physical forms of harm."⁷ Ms. RESPONDENT was subject to various forms and instances of persecution in Venezuela. The first such instances came in 2008 while she was living in Caracas. She participated in a number of anti-government street protests during which she, along with many other of the protestors, was dispersed by government forces with tear gas. Next, in 2012 she was fired from her job at a television station in [Redacted] due to her political opinion. The television station, "TELEVISION STATION", was state-run. Soon after her political affiliations became known, she was relieved of her employment. Finally, during the political tumult that gripped the country in 2014, Ms. RESPONDENT was twice targeted during street protests for her anti-government stance. The first incident occurred at the convenience store owned and run by her mother in [Redacted]. Ms. RESPONDENT and her friends and fellow members of the anti-Maduro

³ See: In re T-Z-, 24 I&N Dec. 163, 171 (BIA 2007).

⁴ THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Handbook on Procedures and Criteria for Determining Refugee Status (1992), par. 51, available at www.hrea.org/learn/tutorials/refugees/Handbook/hbtoc.htm; see also Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011).

⁵ See: Matter of L-K-, 23 I&N Dec. 677, 682-83 (BIA 2004); Gomes v. Gonzales, 473 F.3d 746, 753-54 (7th Cir. 2007); Narayan v. Ashcroft, 384 F.3d 1065, 1067-68 (9th Cir. 2004); Montoya-Uloa v. INS, 79 F.3d 930 (9th Cir. 1996).

⁶ See: Maurice v. Att'y Gen. of the U.S., 388 Fed.Appx.932, 935 (11th Cir. Jul 23, 2010) (*unpublished*, NO. 09-15953); ⁶ Matter of O-Z- & I-Z-, 22 I&N Dec. 23, 25-26 (BIA 1998).; Montoya-Uloa v. INS, 79 F.3d 930 (9th Cir. 1996); Narayan v. Ashcroft, 384 F.3d 1065, 1067-68 (9th Cir. 2004)

⁷ Matter of O-Z- & I-Z-, 22 I&N Dec. 23, 25-26 (BIA 1998).

political parties, including the “Primer Justicia” group of which she was a member, were returning from a street protest when a group of members of the “Tupamaro” gang and other government supporters approached the store and began to attack the store. They threw stones that shattered and destroyed the glass storefront. They screamed and verbally assaulted the anti-government protestors. They singled Ms. RESPONDENT out specifically, referring to her by what she was wearing. They threatened explicitly that they wanted to physically attack her, and specifically to disfigure her face. The second incident occurred less than a month later at another anti-government street protest in [Redacted]. Ms. RESPONDENT was photographing a street protest on behalf of the “Primer Justicia” party. The purpose of her photo and video documenting activities was to post her work online to publicize the activities of the party and how the government treated the opposition. She was approached on the street by one of the same people, a woman, who began screaming at her to stop what she was doing. The woman grabbed at Ms. RESPONDENT’s camera and forcibly pulled the camera from Ms. RESPONDENT. In the scuffle for control of the camera, the woman, a member of the government sympathizing Tupamaros, punched and kicked Ms. RESPONDENT in the lower abdomen and groin area. Ms. REDACTED soon thereafter sought medical care.

The harms that Ms. RESPONDENT has suffered rise to the level of persecution. A finding of persecution does not require that an applicant establish permanent or serious injury. Matter of O-Z & I-Z, 22 I & N Dec. 23, 25-26 (BIA 1996); De Santamaria v. Att’y Gen. of the U.S., 525 F.3d 999, 1009 (11th Cir. 2008). Persecution must also be evaluated cumulatively. Shi v. Att’y Gen. of the U.S. 707 F.3d 1231 (11th Cir. 2013). Niftalviev v. Att’y Gen. of the U.S., 504 F.3d 1211, 1217 (11th Cir. 2007); Delgado V. Att’y Gen. of the U.S., 487 F.3d 855, 861 (11th Cir. 2007). In this case, Ms. RESPONDENT has been the target of tear gas, termination

from her job, an attempted attack on her physical safety combined with threats of more physical harm as well as an actual physical attack. This treatment was both serious and protracted, occurring over the course of six years—from 2008 to 2014. Taken together, all of this mistreatment constitutes persecution.

B. The persecution that Ms. RESPONDENT Suffered Was on Account of Her Opposition Political Opinion

Ms. RESPONDENT was persecuted on account of the opposition political opinion she openly displayed and expressed while collaborating as a photographer for Primero Justicia, a strong and well-established opposition political party. Even prior to her active role in Primero Justicia, Ms. RESPONDENT's political opinion was known to government supporters. After working at the government funded channel for approximately three months, Ms. RESPONDENT was let go of her position because of her dissident demeanor. Her superiors clearly stated that she could not keep her job because she was not committed to the “revolutionary” process of the current government.

As an active member of Primero Justicia in LOCATION, Ms. RESPONDENT was part of many demonstrations against the government. She was in charge of documenting the demonstrations by taking pictures and videos of the peaceful gatherings. When they began to turn hostile in February of 2014 due to the involvement of the Tupamaro group, Ms. RESPONDENT was in charge of documenting the violence instigated by the Tupamaro, the police and the National Guard. In her position as a photographer for Primero Justicia, Ms. RESPONDENT wore a bright yellow shirt, which is clearly associated with the Primero Justicia political party. The shirt has the name of the party imprinted. Her opposition to the government of Venezuela was visible and clear. These publicly expressed opinions constitute political

opinions under the law, and they are the central reason for the persecution that Ms.

RESPONDENT suffered. There is a clear nexus between Ms. RESPONDENT's opposition political opinion and the persecution she suffered, as demonstrated by the physical assault she experienced while covering the violence perpetrated by the Tupamaro, and the threats made by the Tupamaro who told her that they would disfigure her face after they heard her singing a song with the lyrics "the government will fall."

i. Ms. RESPONDENT's Active Participation as a Member of Primero Justicia Constitutes Political Opinion.

The organized political activism exercised by Ms. RESPONDENT clearly constitutes "political opinion" and is protected ground under INA § 101(a)(42). Courts have interpreted "political opinion" broadly, and a wide range of activities and beliefs have been ruled to be "political" for the purposes of eligibility for asylum.⁸ "Political opinion" does not only refer to organized political activity, but is interpreted broadly and may include economic activity,⁹ issues of fundamental rights,¹⁰ actions against corruption,¹¹ membership in community based religious organizations,¹² and more. "[A]n asylum petitioner may hold a political opinion within the meaning of the INA even if the petitioner did not participate in organized political activities."¹³ In this case, Ms. RESPONDENT active participation as a photographer in Primero Justicia clearly constitutes political opinion. In addition, Ms. RESPONDENT's refusal to participate in TELEVISION STATION's pro-government activities, also constitute political opinion.

⁸ See e.g., Matter of C-Y-Z-, 21 I&N Dec. 915, 921-22 (BIA 1997); Meza-Menay v. INS, 139 F.3d 759, 763 (9th Cir. 1998); Lazo-Majano v. INS, 813 F.2d 1432, 1435 (9th Cir. 1987).

⁹ See e.g., Osorio v. INS, 18 F.3d 1017 (2d Cir. 1994).

¹⁰ Matter of C-Y-Z-, 21 I&N Dec. 915, 921-22 (BIA 1997).

¹¹ See e.g., Grava v. INS, 205 F.3d 1177 (9th Cir. 2000).

¹² Cordero-Trejo v. INS, 40 F.3d 482, 487 n.5 (1st Cir. 1994).

¹³ Meza-Menay v. INS, 139 F.3d 759, 763 (9th Cir. 1998).

Political opinion encompasses beliefs that are viewed as threatening by the persecutor. In determining whether an opinion is political, the opinion or activity must be viewed in the context of the applicant's home country.¹⁴ Evidently, the government of Venezuela views opposition political parties as threatening the socialist rule that has been in power since Hugo Chavez began his presidency in 1999. Ms. RESPONDENT repeatedly, publicly expressed her anti-Chavismo beliefs and ideals joining Primero Justicia, wearing the party's identifiable t-shirt, chanting anti-government songs, taking pictures and videos of the demonstrations, and by refusing to be part of pro-government activities while being employed by TELEVISION STATION.

ii. There is a Clear Nexus Between the Persecution and Ms. RESPONDENT's Opposition Political Opinion.

The central reason for the persecution Ms. RESPONDENT suffered is her opposition political opinion. An asylum applicant demonstrates the nexus between the persecution she experienced and her political opinion by showing that the persecutor knew of her political opinion, and was motivated by it to harm her. The asylum applicant demonstrates this through credible testimony,¹⁵ evidence that she has acted in a way that is consistent with her beliefs, and evidence that the persecutor was aware or could become aware of her beliefs.¹⁶ The nature and expression of the applicant's opinions and activities are relevant to the determination of whether the persecutor knew or could learn of the applicant's political opinion.¹⁷ The BIA has similarly ruled that an applicant must show evidence of her political opinion, and evidence that the persecutor is aware of or sought to punish the applicant for her political opinion.¹⁸

¹⁴ See: Osorio, 18 F.3d 1017 (2d Cir. 1994).

¹⁵ See, e.g., Kotasz v. INS, 31 F.3d 847, 854 (9th Cir. 1994).

¹⁶ Garcia-Ramos v. INS, 775 F.2d 1370, 1374 (9th Cir. 1985).

¹⁷ Id.

¹⁸ Matter of Acosta, 19 I&N Dec. 211, 235 (BIA 1985).

The Tupamaro who attacked and threatened Ms. RESPONDENT identified her as a member of the opposition party because she worked for Primero Justicia, actively covering the events, she sang anti-government chants and in many occasion, wore the Primero Justicia distinctive yellow t-shirt. Furthermore, the Tupamaro specifically threatened to deform Ms. RESPONDENT because she had been seen in anti-government demonstrations. She had to go in hiding towards the convenience store owned by her mother because she feared the Tupamaros would harm her after hearing her singing an anti-government song.

Ms. RESPONDENT was kicked in the abdomen while covering a one of the demonstrations. Her camera was taken from her because she was documenting the violence instigated by the Tupamaro. She had to run and hide from the Tupamaro and from police officers who were after the demonstrators to arrest them. It is clear by the evidence in the record that the central if not the only reason Ms. RESPONDENT was assaulted by the Tupamaro and chased by police and National Guard officers, is her political opinion. Furthermore, when she was fired from TELEVISION STATION, her superiors openly told her that the channel could not keep her because she was not committed to the Chavista party ideals.

All the instances of persecution are closely linked to Ms. RESPONDENT's clear opposition opinions or membership in Primero Justicia.

C. The government of Venezuela is Unable and Unwilling to Protect Ms. RESPONDENT from the Tupamaro, and It Has been the Government Itself that has Perpetrated Instances of Persecution Against Ms. RESPONDENT

The government of Venezuela is unable and unwilling to protect RESPONDENT from the Tupamaro. In addition, in many instances, the government of Venezuela itself perpetrated the persecution against Ms. RESPONDENT. In order for an applicant to be eligible for asylum, the

persecution must be inflicted either by a state actor, or by a private actor or organization that the government is unable or unwilling to control.¹⁹ The applicant must demonstrate that he is unable or unwilling to avail herself of the protections of her home country.²⁰ There is no requirement to show that persecution by a non-state actor was supported or condoned by the government, only that the government was unable or unwilling to control it.²¹ Reporting private persecution to the authorities is not required to demonstrate that the government is unable or unwilling to control the persecutor(s).²²

Ms. RESPONDENT was fired from her position at TELEVISION STATION, a government channel. Furthermore, as previously stated, the Tupamaro is considered a quasi-government actor. The Tupamaro have clear political connections and are often insulated against investigation and arrest. In fact, the Venezuela police force and National Guard stood idly as the Tupamaro vandalized Ms. RESPONDENT's mother's convenience store. (Ex. K1).

Ms. RESPONDENT did not report the persecution she suffered because the persecution was perpetrated by the state itself and organization protected by the state of Venezuela.

D. Even if this Court Finds that the Government Is Able to Rebut the Presumption that Ms. RESPONDENT Has a Well Founded Fear of Persecution, She Is Entitled to a Grant of Her Application Because She Would Suffer “Other Serious Harm” If Returned to Venezuela.

Owing to the fact that she has suffered past persecution, Ms. RESPONDENT is entitled to a presumption that she will suffer future persecution if she is removed to Venezuela. See: 8

¹⁹ INA § 101(a)(42)(A); Afriyie v. Holder, 613 F.3d 924, 932 (9th Cir. 2010).

²⁰ INA § 101(a)(42)(A).

²¹ *See* Thomas v. Ashcroft, 359 F.3d 1169, 1179-80 (9th Cir. 2004) vacated on other grounds by Gonzales v. Thomas, 547 U.S. 183 (2006); Guillen-Hernandez v. Holder, 592 F.3d 883, 886-87 (8th Cir. (2010); Truong v. Holder, 613 F.3d 938, 941 (9th Cir. 2010).

²² Afriyie v. Holder, 613 F.3d 924, 931 (9th Cir. 2010).

C.F.R. 1208.13(b)(1)(i)(A)-(B). The government has not, and cannot, present any meaningful or persuasive evidence that there has been a fundamental change in circumstances such that she no longer has a well-founded fear of persecution. In addition, safe relocation is not a viable option for Ms. RESPONDENT as the threat she faces from the government of President Maduro and its allies is nationwide.

If for whatever reason, however, this Court finds that the Department does rebut Ms. REDACTED's fear of future persecution, her application must still be granted because there is a "reasonable possibility that she may suffer other serious harm upon removal." See: 8 C.F.R. 208.13(b)(1)(iii)(B); 63FR 31945, 31947 (June 11, 1998). The infliction or suffering of "other serious harm" need not have a nexus to one of the five protected grounds. 65 FR 76121 to 76 FR133 (2000); Matter of L-S; 25 I & N Dec. 705 (BIA 2012).

The evidence of the risk of other serious harm in Venezuela is dramatic. The absolute economic collapse of Venezuela, which has precipitated hyperinflation, food shortages, lack of access to medical care and a dramatic refugee crisis in which thousands of Venezuelans have been fleeing to Colombia has created conditions that would subject Ms. RESPONDENT to "other serious harm" were she removed there. The national economy is in shambles. The collapse of oil prices in 2014 has created a macroeconomic environment characterized by one of the world's highest (triple digit) inflation rates. (Respondent's Second Submission, Exh. M7 & 8). The International Monetary Fund forecast for 2017 is an inflation rate of 1600%. (Id. at Exh. M14). Income has been eroded and investment has plummeted. It is estimated that GDP will contract over ten per cent in 2016. (Respondent's Second Submission, Exh. M7, M8). The collapse of the oil industry has been so acute that Venezuela was forced to import oil from the

United States. (Respondent's Second Submission, Exh. M8). One official with the Royal Bank of Canada described the country as "literally imploding." Id.

This macroeconomic collapse has specific consequences in people's individual lives. Food shortages are so bad that people are waiting in line by the hundreds for food, as well as simply ransacking supermarkets. (Respondent's Second Submission, Exh. M13 & 15). A staggering 87% of the people in the country report they don't have enough money to buy enough food. Id. at M11. This desperate shortage led to some fifty riots, protests and looting incidents throughout the country in a two week period in July of this year. Id. Baggage handlers at the airport are looting baggage for items such as milk and diapers. Id. at M13. Workers on the oil rigs reportedly are watching each other extremely closely while they are out on the rigs, for fear their co-workers will faint from lack of food. (Respondent's Second Submission, Exh. M8). A wave of malaria has spread across the country as more and more workers from the city are displaced to work in the mines, where the watery pits are a breeding ground for the disease-spreading mosquito. These workers then return to the cities and the disease has spread. Id., Exh. M9. Employees of a children's hospital in Caracas report a shortage of medicine and a waiting list of 5500 patients in need of being operated on. A spokesperson for an NGO called Fundacion Bengoa reports seeing children suffering from starvation and the country being plagued by a "nutrition emergency." (Respondent's Second Submission, Exh. M6). Rates of infant and maternal mortality have noticeably spiked in the last year. Id., Exh. M4. In these conditions, there is a reasonable possibility Ms. RESPONDENT would suffer other serious harm, apart from persecution, such that this harm provides a basis for this Court to grant her application.

VI. Ms. RESPONDENT Merits a Grant of Her Application in the Exercise of this Court's Discretion

Ms. RESPONDENT merits a grant of her application for asylum in the exercise of this court's discretion. At no time has she ever entered the United States, or attempted to enter the United States, without inspection. She has no criminal history in the United States. She has support in the United States from her friends and family, especially in Richmond, Virginia. Furthermore, her ambition as reflected in her educational pursuits and the political engagement she demonstrated while in Venezuela, are classic hallmarks of what make a productive member of the American community and a beneficial member of the American polity. Our country was founded by people who shared her feisty spirit and dedication to the pursuit of their vision of justice. In other words, the United States and all of its residents and citizens would be lucky to have Ms. RESPONDENT among us.

VII. Conclusion

Therefore, based on the foregoing facts and arguments, Ms. RESPONDENT qualifies for and merits a grant of her application for asylum by this Court.

Respectfully Submitted,

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
180 SPRING STREET, SUITE 241
ATLANTA, GEORGIA 30303

In the Matter of:

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File No.: A XXX XXX XXX

RESPONDENT,)

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In Removal Proceedings _____)

Immigration Judge: Michael Baird

Next Individual Hearing Date: November 10, 2016 at 10:00 a.m.

CERTIFICATE OF SERVICE

On _____, I Peter Isbister, served a copy of this:

1. Respondent's Pre-Hearing Brief in Support of Application for Asylum

and any attached pages to:

United States Department of Homeland Security
Immigration and Customs Enforcements
Office of the Chief Counsel
180 Spring Street, S.W., Suite 332
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VIA Hand Delivery

Respectfully submitted November 2, 2016.

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