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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
AURORA, COLORADO

In the Matter of:

MR.JJ

In removal proceedings.

File No. A 012-345-678

Immigration Judge Elizabeth Miller Individual Hearing: December 2, 2020, 6:00 PM

**RESPONDENT'S BRIEF IN SUPPORT OF WITHHOLDING OF
REMOVAL AND RELIEF UNDER THE CONVENTION AGAINST
TORTURE**

I. INTRODUCTION

Respondent, Mr. JJ through his pro bono counsel, submits this brief seeking withholding of removal and/or protection under the Convention Against Torture. Mr. JJ is a Nicaraguan who fled to the United States after being kidnapped, detained, threatened and tortured because of his involvement with anti-government activists.

II. STATEMENT OF FACTS

a. Mr. JJ's Early Life

Mr. JJ was born and raised in Tulingbila, in the area of Costa Caribe Norte in Nicaragua along the Honduran border. He worked in construction, as a mail carrier, and as a water deliveryman. In 1998, he fled Nicaragua for the U.S. and sought asylum protection. At that time, the government was mobilizing young men to exercise control over the people of Nicaragua and he feared being forced to harm members of his community on behalf of the government. He was put in a detention center but chose to be deported back to Nicaragua rather than remain in detention until the completion of his case. He made that decision because the situation in Nicaragua was not as alarming at that time and he still had hope that things could improve in his country. Now--21 years later--he no longer believes that is the case.

b. 2018 Social Protests and Detention and Beating by Police

In April 2018, social protests began in Nicaragua and Mr. JJ chose to join in the movement against the Ortega regime. The protests began because the government failed to respond properly to forest fires and the protests expanded when the government reduced social security and pension payments. Mr. JJ identified with the movement because he wanted to fight for liberty and justice. He self-identifies as a "campesino."

On June 22, 2018, Mr. JJ drove with a caravan from Managua to an anti-government march in Ocotal. He was arrested by the police and brought to a police station where they imprisoned him for 24 hours without food or water. He was brutally beaten by the police and sprayed with a fire hose, handcuffed the entire time. After his release, Mr. JJ's spirit was not broken. *See* Letters of Support at Exhibit B. Instead, he made the decision to become even more involved in the movement against the Ortega regime. He became a driver for local organizers. His role was to drive activists and community members to protests. The police in Managua knew he was an activist because they were informed about his detention in Ocotal and they saw him driving protestors to the marches.

c. April 12, 2020 Detention and Beating by Police

As time went on, the human rights violations in Nicaragua worsened and the government became even more repressive. They violently detained, threatened and beat people affiliated with the movement and Mr. JJ began to fear for his life. *See Exhibit B.* In March 2020, he fled Nicaragua for the U.S., seeking protection as a refugee. He was detained in Mexico and deported back to Nicaragua. When he arrived at the bus terminal in Managua on April 12 2020, the police were waiting for him. They brought him to the police station without a warrant, took away his phone, did not allow him to communicate with his family, and kept him there for the night. The police brutally beat Mr. JJ with their fists and their guns and they kicked him violently. They wanted information about other anti-Ortega activists and they wanted to know who else was fleeing Nicaragua.

The next day, Mr. JJ was returned to his house but he was kept under house arrest for sixteen days. Sandanistas, who work for the government as members of Ortega's Sandista National Liberation Front ("FSLN") party, guarded his house at all times to

ensure he did not leave; they wanted him to stop participating in the movement and they did not want anyone to see his injuries. When he was eventually allowed to leave his house, Mr. JJ was often followed by a Sandanista, a parapolice officer (known as paramilitaries), or a police officer. He believes they were following him in order to intimidate him.

d. September 19, 2020 Attack by Sandanistas

Mr. JJ continued driving activists to marches and he bravely walked in the protests himself in order to promote justice and freedom in Nicaragua. *See Exhibit B.* Police, paramilitaries, and Sandanistas would often go to his house, blast music outside, call him a traitor, shoot guns into the air, and threaten to kill him. On September 19, 2020, Mr. JJ was approached by Sandanistas at a store and they beat him with their fists and sticks and they kicked him. They fractured his skull and broke his nose. He has scars on the right side of his head from this beating and his nose is still fractured. After this brutal attack, Mr. JJ was denied medical treatment at the hospital because of his activism and the police refused to file a police report. He filed a report on the attack with a human rights organization operating in his area. *See HR REPORT at Exhibit C.*

e. October 11, 2020 Kidnapping, Torture and Escape to the US

Notwithstanding the beatings, intimidation tactics, and threats to his life, Mr. JJ continued participating in the movement against the Ortega regime to support democracy and freedom. However, once he was kidnapped and tortured, Mr. JJ realized that he needed to seek refuge in the US in order to survive.

On October 11, 2020, Mr. JJ was delivering water to a pharmacy when he was approached by a truck filled with paramilitaries. They forced him into their truck and brought him to the military base. They undressed him and violently beat him while he

was naked. When he refused to give them his telephone passcode, they threatened to cut off his penis, so he gave them the passcode. Once they read the anti-government messages and social media posts on his phone, they beat him more brutally and threatened to sexually assault him in his rectum. They laughed while doing this, took pictures of their molestation, and threatened to kill him if he continued protesting the government. They fractured his rib and caused severe internal bleeding. After six hours, the paramilitaries released Mr. JJ and brought him home; they kept his motorcycle which he used to deliver water. He was again refused treatment at the hospital and he filed another report with a human rights agency.

At this point, Mr. JJ desperately feared for his life. He knew that if he did not leave Nicaragua, he would be killed. Paramilitaries continued threatening Mr. JJ and guarded his home around the clock to prevent him from leaving. On April 14, 2021, six months after the kidnapping, Mr. JJ realized there was no one watching his house and he knew it was his opportunity to escape. He boarded a bus to Honduras, drove through Guatemala and into Mexico, and then paid human traffickers to help him cross the US border. As soon as he entered the US, he approached an immigration officer and requested asylum.

Mr. JJ is terrified that if he is forced to return to Nicaragua, he will be arrested, tortured, and even killed because of his political opinions and activism. He is prohibited from seeking asylum because of the 2003 removal order, and he is therefore requesting withholding of removal and protection under the CAT.

III. STATEMENT OF COUNTRY CONDITIONS

Since Daniel Ortega and his Sandinista National Liberation Front (FSLN) party came to power in the 2006 presidential elections, there has been a “systematic erosion of

human rights” in Nicaragua. *Human Rights Violations and Abuses in the Context of Protests in Nicaragua*, 2018, Office of the United Nations High Commissioner for Human Rights (OHCHR Report) at 4. Ortega’s government gradually concentrated power and now exercises complete control over the executive, legislative, judicial, and electoral functions. *2020 Country Reports on Human Rights Practices: Nicaragua*, US Department of State (State Department Report) at 1. In terms of security and control,

The Nicaraguan National Police maintains internal security. The army is responsible for external security but also has some domestic security responsibilities. Both report directly to the president, pursuant to changes in the police and army code in 2014. Parapolice, which are nonuniformed, masked, and armed groups with tactical training and organization, act in coordination with government security forces, under the direct control of the government, and report directly to the national police.

State Department Report at 1.

In 2018, social protests led to a drastic eruption of human rights abuses and violations throughout the country. *See* OHCHR Report at 7. In April of that year, peasant groups known as campesinos, environmental groups and students began protesting the government’s insufficient response to fires in the Indio Maíz Biological Reserve. *See id.* at 7. Those protests expanded across the country when the government reduced social security and pension payments. *See id.* at 7. In response, the government began a violent campaign designed to quell any and all opposition. *See id.* It has been shockingly successful. *See REPORT.*

Over the past three years, in order to silence protestors, the Ortega Regime has engaged in systemic violations of human rights, including:

disproportionate use of force by the police that sometimes resulted in extrajudicial killings; enforced disappearances; obstructions to access to medical care;

widespread arbitrary or illegal detentions; prevalent ill-treatment and instances of torture and sexual violence in detention centres; violations of freedoms of peaceful assembly and expression, including the criminalization of social leaders, human rights defenders, journalists and protesters considered critical of the Government.

OHCHR Report at 7; *see also* State Department Report at 1. The government has deployed paramilitary police to carry out detentions, kidnappings and threats, and there have been “credible reports the government killed some police officers for refusing to follow orders to suppress protests.” U.S. State Department, *Nicaragua 2018 Human Rights Report* at 282. On May 30, 2019, which was Mothers’ Day, thousands of people, including Mr. JJ, marched in Ocotal in support of mothers whose children had been killed during the protests. *See* OHCHR Report at 15. The government attacked marchers, initiating “a new peak of violence in the crisis.” *Id.*

In a scathing report on the government’s response to the protests, the Office of the United Nations High Commissioner for Human Rights (OHCHR) found that

pro-government armed elements . . . acted with the acquiescence of high-level State authorities and of the National Police, and often in a joint and coordinated manner. These groups participated in raids and attacks against protesters and carried out illegal detentions.

OHCHR Report at 7-8. The OHCHR “received numerous accounts alleging acts of torture and ill-treatment perpetrated by police or prison authorities during arrest or in the days following the arrest.” *Id.* at 29. It found that detainees were subject to physical torture, psychological torture, death threats, and sexual abuse. *Id.* at 29. It also found that the government repeatedly harassed protestors by engaging in “house tagging, death threats, mobbing and smear campaigns in social media.” *Id.* at 19. Moreover, in “public hospitals, medical staff were reportedly ordered by the Ministry of Health to deny services to those participating in protests and/or barricades.” *Id.* at 25.

Similarly, in a 2020 report, the U.S. State Department found that “Parapolice and individuals linked to the Ortega regime carried out a campaign of harassment, intimidation, and violence toward perceived enemies of the regime, such as former political prisoners, campesino activists, prodemocracy opposition groups, human rights defenders, and Catholic clergy.” State Department Report at 1. The State Department additionally found that “cases of torture were well documented, and public officials intentionally carried out acts that resulted in severe physical or mental suffering for the purposes of securing information, inflicting punishment, and psychologically deterring other citizens from reporting on the government’s actions or participating in civic actions against the government.” *Id.* at 4. The state has failed to carry out investigations of these human rights violations. *See* OHCHR Report at 8.

Leaders of rural movements, or campesinos, have been specifically targeted and thousands of protesters and dissenters have been forced to flee. *See* OHCHR Report at 8. “Reports of killings were common in the northeast regions” of Nicaragua and inhabitants of Costa Caribe Norte, where Mr. JJ lived, “alleged repeated government interrogations and searches.” State Department Report at 2, 13. There were at least 30 documented killings of campesinos in Costa Caribe Norte, Nueva Segovia, and Jinotega, a nearby department, between June 2019 and November 2020. *Id.* at 3. The torture experienced by Mr. JJ, including illegal detentions, kidnapping, brutal beatings, deprivation of food and water, sexual assault, inability to communicate with family, and threats to his life, are not uncommon for campesino activists in Costa Caribe Norte.

Conditions have not improved since Mr. JJ left Nicaragua. In fact, it appears that the situation has become worse. In June 2021, the month that Mr. JJ fled, the Inter-

American Commission on Human Rights (IACHR) found that there had been “a serious escalation of repression” in recent days against those perceived to oppose the regime. *IACHR Condemns the Serious Escalation of Repression in Nicaragua* (June 18, 2021) (IAHCR Report). It learned of multiple reports of violent and arbitrary arrests and it found that the government was targeting campesinos. *See IACHR Report; IACHR and OHCHR Demand an End to Arbitrary Arrests and the Release of All Individuals Detained Since the Start of the Crisis in Nicaragua* (July 9, 2021). As recently as October 2021, the UN condemned a “new rash of attacks and arrests” by security forces against political opponents. *Nicaragua must stop attacking and undermining human rights defenders*, United Nations News Report (June 3, 2021).

IV. MR. JJ IS ELIGIBLE FOR WITHHOLDING OF REMOVAL

An individual is eligible for withholding of removal if he can show that upon return to his country, his “life or freedom would be threatened” on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 241(b)(3); 8 C.F.R. § 1208.16(b)(1)(i). If an individual has suffered past persecution on account of a protected ground, it will be presumed that his life or freedom would be threatened upon return. 8 C.F.R. § 1208.16(b)(1)(i). If an individual has not suffered past persecution, he can still show that his life or freedom would be threatened by establishing that it is more likely than not that he will be subject to persecution upon his return. 8 C.F.R. § 1208.16(b)(1)(i); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430 (1987); *INS v. Stevic*, 467 U.S. 407, 430 (1984). If an individual establishes eligibility, the court must grant withholding of removal. INA § 241(b)(3).

a. Mr. JJ suffered past persecution by the government on account of his political opinion

Mr. JJ is eligible for withholding of removal because he suffered past persecution on account of his political opinion. Persecution means “the infliction of suffering or harm upon those who differ (in race, religion, or political opinion) in a way regarded as offensive and requires more than just restrictions or threats to life and liberty.” *Yuk v. Ashcroft*, 355 F.3d 1222, 1233 (10th Cir. 2004) (internal quotation marks omitted). Mr. JJ was the victim of detentions, kidnapping, beatings, sexual assault, deprivation of food and water, and countless death threats, all at the hands of government forces and all due to the fact that he was protesting the Ortega regime.

Serious actual or attempted physical violence qualifies as persecution. *See Karki v. Holder*, 715 F.3d 792, 804–05 (10th Cir. 2013). Mr. JJ was detained by the police for 24 hours, deprived of food and water, and brutally beaten on June 29, 2019 at the Ocotol social protest. He was subsequently detained for one night by the police after his deportation from Mexico and brutally beaten again. He was thereafter beaten so badly by Sandanistas that his skull and his nose were fractured. And, in January of 2020, Mr. JJ was kidnapped by paramilitary officers, brought to the military base, and tortured for six hours. He was denied medical care at the hospital following these attacks. All of these experiences constitute serious actual physical violence.

In addition to the physical violence, Mr. JJ has been threatened with death innumerable times between 2018 and 2021. Death threats qualify as persecution when “they are so immediate and menacing to cause significant suffering or harm” and when there is a “concrete connection between” the threats and “any overt violence or mistreatment.” *Vatulev v. Ashcroft*, 354 F.3d 1207, 1210 (10th Cir. 2003). The police, paramilitary officers, and Sandanistas all threatened to kill Mr. JJ while they detained and beat him. They additionally threatened to kill Mr. JJ by driving to his house, shouting

threats, forcing him to remain inside and shooting their guns into the air on numerous occasions. The threats to his life were an attempt to prevent him from participating in the movement against the Ortega regime, and they were legitimate, menacing and supported by ongoing violent actions against both him and other protestors.

Mr. JJ's past persecution creates a presumption that his life or freedom would be threatened in the future on account of his political opinion. *See* 8 C.F.R. § 1208.16(b)(1)(i). The government may rebut this presumption by showing either: (A) there has been a fundamental change in circumstances such that the "applicant's life or freedom would not be threatened" on account of a protected ground; or (B) that the applicant "could avoid future persecution by relocating to another part of the applicant's country of nationality ... and under all the circumstances it would be reasonable to expect the applicant to do so." *Id.* Neither conclusion is supported by the record in this case.

1. Conditions in Nicaragua have not changed

The government cannot show that country conditions have changed since October 2020, when Mr. JJ escaped after being kidnapped and tortured by paramilitary officers. An authoritarian government notorious for its brutal and systemic violence against pro-democracy protestors does not transform within a matter of months, especially when that dictator is still in power. Rather, recent reports indicate that violence against protestors has increased since then in order to quash any and all opposition. *See* IAHCR Report; United Nations News Report, June 3, 2021.

2. Mr. JJ could not reasonably relocate inside of Nicaragua

The government cannot show that relocation within Nicaragua would be a reasonable expectation under the circumstances. Internal relocation is presumed unreasonable when the claimed persecutor is a government. *Singh v. Mukasey*, 288 Fed.

Appx. 420, 421 (9th Cir. 2008). Because Mr. JJ's persecutors were Nicaraguan officials, including police officers, paramilitary officers, and Sandanistas, internal relocation to another region of Nicaragua is presumed unreasonable. Moreover, the Nicaraguan government is persecuting protestors throughout the country, as evidenced by the US State Department and OHCHR reports. Mr. JJ could not safely express his political opinion anywhere in Nicaragua.

b. Mr. JJ is more likely than not to suffer future persecution if he is removed to Nicaragua

Even if the Court finds that Mr. JJ has not established past persecution, he is still entitled to withholding of removal based on the fact that he is more likely than not to suffer future persecution on account of his political opinion if he is removed to Nicaragua. We know what will happen to Mr. JJ if he is returned to Nicaragua because this exact situation happened in March of 2020 when he was deported from Mexico: the police waited for him at the bus terminal, brought him to the police station, and violently beat him for an entire night while depriving him of food, water, and a safe place to sleep. If Mr. JJ is returned to Nicaragua, he will certainly be targeted by government forces and, given the increase in violence against protestors, potentially killed this time.

Moreover, the statute does not require an applicant to provide evidence that he will be singled out individually for such persecution if (i) the "applicant establishes that in that country there is a pattern or practice of persecution of a group of persons similarly situated to the applicant" on account of a protected ground; and (ii) "the applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return to that country." 8 C.F.R. § 1208.16(b)(2). Reports from the US State Department and the OHCHR clearly show that government officials in Nicaragua routinely detain,

attack, torture, and threaten protestors that speak out against the Ortega regime. Mr. JJ has established, via his declaration and multiple affidavits from community members, that he participated in protests against the government and was persecuted on account of his participation in the anti-Ortega movement. *See LETTERS.*

c. Mr. JJ was persecuted on account of his political opinion

There is no question that Mr. JJ's actual and imputed political opinions were the direct reason for the detentions, kidnapping, beatings, torture, and credible threats to his life. The Tenth Circuit has explained:

To show persecution on account of a political opinion, the applicant must establish the political opinion was "at least one central reason" for the persecution. § 1158(b)(1)(B)(i). The applicant's possession of a political opinion "cannot play a minor role in the alien's past mistreatment or fears of future mistreatment. That is, it cannot be incidental, tangential, superficial, or subordinate to another reason for harm."

Rivera-Barrientos v. Holder, 666 F. 3d 641 at 646 (10th Cir. 2012) (*quoting Dallakoti v. Holder*, 619 F.3d 1264, 1268 (10th Cir. 2010)) (referring to asylum which also requires persecution on account of a protected ground).

In this case, Mr. JJ was captured at an anti-government protest in Ocotal and beaten at the police station for participating in the protest. After attempting to flee Nicaragua, he was illegally detained and beaten by the police at the Ocotal police station while they attempted to gather information on other political activists. He was subsequently beaten, kidnapped and tortured by government-controlled Sandanistas and paramilitary officers because of his continued participation in the anti-government movement. During each of these episodes, and many times in between, the government forces told Mr. JJ that they would kill him if he continued speaking out against the government. Mr. JJ's opinion of support for and participation in the movement against

Ortega's authoritarian government was not just one of the central reasons for the persecution against him; it was the only reason.

d. Mr. JJ was persecuted by government officials

An applicant for withholding must demonstrate that the persecution is either at the hands of the government or by a private actor that the government is unwilling or unable to control. *Estrada-Escobar v. Ashcroft*, 376 F.3d 1042, 1046 (10th Cir. 2004). The applicant need not show that the government "condoned" persecution inflicted by private actors; he only needs to show that the government is unwilling or unable to control such parties. *See Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998).

In this case, Mr. JJ was persecuted at the hands of the government, not by private actors. He was detained, beaten and threatened by police officers on two occasions; he was beaten and threatened by members of Ortega's FSLN party, known as Sandanistas; and he was kidnapped, tortured and threatened by parapolice officers (paramilitaries). All three of these groups are controlled by and report to the Ortega government. *See* State Department Report at 1.

e. Mr. JJ Was Not Firmly Resettled in Another Country Before Entering the US

As set forth in Mr. JJ's declaration, he traveled through Honduras, Guatemala and Mexico in order to arrive at the US border. At no point was he firmly settled or offered resettlement in any of those countries.

V. MR. JJ IS ALSO ENTITLED TO PROTECTION UNDER THE CONVENTION AGAINST TORTURE

Pursuant to Article III of the CAT, the United States may not remove a respondent to a country where it is more likely than not that he would be tortured. 8

C.F.R. § 1208.16(a), (c)(2); *Matter of D-R-*, 25 I&N Dec. 445, 464 (BIA 2011).¹ In assessing whether a respondent is likely to be tortured, a court should consider evidence of past torture of the applicant along with evidence of gross, flagrant, or mass violations of human rights within the country of removal. *See* 8 C.F.R. § 1208.16(c)(3). Even a single, isolated act may suffice to constitute torture. *See* 8 C.F.R. § 1208.18(a)(1). If past torture can be demonstrated, future threat to life or freedom is presumed. *Id.* If an applicant establishes that it is more likely than not that he will be tortured by the government or its acquiescence in his home country, relief under CAT is mandatory. 8 C.F.R. § 1208.16(c).²

An order requiring Mr. JJ to return to Nicaragua will lead to severe harm and possibly death. Government officials know that he supports the movement against the regime and they have detained and tortured him on several occasions for that reason. When he was previously deported to Nicaragua, the police brutally beat him upon his return. He has clearly shown that he has been tortured in the past and that he is more likely than not to face torture if he is removed to Nicaragua, and recent reports from Nicaragua show that the regime continues to target dissenters. If the US government returns Mr. JJ to Nicaragua, it would be delivering him into the hands of a brutal authoritarian government that considers him an opponent of the regime.

VI. CONCLUSION

¹ Torture is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.” 8 C.F.R. § 1208.18(a)(1). The act must be directed against a person in the torturer’s custody or physical control and must be inflicted by or with the acquiescence of a public official or other person acting in an official capacity. *Id.*

² Pursuant to the law in the Tenth Circuit, willful blindness suffices to prove the acquiescence of government officials to torture. *See Karki v. Holder*, 715 F.3d 792, 806–07 (10th Cir. 2013).

Based on the detailed and credible facts in his Declaration, as well as the other declarations, documents, expert report and country condition evidence cited in this brief, Mr. JJ is entitled to withholding of removal or, in the alternative, protection under the CAT.

Respectfully submitted this ____.

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