

[REDACTED] PLLC  
[REDACTED] Floor  
New York, NY 10022  
[REDACTED]  
[REDACTED]@[REDACTED].com

*Pro Bono Counsel*

**U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
U.S. IMMIGRATION COURT  
AURORA, COLORADO**

IN THE MATTER OF:

[REDACTED] )  
[REDACTED] )  
a/k/a [REDACTED] )  
A# [REDACTED] )  
 ) REMOVAL PROCEEDINGS  
 )  
Respondent )  
\_\_\_\_\_ )

**Immigration Judge:** [REDACTED] **Hearing Date:** October [REDACTED] 2024 at 1:00 pm

**RESPONDENT'S BRIEF IN SUPPORT OF I-589 APPLICATION FOR ASYLUM,  
WITHHOLDING OF REMOVAL AND RELIEF UNDER THE CONVENTION  
AGAINST TORTURE**

Respondent, [REDACTED] [REDACTED] [REDACTED] aka [REDACTED] [REDACTED] [REDACTED] by and through her undersigned pro bono attorney, submits this brief in support of her application for asylum under § 208 of the Immigration and Nationality Act (INA), or in the alternative Withholding of Removal under INA § 241(b)(3), or withholding of removal under the United Nations Convention Against Torture (CAT) and 8 C.F.R §§208.16(c)(3);208.17.

### Introduction

Respondent, [REDACTED] [REDACTED] [REDACTED] is a 33 year-old transgender woman from Honduras.<sup>1</sup> Ms. [REDACTED] [REDACTED] identifies a female and prefers the name “[REDACTED]” She was born and remains biologically male but identifies as female. Ms. [REDACTED] [REDACTED] has been undergoing hormone therapy for the past few months and continues to receive treatment. When [REDACTED] was a little boy she knew something was not right and something was different but she was not sure exactly what. [REDACTED] faced abuse by a male individual who is related to her father. Her father kicked [REDACTED] out of the house after discussing the abuse with her mother. Many years down the line, [REDACTED] realized that she is a transgender woman. Although Ms. [REDACTED] [REDACTED] is a transgender woman, members of Honduran society who are unfamiliar with transgender identity have often perceived her as a gay man.

Ms. [REDACTED] [REDACTED] has suffered past persecution at the hands of Honduran citizens including the 18<sup>th</sup> Street Gang, and one of her neighbors. Additionally, she has suffered persecution at the hands of Honduran police officers. The 18<sup>th</sup> Street Gang, her neighbor, and the

---

<sup>1</sup> The term “transgender” refers to people whose gender identity differs from the biological gender they were assigned at birth. Transgender persons may describe themselves using one or more or a variety of terms, including “transgender.” Altering one’s biological sex or “transitioning”, is not a one-step process. It is a complex process that occurs over time and can include personal, medical, and legal steps, including telling friends, family and co-workers, using a different name and gender pronouns, dressing differently, undergoing hormone therapy, and possibly one or more types of surgery. The exact steps involved in any particular person’s transition vary greatly.

Honduran police officers targeted and persecuted Ms. [REDACTED] [REDACTED] on account of her membership in the particular social group “transgender women in Honduras” and “sexual minorities in Honduras including transgender women perceived to be gay males”. Additionally, Ms. [REDACTED] [REDACTED] has experienced threats, verbal abuse and discrimination from the general citizenry of Honduras. Ms. [REDACTED] [REDACTED] has a well-founded fear of future persecution by her neighbors, the 18<sup>th</sup> Street Gang, Honduran police officers, and by homophobic and transphobic people of Honduras on the same grounds.

The Honduran government is both unwilling and unable to protect Ms. [REDACTED] [REDACTED] from persecution by its own police officers. Numerous reports regarding the violence and discrimination of transgender women and “sexual minorities in Honduras including transgender women perceived to be gay males” in Honduras detail acts of violence and sexual assault committed by police officers against transgender women and “sexual minorities in Honduras including transgender women perceived to be gay males” in Honduras. There is nowhere in Honduras that Ms. [REDACTED] [REDACTED] could safely and reasonably relocate. In the alternative, Ms. [REDACTED] [REDACTED] qualifies for withholding of removal under INA §241(b)(3), and withholding under the United Nations Convention Against Torture.

### **Procedural History**

In March of 2024, Ms. [REDACTED] [REDACTED] entered the United States at an unknown location in Texas. She surrendered herself at the border to immigration officials to seek asylum and expressed fear returning to Honduras. She was transferred to ICE custody and moved to Aurora, Colorado. She had her credible fear interview and upon passing the credible fear interview she was given an Notice To Appear. Ms. [REDACTED] [REDACTED] was charged with removal under § 212(a)(7)(A)(i)(I) and §212(a)(6)(A)(i) and placed in removal proceedings. *See* Notice to

Appear. Since March 2024, Ms. [REDACTED] [REDACTED] has been detained and is currently being held in the GEO ICE Aurora Detention Facility (“GEO”) in Aurora, Colorado. On or around [REDACTED] [REDACTED] 2024, an Asylum Officer of the Department of Homeland Security determined Ms. [REDACTED] [REDACTED] to have a credible fear of return to her country of origin. Ms. [REDACTED] [REDACTED] submitted a timely I-589 Application for Asylum, Withholding of Removal, and relief under the Convention Against Torture to the Department of Homeland Security and the Department of Justice, which was received by the Aurora Immigration Court on [REDACTED] [REDACTED] 2024. *See* I-589. An Individual hearing was set for [REDACTED] [REDACTED] 2024.

### **Statement of Facts**

Respondent [REDACTED] [REDACTED] [REDACTED] is a 33-year-old transgender woman from Honduras. Ms. [REDACTED] [REDACTED] identifies as female and prefers the name “[REDACTED]” rather than her birth name of [REDACTED]. She was born and remains biologically male but hopes to transition her male biology to that of a female through hormone therapy. She is physically and romantically attracted to men.<sup>2</sup> Although Ms. [REDACTED] [REDACTED] is a transgender woman, members of Honduran society who are unfamiliar with transgender identity have often perceived her as a gay man.

#### **A. Persecution by police**

In or around 2022, [REDACTED] was walking through the park with her partner, [REDACTED]. The police arrested [REDACTED] and [REDACTED]. The police beat up [REDACTED] until he was unconscious. The police then took [REDACTED] to the police station and sexually abused her. The police specifically instructed [REDACTED] to not walk around talking about what happened at the jail. They also told her

---

<sup>2</sup> Ms. [REDACTED] [REDACTED] is prepared to testify to all these facts at the hearing.

to be a real man. The police said that they would lock ██████ up for life if she told anyone about the incident at the jail. She never reported this incident to the police because she did not feel safe telling the police this incident regarding their fellow police officers.

### **B. Abuse by 18<sup>th</sup> Street Gang**

In or around 2023, the 18<sup>th</sup> Street Gang came into the neighborhood of ██████ girlfriend where ██████ was living at the time. The gang slapped ██████ around forced her to have sexual relations with gang members while they had a weapon pointed at her. During the attack the gang stated that they did not like ██████ They stated that they did not like “faggots” and that they would kill her. ██████ went and reported the incident to the police. The police reject ██████ report because the police stated that LGBTQ+ people are not to be believed.

### **C. Attack by Neighbor**

In or around 2023, ██████ was physically attacked by her neighbor. The neighbor said that he would kill ██████ and that he didn’t want her type. He also stated that he hated faggots and that ██████ should leave or she would be killed.

### **D. Escape from Honduras and travel in Mexico in 2024**

Because of increasing threats to her life, Ms. ██████ ██████ fled Honduras to seek protection in the United States. She left Honduras and traveled towards Mexico. ██████ was robbed in Guatemala and everything she owned including her identification and mobile phone were taken from her. ██████ came with a caravan. Some other Honduran men were part of the caravan. The men showed ██████ a knife and told ██████ that they don’t like faggots and they would take her intestines out. The same night ██████ was propositioned. A man said he would give her food and clothing and then since ██████ did not have any money he abused her. The

man who abused her said she would have to pay somehow. ██████ pleaded with her abuser not to do it because her mind was not in the right place. As a result of ██████ phone being stolen in Guatemala and these two imminent threats to her safety ██████ did not apply with CBPOne.

Once she finally arrived in the US, she expressed her fear of returning to Honduras and her desire to apply for asylum.

### **E. Support Letters**

Two witnesses, Ms. ██████ ██████ friend, ██████ ██████ ██████ and Ms. ██████ ██████ sister, ██████ ██████ ██████ have seen Ms. ██████ ██████ experience past harm and how society reacts to her. In her support letter, Ms. ██████ ██████ discusses that she has known Ms. ██████ ██████ for a long time because she rented a room in her daughter's house. Ms. ██████ ██████ describes the incident when gang members attacked Ms. ██████ ██████ Ms. ██████ ██████ recalls, "I later learned that when gang members broke into my daughter's house, they hurt ██████ because of her sexual orientation" (pg. 3). She goes on to explain that gang members continue to look for Ms. ██████ ██████ and that "people wanted to kill her for being an LGBT person" (pg. 3). ██████ ██████ ██████ ██████ recalls that "██████ suffered a lot of harm in Honduras for being an LGBT person" (pg. 9) She discusses that LGBT individuals are abused and even killed because of their identities. These two witnesses corroborate Ms. ██████ ██████ story and the country conditions back this up.

### **Statement of Country Conditions**

There is a pattern and practice of systematic violence against transgender women in Honduras. Homophobic and transphobic values remain deeply embedded within the Honduran

societal fabric. Honduras has high levels of violence towards LGBT+ individuals and the government itself even encourages violence against LGBT+ individuals. According to Human Rights Watch, “Honduras has one of the world’s highest rates of homicides of transgender people”. *See* Human Rights Watch, “Trans People at Risk in Honduras” (November 2020). According to Freedom House, “in September, Soraya Alvarez Portillo, a transgender activist, was murdered. Cattrachas, a local NGO, said Alvarez was the 40<sup>th</sup> LGBT+ person to be murdered in Honduras in 2023.” *See* Freedom House, “Honduras: Freedom in the World 2024 Country Report” (2024). According to the same article reports, despite calls for reform, same-sex marriage is still illegal in Honduras today. *Id.*

Many of these crimes against LGBT+ people and transgender women in particular are underreported and are not properly investigated. The U.S. Department of State Country Reports on Human Rights for 2023 continues to explain, “NGOs reported police and other government agents incited, perpetrated, condoned or tolerated violence against LGBTQI+ individuals. Impunity for such crimes was high.” *See* United States Department of State, “2023 Country Reports on Human Rights Practices: Honduras” Bureau of Democracy, Human Rights and Labor, (2023). According to the International Rescue Committee (“IRC”) “almost 90% of crimes against LGBTQ+ persons go unpunished”. *See* International Rescue Committee, “LGBTQ+ persons in Honduras: discrimination impacts mental health and livelihoods, IRC warns” (June 2023). The Department of State Report also went on to discuss that there is a lot of hate from the general population towards LGBTQI+ individuals. *See* United States Department of State, “2023 Country Reports on Human Rights Practices: Honduras” Bureau of Democracy, Human Rights and Labor, (2023). The report stated that there were 83 hate crimes against this population as of November. *Id.*

There is also a practice of discriminatory hiring practices used against transgender women. According to the Department of State Report “transgender women were particularly vulnerable to employment and educational discrimination”. *Id.*

These practices of discrimination and violence against transgender individuals not only leads to physical side effects – there is also a mental impact. According to the IRC, a recent study revealed that “1 of every 3 participants expressed experiencing moderate to severe symptoms of depression.” *See* International Rescue Committee, “LGBTQ+ persons in Honduras: discrimination impacts mental health and livelihoods, IRC warns” (June 2023).

### Argument

Ms. [REDACTED] [REDACTED] has a well-founded fear of returning to Honduras because of the persecution she has experienced on account of her status as a transgender woman. Because she qualifies as a refugee and is not otherwise barred from a grant of asylum, the Court, in its discretion, should grant her request for asylum based on her persecution as a member in the particular social group “transgender women in Honduras.” In the alternative, Ms. [REDACTED] [REDACTED] is also eligible for a mandatory grant of withholding of removal under INA §241(b)(3) or for relief under the Convention Against Torture.

### **Ms. [REDACTED] [REDACTED] Is Entitled To Asylum Based On Past Persecution, A Well-Founded Fear Of Future Persecution, And She Also Qualifies For Humanitarian Asylum.**

To qualify for asylum, an applicant must prove that he or she is statutorily eligible for asylum by establishing that he or she is a refugee. *Woldemeskel v. INS*, 257 F.3d 1185, 1188 (10<sup>th</sup> Cir. 2001); 8 C.F.R § 208.13(a). There are three ways to establish refugee status: 1) showing a well-founded fear of persecution; 2) showing past persecution, 3) showing past persecution so severe as to demonstrate compelling reasons for being unwilling or unable to



return. *Krastev v. INS*, 292 F.3d 1268,1270-71 (10<sup>th</sup> Cir. 2002). Because Ms. [REDACTED] [REDACTED] has a well-founded fear of future persecution, can show past persecution, and her past persecution was so severe as to merit humanitarian asylum, and the persecution is based on the enumerated protected grounds that the government is unwilling or unable to protect her from, she should be granted asylum.

**Ms. [REDACTED] [REDACTED] Belongs To Several Particular Social Groups**

Ms. [REDACTED] faces persecution on account of her membership in a particular social group. Protected grounds for asylum include “race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1101 (a)(42)(A). A particular social group requires three findings: 1) composed of members who share common immutable characteristics; 2) defined with particularity; and 3) is socially distinct. *Matter of M-E-V-G-*, 26 I&N Dec 227, 251-52 (BIA, 2014). A common immutable characteristic is a trait that an individual holds that they cannot or should not be required to change. *Id* at 231. The particularity of a certain group is based on “particular and well-defined boundaries” *Rivera-Barrientos v. Holder*, 666 F.3d 641, 648-649 (10<sup>th</sup> Cir. 2012). These boundaries must place someone within a group that is recognized by the society in the country that the claimant is seeking asylum from. *Matter of M-E-V-G-*, 26 I&N Dec. at 238. Social distinction requires a finding that the society the individual will be sent back to recognizes and sets the group apart, whether or not they are actually ocularly “visible.” *Id* at 238. Even individuals that take efforts to hide their identity within a group may be considered members of a particular social group if they are set apart by society. *Id* at 240.

**Ms. [REDACTED] [REDACTED] belongs to a particular social group of “sexual minorities in Honduras including transgender women perceived to be gay males.”**

Ms. [REDACTED] [REDACTED] has faced past persecution, and will face future persecution, based on her membership in the particular social group of sexual minorities in Honduras, including transgender women perceived to be gay males. Ms. [REDACTED] [REDACTED] identifies as transgender, she is located in the transgender pod at GEO and ICE is paying for her hormone therapy. Homosexuality has long been recognized as a particular social group for purposes of asylum. See *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990). Transgender identity can also form the basis for a particular social group. See *Aguilar v. Garland* 29 F. 4<sup>th</sup> 1208 (10<sup>th</sup> Cir. 2022) (recognizing a transgender women in Honduras as a particular social group); *N-A-M- v. Holder*, 587 F.3d 1052 (10<sup>th</sup> Cir. 2009) (recognizing a viable claim based on transgender status). Sexual orientation and gender identity are fundamental aspects of a person’s identity. *Id.*; See *XX-Montiel v. INS*, 225 F.3d 1084, 1095 (9<sup>th</sup> Cir. 2000) (recognizing “gay men in Honduras with female sexual identities” as a particular social group). Ms. [REDACTED] - [REDACTED] identity as a transgender woman is an immutable characteristic which she cannot be expected to change or hide. See *Muhur v. Ashcroft*, 355 F.3d 958, 960 (7<sup>th</sup> Cir, 2004) (rejecting argument that respondent could avoid persecution by concealing practice of religion); *Karouni v. Gonzales*, 399 F.3d 1163, 1170 (9<sup>th</sup> Cir, 2005) holding that asylum applicants cannot be asked to conceal their sexual identity).

Particularity requires that a proposed group be defined by characteristics that “provide a clear benchmark for determining who falls within the group.” *Matter of M-E-V-G-*, 26 I&N Dec. at 239; see also *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69,76 (BIA 2007). A social group does not have to be defined with homogeneity but the group cannot be “too loosely defined.” *Matter of M-E-V-G-*, 26 I&N Dec. at 240. Thus, the terms used to describe the group must have

commonly accepted definitions and defined boundaries within the society of which the group is a part, and may not be too amorphous, overbroad, diffuse or subjective. *Id.* at 239. The particular social group “transgender women in Honduras” is defined with clear boundaries and outer limits. *Matter of M-E-V-G-*, 26 I&N Dec. at 238. *Id.* at 239. The group is defined by nationality and gender identity – including only those persons biologically born male who do not identify with that assignment, but rather identify as female. It is well established that the “characteristic of gender” is “susceptible to easy definition” *Rivera-Barrientos*, 666 F.3d at 650. Accordingly, the group “transgender women in Honduras” is neither amorphous or overbroad.

Transgender people are “often especially visible, and vulnerable, to harassment and persecution due to their often public nonconformance with normative gender roles.” *Avendano-XX v. Lynch*, 800 F.3d 1072, 1081 (9<sup>th</sup> Cir. 2015). This is certainly true in Honduras. According to Freedom House, “in September, Soraya Alvarez Portillo, a transgender activist, was murdered. Cattrachas, a local NGO, said Alvarez was the 40<sup>th</sup> LGBT+ person to be murdered in Honduras in 2023.” *See* Freedom House, “Honduras: Freedom in the World 2024 Country Report” (2024). According to the International Rescue Committee (“IRC”) “almost 90% of crimes against LGBTQ+ persons go unpunished”. *See* International Rescue Committee, “LGBTQ+ persons in Honduras: discrimination impacts mental health and livelihoods, IRC warns” (June 2023). The Department of State Report also went on to discuss that there is a lot of hate from the general population towards LGBTQI+ individuals. *See* United States Department of State, “2023 Country Reports on Human Rights Practices: Honduras” Bureau of Democracy, Human Rights and Labor, (2023). The report stated that there were 83 hate crimes against this population as of November. *Id.*

**Ms. [REDACTED] [REDACTED] belongs to a particular social group of transgender women in Honduras**

Ms. [REDACTED] [REDACTED] is a member of a second particular social group. She meets the legal standard discussed above. The 10<sup>th</sup> Circuit recently recognized transgender women in Honduras as a particular social group. See *Aguilar v. Garland* 29 F. 4<sup>th</sup> 1208 (10<sup>th</sup> Cir. 2022) (recognizing a transgender women in Honduras as a particular social group).

**Ms. [REDACTED] [REDACTED] is entitled to asylum based on past persecution.**

Ms. [REDACTED] [REDACTED] has suffered past persecution based on her membership in a particular social group. When an applicant has established past persecution, there is a presumption that she has a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1). Once persecution has been established, the government must show changed circumstances such that the threat of persecution no longer exists or that the applicant is able to relocate internally. 8 C.F.R. § 1208.13(b)(1)(i)-(ii); 8 C.F.R. § 1208.16(b)(1)(ii). In the Tenth Circuit, persecution is defined as “the infliction of suffering or harm upon those who differ (in race, religion, political opinion, or membership in a particular social group) in a way regarded as offensive and requires more than just restriction or threats to life and liberty.” *Tulengkey v. Gonzales*, 426 F.3d 1277 (10<sup>th</sup> Cir. 2005). Rape and sexual violence are regarded as forms of persecution. See *Lopez-Galarza v. INS*, 99 F.3d 954, 963 (9<sup>th</sup> Cir. 1996) (holding that rape and sexual assault may constitute persecution for asylum purposes); *XX-Montiel v. INS*, 225 F.3d 1084, 1097 (9<sup>th</sup> Cir. 2000) (finding that sexual assaults against a transgender woman “undoubtedly constitute persecution”), *overruled on other grounds by Thomas v. Gonzalez*, 409 F.3d 1177, 1187 (9<sup>th</sup> Cir. 2005); *Zubeda v. Ashcroft*, 333 F.3d 463, 472 (3<sup>rd</sup> Cir. 2003) (finding that “[r]ape can constitute torture... [as it] is a form of aggression constituting an egregious violation of humanity”); accord *Acendano-XX v. Lynch*, 800 F.3d 1072, 1081 (9<sup>th</sup> Cir. 2015).

Threats of serious harm when combined with confrontation or other mistreatment are also considered persecution. See, e.g. *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120-21 (9<sup>th</sup> Cir. 2004) (death threats, violence against family, vandalism of residence, threats of mob violence, economic harm and emotional trauma suffered by ethnic Afghan family in Germany). The Court must look at the “totality of the circumstances” in determining a find of past persecution. *Guo v. Ashcroft*, 321 F.3d 1194, 1203 (9<sup>th</sup> Cir. 2004).

As discussed in the above, Ms. [REDACTED] [REDACTED] has faced severe and continuous persecution based on her status as a sexual minority while living in Honduras, Ms. [REDACTED] [REDACTED] past persecution is established by sexual violence and rape. See *Lopez-Galarza*, 99 F.3d at 962; *XX-Montiel*, 225 F.3d t 1097. For example, in or about 2022, [REDACTED] was walking in the park with her partner [REDACTED]. The police arrested both [REDACTED] and [REDACTED] and then beat up [REDACTED] until he was unconscious. The police took [REDACTED] to the police station where they sexually abused her. They specifically told [REDACTED] to be a “real man” and to not tell anyone about the incident. Then in or about 2023, [REDACTED] was attacked by the 18<sup>th</sup> Street gang who forced her to have sexual relations with gang members while a weapon was pointed at her. When she was attacked the gang, members said they don’t like “faggots” and that they would kill her. She went to the police regarding the incident and the police stated that they did not believe LGBTQ+ individuals and that her report regarding the incident with the gang was rejected.

Ms. [REDACTED] [REDACTED] repeated subjection to sexual and other violence was on account of her status as a sexual minority. During every instance of assault or harassment, she was called homophobic slurs, establishing that the attacks were due to her membership in the group. Because Ms. [REDACTED] [REDACTED] has shown past persecution on account of a protected ground, she has a rebuttable presumption of a well-founded fear of future harm.

**Ms. [REDACTED] [REDACTED] has a well-founded fear of future harm based on her membership in this group.**

Even if Ms. [REDACTED] [REDACTED] rape, sexual assault by police, and other sexual and emotional abuse and discrimination by community members are not found to constitute past persecution, Ms. [REDACTED] [REDACTED] also has a well-founded fear that she will be persecuted on account of her membership in the group of sexual minorities in Honduras. When establishing a well-founded fear of future persecution, an applicant must demonstrate a genuine subjective fear of persecution as well as an objective fear. *Karki v. Holder*, 715 F.3d 792, 801 (10<sup>th</sup> Cir. 2013). The objective fear is demonstrated through “credible, direct, and specific evidence” that supports the applicant’s reasonable fear of persecution. *Yuk v. Ashcroft*, 355 F.3d 1222, 1233 (10<sup>th</sup> Cir. 2004). Once an objective showing of fear is established, the applicant only needs to show that persecution is a *reasonable possibility*, not that persecution is likely. 8 C.F.R. § 208.12(b)(2)(i)(B); *Unreroro v. Gonzalez*, 443 F.3d 1197, 1202 (10<sup>th</sup> Cir. 2006). A reasonable possibility may be as little as a 10% chance of future persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987). Additionally, if an applicant establishes that there is a “pattern or practice in ... [the] country of nationality... of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group or political opinion” and that the applicant is included in and identifies with such a group that the “fear of persecution upon return is reasonable,” an immigration judge “shall not require the applicant to provide evidence that there is a reasonable possibility he or she would be singled out individually for persecution.” 8 C.F.R. § 208.13(b)(2)(iii); *see also Woldemeskel v. INS*, 257 F.3d at 1190. Even where news laws have been introduced to prevent violence against the LGBTQ+ community, country conditions evidence can establish a pattern of violence and

persecution. *Gonzales Aguilar v. Garland*, No. 18-9570, 2022 WL 905384, at \*1 (10<sup>th</sup> Cir. Mar.29, 2022).

In *Gonzales Aguilar*, the petitioner sought asylum based on a well-founded fear of future persecution on account of her membership in the particular social group of transgender women from Honduras. *Id* at \*1. The Tenth Circuit held that country conditions in Honduras pointed towards a pattern of persecution of transgender and LGBTQ+ individuals within the country, despite the passage of laws aimed at protecting and prosecuting LGBTQ+ individuals, the fact that several LGBTQ+ groups had been working with the Honduran government to address violence, the addition of agents to address the violence, and that law enforcement professionals were educating officers in gender-based violence. *Id* at \*5. The court determined from the country conditions that the violence against transgender women continued in Honduras in spite of the government measure, and the perpetrators of the violence often acted with impunity. *Id* at \*6-8.

In this case, Ms. [REDACTED] [REDACTED] fear of future persecution based on her gender identity is both objectively and subjectively reasonable. She has a genuine fear that she would be persecuted upon return to Honduras based on her knowledge of the overall discriminatory attitude toward transgender women based off of her own persecution as well as the persecution of other transgender and gay individuals that she heard about. Further, Ms. [REDACTED] [REDACTED] fear of returning to Honduras is objectively reasonable because “a reasonable person in [her] circumstances would fear persecution.” *Mogharrabi*, 19 I&N Dec. at 445. Almost exactly as in *Gonzales Aguilar*, Ms. [REDACTED] [REDACTED] past experiences and forward looking fears are objectively substantiated by the fact that transgender women are targets of violence and discrimination.

Country conditions evidence shows that police specifically target transgender women and according to Human Rights Watch, “Honduras has one of the world’s highest rates of homicides of transgender people”. *See supra* Statement of Country Conditions; Human Rights Watch, “Trans People at Risk in Honduras” (November 2020). The U.S. Department of State Country Reports on Human Rights for 2023 continues to explain, “NGOs reported police and other government agents incited, perpetrated, condoned or tolerated violence against LGBTQ+ individuals. Impunity for such crimes was high.” *See* United States Department of State, “2023 Country Reports on Human Rights Practices: Honduras” Bureau of Democracy, Human Rights and Labor, (2023). According to the International Rescue Committee (“IRC”) “almost 90% of crimes against LGBTQ+ persons go unpunished”.

Due to the widespread violence and discrimination against LGBTQ+ individuals, and transgender women in particular in Honduras, Ms. [REDACTED] [REDACTED] has established that there is a pattern and practice of persecution against people in her particular social group. See *Gonzalez Aguilar*, 2022 WL 905384, at \*1. Thus, she should not have to show that she will be individually targeted. 8 C.F.R. § 208.13(b)(2)(iii). Nonetheless, she has also shown a reasonable possibility that she will be persecuted, given her past experiences of abuse and discrimination in Honduras. *Unreroro*, 443 F.3d at 1202. Based on controlling case law describing very similar facts and the same protected grounds, Ms. [REDACTED] [REDACTED] should prevail on her claim.

**The government is unwilling or unable to protect members of the group.**

Asylum applicants must demonstrate that persecution is either at the hands of the government or by a non-governmental actor that the government is “unwilling or unable to control.” *Estrada-Escobar v. Ashcroft*, 376 F. 3d 1042, 1046 (10<sup>th</sup> Cir. 2004) (quoting *Batalova v. Ashcroft*, 355 F.3d 1246, 1253 (10<sup>th</sup> Cir. 2004)). When demonstrating that the government is



unwilling or unable to control private actors, an applicant for asylum does not need to show that the government “condoned” the persecution inflicted by the non-government actors, but rather that the government was unable to control the private actors. See *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998).

The government in Honduras was unwilling and unable to protect Ms. [REDACTED] [REDACTED] from physical and verbal abuse. *See id.* The police were not only unable to arrest her rapist, but it was the police who assaulted Ms. [REDACTED] [REDACTED] when she was walking in the park with her partner [REDACTED]. The police told Ms. [REDACTED] [REDACTED] to not walk around and tell anyone what happened or she would be locked up for life and to be “a real man”.

Additionally, country conditions show that the Honduran government is unwilling or unable to control the persecution of people who belong to Ms. [REDACTED] [REDACTED] protected groups. According to the Freedom House report discusses that despite calls for reform, same-sex marriage is still illegal in Honduras today. *See* Freedom House, “Honduras: Freedom in the World 2024 Country Report” (2024). According to Human Rights Watch, “Honduras has one of the world’s highest rates of homicides of transgender people”. *See* Human Rights Watch, “Trans People at Risk in Honduras” (November 2020).

Further, as detailed in the Country Conditions, *supra* there is a pattern of systemic violence against the LGBTQ+ community perpetuated by state officials and private citizens at the acquiescence of the state.

**Ms. [REDACTED] [REDACTED] is entitled to humanitarian asylum**

Ms. [REDACTED] [REDACTED] past persecution was so severe that she was entitled to humanitarian asylum. See 8 C.F.R. § 1208.13(b)(1)(iii). This relief can be granted based on the

compelling reasons arising out of the severity of the past persecution or the “reasonable possibility” that she may suffer other serious harm in the country of removal. See 8 C.F.R. §208.13(b)(1)(iii); *Matter of L-S*, 25 I&N Dec. 705 (BIA 2012). The “other serious harm” need not related to the applicants past harm or be on account of a protected ground, it must only be “so serious that it equals the severity of persecution.” *Id.* In order to determine if the applicant has established a “reasonable possibility” of “other serious harm” the court should look to the general country conditions and the particular challenges the applicant may face. *Id.* In *Matter of Chen*, the BIA held that when the past persecution is severe, it is inhumane to return and asylum applicant to her former country, even absent a risk of future persecution. 20 I&N Dec. 16, 21 (1989).

Ms. [REDACTED] [REDACTED] has established her past persecution was severe and thus it would be inhumane to return her to Honduras. Ms. [REDACTED] [REDACTED] was subject to consistent emotional abuse, and multiple instances of severe sexual abuse, including by the police. Country Conditions show that there is a “reasonable possibility” that she may suffer other serious harm in Honduras related to her status as a transgender woman. For the forgoing reasons Ms. [REDACTED] [REDACTED] merits relief in the form of humanitarian asylum.

**In the Alternative Ms. [REDACTED] [REDACTED] Should be Granted Withholding of Removal or Relief Under the Convention Against Torture.**

If the Court denies Ms. [REDACTED] [REDACTED] request for asylum, she seeks, in the alternative, Withholding of Removal under INA §241(b)(3) or protection under the Convention Against Torture.

**Ms. [REDACTED] [REDACTED] qualifies for Withholding of Removal and is not otherwise ineligible for a mandatory grant of Withholding.**

Ms. [REDACTED] [REDACTED] is eligible for withholding of removal under INA 241(b)(3) because she has demonstrated that there is a clear probability that her “life or freedom would be threatened on account of her ... membership in a particular social group.” See INA §241(b)(3)(a); *INS v. Stevic*, 469 U.S. 407, 413, 429-30 (1984). Unlike the grant of asylum, however, withholding of removal is a mandatory form of relief that the court must grant if the applicant meets the relevant standard and has no disqualifying crimes. 8 C.F.R. §208.16 (d)(1); see *Cardoza-Fonseca*, 480 U.S. at 440-41, n.25.

Ms. [REDACTED] [REDACTED] easily satisfies the more stringent standard of withholding of removal because she has established: 1) that she has experienced past persecution in Honduras on account of her membership in the particular social group of transgender women, and 2) that the government is both unable and unwilling to prevent this sort of persecution in the future. See *supra* Argument. Ms. [REDACTED] [REDACTED] is therefore entitled to the presumption that she will face future persecution in Honduras. See 8 C.F.R. § 1208.13(b)(1); *Krastev v. I.N.S.*, 292 F.3d 1268, 1270-1271 (10<sup>th</sup> Cir. 2002).

As evidenced by the country conditions reports and Ms. [REDACTED] [REDACTED] personal experiences, Honduran citizens are targeting and persecuting LGBT individuals, especially transgender women who do not conform to expected gender norms. Honduran authorities are unable to effectively offer protection to this vulnerable population and have failed to effectively investigate and prosecute crimes committed against them. Honduran police throughout the country target transgender women with violence, verbal threats, arbitrary arrest and rape, just

like they did to Ms. [REDACTED] [REDACTED]. Accordingly, it is “more likely than not” to conclude that Ms. [REDACTED] [REDACTED] will face the same persecution if she is returned to Honduras.

An individual will be found ineligible for a grant of withholding of removal if she is: 1) has been convicted of a particularly serious crime while in the US, 2) has committed a serious non-political crime prior to entering the United States, 3) has ordered, incited, assisted or otherwise participated in persecution of others, or 4) presents a danger to U.S. security. INA §241(b)(3)(B); 8 C.F.R. § 1208.16. Ms. [REDACTED] [REDACTED] has never been convicted of a crime in the United States, participated in the persecution of others, committed any crime in Honduras or country other than the U.S., and does not present a danger to the United States.

Because both her life and freedom would be severely threatened in Honduras, Ms. [REDACTED] [REDACTED] qualifies for Withholding of Removal under INA §241(b)(3) and should be granted that relief, in the alternative.

**Ms. [REDACTED] [REDACTED] qualifies for protection under the Convention Against Torture and is not otherwise ineligible for a mandatory grant of CAT protection**

If the court concludes that Ms. [REDACTED] [REDACTED] is not eligible for asylum or withholding of removal, she also seeks protection in the form of withholding or deferral of removal under the Convention Against Torture. Ms. [REDACTED] [REDACTED] is eligible for relief under CAT because she established that it is more likely than not that she would be tortured if returned to Honduras. See 8 C.F.R. §208.16(c)(2).

Torture is defined as an act that causes (1) severe physical or mental pain or suffering that is (2) intentionally inflicted for a proscribed purpose, (3) by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim. *Matter of J-E-*, 23 I&N Dec. at 297 (BIA 2002) (citing 8 C.F.R. §208.18 (a)). If Ms. [REDACTED]

██████████ is forcibly returned to Honduras, she will face severe physical and mental pain and suffering that rises to the level of torture. 8 C.F.R. § 208.18 (a)(4)(iii). Beating and killings perpetrated by police and security forces constitute torture, “acts constituting torture are varied and include beatings and killings.” *Broomfield v. Mukasey*, 543 F.3d 1071, 1079 (9<sup>th</sup> Cir. 2008) (citing *Comollari v. Ashcroft*, 278 F.3d 694, 69 (7<sup>th</sup> Cir. 2004) and *Al-Saher v. INS*, 268 F.3d 1143, 1147 (9<sup>th</sup> Cir. 2001)).

As detailed above, Ms. ██████████ ██████████ was attacked by police officers who sexually assaulted her because she did not conform with gender norms. This egregious abuse of power by the prototypical public figures rises to the level of torture. See, e.g., *Arostegui Maldonado v. Garland*, 75 F. 4<sup>th</sup> 1132 (10<sup>th</sup> Cir. 2023). Country condition reports demonstrate that murder, sexual assault, and rape perpetrated against transgender women are rarely investigated and it is unlikely perpetrators will ever be prosecuted.

Additionally, as country conditions illustrate, rape, violence, and torture of transgender women in Honduras is all too common and Honduran police officers are often primary perpetrators. The unchecked sexual and psychological torture committed against Ms. ██████████ ██████████ by police officers alike, along with the ongoing violence against transgender women, indicate that it is more likely than not that Ms. ██████████ ██████████ will be tortured if returned to any region in Honduras.

Honduran gangs such as the 18<sup>th</sup> Street gang have tortured Ms. ██████████ ██████████ Ms. ██████████ ██████████ reported these incidents to the police and the police fail to do anything about it showing their acquiescence to the acts of the Honduran gangs. Ms. ██████████ ██████████ has also been tortured by her neighbor and other citizens of Honduras. Ms. ██████████ ██████████ can also show that it is more likely than not that she will experience torture considering all of these

potential sources of harm – from the police, the gangs and the bigoted members of the public.

*Matter of J-R-G-P-*, 27 I&N. Dec 482 (BIA 2018)

**Conclusion**

For the above reasons, Ms. [REDACTED] [REDACTED] case is credible and compelling. Thus, Ms. [REDACTED] [REDACTED] case warrants asylum. In the alternative, Ms. [REDACTED] [REDACTED] is entitled to withholding of removal or relief pursuant to the Convention Against Torture.

Dated October 22, 2024

Respectfully Submitted,

---

[REDACTED] [REDACTED] [REDACTED] PLLC  
[REDACTED] [REDACTED] [REDACTED]  
New York, NY 10022  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED]@ [REDACTED].com

*Pro Bono Counsel*

PROOF OF SERVICE

This document was electronically filed through ECAS and both parties are participating in ECAS. Therefore, no separate service was completed.

---

██████████ ██████████ Esq.  
Attorney