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***Pro bono* counsel for Respondent**

**UNITED STATES DEPARTMENT OF JUSTICE**

**EXECUTIVE OFFICE OF IMMIGRATION REVIEW**

**IMMIGRATION COURT AURORA, COLORADO**

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In the Matter of: )

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**XXX XXX** )

Respondent )

 ) File No.: **A XXXXX**

In Removal Proceedings )

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Individual Hearing: December XX, 2024Immigration Judge: Hon. Elanie J. Cintron

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**RESPONDENT'S PRE-HEARING STATEMENT IN SUPPORT OF APPLICATION FOR ASYLUM, WITHHOLDING OF REMOVAL, AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE**

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**RESPONDENT'S PRE-HEARING STATEMENT IN SUPPORT OF APPLICATION FOR ASYLUM, WITHHOLDING OF REMOVAL, AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE**

**I.** **INTRODUCTION**

Respondent, XXX XXX, through his *pro bono* counsel, submits this brief in support of his applications for asylum, withholding, and protection under the Convention Against Torture (CAT).

Mr. XXX is a citizen of Sudan who fled to the United States after suffering extreme persecution, including the murder of members of his family and his arrest, imprisonment, and torture on two separate occasions by Sudanese officials because of his actual and implied political opinion in support of an opposition movement, and because of his membership in a particular social group – Nuba tribe member. Since Mr. XXX escaped from Sudan, the Sudanese government has increased targeting of civilians, and Mr. XXX is in continual danger of being arrested and tortured if he returns to Sudan.

For these reasons, Mr. XXX merits asylum, or alternatively, withholding of removal and/or protection under the Convention Against Torture ("CAT").

# **II.** **STATEMENT OF FACTS[[1]](#footnote-1)**

Mr. XXX is a citizen of Sudan and was born on MONTH XX, YEAR, in [LOCATION], Sudan. He is a member of the Nuba tribe and has a wife and two children who are in Sudan.

Mr. XXX spent his early years in the village of [Village NAME], located in South Kordofan within the Nuba Mountains. TAB A. His childhood was marked by hardship, as the Sudanese government maintained a longstanding hostility toward the Nuba people, subjecting them to systemic discrimination, extreme poverty, and famine.

In approximately MONTH YEAR, when Mr. XXX was approximately nine years old, his village was attacked in a state-sponsored assault targeting rebel opposition in the Nuba Mountains. During this brutal event, he witnessed soldiers destroying homes, burning the village, and killing those unable to escape. Tragically, he saw his grandfather, uncle, and aunt murdered. Mr. XXX fled with his brother, and afterward, his family relocated to the city of [CITY NAME] in the South Kordofan State of Sudan. Due to their extreme poverty, he left school to work in construction to help support his family.

Around YEAR, Mr. XXX participated in a movement led by a Nuba tribal leader to repopulate and rebuild the villages. Upon returning to Kanga, he and his family faced the destruction of their home from the government's prior attack and began the arduous task of reconstruction. However, in YEAR, the Sudanese government and military once again attacked Kanga and other Nuba villages. During this assault, soldiers shot and killed citizens, including two of Mr. XXX's uncles, in front of Mr. XXX.

Following this attack, Mr. XXX's family returned to Kadugli, where conditions worsened due to continued government oppression. Each time Mr. XXX went to the market, soldiers harassed, insulted, and threatened him, often referring to him as an "insect" or a "slave." To escape this persecution, he moved to the city of [CITY] in the state of Khartoum to stay with his brother, but the harassment persisted. In MONTH YEAR, Mr. XXX fled Sudan and traveled to Beirut, Lebanon, where he lived for several years before being deported back to Sudan.

Upon his return to Sudan, conflict erupted between Sudanese government forces and rebels aligned with insurgent leader XXXXX. The government began targeting individuals from various tribes, including the Nuba tribe, arresting and executing suspected supporters of XXX and the insurgents. During this period, roads were closed, and vehicles were searched for members of these tribes. While attempting to travel from [CITY] to [CITY], Mr. XXX was arrested and detained. During his detention, he was severely beaten and mocked for his Nuba tribal membership. He was released after convincing authorities that he had just returned from Lebanon and was unaware of the ongoing conflict. Fearing for his safety, he returned to [CITY].

In MONTH YEAR, a conflict erupted in [CITY] over the gubernatorial elections between a Nuba candidate and an ally of the Sudanese government. The government rigged the election in their favor, prompting outrage and rebellion among the Nuba people.

On [DATE], moving to quell the insurgency, government forces attacked [CITY], killing civilians indiscriminately and committing atrocities consistent with genocide. Mr. XXX's father and sister were killed during this attack. Two days later, Mr. XXX and his brother were arrested. They endured 21 days of imprisonment under deplorable conditions, suffering daily beatings and torture. Guards handcuffed and blindfolded Mr. XXX, beating him with heated sticks, and leaving him in the sun without water or shade. The guards insulted him, calling them "slaves" and "animals." Eventually, officials told Mr. XXX he could either check in daily with authorities or leave the area permanently. He chose to flee Sudan.

On Month XX, 2011, Mr. XXX left Sudan, traveling through Europe and ultimately reaching France, where he applied for asylum. Out of fear that Sudanese authorities could locate him, he applied under the name of his deceased uncle, [NAME], who had been killed in XXXX. Mr. XXX lived in France under this alias until 2023.

In 2023, Mr. XXX began to receive phone calls in France from an unknown Sudanese phone number. The person on the phone identified himself as a member of the Sudanese government and told Mr. XXX they had found information on WhatsApp about a group of people living abroad and supporting members of the Nuba tribe and found his name among the sponsors. The caller told Mr. XXX, "You people who travel to other countries and support people here, we will find you." Mr. XXX knew that his name was included on a WhatsApp listing of individuals who supported the Nuba tribe with money. A few days later, Mr. XXX received another phone call from Sudan. The person on the phone referred to him by his real name and told him they knew his address in France. They said that the government had a "long hand" and that they would find him in France and kill him. Mr. XXX received a third call a few days later. The caller told him they had killed his nephew, and they have a "long hand" and could kill him too. The caller said that Mr. XXX's family had escaped the house when they killed his nephew and that they would find and kill them too. Mr. XXX was scared and stopped answering any calls from Sudan. Fearing for his safety and worried that if he told French authorities, he would be deported to Sudan for using a false identity, Mr. XXX felt he had no choice but to leave France.

On January 23, 2024, he departed France, traveling through Latin America to reach the U.S.-Mexico border. On March 9, 2024, Mr. XXX entered the United States without inspection near San Diego. Unfamiliar with the CBP One App and unable to communicate due to language barriers, he was unaware of the asylum appointment process. Upon arrest by ICE officials, he immediately disclosed his real identity and his immigration status in France. On July 9, 2024 DHS issued a Notice to Appear, charging him as a removable under INA 212(a)(6)(A)(i). On August 12, 2024, DHS filed a I-216 Additional Charges of Inadmissibility/Deportability under INA 240. On October 1, 2024, Mr. XXX filed a Form I-589 Application for Asylum, Withholding of Removal, and CAT protection.

While detained at the Aurora Contract ICE Processing Center, Mr. XXX has made many attempts to contact his family in Sudan to collect documents and witness statements to support his I-589 Application. To date, he has been unable to contact his family due to the ongoing conflict and deteriorating conditions in Sudan.

# **III.**  **STATEMENT OF COUNTRY CONDITIONS**

The Nuba tribe, residing primarily in the Nuba Mountains of South Kordofan, has faced systematic persecution and marginalization by successive Sudanese governments, mainly driven by the government's perception of the Nuba people as sympathizers or supporters of resistance to the government. Tab G.

Beginning in 1970s and 80’s, the Sudanese government began to target the Nuba tribe due to their perceived alliance with government opposition groups, conducting widespread destruction of Nuba villages. Government forces deliberately targeted civilians in actions that have been identified as attempts at ethnic cleansing and cultural erasure. Continuing throughout the 1990s, the government imprisoned and tortured Nuba citizens, trying to break the Nuba people's resistance. Fighting continued following South Sudan's independence in 2011, with the Sudanese government resuming indiscriminate bombing campaigns, blockades of humanitarian aid, and targeted violence against the Nuba population​.

Current conditions in Sudan have deteriorated further. Since early 2023, Sudan has been engulfed in a violent conflict that is one of the world's most severe humanitarian crises. Tab I. As noted by the U.S. State Department and Amnesty International, the Sudanese government has committed extensive violations of international human rights and humanitarian law, including war crimes, crimes against humanity, and acts of ethnic cleansing. Tab C and Tab F. Reports document indiscriminate killings, mass executions, and ethnic targeting. Mass graves have been uncovered, reflecting the scale of the atrocities. Tab F. As the State Department notes, Sudanese forces have detained civilians, human rights defenders, and political activists arbitrarily, subjecting many to torture, starvation, and other inhumane treatment. Tab C. The conflict has displaced millions throughout the country. Tab I. Civilians face dire conditions, including food insecurity, lack of shelter, and inadequate access to healthcare and sanitation. In areas like the Nuba Mountains, where many displaced people have sought refuge, resources are scarce. *Id*. Currently, at least half of Sudan's population faces crisis levels of food insecurity, and a famine has been declared in parts of the country.

During the current conflict, Individuals associated with ethnic or political groups perceived as opposed to the Sudanese government have been particularly vulnerable. Survivors recount witnessing killings, sexual violence, destruction of homes, ongoing violence, severe human rights abuses, and humanitarian collapse.

These conditions have led the U.S. government to declare Temporary Protected Status, recognizing the ongoing humanitarian crises in the country which have made it unsafe for Sudanese nationals to return. Tab D.

# **IV.** **MR. XXX IS ELIGIBLE FOR ASYLUM**

Asylum is available for individuals who meet the statutory definition of a "refugee." Mr. XXX is a refugee and should receive asylum in the United States. Refugee is defined in relevant part by INA §1101(a) (42) as:

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

As is evidenced by his Declaration and supporting evidence, Mr. XXX meets each of the elements of this definition.

## **A.** **Mr. XXX is unable to return to Sudan because he suffered past persecution and has a well-founded fear of future persecution**

 Mr. XXX cannot return to Sudan for fear of torture and death. His fears are based on his past persecution; among other things, he was the victim of detention, beating, deprivation of food and water, and the threat of death at the hands of government forces. The "central reasons" for this persecution were his perceived political opinion of opposing the Sudanese government and supporting fair treatment for Sudanese citizens and members of the Nuba tribe and his membership in a particular social group, the Nuba tribe. Mr. XXX can also demonstrate that he has a well-founded fear of future persecution on these same grounds. Mr. XXX is terrified that if he returns to Sudan, he will be arrested, detained, tortured, and possibly killed by government officials.

Persecution is "the infliction of suffering or harm . . . in a way regarded as offensive" and "encompasses more than just restrictions or threats to life and liberty." *Niang v. Gonzales*, 442 F.3d 1871, 1197 (10th Cir. 2005) (internal quotations omitted)). Serious actual or attempted physical violence qualifies as persecution. *See Karki v. Holder*, 715 F.3d 792, 804–05 (10th Cir. 2013).

Mr. XXX was detained, deprived of food and water, and brutally beaten by Sudanese officials on multiple occasions. Sudanese officials murdered members of his family, including his father, sister, grandfather, and two uncles. Mr. XXX witnessed the Sudanese government burning his village and murdering and imprisoning his neighbors and members of his tribe.

Mr. XXX's past persecution "establishes a presumption of a well-founded fear of future persecution on the same basis as established for the original persecution." *Niang*, 422 F.3d at 1195; *See* 8 C.F.R. § 1208.13(b)(1)). The government may rebut this presumption by showing either: (1) "there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality" on account of a protected ground, or (2) 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.

### **B.** **Conditions in Sudan have not changed**

The government cannot show that country conditions have changed since June 2011, when Mr. XXX was last detained, beaten, and tortured. A nation with a years-long history of brutal and systemic violence against a repressed minority does not transform within a matter of months. If anything, violence in Sudan is increasing. As the U.S. State Department reports detail, the U.S. government found evidence of "war crimes…" "crimes against humanity, and ethnic cleansing committed by the Sudanese government.: Among many other things, current significant human rights issues included credible reports of unlawful or arbitrary killings. . . enforced disappearance, cruel, inhuman or degrading treatment or punishment by the government, harsh and life-threatening prison conditions, arbitrary arrest or detention, political prisoners or detainees . .. serious abuses in a conflict, including unlawful or widespread civilian deaths or harm. . ." CITE

###  **C.** **Mr. XXX cannot reasonably relocate within Sudan**

The government cannot show that relocation within Sudan 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. XXX's persecutors were Sudan officials, internal relocation to another region of Sudan is presumed unreasonable. Country conditions make it clear violence by Sudanese government forces against civilians existed throughout the country. CITE. This is especially true for Mr. XXX, who is identifiable as a member of the Nuba tribe who has already been identified as a supporter of opposition and who has repeatedly relocated in the past in a fruitless effort to seek safety.

### D. **Even without a presumption, Mr. XXX can independently establish the likelihood of future persecution**

### Mr. XXX's fear of future persecution can serve as an independent basis for asylum. A well-founded fear of future persecution must be based both on a genuine subjective fear of persecution and an objective fear demonstrated through "credible, direct, and specific evidence in the record." *Karki*, 715 F.3d at 801. Mr. XXX only needs to establish the objective situation is a "reasonable possibility" and not that persecution is more likely than not. *Uanreroro v. Gonzalez*, 443 F.3d 1197, 1202 (10th Cir. 2006) (*quoting I.N.S. v. Stevic*, 467 U.S. 407, 424–25, 104 S. Ct. 2489, 81 L.Ed.2d 321 (1984)). A "reasonable possibility" may be as small as a 10% chance of persecution. *INS v. Cardoza*, 480 U.S. 421, 440 (1987). Mr. XXX's subjective fear is demonstrated in his Declaration.

### Mr. XXX's objective fear of future persecution can also be established through evidence that individuals like Mr. XXX face persecution as a "pattern or practice," even if he had never been singled out for harm. 8 C.F.R. § 208.13(b)(2)(iii)(A)-(B); *See* also *Woldemeskel v. I.N.S*., 257 F.3d 1185, 1191 (10 Cir. 2001). To succeed on "pattern or practice" evidence, Mr. XXX must demonstrate he is a member of a particular social group or holds a political opinion that is targeted for "systemic or pervasive persecution." Id. at 1191. Mr. XXX has provided ample evidence that the Nuba tribe and those suspected of membership in the opposition movement face systemic and pervasive persecution from government security forces.

Mr. XXX's removal from the United States and return to Sudan would be the equivalent of condemning his to certain torture and/or death.

**E.** **Mr. XXX was Persecuted based on his Actual and Imputed Political Opinions**

If the protected ground in seeking asylum is political opinion, the Respondent must identify the opinion asserted, that the opinion constitutes a "political opinion," and that the political opinion was "at least one central reason for the persecution." *Rivera-Barrientos*, 666 F.3d at 641 (internal quotations omitted). The BIA has defined political opinion as follows: "The particular belief or characteristic a persecutor seeks to overcome in an individual is his political opinion. Thus [it] refers not to the ultimate political end that may be served by persecution, but to the belief held by an individual that causes him to be the object of persecution." *Matter of Acosta*, 19 I.& N. at 234. The Tenth Circuit has acknowledged that "it may generally be true, as some circuits have held, that imputed political opinion is still a valid basis for relief after Elias–Zacarias." Ustyan v. Ashcroft, 367 F.3d. 1215, 1218 (10th Cir. 2004) (internal quotation omitted).

 Here, Mr. XXX was detained, brutally beaten, and threatened with death by government officials because of his imputed involvement with Nuba opposition groups. Officials specifically threatened him because of his political activities and involvement in the tribe and its activities. In addition, he was recently threatened in France because his persecutors knew he was a supporter of the Nuba tribe. This political opinion of support for the Nuba tribe and its opposition movement was imputed to him because he is a member of the Nuba tribe and a perceived supporter of the Nuba tribe opposition.

## **E. Mr. XXX was persecuted based on his membership in a particular social group, "members of the Nuba tribe"**

To establish membership in a "particular social group," an asylum applicant must show that he is a member of a group of persons that share a common immutable characteristic that he either cannot change or should not be required to change because it is fundamental to his individual identity or conscience. *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985); *See also Niang v. Gonzales*, 422 F.3d 1187, 1198-99 (10th Cir. 2005) (discussing and adopting *Acosta's* definition on "particular social group"). The group must have particular and well-defined boundaries and a recognized level of social distinctiveness. *Matter of* *M–E–V–G–*, 26 I. & N. Dec. 227, 234-38, 240-43, 247 (B.I.A. 2014); *Rodas-Orellana v. Holder*, 780 F.3d 982, 990-91 (10th Cir. 2015). Social groups must be assessed on a case-by-case basis. *Matter of M-E-V-G-*, 26 I. & N. Dec. at 251 ("Social group determinations are made on a case-by-case-basis").

As to the third element of the particular social group test, social distinction, "[m]embers of the group may be visibly recognizable, but society can also consider persons to be a group without being able to identify the members by sight." *Matter of M–E–V–G–, 26 I. & N. at 240*. Instead, "socially distinct" means that a group is "recognized in the society in question as a discrete class of persons." *Id*. at 249. To establish "social distinction" necessary to establish a particular social group, an asylum petitioner must present "evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. Although the society in question need not be able to easily identify who is a member of the group, it must be commonly recognized that the shared characteristic is one that defines the group." *Matter of W–G–R–*, 26 I. & N. at 217.

Mr. XXX is a member of a particular social group of Nuba tribe members. Tribe membership has been recognized as a "particular social group" by the BIA. *Matter of H*-, 21 I&N Dec. 337, 342-43 (BIA 1996); *see also Malonga v. Mukasey*, 546 F.3d 546 (8th Cir. 2008)

To be a Nuba tribe member is necessarily immutable. It is not something that the individual can change or should be required to change. Further, membership in that group is easily delimited and verifiable, making it sufficiently particular and socially distinct.

Mr. XXX was detained, beaten, tortured, deprived of food and water and threatened with death. This would not have happened to him if he had been a member of a different tribe. Many of the officials engaged in this behavior told Mr. XXX that this was happening to him because he was a Nuba tribe member suspected of supporting the opposition.

## **F.** **Mr. XXX's persecution was on account of his actual and imputed political opinion and his membership in a particular social group**

"[A]t least one central reason motivating the persecution the individual has experienced or may experience in the future must be the individual's 'race, religion, nationality, membership in a particular social group, or political opinion.'" INA § 208(b)(1)(B)(i). There is no question that Mr. XXX's actual and imputed political opinions and his social group were central reasons for the detention, beating, torture, withholding of food and water, and credible threats to his life.

Officials first attacked Mr. XXX's village in YEAR because the then president of Sudan believed that rebels opposing his government were living in the Nuba mountains and villages like Kanga and sought to destroy the area to punish rebels and hinder the rebellion. Mr. XXX and his family returned to [CITY] as part of a popular movement by a Nuba tribe leader to rebuild and repopulate areas to oppose and rebel against the government's targeting of his people. The area and village were attacked again by Sudanese forces in YEAR by soldiers who burned houses and killed civilians and arrested Mr. XXX and beat him for being part of the Nuba tribe rebelling against the government. In YEAR, the Sudanese forces attacked his area again, shooting civilians, burning houses to quash a burgeoning rebellion in the Nuba tribe. Mr. XXX was arrested, detained, brutally beaten, tortured, and threatened for 21 days.

As country conditions reports demonstrate throughout his entire Declaration, being in the Nuba tribe and/or being wrongly associated with the political opinion of the opposition movement in Sudan, as Mr. XXX was, may condemn any individual to beating, torture, jailing and death. *See Singh v. Holder*at 1159 ("association with or relationship to people who are known to hold a particular political opinion" satisfies imputed political opinion).

**H. Mr. XXX's Case Warrants a Favorable Exercise of Discretion.**

In deciding whether to grant asylum, the Court may consider humanitarian concerns and other equitable factors. 8 C.F.R. § 208.13(b)(1)(iii)(B). Where a [LS31] noncitizen seeking asylum has shown a well-founded fear of persecution, "[t]he danger of persecution will outweigh all by the most egregious adverse factors." *Matter of Kasinga*, 21 I&N. Dec. 357, 367 (BIA 1996); *see also Matter of Pula*, 19 I&N Dec. 467 (BIA 1987) ("discretionary factors should be carefully evaluated in light of the unusually harsh consequences which may befall a [noncitizen] who has established a well-founded fear of persecution.").

Mr. XXX has survived a lifetime of violence in Sudan. His experiences — including witnessing the murder of family members, surviving repeated attacks on his village, enduring torture, and receiving credible threats even after fleeing Sudan — illustrate the life-threatening consequences of returning to his home country. The danger of persecution in Mr. XXX's case clearly outweighs any potential adverse factors. The Court should weigh his credible fear of persecution, ongoing threats, and his efforts to protect his life and family against any discretionary considerations.

Furthermore, equitable factors should be evaluated in light of the severe consequences Mr. XXX would face if denied asylum. His use of a false identity in France and irregular entry into the United States are actions taken out of desperation to survive and protect himself from persecution — not out of disregard for immigration laws. These factors do not negate the legitimacy of his fear or the humanitarian need for protection. Granting asylum would align with the core principles of justice and humanitarian relief, offering Mr. XXX the safety and stability that have been denied to him for decades.

Because Mr. XXX has demonstrated that he meets the definition of a refugee and merits a favorable exercise of discretion, he asks that this Court grant his request for asylum.

**I. Mr. XXX merits humanitarian asylum given the severity of the past harm suffered and other serious harm he would endure if removed.**

 To qualify for humanitarian asylum, an applicant must first establish that he merits protection as a refugee based on past persecution on account of nexus grounds. *See, e.g. Matter of D-I-M*, 24 I&N Dec. 448, 449-50 (BIA 2008). Upon meeting this standard, the burden then shifts to DHS to rebut the presumption of a well-founded fear of future persecution on account of the same nexus grounds. See 8 C.F.R. § 1208.13 (b)(1)(i)-(ii). If DHS rebuts this presumption, the applicant must then either establish another basis for a well-founded fear of persecution or establish that relief is warranted based on humanitarian asylum. See 8 C.F.R. § 1208.13 (b)(1)(iii). Eligibility for humanitarian asylum may be established in two independent ways: the applicant must either demonstrate that there are "compelling reasons for being unwilling or unable to return to the country arising out of the severity of the part persecution" or the applicant must demonstrate that "there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country." 8 C.F.R. § 1208.13 (b)(1)(iii)(A)-(B). The Board has held that "other serious harm" may be "wholly unrelated" to the past harm ad that "no nexus between the 'other serious harm' and an asylum ground protected under the Act need be shown. *See Matter of L-S-*, 25 I&N Dec. 705, 714 (BIA 2012).

 There are compelling reasons that Mr. XXX should not be removed to Sudan, namely that he is a survivor of genocide. The experiences that Mr. XXX endured are objectively "truly heinous abuses" especially when his age for many of the events is taken into account, meeting the requisite standard of severe past persecution. *See Kholyavskiy v. Mukasey*, 540 F.3d 555, 577 (7th Cir. 2008). The Ninth Circuit has reasoned that the *Matter of Chen* exception "is an expression of humanitarian considerations that sometimes past persecution is so horrific that the march of time and the ebb and flow of political tides cannot efface the fear in the mind of the persecuted*. Lal v. I.N.S*., 255 F.3d 998, 1009 (9th Cir. 2001). This is certainly the case for Mr. XXX, who first witnessed the massacre of his family (grandfather and aunt) at age eleven. Mr. XXX has established that his past persecution is sufficiently severe to merit humanitarian asylum.

Separately, Mr. XXX would suffer other serious harm if removed to Sudan. As discussed throughout, he fears it is more likely than not he would be killed. Mr. XXX does not know if his family is alive and does not have anywhere safe to live; he fears he would be homeless. S*ee Kholyavskiy*, 540 F.3d at 577 (7thCir. 2008) (finding that debilitation and homelessness would both appear to constitute serious harms for the purposes of 8 C.F.R. § 1208.13(b)(iii0(B)." It is likely that Mr. Alaeys would suffer substantial psychological harm if returned to Sudan.

Accordingly, Mr. XXX establishes that he qualifies for a grant of humanitarian asylum based on the severity of harm suffered and the other serious harm he would endure if removed to Sudan. 8 C.F.R. § 1208.13(b)(iii)(A)(B).

## G. **The Firm Resettlement Rule should not apply to Mr. XXX because he cannot return to France**

Mr. XXX acknowledges that he received asylum in France in 2015. Because he was afraid that individuals from the Sudanese government would be able to find him in France, he applied for asylum using the name and identification documents of his uncle, [NAME] who had been killed in Sudan in YEAR. Mr. XXX lived in France using his uncle's name until 2023.

In 2023, after large-scale violence broke out in Sudan and Sudanese government forces attacked several villages including where his family was living, Mr. XXX began to receive death threats from Sudanese officials in France. Mr. XXX received three phone calls from individuals who told him they knew that he was supporting Nuba tribe members from France because his name was on a WhatsApp list. The caller told him that the Sudanese government had a "long hand" and they would find in France and kill him for his support of Nuba insurgents. Mr. XXX, afraid that French officials might turn him over to Sudan, left France to seek asylum in the United States.

 The firm resettlement rule under 8 C.F.R. § 208.15 states that an asylum seeker is considered firmly resettled in a third country if they have received an offer of permanent residence, citizenship, or some other type of permanent status in that country before arriving in the United States. If the applicant received an offer of permanent residence, the applicant may establish, by a preponderance of the evidence, that an exception to firm resettlement applies pursuant to 8 C.F.R. 207.1(b), 208.15 (a) and (b). If the applicant can meet his or her burden of proof that such an exception applies, the applicant may be granted asylum. *Id.*

Restrictive conditions, which might establish an exception under 8 C.F.R. 208.15(b), include threats or harm by a persecutor in the country of resettlement, causing the individual to fear for his or his safety. This "continuing fear" may so limit the individual's ability to function that he or he is unable to obtain the benefits of firm resettlement. If an individual can prove that they faced significant threats of violence, harassment, or other forms of persecution in the country they were resettled in, it could be considered a valid reason to overcome the firm resettlement bar.

Moreover, because his documents in France were obtained with a false identity, if Mr XXX, who is a bona fide refugee and is likely to be killed or persecuted in Sudan, is forced to return to France without proper documentation, he will not be able to stay and will likely be deported to Sudan. This undermines the very purpose of asylum protection under the Refugee Act of 1980 and the 1951 Refugee Convention.[[2]](#footnote-2)

K. **The Circumventing Legal Pathways Bar should not be applied to Mr. XXX because he qualifies for an Exceptionally Compelling Circumstance, Family Unity**

The **Circumventing Legal Pathways (CLP) rule** limits asylum eligibility for individuals who did not use approved legal pathways before arriving in the United States. **8 C.F.R. § 208.33(a)**. Those subject to this rule face a presumption of asylum ineligibility unless they qualify for an exception. Applicants who do not meet an exception can still **rebut the presumption of ineligibility** by demonstrating **"exceptionally compelling circumstances,"** including considerations of family unity.

Under this provision, if 1) a principal applicant qualifies for **withholding of removal** or protection under the **Convention Against Torture (CAT)** and would otherwise be granted asylum but for the CLP rule, and 2) if the applicant's accompanying spouse or child is eligible for derivative status but does not independently qualify for asylum, the presumption of ineligibility is rebutted due to the **exceptionally compelling circumstance** of maintaining family unity. **8 U.S.C. § 1158(b)(3)(A)**. This exception recognizes the humanitarian need to preserve family unity and ensures applicants are not barred from asylum due to their family members being unable to accompany them.

As established above, **Mr. XXX qualifies for asylum**. However, if the Court finds that the CLP rule renders him ineligible, **Mr. XXX's circumstances rebut this presumption** due to the exceptionally compelling need for family unity. Specifically, **Mr. XXX's wife and two children remain in Sudan** and cannot travel to the United States to obtain derivative status because of the **ongoing civil strife, logistical barriers, lack of valid travel documents, and limited access to U.S. consular services**.

In addition, upon arriving at the U.S.-Mexico border, Mr. XXX did not speak English, Spanish, or Haitian Creole, the primary languages needed to navigate the CBP One app. He further did not encounter third parties who spoke Arabic and could assist him with the requirements of the CBP system. This language limitation significantly hindered his ability to understand or utilize the app to schedule an appointment for asylum processing. His inability to access the CBP One app was due to circumstances beyond his control, not a willful decision to circumvent lawful pathways. The CLP ban is intended to apply to those who knowingly and deliberately bypass available legal pathways, not to individuals like Mr. XXX, who faced insurmountable barriers to using the app. The regulations recognize exceptions for situations where applicants face language, technological, or accessibility challenges, which squarely apply to Mr. XXX's case. *See* 88 Fed. Reg. at 31394 (exceptionally compelling circumstances" are not limited to the examples enumerated.”)

# V. **MR. XXX IS ALSO ENTITLED TO WITHHOLDING OF REMOVAL**

The Attorney General "may not" remove an alien when he demonstrates that it is more likely than not his life or freedom would be threatened "because of the alien's race, religion, nationality, membership in a particular social group or political opinion." INA § 241(b)(3)(A).

Mr. XXX has shown he is more likely than not to face detention, torture, and probably death if he is forced to return to Sudan. While in Sudan, Mr. XXX suffered beatings, withholding of food and water, and threats against his life as result of his political opinion and his membership in the Nuba tribe. Officials in Sudan continue to look for Mr. XXX, contacting and threatening him in France. Members of Mr. XXX's family including his father, sister, grandfather, two uncles and nephew have been killed by Sudanese forces and his wife and children have been killed or forced into hiding in Sudan because government forces attacked and continue to attack his village and region. Country conditions evidence has further made it clear that Nuba tribe members and imputed members of the opposition movement are the targets of violence that is pervasive and endemic in Sudan. CITE

# VI. **MR. XXX IS ALSO ENTITLED TO PROTECTION UNDER THE CONVENTION AGAINST TORTURE**

Mr. XXX is entitled to protection under the CAT. The United States is a party to the CAT, an international convention that forbids the return of "a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture" (Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, Senate Treaty Doc. No. 100–20, p. 20, 1465 U.N.T.S. 85, Art. 3(1)). Courts have interpreted federal regulations to require a person invoking CAT to demonstrate there is a "substantial risk" of torture. *Rodriguez-Molinero v. Lynch*, 808 F.3d 1134 (7th Cir. 2015). The torture must be "by a public official, or at the instigation or with the acquiescence of such an official. *Karki*, 715 F.3d at 806. "[W]illful blindness suffices to prove acquiescence." *Id.* Even a single, isolated act may suffice to constitute torture. *See* 8 C.F.R. § 1208.18(a)(1).

Mr. XXX has shown he faces a "substantial risk" of torture if he is removed to Sudan and the officials perpetrating the torture on Mr. XXX were themselves government officials.

An order requiring Mr. XXX to return to Sudan is a death sentence. Sudan is in the middle of a civil war and reported genocide of civilians in the Nuba mountains. CITE. The severity of the situation has led the U.S. government to grant Temporary Protected Status to Sudan. CITE Additionally, Sudanese officials tracked him to France because they believe that Mr. XXX has supported Nuba tribe insurgents, threatening his life and killing his nephew. The process of returning Mr. XXX to Sudan would involve coordination between U.S. and Sudanese government authorities. For the U.S. government to deliver Mr. XXX into the hands of the government that has already tortured him and considers him a supporter of insurgents would be participating in his death.

**VII. CONCLUSION**

For the above reasons, Mr. XXX's case is credible and compelling. Thus, Mr. XXX's case warrants asylum. In the alternative, Mr. XXX is entitled to withholding of removal or relief pursuant to the Convention Against Torture.

Dated: December XX, 2024

Respectfully Submitted,

*/s/ Attorney Signature*

[Attorney Name]

[Attorney Contact Information]

*PRO BONO* COUNSEL FOR RESPONDENT

**CERTIFICATE OF SERVICE**

I, Attorney Name, hereby certify that on December XX, 2024, I served a true and correct copy of the foregoing **RESPONDENT’S PRE-HEARING STATEMENT IN SUPPORT OF APPLICATION FOR ASYLUM, WITHHOLDING OF REMOVAL AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE** on the Department of Homeland Security via ECAS.

*\_\_\_/s/ Attorney Name*\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_12/9/2024\_\_\_\_\_

Attorney Name Date

*Pro Bono* Counsel for Respondent

1. At the time of this filing, the Respondent has a pending Motion to Continue the Individual Hearing, citing an inability to obtain evidence due to ongoing civil strife in Sudan, which has disrupted telephone and internet services in the regions where the Respondent is attempting to establish contact, thereby raising due process concerns. Respondent accordingly reserves the right to supplement this Pre-Hearing Statement. [↑](#footnote-ref-1)
2. While *Matter of D-X- & Y-Z*-, 25 I&N Dec. 664 (BIA 2012), generally holds that firm resettlement applies even if the individual used fraudulent documents to obtain immigration status, it may be easily distinguished by the circumstances of the return to the third country. In *D-X- & Y-Z*, the Respondents were to be returned to Belize and relative security compared to Mr. XXX who experienced direct threats to his life while living in France. [↑](#footnote-ref-2)