

Davis Graham & Stubbs LLP

DETAINED

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Denver, CO 80202

([REDACTED]
[REDACTED]@ [REDACTED]
[REDACTED]@ [REDACTED]

PRO BONO COUNSEL FOR RESPONDENT

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

In the Matter of:

[REDACTED] [REDACTED] [REDACTED]

Respondent.

File No. [REDACTED]-[REDACTED]-[REDACTED]

Immigration Judge: [REDACTED] [REDACTED]

Hearing Date: [REDACTED] [REDACTED] 2024 at 8:30 a.m.

RESPONDENT'S PRE-HEARING BRIEF

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I. INTRODUCTION

██████████ is a journalist who has been the victim of police brutality and persecution by the government of the Federal Republic of Nigeria. (See A-1, Declaration of ██████████ ¶ 1). This brief sets forth the evidence and applicable law which entitles Mr. ██████████ to the relief of asylum and withholding of removal under the Immigration and Nationality Act, or alternatively, relief under the Convention Against Torture.

Mr. ██████████ was brutally beaten and threatened with death by police acting on behalf of the Nigerian government on two separate occasions on account of his whistleblowing journalism which, by established law, constitutes persecution on account of his political opinion. He further was persecuted for his Igbo race, another protected ground. Mr. ██████████ past persecution raises a presumption of eligibility for relief, a presumption the Government cannot rebut. Further, the adverse presumption of the Legal Pathways Rule has been held to be unlawful by a federal court and, in any event, is rebutted by the evidence here.

Mr. ██████████ is entitled to the relief he seeks.

II. STATEMENT OF FACTS

Mr. ██████████ was born in the city of ██████████/██████████, Nigeria on ██████████, 1985. He attended six years of primary school and six years of secondary school in that state and five years of higher education in the state of ██████████. He was trained as an ██████████ and in the field of ██████████. (Id. at ¶ 2.)

Mr. ██████████ is married and has two young children. (Id. at ¶ 3.)

Mr. ██████████ first job after he completed his higher education was with ██████████ Communications ("██████████" as a broadcast engineer in the state of ██████████ (see A-2, Offer of Employment), the state where he spent his entire employment career. He then began presenting and reporting with ██████████ as a journalist, which he did from ██████████-██████████. He received two Awards of Best Performance for his work at ██████████ (A-3, ██████████ Communications Awards of Best Performance.) In 2019, he began his own company to sell broadcast equipment, freelance the coverage of current events, engage in journalism, and provide counseling on radio and television. Journalists were forbidden by law from broadcasting criticism of the ruling party, but Mr. ██████████ nevertheless expressed his anti-government opinions on Facebook and in various articles he wrote. He also exposed police bribery on some broadcasts. Once, he wrote an article

about innocent military officers who had been court martialed and unfairly imprisoned. (A-1 at ¶ 4.)

Mr. [REDACTED] has been persecuted and discriminated against in part because of his Igbo race. In about [REDACTED] as a journalist, he covered political riots that occurred in the state of Rivers. Mr. [REDACTED] along with other journalists, was interviewed by a military public relations officer while several other military officers stood by and listened. Among other questions, he was asked where he was born. When he answered, “[REDACTED] which is an eastern, primarily Igbo state, one of the military officers said words to the effect of, “then you must be supporting these people (the rioters).” (*Id.* at ¶ 5.) The officer then ordered Mr. [REDACTED] to start jumping while holding his ear (apparently a military exercise), which Mr. [REDACTED] felt forced to do. The officer left while he was doing that, telling the other officers to flog him if he quit. After about five minutes, Mr. [REDACTED] became exhausted and had to quit jumping, but was not flogged. He also has been refused various contract opportunities and discriminated against in other ways because of his race. (*Id.*)

On [REDACTED] [REDACTED] 2020, the Nigerian police killed dozens, and injured many other, Nigerian youths who were peacefully protesting at the LEKKI toll gate in the state of Lagos. The government shut down the LEKKI toll gate CCTV surveillance cameras and ordered the police to fire on the peaceful protestors. Those killed and injured were among thousands of youths demanding that the government direct the Nigerian Inspector General disband a unit of the Nigerian police force known as SARS. This unit killed, tortured, and extorted the government’s political opponents and others. (*Id.* at ¶ 6; *see generally* C-1, AMNESTY INT’L, *Nigeria: Time to End Impunity* (outlining and documenting atrocities committed by SARS).)

Mr. [REDACTED] reported on this mass murder. The military police response began with tear gas. When the youths did not disperse, the military police began shooting into the crowd. Mr. [REDACTED] was live streaming all of this to African Independent Television. After a while, the military police rushed the journalists, and he ran with the others, eventually into barricades which stopped all of them. The journalists were arrested and taken to a detention center, where Mr. [REDACTED] was detained for fourteen days. On the first day, a military policeman kicked Mr. [REDACTED] in the back, but otherwise he was not beaten. He was in a small room with about fourteen other journalists. It was cold, they had little food or water and no adequate sanitation.

Mr. [REDACTED] developed a severe pain in his back on the seventh day from the kick he had received earlier. (A-1 at ¶ 7.)

National elections, although required by the Nigerian Constitution to be fair and democratic, have been rife with massive fraud, violence, and corruption under the recent ruling party, the All Progressives Congress (“APC”). As the February 2023 national elections approached, many opponents of the APC were killed, attacked, and intimidated. At those elections, journalists were banned from observing the proceedings. (*Id.* at ¶ 8.) Because Mr. [REDACTED] expected irregularities to occur, he deployed surveillance equipment—transreceivers, cameras and base station controllers—at selected polling sites. These recorded the government engaging in numerous acts of election irregularities using government personnel. Based on the information he obtained from this surveillance, he prepared a report which was made available to the opposition Labour Party. The report consisted of approximately two hours of video clips of police and police dogs intimidating voters, police stealing ballot boxes, and other irregularities by government officials. This report was used by the Labour Party to challenge the outcome of the election through the Court of Electoral Tribunal, Appeals Court, and Supreme Court. (*Id.*) Further investigation by Mr. [REDACTED] and other journalists established that there was extensive violence, human rights abuses, and corruption conducted at the polls by the Nigerian police, including, among other acts, voter intimidation, vote buying, stealing of ballot boxes, thuggery, and alteration of ballots. (*Id.* at ¶ 9.)

For Mr. [REDACTED] role in exposing these crimes and for his anti-government opinions, he was arrested and tortured. He is confident that his Igbo race was also a factor in his arrest and torture. On [REDACTED] 2023, the police came to arrest Mr. [REDACTED] at his home, but he was at a function in [REDACTED] [REDACTED] another state in Nigeria. At about 3:00 p.m. that day, Mr. [REDACTED] received a phone call from his wife, who told him that armed police had come to their house looking for him. His wife told the police that he was away at a function. (*Id.* at ¶ 10; A-4, Declaration of [REDACTED] [REDACTED] [REDACTED] ¶ 6.)

At about midnight the next day, police officers jumped his residence gate and invaded his home. Mr. [REDACTED] was still at the function in [REDACTED] [REDACTED]. One of the police officers pushed his wife, who was eight months pregnant, against the door and her night clothes fell off, leaving her naked. Their three-year-old son was crying and screaming. A police officer told his wife to sit down or he would “kick out her pregnancy.” She was humiliated in a manner she will never

forget. Later that night, she was rushed to the hospital where she was treated for high blood pressure. (A-1 at ¶ 11; A-4 at ¶ 6.)

On [REDACTED] [REDACTED] Mr. [REDACTED] returned from [REDACTED] [REDACTED] and reported to the Rivers state police station to determine why his wife had been humiliated. Instead of discussing this with him, the police detained and assaulted Mr. [REDACTED]. As Mr. [REDACTED] entered the station and gave his name, the desk officer said, “you’re the journalist we’ve been looking for.” (A-1 at ¶ 12.) About five other police officers then came into the room, one of whom was very aggressive. He ordered Mr. [REDACTED] to sit down, which he did. But as he stood up to ask why his wife had been assaulted, that officer twice slammed Mr. [REDACTED] face against a long glass handle on a door, saying words to the effect of “this is for your role in the election.” (*Id.*) This broke his eyeglasses into his eye and caused severe injury. His lips were cut and bled severely, and his teeth were broken. (*Id.*)

Mr. [REDACTED] was detained without medical attention in a dark room with ten other prisoners and told he would be tortured to death because of his role in reporting on the election. About every four days either one or two guards would come to check on the detainees and would assault only Mr. [REDACTED] by kicking him. As the officer did so, he would point a flashlight in his eye, which was very painful because of the condition of his eye and the darkness of the room. The officer would say to him words like, “so you know all about technology, huh.” (*Id.* at ¶ 13.) Mr. [REDACTED] was kept in miserable conditions—no adequate sanitation or fresh water—until [REDACTED] [REDACTED] 2023, when, with the condition of his eye worsening, he was taken to the [REDACTED] of [REDACTED] [REDACTED] Hospital in Rivers where he was treated for the injury to his eye. At the hospital he “complain[ed] of lost vision from severe torture,” and the medical report stated he had “an injury in his left eye and a broken tooth.” (A-5, [REDACTED] of [REDACTED] [REDACTED] [REDACTED] Hospital Medical Report at 43.) When he was released from the hospital, he was transferred to the [REDACTED] Police Command Center. On the first day at that Command Center, he was scheduled for another transfer with 22 other prisoners. However, a sergeant at the [REDACTED] facility told Mr. [REDACTED] that he would be killed if transferred because of his opposition to the government; this officer ultimately arranged for Mr. [REDACTED] release. (A-1 at ¶ 13.)

Mr. [REDACTED] remained in hiding in [REDACTED] until [REDACTED] [REDACTED] 2023, when he flew to [REDACTED] Colombia. He then took a bus to [REDACTED] Colombia, intending to seek asylum in the United States and to seek consultation from eye specialists in Colombia or the United States. In

Mr. [REDACTED] was told that he needed eye surgery, which was too expensive for him, so he began his journey to the United States to seek asylum and medical treatment. *Id.*

Mr. [REDACTED] travelled through the jungles of Panama, crossed Costa Rica in a car and continued through Nicaragua, Honduras, and Guatemala to the Mexican border. After crossing the Mexican border, he went to the city of Tapachula where he reported to a border patrol station. There, he was told that he would have to make a reservation to enter the United States at a lawful port of entry. However, the officer who told him that said the reservation system was “down” and would not be “up” for a long time. Given that, and given the worsening condition of his eye, Mr. [REDACTED] decided to continue to the United States border to find out if there was another way to enter. He travelled to Mexico City and took a bus from there to Mexicali. On the way to Mexicali, the bus was stopped by thieves with guns, and he was threatened and robbed of 1,500 Mexican pesos. They let him keep 500 Mexican pesos which he was told would be needed to pay members of Mexican organized crime to enter the United States. At that point, he decided definitively to enter the United States. He had left his country because he feared persecution, torture, and death. However, Mr. [REDACTED] could not remain in Mexico: He was concerned that the delay in seeking an appointment for a legal port of entry and waiting for that appointment could lead to permanent eye damage. Also, he did not feel safe in Mexico as he had been threatened and robbed at gunpoint. (*Id.* at ¶ 14.)

Mr. [REDACTED] continued to Mexicali and the border. He crossed a bridge near San Luis, Arizona. Near the end of the bridge, members of Mexican organized crime took almost everything he had: 500 Mexican pesos, his watch, and his phone. Mr. [REDACTED] entered the United States on about November [REDACTED] 2023, with fifteen other migrants. They waited for about fifteen to twenty minutes for Border Patrol to arrive. Mr. [REDACTED] surrendered peacefully and stated that he was seeking asylum in the United States. He was detained at the border on or about November [REDACTED] 2023. (*Id.* at ¶ 15.)

On or about November [REDACTED] 2023, Mr. [REDACTED] was interviewed by a border patrol agent; he told the agent that he entered the United States because “I feared for my life.” (A-6, Record of Sworn Statement in Proceedings at 47.) Exercising their discretion, U.S. Citizenship and Immigration Services did not conduct a Credible Fear Interview. Mr. [REDACTED] was transferred to the Aurora, Colorado detention center on about November [REDACTED] 2023, and had a medical exam there on about November [REDACTED] 2023.

Mr. [REDACTED] identity is confirmed by his passport, (*see* A-8). He will be a productive resident if allowed to remain in the United States. In Nigeria, he was a journalist and morality counsellor to many through radio and television programs. He has held memberships in several professional institutes, including, among others:

- Nigerian Institute of Management. (*See* A-9.)
- Nigeria Society of Engineers; and
- Nigeria Drug Law Enforcement Agency (as a patron).

(A-1 at ¶ 16.)

Mr. [REDACTED] had several radio shows and [REDACTED] pages which educated the public on topics such as technology development and the principles of relationships and marriage. (*Id.* at ¶ 17.)

Mr. [REDACTED] has never used or sold illegal drugs. (*Id.* at ¶ 18.)

Mr. [REDACTED] has never committed a crime or been arrested, other than as a form of persecution by the Nigerian police. (*Id.* at ¶ 19.)

Mr. [REDACTED] has never engaged in any act contrary to the interest of the United States. (*Id.* at ¶ 20.)

If allowed to stay in the United States, Mr. [REDACTED] will seek employment as an electrical engineer, journalist, broadcaster, or other occupation to support himself. (*Id.* at ¶ 21.)

If returned to Nigeria, Mr. [REDACTED] fears he will be persecuted, tortured, and/or killed by the government and groups supported by the government because of his political opinions, political whistleblowing, actions as a journalist, and his Igbo race. (*Id.* at ¶ 22.)

III. PROCEDURAL HISTORY

Mr. [REDACTED] is in removal proceedings based on an Order of Removal. (A-10, Notice and Order of Expedited Removal.) Davis Graham & Stubbs LLP entered its *pro bono* appearance for Mr. [REDACTED] on [REDACTED] [REDACTED] 2024. Thereafter, Mr. [REDACTED] has had two Master Calendar Hearings, on [REDACTED] [REDACTED] 2024, and [REDACTED] [REDACTED] 2024. At the second Master Calendar Hearing, this Court set his Individual Merits Hearing for [REDACTED] [REDACTED] 2024.

IV. STATEMENT OF COUNTRY CONDITIONS

A. Applicable Literature

Despite its looming presence across Africa as the continent's largest populated state as well as the largest economy, Nigeria continues to be plagued by rampant political instability and

persecution against those seeking to expose endemic corruption. The U.S. State Department has been clear: Nigerians continue to suffer “[s]ignificant human rights issues,” which include:

- Unlawful and arbitrary killings;
- Forced disappearances;
- **Torture and cases of cruel, inhuman, or degrading treatment or punishment by the government;**
- Serious problems with the independence of the judiciary;
- Arbitrary or unlawful interference with privacy;
- Serious abuses in a conflict, including reportedly unlawful or widespread civilian deaths or harm, enforced disappearances or abductions, torture, and physical abuses or punishment;
- Serious restrictions on free expression and media, **including violence or threats against journalists**, and enforcement of criminal libel and blasphemy laws to limit expression;
- **Serious government corruption;** [and]
- Lack of investigation and accountability for gender-based violence.

(B-1, U.S. DEP’T OF STATE, *2022 Country Reports on Human Rights Practices: Nigeria*, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/nigeria/> (last visited May 30, 2024) at 71–72 (alterations omitted and emphases added).)

Mr. [REDACTED] experiences are the norm, not the exception, for Nigerian journalists, as Nigeria is one of “West Africa’s most dangerous and difficult countries for journalists.” (C-1, REPORTERS WITHOUT BORDERS, *Nigeria*, <https://rsf.org/en/country/nigeria> (last visited May 30, 2024) at 292.) The State Department has further acknowledged human rights groups’ well-documented allegations that journalists have been “jailed without access to legal representation,” as well as being denied their “right to a fair and public trial.” (See B-1 at 83, 87 (explaining that the police have “arrested and detained journalists who criticized the government”).)

The Nigerian government has made clear it is no friend to a free and fair press. Through previous bans on the social media and news site X (formerly known as Twitter) to suspending local radio stations because of criticisms of the government, the Nigerian state has repeatedly attacked organizations and journalists willing to stand up to the government’s forced narrative of national affairs. (See C-3, AMNESTY INT’L, *Endangered Voices: Attack on Freedom of Expression in Nigeria* (listing charges against journalists and bloggers – including treason – for pursuing their careers and reporting on political affairs within Nigeria); C-4, BTI TRANSFORMATION INDEX, *Nigeria Country Report 2024*, <https://bti-project.org/en/reports/country-report/NGA> (last visited May 30, 2024) at 195 (“Media outlets

have faced government pressure through license suspensions [and] the arbitrary arrest of journalists.”); C-2 (same).) This trend is not improving; rather, the Nigerian government continues its “high-handed clamp down for publications critical of government” towards journalists like Mr. [REDACTED] (C-5, PLAC, *Nigeria Annual Human Rights Report 2023* 16 (Dec. 2023) at 247, available at <https://placng.org/i/wp-content/uploads/2023/12/Annual-Human-Rights-Report-2023.pdf>.)

Amnesty International has studied and reported on the persecution journalists endure in Nigeria. (*See* C-3.) Explaining how “Nigeria’s security forces arrest and secretly detain [journalists] in inhumane conditions,” Amnesty International has collected testimonies of the consequences Nigerian journalists endure in the pursuit of independent reporting. (*See id.* at 155–56. (journalist explaining how he was tortured, beaten, and ultimately forced to sign false confession to admitting he was a militant); *see also id.* at 162–64 (blogger and social media activist describing torture and abuse inflicted by Nigerian police forces).)

B. Expert Report of Charlotte Walker-Said, PhD.

The literature and reports discussed above are corroborated by the Report in Support of Mr. [REDACTED] [REDACTED] [REDACTED] Application for Asylum, Withholding of Removal, and Protection Under the Convention Against Torture, prepared by Dr. Charlotte Walker-Said, an Associate Professor in the Department of Political Science at the John J. College of Criminal Justice, City University of New York (“Report”). (*See* C-6.) Dr. Walker-Said is a highly qualified expert on the current country conditions of Nigeria, who has been qualified several times in Immigration Courts as an expert on Nigeria. (*Id.* at ¶¶ 1–8.)

In her Report, Dr. Walker-Said focuses on “the growing persecution of journalists [like Mr. [REDACTED] in Nigeria in recent years and the fact that many of the Igbo race [like Mr. [REDACTED] are being targeted both by the government and by rival ethnic groups . . . in the current day.” (*Id.* at ¶¶ 14, 16.) She provides statistics, specific examples, and citations to commentary to support her conclusions that (1) Mr. [REDACTED] statements concerning his experiences in [REDACTED] 2020 and [REDACTED] 2023 with police arrest, beatings, and detention for his news coverage, for his imputed political interference, and for making disparaging reports of government activities are consistent with confirmed reports of human rights abuses against journalists and imputed whistleblowers in Nigeria in those years, and (2) Mr. [REDACTED] stated fears of future state-based persecution on account of growing repression of members of the press and those who participate

in broadcast journalism, local reporting, and investigative journalism *as well as* the growing repression of members of the Igbo minority group, are very consistent with the country evidence demonstrating the ongoing persecution of both journalists and members of the Igbo minority group in Nigeria.

Dr. Walker-Said also concluded:

- It is entirely reasonable to believe that Mr. [REDACTED] first arrest led to him remaining under suspicion by members of the police, ex-SARS members, and/or other security units in future years and led to the raid on his home and the harassment and assault of his wife in their home in [REDACTED] 2023. Mr. [REDACTED] account of the violence against his innocent wife is also consistent with documented reports of women being wrongfully harassed, tortured, or attacked by members of the security forces despite never having been found guilty of a crime. (*Id.* at ¶ 30.)
- Mr. [REDACTED] is likely to have the identity of a “whistleblower” or anti-police critic being imputed to him as a result of investigative journalism and his flight from Nigeria following his second arrest and severe beatings in detention. It is likely that the police could impute to him a desire to report on and expose police brutality, corruption, and election meddling/fraud in Nigeria upon return, and/or report on the abuse of journalists such as he faced in 2020 and 2023. Whistleblowers of police brutality have been violently killed in recent years in Nigeria. For example, SARS personnel arrested prominent radio host Kofi Bartels in 2019 for filming five SARS officers beating a boy just outside the journalist’s compound in Port Harcourt. Bartels was arrested and tortured while in police custody and officers threatened to put him in a prison cell with a male inmate who would rape him. A photograph of the journalist lying injured on a bed following his alleged assault by the police was published by a number of media outlets including the Committee to Protect Journalists (CPJ). (*Id.* at ¶ 34.)
- It is also relevant that Mr. [REDACTED] account of facing arrest and a raid on his home where his wife was assaulted in 2023, and his subsequent detention [and] beatings is also consistent with confirmed reports of attacks on journalists in Nigeria for that year. The Press Attack tracker (run by the Centre for Journalism Innovation and Development (CJID)) in the first quarter of 2023 tracked and verified 45 cases of harassment and infringements suffered by journalists in Nigeria, which demonstrates a significant deterioration of press freedom and human rights in the country. The Q1 2023 press attack number marked an alarming increase as it surpassed the total for the whole of 2022 when 37 cases were reported. These cases were largely related to political events, which hit a peak in the first quarter of 2023. The gubernatorial and state legislative elections, which were held in March, accounted for 44 per cent, while the February presidential and National Assembly elections accounted for 31 per cent, resulting in an alarming sum of 71 per cent directly linked to elections. The remaining 29 per cent were not related to the elections. Physical attacks were the most

common, accounting for 47 per cent of the incidents, followed by denial of access (13 per cent) and equipment damage/seizure (7 per cent). Geographically, the South-west had the most attacks with 17 or 37.8 per cent. The North-central and South-south had the same number of attacks – 11 each – separately accounting for 24.4 per cent. (*Id.* at ¶ 36.)

- The longstanding nature of torture and inhumane treatment by police of journalists in particular, coupled with the fact that Mr. [REDACTED] is Igbo, means that he is at high risk of being subjected to arrest, false allegations/imputed political opinions, torture, disappearance, and/or extrajudicial killing upon return by state security forces. (*Id.* at ¶ 58.)
- Mr. [REDACTED] could not seek police protection or law enforcement assistance with preventing or investigating further beatings or torture by security forces, as he is part of a minority group (Igbo) that is frequently preyed upon by law enforcement and law enforcement agencies and security forces routinely lack oversight and accountability for the crimes and abuses they commit. (*Id.* at ¶ 59.)
- In light of the country conditions described above and my long-term experience working with Nigerians and studying human rights in Nigeria, **it is very likely that Mr. [REDACTED] [REDACTED] [REDACTED] is at high risk of being arrested, tortured, and/or killed in urban centers, rural areas, and across Nigeria's other regions by members of the Nigerian Police Force**, other security forces, or local law enforcement militias who are known to target journalists for their investigative work and reporting. Law enforcement in Nigeria is known to carry out extrajudicial forms of violence and commit human rights abuses against journalists, as well as minorities and other kinds of vulnerable groups. Mr. [REDACTED] is also at high risk of not being able to secure police or government protection from these various forms of violence and he would be unable to seek redress for any harm done to him in the Nigerian court system if he were to survive an attack, arrest, torture, or police brutality. (*Id.* at ¶ 60 (emphasis added).)

The expert opinions of Dr. Walker-Said, as well as recent literature and reports, present compelling support for Mr. [REDACTED] well-founded fear that, if returned to Nigeria, he will face almost certain persecution and torture by the Nigerian government on account of his journalistic work, whistle-blower reports, implied political opinions, and his Igbo race.

V. ARGUMENT

Because of the Nigerian government's relentless persecution of Mr. [REDACTED] stemming from his journalistic activities and his race, he qualifies for asylum. In the alternative, Mr. [REDACTED] qualifies for withholding of removal and for relief under the Convention Against Torture.

Under the Immigration and Nationality Act (“INA”), applicants seeking asylum or withholding of removal must demonstrate the same basic elements. Applicants for both of these forms of relief must establish (1) that they were persecuted in the past *or* they reasonably fear future persecution, and (2) that they experienced persecution in the past or reasonably fear future persecution on account of at least one of five protected grounds: the applicant's “race, religion, nationality, membership in a particular social group, or political opinion.” 8 C.F.R. § 1208.16(b)(1) (asylum), (b)(6) (withholding of removal). There are two differences between claims for asylum and withholding of removal. First, granting asylum is a discretionary decision, whereas granting withholding of removal is mandatory if the applicant meets the necessary criteria. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 441 (1987). Second, the burden of proof for an applicant for a withholding of removal is higher than on an asylum claim. For withholding of removal, an applicant must show that it is more likely than not that he will be persecuted if returned to his home country, that is, greater than a fifty percent likelihood that he will be persecuted if returned. 8 C.F.R. §1208.16(b)(1)(iii). An asylum applicant must only demonstrate a “reasonable possibility” that future persecution will occur. *Unreroro v. Gonzales*, 443 F.3d 1197, 1202 (10th Cir. 2006). A “reasonable possibility” may be as small as a 10% chance of persecution. *Cardoza-Fonseca*, 480 U.S. at 440.

An otherwise removable individual qualifies for protection from removal under the Convention Against Torture if he can show “that it is more likely than not that he . . . would be tortured if removed to the proposed country of removal.” 8 C.F.R. § 1208.16(c)(2); *see Ismaiel v. Mukasey*, 516 F.3d 1198, 1204 (10th Cir. 2008).

A. Mr. [REDACTED] is Entitled to A Grant of Asylum

Below, Mr. [REDACTED] demonstrates that he has been persecuted by agents of the Nigerian government (1) because he was a journalist exposing corrupt acts of the government and for the political opinions imputed to him because of his journalistic work, and (2) because of his Igbo race. He also demonstrates the reasonable possibility that he will face future persecution based on those same grounds. Further, Mr. [REDACTED] presents evidence that rebuts the adverse presumption of the Legal Pathways Rule. Finally, the Legal Pathways Rule was illegally promulgated and does not apply in this matter. For these reasons, Mr. [REDACTED] is entitled to a grant of asylum.

i. The Nigerian Government's jailing, beating, and torture of Mr. ██████ constitutes past persecution

Mr. ██████ can meet the persecution element of his asylum claim by showing that he was persecuted in the past. 8 C.F.R. § 1208.16(b)(1) (requiring applicant to show “[p]ast threat to life or freedom”). Persecution is “the infliction of suffering or harm . . . in a way regarded as offensive” and “entail[s] more than just restrictions or threats to life and liberty.” *Hayrapetyan v. Mukasey*, 534 F.3d 1330, 1337 (10th Cir. 2008) (quoting *Wiransane v. Ashcroft*, 366 F.3d 889, 893 (10th Cir. 2004)). Persecution includes suffering “inflicted by the government itself, or by a non-governmental group that the government is unwilling or unable to control.” *Id.* (quoting *Wiransane*, 366 F.3d at 893). A single offensive incident can rise to the level of persecution. *See Corado v. Ashcroft*, 384 F.3d 945, 947–48 (8th Cir. 2004). An Immigration Judge “do[es] not look at each incident in isolation, but instead consider[s] them collectively, because the cumulative effects of multiple incidents may constitute persecution.” *Ritonga v. Holder*, 633 F.3d 971, 975 (10th Cir. 2011).

By these standards, Mr. ██████ has been persecuted by the Nigerian government. In 2020, while reporting on political riots, Mr. ██████ was forced by Nigerian military police to engage in an exhausting and humiliating exercise under the threat of flogging. Also in 2020, after reporting on the LEKKI Toll Gate massacre, he was arrested, detained without charge, and kicked by Nigerian police. In July 2023, for his role in exposing government corruption in national elections, Mr. ██████ was arrested and pushed against a glass door handle, badly damaging his eye, severely cutting his lips, and breaking his teeth. He was then detained and beaten for five weeks. Taken as a whole, these various acts of violence clearly establish past persecution, inflicted by the Nigerian military and police acting on behalf of the Nigerian government.

ii. Mr. ██████ was persecuted because of his actual and imputed political opinions

Political opinion is a protected ground for granting asylum. An applicant seeking to show that he was persecuted for his political opinion must identify (1) the opinion asserted, (2) that the opinion constitutes a “political opinion,” and (3) that the political opinion was “at least one central reason for the persecution.” *Rivera-Barrientos v. Holder*, 666 F.3d 641, 643 (10th Cir. 2012) (quoting 8 U.S.C. § 1158(b)(1)(B)(i)). The Board of Immigration Appeals (“BIA”) has defined political opinion as follows: “The particular belief or characteristic a persecutor

seeks to overcome in an individual must be 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 the persecution.” *Matter of Acosta*, 19 I&N Dec. 211, 234–35 (BIA 1985). **A political opinion may be actual or imputed.** *Khudaverdyan v. Holder*, 778 F.3d 1101, 1106 (9th Cir. 2015).

The BIA has made plain that “an applicant does not bear the unreasonable burden of establishing the exact motivation of a ‘persecutor’ where different reasons for actions are possible.” *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211 (BIA 2007) (quoting *Matter of Fuentes*, 19 I. & N. Dec. 658, 662 (BIA 1988)). The Supreme Court has held that the applicant can use direct or circumstantial evidence to prove the motivation (that is, the nexus) of the persecutor. *INS v. Elias Zacarias*, 502 U.S. 478, 482–84 (1992); *see also* Asylum and Withholding Definitions, 65 Fed. Reg. 76588, 76593 (Dec. 7, 2000) (evidence of “patterns of violence [that] are (1) supported by the legal system or social norms in the country in question, and (2) reflect a prevalent belief within society, or within relevant segments of society” is relevant to determining whether the persecution is “on account of” a protected characteristic) (emphasis removed). Whether nexus exists depends on “the views and motives of the persecutor.” *Matter of W-G-R-*, 26 I&N Dec. 208, 224 (BIA 2014). Various courts have recognized imputed political opinions as a basis for asylum or withholding of removal. *See, e.g., Matter of N-M-*, 25 I&N Dec. 526, 528 (BIA 2011); *Sherpa v. Holder*, 549 F. App’x 775, 779 (10th Cir. 2013); *Hu v. Holder*, 652 F.3d 1011, 1017 (9th Cir. 2011), *abrogated on other grounds by Garland v. Ming Dai*, 141 S. Ct. 1669 (2021) (“When an asylum applicant argues he was persecuted because of an imputed political opinion, the focus shifts from the views of the victim to the views of the persecutor.”) (internal quotation marks omitted).

Of particular relevance to Mr. [REDACTED] claim, actions taken in retaliation for exposure of government corruption can alone support a claim of persecution on the basis of political opinion. *Hayrapetyan*, 534 F.3d at 1336; *see also Zhang v. Gonzales*, 426 F.3d 540, 542 (2d Cir. 2005) (“[R]etaliatio[n] for opposition to government corruption may . . . constitute persecution on account of political opinion.”); *Hasan v. Ashcroft*, 380 F.3d 1114, 1121 (9th Cir. 2004), *overruled on other grounds by Maldonado v. Lynch*, 786 F.3d 1155 (9th Cir. 2015) (exposure of political leader’s corruption is “inherently political”); *Grava v. INS*, 205 F.3d 1177, 1181 (9th Cir. 2000) (whistleblowing against abuse of public trust is necessarily political, even where whistleblower

does not espouse political theory). In *Hayrapetyan*, the petitioner was a political reporter who was persecuted by the police because her political reports threatened to expose government corruption. 534 F.3d at 1332. The immigration judge found that this evidence failed to show a well-founded fear of future persecution and denied all relief. The BIA affirmed. The Tenth Circuit reversed, holding as follows:

We agree with our sister circuits, however, that official retaliation against one who threatens to expose governmental corruption may, in certain circumstances, amount to political persecution. Thus, if the retaliation against Ms. Hayrapetyan was carried out by mere civilians motivated by personal vengeance, there would be no basis for asylum. That was not the case here. Ms. Hayrapetyan described retaliation by the police for her attempts to document institutionalized government corruption, particularly the rampant ballot-box stuffing that occurred during Armenia's 2003 presidential election. Moreover, it is clear that Ms. Hayrapetyan's reporting focused not on individuals whose corruption was aberrational, but on what she has described as a criminal government run by corrupted authorities. Based on the record before us, we conclude that the IJ applied the wrong legal standard in assessing whether Ms. Hayrapetyan was politically persecuted.

Id. at 1337.

The rationale for this doctrine may be found in *Khudaverdyan*, 778 F.3d at 1106. There, the Ninth Circuit "connect[ed] two long-established lines of precedent concerning political opinion as a protected ground." The first line of precedent was that "official retaliation against a whistleblower may amount to persecution on account of political opinion." *Id.* The second was the concept of "imputed political opinion." *Id.* The Ninth Circuit applied those two concepts to hold that "one form of imputed political opinion is perceived whistleblowing." *Id.*

The facts of this case fall squarely within this line of authority. As in *Hayrapetyan*, Mr. [REDACTED] was a journalist who not only threatened to expose government electoral corruption, but *did* expose that corruption. Worse, he had exposed a police massacre three years earlier. Mr. [REDACTED] fits precisely into the category of a political whistleblower, retaliation for which has been held to be "political persecution." *Hayrapetyan*, 534 F.3d at 1336.

iii. Mr. [REDACTED] persecution was perpetrated by the Nigerian government

To be eligible for asylum, Mr. [REDACTED] must show that his persecution was perpetrated by the government or by groups which the government is unable or unwilling to control. Here, the persecution Mr. [REDACTED] faced was perpetrated by the Nigerian police, and thus he satisfies

this criterion for asylum. *See Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1088 (9th Cir. 2005) (“Police officers are the prototypical state actor for asylum purposes.”).

iv. Mr. [REDACTED] is entitled to a presumption of future persecution

Under the asylum statute, Mr. [REDACTED] past persecution establishes a presumption of a well-founded fear of future persecution on the same basis as established for the original persecution. 8 C.F.R. § 1208.13(b)(1). The United States may rebut this presumption by showing, by a preponderance of the evidence, that conditions have changed in the country of origin or that internal relocation is reasonable. *Id.* § 1208.13(b)(1)(i), (ii). Neither conclusion is supported by the record in this case.

a) The country conditions in Nigeria have worsened

The government cannot show that country conditions have changed for the better since 2023 when Mr. [REDACTED] was last arrested and threatened with death. A nation with a years-long history of brutal and systemic violence against a political minority does not transform within a matter of months. Indeed, as documented by Dr. Walker-Said, the repression and violent approach of the Nigerian government creates a current risk of persecution for Mr. [REDACTED] (C-6 at ¶¶ 58, 60.)

b) Internal relocation is not reasonable

The United States also cannot show that relocation within Nigeria would be a “reasonable” expectation under the circumstances. Internal relocation is *presumed* unreasonable when the persecutor is the government. 8 C.F.R. § 1208.13(b)(3)(ii). Because Mr. [REDACTED] persecutors included the Nigerian police, a government entity, internal relocation to another region of Nigeria is presumed unreasonable.

Quite apart from this presumption, Dr. Walker-Said has made clear that relocation within Nigeria is not a viable option for Mr. [REDACTED]

The 2020 U.S. State Department Human Rights Report for Nigeria summarizes succinctly, “The government took some steps to investigate alleged abuses by police, including the Special Anti-Robbery Squad and military forces, but impunity remained a significant problem.” This means that those who arrested, detained, and tortured Mr. [REDACTED] in 2020 never faced any consequences for this action in subsequent years, and were capable of harming him again in 2023. The fact that Mr. [REDACTED] was recently arrested and only escaped detention through an extra-legal procedure also makes it all the more likely that he would be recognized by police and other security forces upon return to Nigeria—either in

Lagos State or anywhere in the country, as the police forces operate throughout the country and operate with absolutely no restraint from the state. (C-6 at ¶ 33 (emphases in original).)

v. Even without a presumption, Mr. [REDACTED] can show that there is a reasonable possibility that he will suffer future persecution

When relying on evidence that he will suffer future persecution, an asylum applicant must show that there is a reasonable possibility (as low as 10%) that he will be persecuted if returned to his home country. INA § 241(b)(3)(A). Mr. [REDACTED] by the evidence of his past persecution and country conditions, and through the exhibits submitted and the expert report of Dr. Walker-Said, has shown to a virtual certainty he will be persecuted if he is forced to return to Nigeria.

vi. Mr. [REDACTED] is also entitled to a grant of asylum because of his well-founded fear of persecution on account of his race

An applicant for asylum or withholding of removal under the INA also may be granted relief if he establishes a well-founded fear of future persecution on account of his race. Such a well-founded fear may be proven in many ways, including solely on the basis of the country conditions of the country of removal. *See Gonzalez Aguilar v. Garland*, 29 F.4th 1208, 1211 (10th Cir. 2022) (explaining concern of possibility of future persecution is reasonable “even when the chance . . . is as low as 10 percent”) (citing *Cardoza-Fonseca*, 480 U.S. at 440). In his Amended I-589 Form and in his Declaration, Mr. [REDACTED] identifies his race as “Igbo,” and in his Declaration he states a fear of persecution, torture or death, in part, because of “my Igbo race.” (A-1 at ¶¶ 5, 22.) On the basis of the country conditions expert opinion of Dr. Walker-Said, this fear is well-founded.

Dr. Walker-Said documents the “harassment, intimidation, and surveillance, as well as armed attacks in recent years” by Nigerian security forces against Igbo communities in Nigeria. (C-6 at ¶ 17.) Dr. Walker-Said warns that Mr. [REDACTED] is a likely victim of the Nigerian State twice over if forced to return because of his journalistic background and because of his Igbo race. Put simply, he is at “risk of torture and killing . . . by the Nigerian Federal Government” if forced to return. (*Id.*) In addition to direct government persecution—including possible torture and death—Igbos face threats of “terror, kidnapping, assault, murder, and theft” from neighboring Fulani herdsman, which the Nigerian government “purposely ignores.” (*Id.* at ¶ 40); *see generally Ikekwu-Onyiaechi v. Holder*, 508 F. App’x 672, 673–74 (9th Cir. 2013)

(persecution of Igbos by a rival tribe unchecked by the government demonstrated past persecution).

Dr. Walker-Said observes that the Nigerian government has sought to quell Igbo armed groups operating in Nigeria, which has “significantly increased the risks of [Igbos] being suspected of pro-Igbo separatist violence.” (C-6 at ¶ 41.) Because of ongoing “sovereign Igbo” movements in Nigeria, the Nigerian state often suspects Igbo of harboring anti-government sentiments.

For all of these reasons, Mr. [REDACTED] also is entitled to a grant of asylum because of his well-founded fear of persecution on account of his race.

B. The Legal Pathways Rule Does Not Bar Asylum For Mr. [REDACTED]

In May 2023, the Department of Homeland Security promulgated the “Circumvention of Lawful Pathways” rule (the “Rule”), which applies a rebuttable presumption of asylum ineligibility for certain noncitizens who traveled through a country other than their own before entering the United States from Mexico between May 11, 2023, and May 11, 2025. 88 Fed. Reg. 31314, 31450–51 (May 16, 2023). This adverse presumption is not applicable in this case. First, the presumption can be rebutted upon a showing, by a preponderance of the evidence, the existence of, *inter alia*, “an acute medical emergency” or “an imminent or extreme threat to life or safety.” *Id.* at 31450. Both of these circumstances existed as Mr. [REDACTED] crossed the United States-Mexico border.¹ Further, the presumption is merely that: it can be rebutted by the sheer weight of evidence to the contrary. *See generally* 4 Admin. Law § 24.04 (explaining a rebuttable presumption can be overcome by evidence to the contrary). The Rule can also be rebutted when the principal asylum applicant is eligible for withholding of removal, and the applicant’s family is eligible to follow to join the applicant; this is also met in this matter. Finally, the Rule has been deemed unlawful by a United States District Court, a holding that this Court should adopt.

i. The Evidence here rebuts the presumption of the Rule

The evidence here rebuts the presumption of ineligibility in four ways: (a) Mr. [REDACTED] as he crossed the border, was experiencing a medical emergency, (b) he faced imminent threats to his life and safety, (c) the overwhelming weight of the evidence, coupled with applicable law,

¹ The presumption of the Rule also is subject to certain exceptions, none of which are available to Mr. [REDACTED]

overcomes the presumption, and (d) Mr. [REDACTED] qualifies for withholding of removal, and his family is eligible to join him per INA § 208(b)(3)(A).

1. Medical Emergency

The Rule explains that “acute medical emergencies include situations in which someone faces a life-threatening medical emergency or faces acute and grave medical needs that they cannot adequately address outside of the United States.” 88 Fed. Reg. at 31392. Because of the severe eye damage that the Nigerian police forces inflicted on Mr. [REDACTED] as retaliation for his reporting, he faced grave medical needs that could only be remedied in the United States.

In Colombia, on his path to the United States, Mr. [REDACTED] was informed that he required eye surgery. Worried about the risk of further eye damage while remaining in Mexico pending his asylum claim, Mr. [REDACTED] felt he had no choice but to quickly enter the United States in pursuit of further ophthalmological examinations to ensure no risk of further eye damage. Although the Rule does not require a “formal medical diagnosis” to qualify for the acute medical emergency exception, *id.* at 31360, the doctor at the [REDACTED] Hospital observed “an injury in [Mr. [REDACTED] left eye” and he was informed of the need for eye surgery in Colombia. (A-5 at 43.)

Mr. [REDACTED] had a reasonable fear of permanent eye damage if he remained in Mexico while waiting for a functional portal for a reservation for entry into the United States and the further delay the reservation date would cause. Because of this grave medical need, he satisfies the “acute medical emergency” rebuttal to the Rule, thus overcoming any presumption of ineligibility.

2. Imminent and Extreme Threat to Life or Safety

In addition to his grave medical needs resulting from his torture by Nigerian police, Mr. [REDACTED] also overcomes the presumption of ineligibility because of imminent and extreme threats to his life and safety by remaining in Mexico. Noncitizens facing an “imminent and extreme threat to [their] life or safety” can overcome the Rule’s presumption of ineligibility. 88 Fed. Reg. at 31318.

After entering Mexico, Mr. [REDACTED] travelled on a bus from Mexico City to Mexicali. En route, the bus was stopped by thieves with guns who threatened and robbed Mr. [REDACTED] of 1,500 Mexican pesos. When he reached the border, he was extorted of his remaining money by members of Mexican organized crime. As he crossed the United States border, he had more than

ample grounds to fear violence if he were to remain in Mexico. His experience was not uncommon: Threats to asylum seekers at the Mexican border are well documented. (*See, e.g., C-7, Asencio, HUMAN RIGHTS FIRST, Asylum Ban Strands Asylum Seekers and Migrants in Mexico and Returns them to Danger* (Nov. 28, 2023) at 311, available at <https://humanrightsfirst.org/library/asylum-ban-strands-asylum-seekers-and-migrants-in-mexico-and-returns-them-to-danger/> (explaining that “vulnerable people in Mexico [waiting asylum] . . . are targets of widespread kidnapping, torture, and violent assaults”).) Already robbed once at gunpoint in Mexico, and robbed again at the border, Mr. [REDACTED] feared for his safety by waiting in Mexico any longer. He was at imminent and extreme risk to his safety if he remained in Mexico.

3. Rebuttal of presumption by weight of the evidence

The Rule’s explicit means of rebutting the presumption of ineligibility are not exhaustive. 88 Fed. Reg. at 31394. Thus, the presumption, like all presumptions, can be rebutted by sufficient evidence contrary to the presumption. Here, the overwhelming evidence—the testimony of Mr. [REDACTED] his wife’s corroboration, the admitted exhibits and country condition evidence including the expert report of Dr. Walker-Said—substantially outweigh any presumption of ineligibility. Mr. [REDACTED] is eligible for asylum.

4. Family Unity Exception

When a principal asylum applicant is eligible for withholding of removal “and would be granted asylum but for the presumption [laid out in the Rule], and where “the principal asylum applicant has a spouse or child who would be eligible to follow to join that applicant as described in INA § 208(b)(3)(A), the presumption shall be deemed rebutted as an exceptionally compelling circumstance.” 8 C.F.R. § 1208.33(c). Mr. [REDACTED] falls under exceptions to the Rule because of his medical emergency, the imminent and extreme threat to his life by remaining in Mexico, and by the weight of the evidence. However, in the alternative, Mr. [REDACTED] also rebuts the presumption because he would be granted asylum but for the Rule (if the Court found that Mr. [REDACTED] does not rebut the presumption, which he does), Mr. [REDACTED] is eligible for withholding of removal, and his family is eligible pursuant to Section 208(b)(3)(A).

Mr. [REDACTED] readily qualifies for withholding of removal. Where a meritorious principal asylum applicant – here, Mr. [REDACTED] – qualifies for withholding of removal and his family would be eligible to join him, “the presumption shall be deemed rebutted as an exceptionally

compelling circumstance.” 8 C.F.R. § 1208.33(c). Mr. [REDACTED] has a wife and two children. Because Mr. [REDACTED] would be granted asylum but for the presumption, he qualifies for withholding of removal, and because Mr. [REDACTED] has a wife and two children that would be eligible to join him, the Rule’s presumption is rebutted.

ii. The Rule has Been Vacated by a Federal District Court

In *East Bay Sanctuary Covenant v. Biden*, No. 18-cv-6810-JST, 2023 U.S. Dist. LEXIS 128360 (N.D. CA. July 25, 2023), the United States District Court for the Northern District of California, in a twenty-page opinion, held the Rule to be unlawful and vacated it on several grounds. Although the United States has appealed that decision, and the order has been stayed, the grounds for the decision are equally relevant here and support the inapplicability of the Rule in this case. Those grounds are as follows:

- The Rule is “contrary to law because it presumes ineligibility for asylum noncitizens who enter between ports of entry, using a manner of entry that Congress expressly intended should not affect access to asylum.” *Id.* at *36–37.
- The Rule is “contrary to law” because it presumes “ineligibility for asylum noncitizens who fail to apply for protection in a transit country, despite Congress’s clear intent that such a factor should only limit access to asylum where the transit country actually presents a safe option.” *Id.* at *37.
- The Rule is arbitrary and capricious in relying “on the availability of other pathways for migration to the United States, which Congress did not intend the agencies to consider in promulgating additional conditions for asylum eligibility.” *Id.* at *38.
- The Rule is arbitrary and capricious for “explain[ing] the scope of each exception by reference to the availability of the other exceptions, although the record shows that each exception will be unavailable to many noncitizens subject to the Rule.” *Id.*
- The Rule is unlawful because the Agency did not properly follow requisite “notice procedures” under the Administrative Procedures Act, denying the “public a meaningful opportunity to comment on the Rule.” *Id.* at *59–60.

Mr. [REDACTED] adopts the reasoning of the *East Bay* Court, which recognizes the fatal substantive and procedural infirmities of the Rule and urges this Court to find the Rule inapplicable in this proceeding.

C. Mr. [REDACTED] is Entitled to Withholding of Removal

Even if Mr. [REDACTED] is denied the relief of asylum, he is entitled to the alternative relief of withholding of removal. First, the Legal Pathways Rule does not apply to the relief of withholding of removal. 88 Fed. Reg. at 31324. Second, the same elements establish an applicant’s right to the relief of both asylum and withholding of removal. There are two

differences between those claims for relief. Granting asylum is a discretionary decision, whereas granting withholding of removal is mandatory if the applicant meets the necessary criteria. *Cardoza-Fonseca*, 480 U.S. at 441. For withholding of removal, an applicant must show that it is more likely than not that he will be persecuted if returned to his home country, that is, greater than a 50% likelihood that he will be persecuted if returned. 8 C.F.R. §1208.16(b)(1)(iii).

Here, Mr. [REDACTED] has established all the elements necessary to prove that it is more likely than not he will be persecuted if returned to Nigeria. He has established that he was persecuted in the past for his whistleblowing, political opinions, imputed political opinions, his employment as a journalist, and his Igbo race. He also has established that his persecution was by agents of the Nigerian government. Mr. [REDACTED] is entitled to a presumption of future persecution and the government cannot rebut that presumption. Even if the government could rebut that presumption, the overwhelming evidence and applicable law support a grant of withholding of removal. If Mr. [REDACTED] is not granted asylum, he clearly is entitled to the relief of withholding of removal.

D. Mr. [REDACTED] is Entitled to Relief Under the Convention Against Torture

The presumption of the Legal Pathways Rule also does not apply to relief under the Convention of Against Torture. 88 Fed. Reg. at 31324. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) is an international human rights treaty designed to “make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.” United Nations, Draft Convention Against Torture, Preamble, 23 I.L.M. 1027 (1984). After the U.N. General Assembly adopted CAT, the United States signed and ratified it.

An individual who would otherwise be deportable qualifies for protection from removal under CAT if he can show “that it is more likely than not that he . . . would be tortured if removed to the proposed country of removal.” 8 C.F.R. § 1208.16(c)(2); *see Ismaiel*, 516 F.3d at 1204. The regulations adopt the definition of “torture” supplied by Article 1 of CAT (23 I.L.M. at 1027):

Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any

kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

8 C.F.R. § 1208.18(a)(1).

That definition has four components. First, it requires an infliction of “severe pain or suffering.” *Id.* Second, it requires that such infliction be “intentional.” *Id.* “[A]n act that results in unanticipated or unintended severity of pain and suffering is not torture.” *Id.* § 1208.18(a)(5). Third, it requires that the infliction of pain and suffering be for a proscribed purpose. Fourth, it requires a connection between the torture and the government. That connection is satisfied if the pain or suffering is inflicted by any “public official acting in an official capacity or other person acting in an official capacity.” *Id.* § 1208.18(a)(1). “[P]ublic officials or other persons act ‘in an official capacity’ when they act ‘under color of law.’” *See Matter of O-F-A-S-*, 28 I. & N. Dec. 35, 39 (B.I.A. 2020). Acts are performed “‘under the color of law’ when the actor misuses power possessed by virtue of law and made possible only because the actor was clothed with the authority of law.” *Id.*

If the pain or suffering is inflicted by someone who is not a public official or a person acting in an official capacity, the requirement is still satisfied if public officials “acquiesce” to the acts constituting torture. *See Karki v. Holder*, 715 F.3d 792, 806 (10th Cir. 2013). “This standard does not require actual knowledge, or willful acceptance by the government; rather willful blindness suffices to prove acquiescence.” *Id.* (quoting *Cruz-Funez v. Gonzales*, 406 F.3d 1187, 1192 (10th Cir. 2005)).

In assessing whether it is more likely than not that an applicant would be tortured if removed, “all evidence relevant to the possibility of future torture shall be considered,” including evidence of past torture inflicted upon the applicant, evidence whether the applicant could relocate to a part of the country of removal where he is not likely to be tortured, evidence of mass violations of human rights within the country of removal, where applicable, and any other relevant information regarding conditions in the country of removal. 8 C.F.R. § 1208.16(c)(3)(i)–(iv). An applicant’s testimony, if credible, may be sufficient to sustain the burden of proof without corroboration. *Id.* § 1208.16(b); *Mansour v. INS*, 230 F.3d 902, 907 (7th Cir. 2000). If an applicant can show that it is more likely than not that he or she will be tortured if returned to the country of origin, “[r]elief under the CAT is **mandatory**.” *Ismaiel*, 516 F.3d at 1204 (emphasis added); *see* 8 C.F.R. § 1208.17(a).

The evidence in this case is more than sufficient to satisfy these legal standards.

VI. MR. [REDACTED] HAS A WILLING SPONSOR IN TEXAS

Mr. [REDACTED] has secured sponsorship if released from detention. Casa Marianella, located in Austin, Texas, is a “shelter that serves immigrants, asylum-seekers, and asylees,” providing “housing, case management, transportation (including bus fare from detention), and other supportive services to such individuals” as Mr. [REDACTED] (A-11, Casa Marianella Sponsorship Letter at 64.) This organization is ready and willing to support Mr. [REDACTED] as his sponsor.

VII. CONCLUSION

Mr. [REDACTED] is a responsible individual who has escaped untold hardship and torture in his home country of Nigeria because of his work as a journalist exposing government corruption and because of his racial minority status. Today, Mr. [REDACTED] is ready and willing to contribute to the United States’ society. (*See generally* A-12, Letters of Commendation.) Based on the law applicable to this case and the detailed and credible facts in Mr. [REDACTED] Declaration, as well as the submitted exhibits and the expert and country condition evidence cited in this brief, Mr. [REDACTED] is entitled to a grant of asylum, or in the alternative, withholding of removal or protection under the Convention Against Torture. Appropriate relief should be granted.

Respectfully submitted this [REDACTED] day of May, 2024.

s/ [REDACTED]
[REDACTED]
[REDACTED]
Davis Graham & Stubbs LLP
[REDACTED]
Denver, Colorado 80203
[REDACTED]
[REDACTED]@ [REDACTED]
[REDACTED]@ [REDACTED]
Pro Bono Counsel for Respondent

[REDACTED]
Name of Respondent

[REDACTED]
A Number

PROOF OF SERVICE

I, [REDACTED] do hereby certify that on this 30th day of May, 2024, I served the foregoing **RESPONDENT'S PRE-HEARING BRIEF and ALL EXHIBITS** on:

Electronically via EOIR Portal

U.S. Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge
Aurora Immigration Court
3130 N. Oakland Street
Aurora, CO 80010

Via U.S. Mail

Office of the Chief Counsel
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
12445 E. Caley Avenue
Centennial, CO 80111

s/ [REDACTED]

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[REDACTED] [REDACTED] [REDACTED] (A [REDACTED]-[REDACTED]-[REDACTED])

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