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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
U.S. IMMIGRATION COURT
CHICAGO, IL

In the Matter of)
)
REDACTED)
)
In Removal Proceedings)
_____) File No.: REDACTED

Immigration Judge: XXXXX Individual Hearing: XXX, 2018, 9:00 a.m.

RESPONDENT'S MEMORANDUM OF LAW IN SUPPORT
OF ASYLUM, WITHHOLDING OF REMOVAL, AND RELIEF UNDER THE
CONVENTION AGAINST TORTURE

I. SUMMARY OF THE CASE

Cuba's national police arrested Mr. REDACTED on two occasions because of his anti-Castro political opinion. On one occasion, they arrested him at a political protest, on the other, for "social dangerousness" because he was unemployed, but this was really a pretext to punish him for his political views and association with dissidents. In total, they held him in a tiny, dark cell without a bathroom for twenty-five days, during which they regularly beat him, leaving lasting physical and psychological damage.

Because Mr. REDACTED was persecuted in the past, he is entitled to a presumption of a well-founded fear of persecution. DHS cannot meet its burden of showing changed country conditions that would rebut this presumption because conditions remain dire in Cuba, especially for Mr. REDACTED. The Cuban police act with impunity and continue to commit violence and arbitrarily arrest dissidents. Since the Cuban police have power throughout Cuba, there is nowhere in the country where Mr. REDACTED can safely relocate.

In addition to the presumption of future persecution stemming from Mr. REDACTED's past persecution, he also has an independent well-founded fear of future persecution. Mr. REDACTED remains opposed to the Cuban government and now that he has left Cuba he is further seen as a traitor to his country. If Mr. REDACTED is forced to return to Cuba after twenty-four months of being away, he will have lost his Cuban citizenship, will have no legal right to work, and will likely be arrested. For these reasons, Mr. REDACTED merits asylum, or alternatively, withholding of removal or relief under the Convention Against Torture.

I. STATEMENT OF THE FACTS

A. Mr. REDACTED avoided military conscription, was unemployed, and became a target for Cuban police.

Mr. REDACTED was born in Guantanamo Cuba in 1991.¹ His upbringing was tumultuous: he was raised by different family members at different times of his life.² He lived with his mother until the age of nine, then he moved in with his grandmother to be closer to school.³ Shortly after he moved in with his grandmother, his mother moved to Havana, sixteen hours away from Guantanamo.⁴ Soon after this move, his grandmother moved to a new home with her husband and Mr. REDACTED was left to live with his alcoholic uncle.⁵

Mr. REDACTED's painful upbringing left him deeply disenchanted with Cuba's economic and political system. Cuba has a socialist economy, in which the majority of all property is owned by the state, 72% of all jobs are state jobs, and the government sets prices and rations goods for its citizens.⁶ When Mr. REDACTED was coming of age for military conscription he decided he was not going to serve in the military because he could not support—let alone fight for—a system with which he did not agree.⁷ He avoided conscription by moving to Havana to live with his mother.⁸

After Mr. REDACTED moved to Havana to avoid conscription, he applied for a job as a janitor at a hospital and was denied the position because he had failed to comply with

¹ Decl. of REDACTED in Supp. of His Asylum Appl., ¶ 3, Tab C.

² *Id.*

³ *Id.*

⁴ *Id.* at ¶ 6.

⁵ *Id.* at ¶ 7.

⁶ See Central Intelligence Agency, The World Factbook: Cuba, Tab J; Amnesty International, Your Mind is in Prison: Cuba's Web of Control over Free Expression and its Chilling Effect on Everyday Life 19 (2017), Tab K.

⁷ Decl. of REDACTED, ¶¶ 9-11, Tab C.

⁸ *Id.* at ¶ 11.

conscription.⁹ He learned as a result of this experience that he was unable to obtain a “state job,” which, in Cuba, constituted the majority of all jobs. The Cuban government uses its control over the labor force as a means to silence political opposition.¹⁰

With no possibility of obtaining a state job, Mr. REDACTED applied for a license to engage in self-employment as a furniture upholsterer. However, he was unable to support himself because of the “tax quota” associated with the license.¹¹ Afterward, he engaged in illegal self-employment, and as a result was continuously harassed by the local *Jefe del Sector*, or Precinct Captain. He was arrested, detained, and fined multiple times for violating Cuba’s restrictive regulations on how and where persons can live and work.¹² This treatment is consistent with widespread reports that Cuban authorities “often arbitrarily and disproportionately apply restrictions from the maze of regulations governing the private sector against anyone deemed critical of the government.”¹³

B. The Cuban police targeted Mr. REDACTED because of his political opinion.

Living in Havana, Mr. REDACTED’s political opinion was informed by his close relationship to Eugenia Hernandez, an active member of the *Damas de Blanco*, a human rights activist group in Cuba that opposes the Cuban government and the Castro regime.¹⁴ Mr. REDACTED was present multiple times in Ms. Hernandez’s home while she was arrested by Cuban police for her vocal opposition to the government.¹⁵ Mr. REDACTED observed as police arrested Ms. Hernandez and he protested her arrest.¹⁶ When he attempted to interfere, the police

⁹ *Id.* at ¶ 13.

¹⁰ Amnesty International, *Your Mind is in Prison* at 19-24, Tab K.

¹¹ Decl. of REDACTED, at ¶ 17.

¹² *Id.* at ¶ 17.

¹³ Amnesty International, *Your Mind is in Prison* at 19-24, Tab K.

¹⁴ Decl. of REDACTED, at ¶ 16; Decl. of Eugenia Hernandez, ¶ 10-13, Tab E.

¹⁵ Decl. of REDACTED, ¶ 16, Tab C.; Decl. of Eugenia Hernandez, ¶ 11-12, Tab E.

¹⁶ *Id.*

pushed him and called him a traitor and a *gusano*, a derogatory term meaning “worm” used by the Cuban police for dissidents.¹⁷ As a result of her political advocacy, Ms. Hernandez was arrested approximately 300 times and detained and beaten so severely on some occasions that she feared she would die.¹⁸

Mr. REDACTED would soon find himself experiencing the same treatment. On or about January 20, 2016, he witnessed an anti-Castro protest at Parque Fe del Valle in Havana.¹⁹ When the police came and began to arrest the protestors, Mr. REDACTED joined the protest.²⁰ The police quickly arrested him too.²¹ An officer threw him to the ground, pinned his back with his knee, and pushed his face into the ground.²² The officers handcuffed Mr. REDACTED, called him a *gusano*, and took him to the local police detention center.²³

He was held in a small and lightless cell called a *calabazo* while police officers took turns beating him.²⁴ One to three officers at a time beat him with a baton on his back and legs, punched his face, and kicked him in the stomach.²⁵ Since he was arrested for protesting, they knew he was anti-Castro and would yell “traitor” as they beat him, and *gusano* as they kicked him.²⁶ After a couple days of regular beatings, Mr. REDACTED was moved to a different cell with other inmates so that they could see how badly beaten he was and understand what would happen if they expressed an opposition political viewpoint.²⁷ Mr. REDACTED was left in this

¹⁷ Decl. of REDACTED, ¶16, Tab C. ; Decl. of Eugenia Hernandez, ¶ 12, Tab E; Amnesty International, “*Your Mind is in Prison*” *Cuba’s Web of Control Over Free Expression and Its Chilling Effect on Everyday Life*, p. 33 n. 100, 2017, <https://www.amnesty.ie/wp-content/uploads/2017/11/Cuba-Freedoms-Briefing-ENG.pdf> (last visited March 29, 2018), Tab K.

¹⁸ Hernandez Decl., Tab E, ¶¶ 3, 7.

¹⁹ REDACTED Decl., Tab C, ¶ 18.

²⁰ *Id.* at ¶ 19.

²¹ *Id.* at ¶ 20.

²² *Id.* at ¶ 21.

²³ *Id.*

²⁴ *Id.* at ¶ 22.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at ¶ 23.

cell without medical attention until his bruises healed. He was released after fifteen days in detention.²⁸

In October 2016, Mr. REDACTED was arrested again. This time, the local *Jefe del Sector* came to his home. At the police station, the captain informed him that he needed to work for the state or he would charge him with *peligro*, meaning “social dangerousness.” Article 75.1 of Cuba’s Penal Code provides that a police officer can issue a warning for “dangerousness” or for associating with a “dangerous person.”²⁹ This vague provision is regularly used to punish unemployed persons as well as political dissidents.³⁰ Moreover, the Cuban state uses its control over the vast majority of the labor market to punish those who hold opposition views.³¹ Persons are often unemployed precisely because they oppose the Cuban state, and then charged with *peligro* for being unemployed.³²

When Mr. REDACTED told the Captain that he felt a charge of dangerousness would be an abuse of the officer’s power, he had him thrown into a *calabazo* to be beaten.³³ Two police officers beat him with a baton. They hit him on the head until he fell over, then they beat him on his ribs and back as he lay on the floor in a fetal position.³⁴ Although their normal practice was to avoid beating detainees in the head so they would not kill them, they beat Mr. REDACTED on the head, leaving a permanent scar near his eye.³⁵ They beat him twice that day and again on the third day he was in detention.³⁶ After ten days, they released him.³⁷

²⁸ *Id.* at ¶ 25.

²⁹ Amnesty International, *Your Mind is in Prison: Cuba’s Web of Control over Free Expression and its Chilling Effect on Everyday Life* 16 (2017), Tab K.

³⁰ *Id.* at 24, 26, 31,

³¹ *Id.* at 20.

³² *Id.*

³³ REDACTED Decl., ¶ 27, tab C.

³⁴ *Id.* at ¶ 29.

³⁵ *Id.*

³⁶ *Id.* at ¶ 30

³⁷ *Id.*

C. Mr. REDACTED fled to the United States to save his life.

After his second extended stay in detention Mr. REDACTED feared for his life.³⁸ The *Jefe del Sector* had threatened to imprison him for being a danger to society which carries a minimum of one year sentence.³⁹ Mr. REDACTED sold his motorcycle and paid for a plane ticket to Guyana with the intention of traveling and seeking asylum in the United States.⁴⁰

D. Country conditions in Cuba remain dangerous.

According to Martina Kunovic, a PhD candidate in sociology at the University of Wisconsin who has extensively studied, written about, and traveled in Cuba, “the government’s intolerance of political dissent and repressive tactics seems to be just as strong—or stronger—now than it was in 2016, given the upcoming elections scheduled for April 2018.”⁴¹ There were 578 arbitrary detentions for political motives in October 2017, according to the independent Cuban Commission for Human Rights and National Reconciliation.⁴² The likely next president, Miguel Díaz-Canel, was recently caught on video speaking of the need for steps to prevent independent political expression by political dissidents, independent media, and even some embassies.⁴³ As a result, Ms. Kunovic opines that “suppression of political dissent [will] continue or become even stronger, using the same methods of intimidation, harassment, physical force, and detention and imprisonment.”⁴⁴

³⁸ *Id.* at ¶ 30-31.

³⁹ *Id.* at ¶ 27.

⁴⁰ *Id.* at ¶ 31.

⁴¹ Martina Kunovic Decl., ¶ 11, Tab I.

⁴² *Id.* at ¶ 12.

⁴³ *Id.* at ¶ 14.

⁴⁴ *Id.*

II. LEGAL BASIS FOR ASYLUM

Mr. REDACTED should be granted asylum because the past persecution of him by the Cuban police entitles him to a presumption of well-founded fear that cannot be rebutted by DHS, since country conditions have not fundamentally changed. He also has an independent, well-founded fear of future persecution. Both his past persecution and fear of future persecution are on account of his political opinion in opposition to the Communist regime.

A. The Cuban government persecuted Mr. REDACTED on account of his political opinion, which creates a presumption of a well-founded fear of future persecution.

1. *The harm that Mr. REDACTED suffered rises to the level of past persecution.*

The Cuban police detained Mr. REDACTED in inhumane conditions for a total of twenty-five days, during which they regularly beat him, leaving him with a permanent physical scar and post-traumatic stress disorder.⁴⁵ In addition, Mr. REDACTED was prevented from pursuing a livelihood because of his principled opposition to conscription, and was repeatedly harassed, detained, and fined for attempting to support himself in the underground economy. Police officers often called Mr. REDACTED a *gusano*, or worm, and on one occasion, the *Jefe del Sector* threatened him with the charge of *peligro*, a vague-sounding but serious charge that could have resulted in a year of imprisonment. Collectively, these detentions, beatings, economic harms, and threats constitute past persecution.

In *Irasoc v. Mukasey*, the Seventh Circuit analyzed the standard of past persecution and held that a showing of past persecution can be established by a showing of “‘punishment’ or ‘the infliction of harm’ administered on account of nationality, religion, race, group membership, or

⁴⁵ REDACTED Decl., ¶ 29, tab C; Report of Molly Persky, M.A. and David Lee, PhD, Tab H.

political opinion.”⁴⁶ The court distinguished “punishment” from “serious injuries” as a prerequisite to finding past persecution and concluded that “past persecution need not threaten the petitioner’s life or freedom.”⁴⁷ In addition, the court determined that even a single incident of harm inflicted can reflect past persecution, when the specifics of the incident reveal the severity of the particular situation.⁴⁸

Furthermore, in determining the harm suffered, the court held that the court considers past events in the aggregate.⁴⁹ In *Tchmkou v. Gonzalez*, the court reversed the Immigration Judge’s (IJ) and the BIA’s determination that the petitioner had not established past persecution.⁵⁰ The court held that the IJ erred in viewing the record as segregated incidents without considering the cumulative significance.⁵¹ In particular, the court concluded that the Ms. Tchmkou’s encounters with the police, which involved her being held prisoner, beaten, and enduring serious injury, amounted to past persecution.⁵² However, even though it considered the incidents in the aggregate, the court noted that one of the encounters would have been sufficient to establish past persecution.⁵³ The court focused on an incident in which Ms. Tchmkou had been “detained under terrible conditions . . . was [had been] deprived of food, water, and sanitation facilities . . . [and] [p]rior to her detention, she had been beaten by the police, and, after her release she required two weeks of hospitalization to recover from the ordeal.”⁵⁴ In Ms. Tchmkou’s case, the court concluded that she had suffered past persecution, because she “suffered something much greater than mere harassment at the hands of the Cameroonian

⁴⁶ *Irasoc v. Mukasey* 522 F.3d 727, 730 (7th Cir. 2008) (citing *Asani v. INS*, 154 F.3d 719, 722-23 (7th Cir. 1998)).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Tchmkou v. Gonzalez*, 495 F.3d 785, 790-91 (7th Cir. 2007).

⁵⁰ *Id.* at 791.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

government; indeed she endured serious bodily harm on two occasions, she was threatened with additional retaliation, and she had her freedom curtailed.”⁵⁵

Mr. REDACTED has suffered similar abuse which rises above harassment and satisfies the past persecution standard. The Cuban police detained Mr. REDACTED twice in ten months for an aggregate period of twenty-five days.⁵⁶ The guards kept him in a dungeon-like cell and regularly beat him in order to intimidate and silence him.⁵⁷ They beat him on his back, stomach and head, leaving a scar on the left side of Mr. REDACTED’s face, next to his eye.⁵⁸

In addition, the *Jefe del Sector* also threatened Mr. REDACTED with future imprisonment if he did not find employment through the state.⁵⁹ He threatened Mr. REDACTED with “*peligro*,” which translates to “social dangerousness.”⁶⁰ “Social dangerousness” carries a minimum one-year prison term for several “dangers” including failing to support the socialist regime through employment.⁶¹ When Mr. REDACTED protested against the *Jefe del Sector*’s abuse of power, the *Jefe del Sector* responded by ordering that Mr. REDACTED be detained, and Mr. REDACTED was then held and beaten over the course of a ten-day period.⁶² All of these detentions, beatings, threats, and economic harms collectively constitute past persecution.

2. *Mr. REDACTED suffered persecution on account of his anti-communist political opinion.*

Mr. REDACTED was persecuted by agents in the Cuban police force on account of his political opinion against the Castro dictatorship. To establish persecution on account of a

⁵⁵ *Id.*

⁵⁶ REDACTED Decl., ¶¶ 25, 30; Tab C.

⁵⁷ *Id.* at ¶¶ 22, 24, 28.

⁵⁸ *Id.* at ¶ 29.

⁵⁹ *Id.* at ¶ 27.

⁶⁰ *Id.* at ¶ 25.

⁶¹ *Id.* at ¶ 27; *Cuba: Job sector, a tool of repression as perceived critics face jobless life*, AMNESTY INTERNATIONAL, November 16, 2017, Tab M.

⁶² REDACTED Decl., at ¶ 27.

protected ground, an applicant must show that he “fits within one of the categories and that there is ‘a nexus between [his] fear of future persecution and one of those five protected grounds.’”⁶³

In addition, the Seventh Circuit has noted that past persecution on account of a protected ground is demonstrated if the persecution occurs at least in part because of the protected ground.⁶⁴

The Seventh Circuit has determined that the nexus requirement for persecution on account of political opinion is met by “express[ion] through political activities or through some sort of speech in the political arena.”⁶⁵ Mr. REDACTED expressed his political opinion by avoiding conscription,⁶⁶ protesting the arbitrary detention of protesters,⁶⁷ joining in an anti-Castro protest,⁶⁸ defending his friend and leader of the human rights organization, *Damas De Blanco* (Ladies in White),⁶⁹ and speaking up to the *Jefe del Sector*.⁷⁰ These actions clearly expressed his anti-communist political opinion.⁷¹

The Seventh Circuit has also determined that an applicant can also show persecution on account of imputed political opinion by showing “(1) that his persecutors attributed a political opinion to him and (2) that the attributed political opinion motivated that persecution.”⁷² The Cuban police attributed the political opinion of the protesters to Mr. REDACTED and this

⁶³ *Cece v. Holder*, 733 F.3d 622, 668 (7th Cir. 2013) (citing *Escobar v. Holder*, 657 F.3d 537, 542 (7th Cir. 2011).

⁶⁴ *Escobar v. Holder*, 657 F.3d 537, 549 (7th Cir. 2011) (“The Board’s rejection of Escobar’s contention that FARC knew of Escobar’s political views and persecuted him at least in part on account of them must be reconsidered in light of all the evidence.”)

⁶⁵ *Hui-Mei Li v. Gonzales*, 416 F.3d 681, 685 (7th Cir. 2005).

⁶⁶ REDACTED Decl., at ¶¶ 9-11.

⁶⁷ *Id.* at ¶¶ 18-20.

⁶⁸ *Id.* at ¶¶ 20.

⁶⁹ *Id.* at ¶¶ 16, 27.

⁷⁰ *Id.* at ¶¶ 27.

⁷¹ *See Base v. Ashcroft*, 352 F.3d 1133, 1138 (7th Cir. 2003) (assuming requisite political opinion where petitioner “did not pass out political leaflets and brochures and did not speak at political rallies even though he supported the organization monetarily and did not hide his support.”); *Musabelliu v. Gonzalez*, 442 F.3d 991, 995 (7th Cir. 2006) (“Someone who campaigns against the government and urges the voters to throw the rascals out is engaged in political speech.”).

⁷² *Mustafa v. Holder*, 707 F.3d 743, 751 (7th Cir. 2013).

political opinion motivated their persecution.⁷³ When they arrested him, they called him a “traitor” and a *gusano*, thus demonstrating that they arrested him because they viewed him as having an anti-communist political opinion.⁷⁴ Mr. REDACTED’s arrest by the Cuban Police force and their use of derogatory language demonstrate that the Cuban police arrested him because they wanted to silence his political speech.⁷⁵

The Cuban police persecuted Mr. REDACTED on account of his demonstrated political opinion. In *Hui-Mei Li v. Gonzales*, the Seventh Circuit held that the applicant had failed to show that she was persecuted on account of her political opinion, even though she may have shown that she had one.⁷⁶ The court held that Ms. Li was unable to point to evidence that her political opinion was the motive behind her persecution.⁷⁷ The court stated that it “did not expect the asylum applicant to always be able to offer direct proof; but the petitioner must produce ‘*some evidence*’ that the government was motivated by the desire to suppress her political opinion.”⁷⁸ After applying this rule to Ms. Li’s claim, the court determined that the record did not support a finding that she held a political opinion or that her persecutors were motivated by a desire to silence her political opinion.⁷⁹ Unlike in *Li*, Mr. REDACTED was arrested immediately after taking part in a protest where he spoke out against the Castros’ regime.⁸⁰ Similarly, the police officers demonstrated that they attributed a political opinion to Mr. REDACTED and that they were punishing him for it when they called him a “traitor” and a *gusano* while beating him.⁸¹

⁷³ REDACTED Decl., at ¶¶ 21.

⁷⁴ *Id.*

⁷⁵ *Mustafa v. Holder*, 707 F.3d at 752-53 (indicating that the BIA and the IJ erred in determining that the politically charged circumstances did not shed light on the persecutors’ use of the term “traitor” to show their motive was at least in part politically motivated).

⁷⁶ *Hui-Mei Li v. Gonzales*, 416 F.3d 681, 685 (7th Cir. 2005).

⁷⁷ *Id.*

⁷⁸ *Id.* (citing *INS v. Elias Zacarias*, 502 U.S. 478 481 (1992)) (emphasis in original).

⁷⁹ *Id.* at 685-86.

⁸⁰ REDACTED Decl., at ¶¶ 20-22.

⁸¹ *Id.*

B. Mr. REDACTED's well-founded fear of persecution cannot be rebutted.

Mr. REDACTED is entitled to a presumption of a well-founded fear of future persecution because of his past persecution.⁸² The government cannot rebut his presumption because country conditions have not fundamentally changed and because Mr. REDACTED cannot relocate to another location in Cuba.⁸³

1. *There has been no fundamental change in country conditions, which remain dangerous for those in Mr. REDACTED's position.*

There has been no fundamental change in country conditions that would eliminate Mr. REDACTED's fear of future persecution. When an asylum applicant has established past persecution, the government can rebut a presumption of well-founded fear of future persecution by showing either a "fundamental change in conditions in the applicant's home country or that, under all the circumstances, it would be reasonable to expect the applicant to relocate to another part of the applicant's country."⁸⁴ Dangerous conditions persist in Cuba for individuals in Mr. REDACTED's situation.⁸⁵ In fact, there has been an increase in the past year in targeted arrests

⁸² 8 C.F.R. § 1208.13(b)(1) (stating that "An applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim.").

⁸³ 8 C.F.R. § 1208.13(b)(1)(A)(B) (stating that a presumption of threat to life or freedom can be rebutted if the immigration judge finds, upon a preponderance of evidence, that "[t]here has been a fundamental change in circumstances [...]". or "the applicant could avoid future persecution by relocating to another part of the applicant's country of national [...] and under all the circumstances, it would be reasonable to expect the applicant to do so."); *see also Matter of D-I-M-*, 24 I&N Dec. 448, 450 (BIA 2008) (stating that "the burden shifts to the DHS to establish by a preponderance of the evidence" that there has been a fundamental change in circumstances or that the applicant could avoid future persecution by relocating.).

⁸⁴ *N.L.A v. Holder*, 744 F.3d 425, 431 (7th Cir. 2014).

⁸⁵ Inter-American Commission on Human Rights, *Annual Report 2017: Chapter IV.B Cuba*, p. 627 at ¶¶ 59-60, 90, Tab N.

for those who are considered dissidents and persons who present “social dangerousness.”⁸⁶

There is a possibility of the death penalty for vague crimes of “dangerousness” in the Cuban Criminal Code, where “dangerousness” can be charged for criminal proclivity when a person is

[C]onsidered in a dangerous state due to anti social conduct [by] habitually break[ing] the rules of community life . . . by behavior which in general harms the rules of community life or disturbs the order of the community or lives as a social parasite from the work of others or exploits or engages in socially reproachable vices.⁸⁷

Expert witness Martina Kunovic predicts that in the future, “suppression of political dissent [will] continue or become even stronger, using the same methods of intimidation, harassment, physical force, and detention and imprisonment.”⁸⁸ Cuba remains a dangerous place for Mr. REDACTED, since he has been tagged as a political dissident and presenting “social dangerousness” due to his lack of lawful employment.

2. *Internal relocation is not a reasonable possibility for Mr. REDACTED.*

It is not reasonable for Mr. REDACTED to relocate in Cuba because he fears the government of Cuba itself. When the government is the persecutor in an asylum case, “it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate.”⁸⁹ DHS cannot meet this burden in this case.

C. Independent of the presumption created by his past persecution, Mr. REDACTED has a well-founded fear of future persecution by the Cuban government.

⁸⁶ Inter-American Commission on Human Rights, *Annual Report 2017: Chapter IV.B Cuba*, p. 627, 640, 646 at ¶¶ 44, 64, Tab N.

⁸⁷ *Id.* at n. 114.

⁸⁸ Kunovic Decl., ¶ 11, Tab I.

⁸⁹ 8 CFR § 1208.13(b)(3)(ii)

Independent of the presumption created by his past persecution, Mr. REDACTED has a well-founded fear of persecution by the Cuban government on account of political opinion.⁹⁰ Mr. REDACTED's fear is well founded because "a reasonable person in his circumstances would fear persecution if forced to return to his native country."⁹¹ As the BIA and the Seventh Circuit require, Mr. REDACTED's fear is both subjectively genuine and objectively reasonable.⁹²

1. Mr. REDACTED's fear of future persecution is subjectively genuine and objectively reasonable.

Mr. REDACTED has a subjective and objective fear of persecution. He satisfies the subjective fear component because he presented sincere testimony of being detained, beaten, and threatened with future loss of liberty by the Cuban Revolutionary National Police force.⁹³ Mr. REDACTED has expressed his subjective fear of return by leaving Cuba, leaving his mother, and enduring a year-long journey to the United States.⁹⁴

Similarly, Mr. REDACTED's fear is objective because, "a reasonable person in his circumstances would fear persecution" if returned to Cuba.⁹⁵ The Revolutionary National Police are aware of Mr. REDACTED's political opinion and his unemployment status.⁹⁶ They have deprived him of his liberty for extended periods of time, physically assaulted him, and threatened

⁹⁰ INA § 101(a)(42); 8 C.F.R. §§ 1208.13(b)(2)(A) and (B).

⁹¹ See *Kllokoqi v. Gonzalez*, 439 F.3d 336, 345 (7th Cir. 2005) (citing *Asani v. INS*, 154 F.3d 719, 725 (7th Cir. 1998); see also *Matter of Mogharrabi*, 19 I. & N. Dec. 439, 445 (BIA 1987).

⁹² *Kllokoqi v. Gonzalez*, 439 F.3d at 345.

⁹³ See *Diallo v. Ashcroft*, 381 F.3d 687, 697 (7th Cir. 2004) (citing *Caprici v. Ashcroft*, 355 F.3d 1075, 1048 (7th Cir. 2004)) ("An applicant who successfully establishes past persecution is presumed to have a well founded fear of future persecution . . . if the fear is 'subjectively genuine and objectively reasonable in light of credible evidence. . . . Although the statute does not define 'persecution,' this circuit has described it as 'punishment or the infliction of harm for political, religious, or other reasons that this country does not recognize as legitimate. It must be more than mere 'harassment,' and can include, 'detention, arrest, interrogation, prosecution, imprisonment, illegal searches, confiscation of property, surveillance, beatings, torture, behavior that threatens the same, and non-life-threatening behavior such as torture and economic deprivation if the resulting conditions are sufficiently severe.'").

⁹⁴ REDACTED Decl., ¶ 31-34, Tab C; Report of Molly Persky, M.A. and David Lee, PhD, Tab H.

⁹⁵ *Kllokoqi v. Gonzalez*, 439 F.3d at 345.

⁹⁶ REDACTED Decl., at ¶ 14, 25.

him with future imprisonment.⁹⁷ They have repeatedly referred to him as a *gusano* and traitor who is a danger to society.⁹⁸ After his last detention, the *Jefe del Sector* warned him that he would be punished for his disobedience and because his unemployed status made him a danger to the socialist society.⁹⁹ The Revolutionary National Police continues to commit human rights abuses as a means to punish and intimidate Cubans for expressing an opposition political opinion or failing to comply with onerous work regulations.¹⁰⁰ This shows that the Cuban police force are capable and willing to punish Mr. REDACTED if he is forced to return. Therefore, Mr. REDACTED's fear of persecution is objectively reasonable.

III. WITHHOLDING OF REMOVAL AS AN ALTERNATIVE FORM OF RELIEF

Mr. REDACTED is also entitled to withholding of removal as an alternative form of relief. A person may not be removed to a country where the evidence demonstrates a clear probability that his "life or freedom would be threatened" due to a protected ground.¹⁰¹ Mr. REDACTED's past persecution entitles him to the presumption of such a future threat, and therefore to the presumption that he is entitled to withholding.¹⁰² Independent of this presumption, Mr. REDACTED qualifies for withholding because it is more likely than not that his life or freedom would be at risk in Cuba. The *Jefe del Sector* has threatened to charge Mr. REDACTED with "dangerousness" in order to send him to prison for an extended period of time,¹⁰³ and in Cuba the police continues to use arbitrary short term detention and physical abuse

⁹⁷ *Id.* at ¶¶ 22-25, 27-30.

⁹⁸ *Id.* at ¶¶ 16, 21-22, 25, 29.

⁹⁹ *Id.* at ¶ 27.

¹⁰⁰ See generally, United States Department of State, *Cuba 2016 Human Rights Report*, 2016, Tab P; see also Amnesty International, "*Your Mind is in Prison*" *Cuba's Web of Control Over Free Expression and Its Chilling Effect on Everyday Life*, p. 33-35 (2017), Tab K.

¹⁰¹ 8 C.F.R. § 208.16.

¹⁰² 8 C.F.R. §§ 208.16(b)(1), 1208.16(b)(1)(i) (stating if "if the applicant is determined to have suffered past persecution...it shall be presumed that the applicant's life or freedom would be threatened in the future.").

¹⁰³ REDACTED Decl., at ¶ 27.

to intimidate and silence political dissenters.¹⁰⁴ The Cuban police have demonstrated a clear pattern and practice of persecuting political opponents.¹⁰⁵ Accordingly, it is more likely than not that Mr. REDACTED will be persecuted by the Cuban Revolutionary National Police on account of his political opinion if forced to return, and he is entitled to withholding of removal.

IV. RELIEF UNDER THE CONVENTION AGAINST TORTURE AS AN ALTERNATIVE FORM OF RELIEF

Mr. REDACTED is entitled to protection under Article 3 of the Convention Against Torture (CAT) because it is more likely than not that the Cuban Revolutionary National Police will detain him and torture him if he returns.¹⁰⁶ All relevant evidence should be considered when determining whether it is more likely than not that Mr. REDACTED would be tortured in Cuba, including: evidence of past torture inflicted upon Mr. REDACTED; evidence that he could not relocate to a part of Cuba where he is not likely to be tortured; evidence of gross, flagrant or mass violations of human rights within the country of removal; and other relevant information regarding conditions in Cuba.¹⁰⁷

A. Mr. REDACTED has been tortured in the past by the Cuban Revolutionary National Police.

The Revolutionary National Police's abuse of Mr. REDACTED constitutes torture according to the regulatory definition. Torture is "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as...punishing him...for an act he...is suspected of having committed...or intimidating or coercing him...or for any reason based on discrimination of any kind, when such pain or

¹⁰⁴ *Id.* at ¶¶25, 30.; *see also* Amnesty International, "Your Mind is in Prison" Cuba's Web of Control Over Free Expression and Its Chilling Effect on Everyday Life, p. 33, 2017, Tab K.

¹⁰⁵ 8 C.F.R. § 208.16(b)(2).

¹⁰⁶ 8 C.F.R. § 1208.18(a)(7).

¹⁰⁷ 8 C.F.R. § 1208.16(c)(3)(i)-(iv).

suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official.”¹⁰⁸ Mr. REDACTED was beaten to the point he could not breathe. He was beaten on his back, stomach, feet, and head and was left with a permanent scar next to his eye.¹⁰⁹ He was detained on two occasions, for a period of fifteen and ten days, respectively, in which he was beaten and used as an example to silence others and to punish him for his anti-socialist opinions and unemployment status.¹¹⁰ The Revolutionary National Police’s severe past mistreatment of Mr. REDACTED meets the legal definition of torture. Moreover, the fact that Mr. REDACTED was tortured in the past for expressing his conscience demonstrates that he would likely be tortured in the future were he to return to Cuba

¹⁰⁸ 8 C.F.R. § 1208.18(a)(1).

¹⁰⁹ REDACTED Decl., at ¶¶ 22, 27-29

¹¹⁰ *Id.* at ¶¶ 25, 30; *see generally*, United States Department of State, *Cuba 2016 Human Rights Report*, 2016, Tab P; *see also* Amnesty International, “*Your Mind is in Prison*” *Cuba’s Web of Control Over Free Expression and Its Chilling Effect on Everyday Life* (2017), Tab K; Inter-American Commission on Human Rights, *Annual Report 2016: Chapter IV.B Cuba*, p. 539 at ¶¶ 101, 107, Tab O (citing The Cuban Human Rights and National Reconciliation Commission (CCDHRN), *Cuba Algunos actos de represión política en el mes de marzo de 2016* (March 2016); Inter-American Commission on Human Rights, *Annual Report 2017: Chapter IV.B Cuba*, p. 627 at ¶¶ 59-60, 90, Tab N.

V. CONCLUSION

For the foregoing reasons, we ask that this Court grant Mr. REDACTED asylum, or in the alternative, withholding of removal or relief under CAT.

Date

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