IMMIGRANT RIGHTS CLINIC
DUKE UNIVERSITY SCHOOL OF LAW

[DATE]

USCIS TSC
Attn: I-589 // **OAW**
6046 N Belt Line Rd. STE 589
Irving, TX 75038-0018

RE: Brief in Support of FULL NAME ("NAME") (A NUMBER), and DERIVATIVE SPOUSE AND UNMARRIED CHILDREN UNDER 21

Dear Asylum Officer:

INSERT PRINCIPAL APPLICANT'S FULL NAME (hereinafter "NAME") is eligible for asylum based on INSERT PROTECTED CHARACTERISTIC(S). HE/SHE suffered past persecution in the form of SUMMARY OF PERSECUTION, which gives rise to a presumption of future persecution that the government cannot rebut. Internal relocation is neither possible nor reasonable, and country conditions have not changed since HE/SHE fled Afghanistan. Even absent past persecution, NAME has a well-founded fear of future persecution on account of PROTECTED CHARACTERISTIC because INSERT BASIS FOR FEAR. NAME is eligible for asylum and not barred from such relief, and HE/SHE merits a favorable exercise of discretion.

[ADD MORE DETAILS HERE ABOUT WHY UNABLE TO RETURN TO AFGHANISTAN, DANGERS THEY FACE IN COUNTRY, AND CONSEQUENCES IF THEY WERE TO RETURN]

Statement of the Facts

BRIEF FACTUAL SUMMARY AND CHRONOLOGY OF EVENTS, AS DRAWN FROM THE DECLARATION AND I-589.

Statement of the Issue and Burden of Proof

The Immigration and Nationality Act ("INA") authorizes the Attorney General to grant asylum to eligible applicants. INA § 208(b)(1). Applicants bear the burden of establishing that they meet the criteria of the refugee definition under § 101(a)(42)(A) of the INA.

To be a refugee, an applicant must demonstrate that they are outside of their native country, "unable or unwilling to return to" that country because of persecution or a well-founded fear of persecution" perpetrated against them "on account of race, religion, nationality, membership in a particular social group, or political opinion," and "unable or unwilling to avail of the protection of" their country. INA § 101(a)(42)(A). An applicant may satisfy this burden "through the presentation of candid, credible, and sincere testimony." *Li v. Gonzales*, 405 F.3d 171, 176 (4th Cir. 2005).

NAME, a citizen and national of Afghanistan,[1] is eligible for asylum protection. Part I of this brief demonstrates that NAME is filing for asylum within the one-year filing deadline of entering the United States. Part II explains why the past harm NAME suffered in Afghanistan meets the legal standard for past persecution. Parts III, IV, V, and VI establish that NAME suffered these past harms "on account of" their imputed political opinion, religion, and membership in a particular social group ("PSG"). Part VII addresses Applicant's inability to avail themselves of any state protection in Afghanistan, explaining that the Afghan government, which is made up of the Taliban, is the feared persecutor. Part VIII addresses the multiple ways in which NAME's fear of future persecution in Afghanistan qualifies as "well-founded." Part IX explains why Applicant is not barred from seeking asylum.

Argument

I. APPLICANT IS FILING FOR ASYLUM WITHIN ONE YEAR OF HIS/HER LAST DATE OF ARRIVAL INTO THE U.S.

NAME has satisfied the one-year deadline for filing HIS/HER I-589 Applications for Asylum and Withholding of Removal because HE/SHE entered the U.S. on [MONTH, DATE, YEAR], and has filed for asylum well in advance of HIS/HER one-year filing deadline. *See* INA 208(a)(2)(E). Neither NAME nor HIS/HER dependent family members included on HIS/HER application have been placed in removal proceedings or ordered removed from the United States.

II. NAME HAS ALREADY SUFFERED HORRIFIC PAST HARM RISING TO THE LEVEL OF PERSECUTION.

A. Legal standard

Persecution can involve "the infliction or threat of death, torture, or injury to one's person or freedom, on account of one of the enumerated grounds in the refugee definition." *Tairou v. Whitaker*, 909 F.3d 702, 707 (4th Cir. 2018) (quoting *Li*, 405 F.3d at 177). It requires more than "mere harassment[,]" but also encompasses "actions less severe than threats to life or freedom[.]" *Id.* "While 'persecution' is often manifested in physical violence, 'the harm or suffering [amounting to persecution] need not be physical, but may take other forms,' so long as the harm is of sufficient severity." *Mirisawo v. Holder*, 599 F.3d 391, 396 (4th Cir. 2010) (quoting H.R.Rep. No. 95-1452, at 5 (1978)). Past persecution does not require an applicant to

[1] Applicant's [DOCUMENTS NAME, e.g., Tazkera, Passport, etc.] establishes Afghanistan is Applicant's native country.

have sustained either "major physical injuries" or "long-term mental harm or problems." *Tairou*, 909 F.3d at 707.

U.S. immigration law mandates that past mistreatment be assessed holistically, proscribing the "technique of addressing the severity of each event in isolation, without considering its cumulative significance." *Poradisova v. Gonzales*, 420 F.3d 70, 79 (2d Cir. 2005), *cited with approval in Baharon v. Holder*, 588 F.3d 228, 232 (4th Cir. 2009). Distinguishing between persecution and low-level mistreatment, therefore, requires an analysis of an applicant's past harms "in the aggregate." *Matter of O-Z- & I-Z-*, 22 I. & N. Dec. 23, 23 (BIA 1998).

Critically, proper consideration of the "aggregate" or "cumulative significance" of past mistreatment requires careful, simultaneous attention to the "cumulative effects of the harm inflicted on [an applicant] [*and his family members*." *Tairou*, 909 F.3d at 707 (emphasis added). In other words, "[v]iolence or threats to one's close relatives is an important factor in deciding whether mistreatment sinks to the level of persecution." *Baharon*, 588 F.3d at 232 (citing string of Fourth Circuit precedents illustrating this proposition).[2] In *Baharon*, for example, the Fourth Circuit found reversible error where an immigration judge failed to consider properly, among other things, "the fear . . . to which [the applicant] was subjected through . . . the persecution of his relatives." *Id.* at 231; *see also Poradisova*, 420 F.3d at 79–81 (finding reversible error where immigration judge failed to consider, among other things, the "cumulative" effect of each family member's persecution on the other). Persecution can be found "where a person persecutes someone close to an applicant, such as a spouse, parent, child or other relative, with the intended purpose of causing emotional harm to the applicant, but does not directly harm the applicant himself." *See Matter of A–K–*, 24 I&N Dec. at 275; *see also Lopez-Orellana v. Whitaker*, 757 Fed. App'x 238, 242 (4th Cir. 2018) (finding that respondent's testimony about the pattern of violence directed by his persecutors against his family members "bolster[ed] his claim of past persecution").]

A substantial body of federal asylum case law supports the notion that "[p]ersecution may be emotional or psychological," and that such harms may play a significant role in determining the cumulative effect of an applicant's past harms. *See, e.g.*, *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120–21 (9th Cir. 2004). Persecution can include mental suffering or severe economic deprivation. *Matter of Acosta*, 19 l&N Dec. 211, 222 (BIA 1985). Economic persecution includes the "deliberate deprivation of basic necessities" and the "deliberate imposition of severe economic disadvantage." *See Matter of T-Z-*, 24 I. & N. Dec. 163, 171 (BIA 2007).

1. Death Threats

Furthermore, the Fourth Circuit has repeatedly and "expressly held that 'the threat of death qualifies as persecution.'" *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015)

[2] Acknowledging the "near obviousness of the proposition that a person who has directly witnessed a brutal assault on a family member has experienced so devastating a blow as to rise to the level of persecution[,]" five other federal Circuits join the Fourth in taking this approach. Deborah E. Anker, Law of Asylum in the United States § 4:20 (2020) (quoting *Camara v. Attorney Gen. of U.S.*, 580 F.3d 196, 205 (3d Cir. 2009)).

(quoting *Crespin-Valladares v. Holder*, 632 F.3d 117,126 (4th Cir. 2011)); *Alvarez Lagos v. Barr*, 927 F.3d 236, 248 n.1 (4th Cir. 2019); *Tairou v. Whitaker*, 909 F.3d 702, 707 (4th Cir. 2018) ("[T]he threat of death *alone* constitutes persecution.") (emphasis added).

Death threats—unaccompanied by any physical harm—count as persecution, even if they are written and not delivered in person. *Bedoya v. Barr*, 981 F.3d 240, 246-47 (4th Cir. 2020) (holding that "home-delivered death threats and text messages can easily be more menacing than verbal threats in that they show that the writer and sender knows where his target lives and the relevant personal cellphone number"). Under this standard, an asylum applicant who demonstrates that she has received death threats "[is] not required to additionally prove long-term physical or mental harm to establish past persecution." *Tairou*, 909 F.3d at 708. Past persecution in the form of death threats can be demonstrated by credible testimony alone. *E.g.*, *Hernandez-Avalos* 784 F.3d at 949 (finding past persecution because applicant "credibly testified that she received death threats" from a gang in El Salvador).

In addition, the death threats do not have to be experienced first-hand. *Portillo-Flores v. Garland*, 3 F.4th 615, 627 (4th Cir. 2021) (holding that death threats do not need to be made directly to the petitioner); *Diaz de Gomez v. Wilkinson*, 987 F.3d 359, 363 n.2 (4th Cir. 2021) ("We reject the government's insinuation … that the death threats against Diaz de Gomez did not amount to persecution because some of them were made to family members rather than to her directly").

In *Tairou v. Whitaker*, the Fourth Circuit affirmed that even implicit threats of death constituted past persecution. 909 F.3d at 707. There, the government conceded that Tairou suffered "at least 'an implicit death threat' when his cousin brandished a knife" at him. *Id*. Accordingly, the court ruled that refusing to recognize this as past persecution constituted an abuse of discretion. *Id*. at 708. Similarly, in *Crespin-Valladares v. Holder*, the Fourth Circuit held that three threats of death against Crespin amounted to past persecution. 632 F.3d at 126. The *Crespin-Valladares* court recognized that death threats need not be made in person to constitute harm rising above mere "harassment." *See id*. (rejecting the Board's holding that "Crespin had suffered mere threats and harassment and had shown only [a] generalized fear of harm" and stating that "[t]his conclusion contravenes our express holding that the threat of death qualifies as persecution" (quotations omitted). Because Crespin had received two notes left at his home and one in-person verbal death threat, *id*. at 120, he was found to have experienced harm rising to the level of persecution. *Id*. at 126.

Courts have also "consistently recognized [that], being forced to flee one's home in the face of an immediate threat of severe physical violence or death is squarely encompassed within the rubric of persecution." *Mendoza-Pablo v. Holder*, 667 F.3d at 1314 (citing *Knezevic v. Ashcroft*, 367 F.3d 1206, 1211 (9th Cir. 2004) (finding that Serb petitioners suffered persecution during the civil war in the former Yugoslavia when "shelling and bombardment by hostile Croat army forces threatened their lives" and forced them to "flee their hometown")).

2. Harm Suffered as a Child

The Fourth Circuit has recognized the relevance of age in the context of whether harm suffered amounts to persecution, stating that "where a petitioner is a child at the time of the alleged persecution, the immigration court must take the child's age into account in analyzing past persecution and fear of future persecution for purposes of asylum. Therefore, even if Petitioner's beatings and the threats made against him would not rise to the level of past persecution for an adult, they may satisfy past persecution for a child." *Portillo Flores v. Garland*, 3 F.4th 615, 628–29 (4th Cir. 2021).

It has long been understood that, because of the vulnerability of children, "the harm a child . . . has suffered may still qualify as persecution despite appearing to be relatively less than that necessary for an adult to establish persecution." Memorandum from Jeff Weiss, Acting Director, Office of International Affairs, to Asylum Officers, Immigration Officers, and Headquarters Coordinators (Asylum and Refugees) 14 (Dec. 10, 1998), *available at* 1998 WL 34032561; AOBTC Manual, *Guidelines for Children's Asylum Claims*, August 31, 2010 ("The harm a child fears or has suffered may still qualify as persecution . . . because children, dependent on others for their care, are prone to be more severely and potentially permanently affected by trauma than adults, particularly when their caretaker is harmed."). Accordingly, adjudicators must relax the past persecution inquiry when evaluating claims involving harm suffered by the applicant during childhood. *See e.g.*, *Ordonez-Quino v. Holder*, 760 F.3d 80, 91–92 (1st Cir. 2014) (citations omitted) (observing that "age can be a critical factor" in determining whether a petitioner's experiences cross [the] threshold" of past persecution, and establishing that "[w]here the events that form the basis of a past persecution claim were perceived when the petitioner was a child, the fact-finder must 'look at the events from [the child's] perspective, [and] measure the degree of [his] injuries by their impact on [a child] of [his] age [.]").

Other Courts have similarly illustrated how age plays an important role in the past persecution analysis. In *Rusak v. Holder*, the Ninth Circuit held that an applicant was "entitled to rely on" the physical abuses suffered by her parents while the applicant was "approximately eleven years old" to "establish her own claim of past persecution because she was a child at the time" her parents experienced the harm. 734 F.3d 894, 895, 897 (9th Cir. 2013) (rejecting BIA's conclusion that "abuses suffered by [the applicant's] parents . . . do not constitute persecution of the [applicant]."). Put generally, decisions like *Rusak* recognize two related principles:

(1) "[H]arm suffered by family members should be given special weight in evaluating whether a child suffered past persecution when the events were perceived or experienced by the applicant as a child, even if the applicant is unable to recall or testify about it with any specificity"; and

(2) "[I]n children's cases, emotional harm should not just be considered as a part of the harm suffered; it can be the main, or even exclusive component of persecutory harm."

See Deborah E. Anker, Law of Asylum in the United States § 4:21 (2020); *see also Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1046 (9th Cir. 2007) ("[I]njuries to a family must be considered in an asylum case where the events that form the basis of the past persecution claim were perceived when the petitioner was a child."); *Mendoza-Pablo v. Holder*, 667 F.3d 1308,

1313 (9th Cir. 2012) ("[I]t is clear from our case law that an infant can be the victim of persecution, even though he has no present recollection of the events that constituted his persecution"); *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006)(finding reversible error where immigration judge failed to "address the harms [that the then-seven-year-old applicant] and his family incurred cumulatively and from the perspective of a small child," and establishing that the applicant's "combination of circumstances could well constitute persecution to a small child totally dependent on his family and community" even where the applicant "was never victimized directly[.]").

B. Application

[FOR THIS SECTION, START WITH PHYSICAL HARMS IF THE CLIENT EXPERIENCED ANY. IF NOT, START WITH DEATH THREATS FOLLOWED BY OTHER NON-PHYSICAL HARM.]

1. Physical harm

[LIST ALL THE PHYSICAL HARMS SUFFERED, FLAGGING HARMS EXPERIENCED AS A CHILD.]

2. Death threats

[LIST ALL FACTS RELATED TO DEATH THREATS, FLAGGING THREATS EXPERIENCED AS A CHILD.]

3. Non-physical harm

[LIST ALL THE OTHER NON-PHYSICAL HARMS SUFFERED, FLAGGING HARMS EXPERIENCED AS A CHILD.]

[ADD SENTENCE AT THE END REMINDING THE ADJUDICATOR IN BRIEF OF ALL OF THE HARMS IN THEIR TOTALITY.] Taken together, there is more than enough evidence in this case that Applicant suffered harm that rises to the level of persecution.

III. NAME WAS PERSECUTED ON ACCOUNT OF HIS/HER POLITICAL OPINION—IMPUTED OR ACTUAL—OF OPPOSITION TO THE TALIBAN.

The Taliban persecuted Applicant because of HIS/HER actual or imputed political opinion of opposition to the Taliban due to NAME's [SELECT THE APPROPRIATE RESPONSE: WORK FOR THE U.S. GOVERNMENT, AFGHAN GOVERNMENT, AND/OR FAMILY RELATIONSHIP TO THE PERSON WHO WORKED FOR THE U.S. OR AFGHAN GOVERNMENT.]

A. Legal standard

To qualify for asylum, an applicant must establish that she has been "subjected to past persecution" or "has a well-founded fear of future persecution" "on account of" at least one protected ground under the INA: "race, religion, nationality, membership in a particular social

group, or political opinion." 8 U.S.C. § 1101(a)(42)(A). It is long established that "[p]ersecution for "imputed" grounds (e.g., where one is erroneously thought to hold particular political opinions or mistakenly believed to be a member of a religious sect) can satisfy the 'refugee' definition." *Matter of S-P-*, 21 I&N Dec. 486, 489 (BIA 1996). To establish imputed political opinion, an applicant must show that the persecutors actually imputed a political opinion to him or her. *Abdel-Rahman v. Gonzales*, 493 F.3d 444, 450-51 (4th Cir. 2007). The Fourth Circuit has noted that "[a]n imputed political opinion, whether *correctly or incorrectly attributed*, may constitute a ground for a well-founded fear of political persecution within the meaning of the INA." *Ashqar v. Hol*der, 355 Fed. Appx. 705, 710 n.6 (4th Cir. 2009) (emphasis added). Thus, "the relevant inquiry is not the political views sincerely held or expressed by the victim, but rather the persecutor's subjective perception of the victim's view." *Alvarez Lagos v. Barr*, 927 F.3d 236, 254 (4th Cir. 2019)

B. Application

[INSERT RELEVANT FACTS FROM CLIENT. THESE CAN INCLUDE THINGS LIKE THEIR FAMILY'S INVOLVEMENT WITH THE GOVERNMENT OR NATURE OF THEIR WORK, AS WELL AS ANY STATEMENTS THEY HAD HEARD OR BEEN TOLD THAT THEIR WORK OR FAMILY RELATIONSHIP WAS CONSTRUED AS AN ANTI-TALIBAN VIEW.]

Applicant's experience is corroborated by a significant number of country conditions reports. Indeed, the Taliban has been targeting people for their association with both the U.S. and former Afghan governments. For example, the Taliban has sent threat letters to some former government officials stating that if they do not give themselves up to the Taliban, then their families would be arrested. The Taliban has stated they are taking these actions due to the victim's previous work, writing "you should have stopped working with a slave government under control of Americans; we shall punish you so others take a lesson." *Afghanistan Dispatches: "Anyone on the Taliban's Blacklist is in Great Danger"* JURIST.ORG (Oct. 26, 2021, 11:05 AM), https://www.jurist.org/news/2021/10/afghanistan-dispatches-anyone-on-the-talibans-blacklist-is-in-great-danger/.

The Taliban is also pinning threat letters to those they accuse of "working for the crusaders," demanding that they attend Taliban-convened courts or face the death penalty. *Taliban use Traditional Afghan Method of "Night Letters" to Intimidate*, THE ECONOMIC TIMES (Aug. 31, 2021, 4:10 PM), https://economictimes.indiatimes.com/news/international/world-news/taliban-use-traditional-afghan-method-of-night-letters-to-intimidate/articleshow/85795913.cms. Even prior to the Taliban's takeover of the government in August 2021, the Taliban was opposed to the former Afghan political system on the basis that they consider electoral democracy un-Islamic. Thus, they targeted civilians they accused of being apologists for the former government or political system more generally. Afghanistan: Freedom in the World 2021 Country Report, FREEDOM HOUSE (2020) https://freedomhouse.org/country/afghanistan/freedom-world/2021. After the Taliban takeover, a former Afghan government official stated that there is "no question [that those] . . . who want a country based on a constitution and rule of law, will remain at the top of the Taliban's target list." Teri Schultz, *An Ex-Senior Afghan Official is Hiding from the Taliban, and Growing Angry at America*, NPR.

(2021), https://www.npr.org/2021/08/17/1028406748/an-ex-senior-afghan-official-is-hiding-from-the-taliban-and-growing-angry-at-ame (last visited Feb 24, 2022).

C. Nexus

An applicant must demonstrate a nexus between the persecution suffered and their protected characteristic. *Canales-Rivera v. Barr*, 948 F.3d 649, 654 (4th Cir. 2020). Persecution occurs "on account of" a protected ground if that ground serves as "at least one central reason for" the past or feared persecution. *Crespin-Valladares v. Holder*, 632 F.3d 117, 127 (4th Cir. 2011). This does not require that the group membership be the sole or dominant motivation for her persecution, as more than one reason may, "and often does, motivate a persecutor's actions." *Cruz v. Sessions*, 853 F.3d 122, 127–28 (4th Cir. 2017), as amended (Mar. 14, 2017).

As a result, "[a]n applicant does not bear the unreasonable burden of establishing the exact motivation of the persecutor where different reasons for the action are possible." *Matter of J-B-N- & S-M*, 24 I. & N. Dec. 208, 211 (BIA 2007) (international quotations removed). Rather, as the Fourth Circuit has "repeatedly emphasized," it is enough that the protected ground be "at least one central reason" for the persecution, that is, it is sufficient for the ground to be *a* reason perhaps "intertwined with others, why [the applicant], and not another person, was threatened." *Alvarez Lagos v. Barr*, 927 F.3d 236, 250 (4th Cir. 2019) (internal citations and quotations omitted).

Here, NAME has provided sufficient evidence that the Taliban has persecuted the applicant on account of HIS/HER opinion of opposition to the Taliban as demonstrated by [INSERT CLIENT FACTS. HELPFUL FACTS INCLUDE EVIDENCE OF WHAT THE TALIBAN SAID, WARNED, OR THREATENED TO THE APPLICANT, THEIR FAMILY, OR SIMILARLY SITUATED INDIVIDUALS. COUNTRY CONDITIONS COULD ALSO HELP SUPPORT THIS CONNECTION.]

IV. NAME WAS PERSECUTED ON ACCOUNT OF HIS/HER RELIGION—IMPUTED OR ACTUAL—BY THE TALIBAN.

The Taliban persecuted Applicant because of HIS/HER actual or imputed religious views due to NAME's [SELECT THE APPROPRIATE RESPONSE: WORK FOR THE U.S. GOVERNMENT, AFGHAN GOVERNMENT, AND/OR FAMILY RELATIONSHIP TO THE PERSON WHO WORKED FOR THE U.S. OR AFGHAN GOVERNMENT], which the Taliban construes as anti-Islamic.

A. Legal standard

As noted above, "[p]ersecution for 'imputed' grounds (e.g., where one is erroneously thought to hold particular political opinions or mistakenly believed to be a member of a religious sect) can satisfy the 'refugee' definition." *Matter of S-P-*, 21 I&N Dec. 486, 489 (BIA 1996). The appropriate test is not whether the adjudicator believes the applicant to be a true believer, but whether the persecuting agents will so perceive him. *Bastanipour v. I.N.S.*, 980 F.2d 1129 (7th Cir. 1992). A religious persecution claim can be established under a theory of imputed religion analogous to the "imputed political opinion" theory when an "individual who does not

subscribe to a certain religion, but is nonetheless [] persecuted on account of others' perception that he does." *See Rizal v. Gonzales*, 442 F.3d 84, 90 n.7 (2nd Cir.2006) (citing *Chun Gao v. Gonzales*, 424 F.3d 122, 129-130 (2d Cir.2005) ("[T]he question . . . is not whether Gao was or is a practitioner of Falun Gong, but whether authorities would have perceived him as such. . . . If authorities would persecute him as an adherent or as a supporter of Falun Gong, then such persecution would be 'on account of' an enumerated ground.")). If persecutors believe an individual is of a particular religion, that can be a sufficient basis for fear of persecution under the law. *See Ahmadshah v. Ashcroft*, 396 F.3d 917, 920 n. 2 (8th Cir.2005), (holding that, "even if [petitioner] did not have a clear understanding of Christian doctrine, this is not relevant to his fear of persecution. If [petitioner] had shown that Afghans would believe that he was an apostate, that is sufficient basis for fear of persecution under the law.").

B. Application

[INSERT CLIENT FACTS. HELPFUL FACTS CAN INCLUDE THINGS THAT SHOW THE TALIBAN IS JUDGING THE APPLICANT FOR BEING INSUFFICIENTLY DEVOUT OR FOR ADHERING TO A VERSION OF ISLAM OF WHICH THEY DO NOT APPROVE.]

As noted above, even prior to the Taliban's takeover of the government in August 2021, the Taliban was opposed to the former Afghan political system on the basis that they consider electoral democracy un-Islamic. Thus, they targeted civilians they accused of being apologists for the former government or political system more generally, motivated in part by the religion opinion imputed to their political and military enemies. *See* Afghanistan: Freedom in the World 2021 Country Report, FREEDOM HOUSE (2020) https://freedomhouse.org/country/afghanistan/freedom-world/2021.

C. Nexus

Here, NAME has provided sufficient evidence that the Taliban has persecuted the applicant on account of HIS/HER imputed religious beliefs as demonstrated by [INSERT CLIENT FACTS THAT REVEAL TALIBAN'S ANIMOSITY TOWARDS THOSE THEY VIEW AS RELIGIOUSLY FLAWED.]

V. NAME WAS PERSECUTED ON ACCOUNT OF HIS/HER MEMBERSHIP IN THE PARTICULAR SOCIAL GROUP(S) OF INDIVIDUALS FORMERLY ASSOCIATED WITH [SELECT APPROPRIATE GROUP(s): THE U.S. AND/OR AFHGAN GOVERNMENTS/MILITARY].

A group qualifies as a particular social group when "(1) its members share common, immutable characteristics, (2) the common characteristics give its members social [distinction], and (3) the group is defined with sufficient particularity to delimit [group] membership." *Canales-Rivera v. Barr*, 948 F.3d 649, 654 (4th Cir. 2020) (citing *Lizama v. Holder*, 629 F.3d 440, 446–47 (4th Cir. 2011)); *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014).

The particular social group(s) here—[SELECT APPROPRIATE: INDIVIDUALS FORMERLY ASSOCIATED WITH THE U.S. AND/OR AFHGAN GOVERNMENTS/MILITARY]—satisfies the immutability, social distinction, and particularity prongs of the particular social group analysis. For example, work for the U.S. government has been recognized as a cognizable a particular social group. *See Al Amiri v. Rosen*, 985 F.3d 1 (1st Cir. 2021) (finding that membership in group of paid contractors for the U.S. army during the Iraq war could constitute a valid particular social group); *Ang v. Gonzales*, 430 F.3d 50, 55-56 (1st Cir. 2005) (employment at the U.S. embassy or support for Americans can constitute a social group because membership stems from an "innate characteristic or shared experience"); *see also Matter of John Smith*, (Unpublished BIA Decision, Sept. 10, 2015) (holding that the respondent's past experience of having cooperated or worked with Americans or American entities or organizations in Iraq was immutable and a cognizable PSG).

Moreover, the U.S. State Department has recognized strikingly similar groups as satisfying the refugee definition. On August 2, 2021, the State Department announced a Program Priority 2 (P-2) designation granting U.S. Refugee Admissions Program (USRAP) access for Afghan nationals who formerly worked for the U.S. or Afghan government as well as their nuclear family members. *See* U.S. Refugee Admissions Program Priority 2 Designation for Afghan Nationals - United States Department of State, UNITED STATES DEPARTMENT OF STATE (2022), https://www.state.gov/u-s-refugee-admissions-program-priority-2-designation-for-afghan-nationals/ (last visited Feb 18, 2022). The designation was announced "in light of increased levels of Taliban violence . . . to provide certain Afghans, including those who worked with the United States, the opportunity for refugee resettlement to the United States." Individuals eligible for P-2 designation include Afghans "who . . . worked as employees or contractors, locally-employed staff, interpreters/translators for the U.S. Government, United States Forces Afghanistan (USFOR-A), International Security Assistance Force (ISAF), or Resolute Support; Afghans who . . . worked for a U.S. government-funded program or project in Afghanistan supported through a U.S. government grant or cooperative agreement; [or] Afghans who . . . were employed in Afghanistan by a U.S.-based media organization or non-governmental organization." As such, it follows that such groups should be deemed to constitute cognizable social groups for purposes of asylum adjudications as well.

A. Immutability

The BIA defines a common, immutable characteristic as "one that members of the group either cannot change or should not be required to change because it is fundamental to their individual identities or consciences." *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985), overruled on other grounds by *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (B.I.A. 1987). "The shared characteristic might be an innate one such as . . . kinship ties[] or . . . shared past experiences. . . . The characteristic must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." *Id.*

Working or serving a national government has been found to be a cognizable PSG in certain circumstances. *See Matter of Fuentes*, 19 l&N Dec. 658, 662 (BIA 1988) (holding that former national police members could be a particular social group in certain circumstances);

Acosta, 19 l&N Dec. at 233 (listing a "shared past experience such as former military leadership" as an example of a "shared characteristic" that unites a particular social group).

In the instant case, NAME cannot change HIS/HER past association or work history for the [SELECT APPROPRIATE: AFGHAN OR U.S. GOVERNMENT/MILITARY.] In fact, the Taliban is aware of the identities of many who have worked for the former Afghan and U.S. governments. According to a Human Rights Watch Report, the Taliban has been able to access employment records that the former Afghan government left behind, using them to identify people for arrest and execution. *Afghanistan: Taliban Kill, "Disappear" Ex-Officials*, HUMAN RIGHTS WATCH (Nov. 30, 2021), https://www.hrw.org/news/2021/11/30/afghanistan-taliban-kill-disappear-ex-officials. In addition, Taliban leadership directed members of the surrendering security forces to register to receive a letter guaranteeing their safety. Instead, those registrations have been used to detain and summarily execute or forcible disappear people within days after they register. *Id.* As such, it is clear that the Taliban understands that former association to be immutable.

B. Social Distinction

"[S]ocial visibility speaks to whether a group is in fact recognized as a group." *Temu v. Holder*, 740 F.3d 887, 892–93 (4th Cir. 2014). The group must be "set apart, or distinct, from other persons within the society in some significant way." *Matter of M-E-V-G-*, 26 I. & N. Dec. at 238. "Whether a social group is cognizable is a fact-based inquiry, depending on whether the group is . . . recognized as . . . socially distinct in the relevant society." *Matter of L-E-A- I*, 27 I. & N. Dec. 40, 42 (BIA 2017) (internal quotations omitted). Thus, social distinction "asks whether the 'home society actually does recognize that group as being a 'distinct' and identifiable group.'" *Amaya v. Rosen*, 986 F.3d 424, 433 (4th Cir. 2021) (citing *S.E.R.L.*, 894 F.3d at 553).

Here the evidence is clear that both society writ large, and most especially the Taliban, view members of these social groups as distinct and set apart. Indeed, the Taliban has been going door-to-door under the guise of humanitarian needs to identify individuals who worked with U.S.-led forces or the previous Afghan government. Daniel Hurst, *Afghans Seeking Australian Humanitarian Visas say Taliban are "Hunting Us Like Animals"* THE GUARDIAN (2021), https://www.theguardian.com/australia-news/2021/oct/11/afghans-seeking-humanitarian-visas-say-taliban-are-hunting-us-like-animals (last visited Feb 24, 2022). Several Afghans who helped the U.S. war effort and could not escape Afghanistan during the U.S. evacuation have had to hop between safe houses as the Taliban, Islamic State, and other extremist groups hunt down former U.S. allies to jail them or, more often, beat or kill them. Robbie Gramer, Jack Detsch & Amy Mackinnon, *Afghans Left Behind in the U.S. Withdrawal Face Dwindling Hope*, FOREIGN POLICY (Oct. 1, 2021), https://foreignpolicy.com/2021/10/01/afghanistan-biden-interpreters-special-immigrant-visa-evacuation-state-department/.

C. Particularity

The Fourth Circuit defines particularity as having "particular and well-defined boundaries." *Crespin-Valladares v. Holder*, 632 F.3d 117, 125 (4th Cir. 2011); *Matter of M-E-V-*

G-, 26 I. & N. Dec. 227, 238 (BIA 2014). A group is considered particular if it invokes an answer in the affirmative to the following question: "is it evident from the group's description who is in and who is not [in the group]?" *Amaya v. Rosen*, 986 F.3d at 434 (2021). It is important not to conflate the particularity requirement with the social distinction requirement; particularity does not depend on "society's perceptions" of the group, but on definitional clarity. *Id.* Additionally, "[w]hat matters [in the particularity analysis] is not whether the group can be subdivided based on some arbitrary characteristic [,] but whether the group itself has clear boundaries." *Id.*

In this case, NAME's membership in the particular social groups of [SELECT APPROPRIATE: INDIVIDUALS FORMERLY ASSOCIATED WITH THE U.S. AND/OR AFHGAN GOVERNMENTS/MILITARY] has clear boundaries and there is no ambiguity or subjectivity to the group's boundaries.

D. Nexus

As stated above, an applicant establishes the required nexus when she demonstrates that her proposed protected status "was or will be a central reason for [her] persecution." *Oliva v. Lynch*, 807 F.3d 53, 59 (4th Cir. 2015). The protected ground need not be the only reason – or even the dominant or primary reason – for the persecution. *Cruz*, 853 F.3d at 127; *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 950 (4th Cir. 2015).

In the case at bar, NAME has established that HIS/HER membership in this social groups was a central reason for the harm HE/SHE suffered by demonstrating that [INSERT FACTS SUCH AS DETAILS ABOUT BEING TARGETED FOR THEIR WORK, SPECIFIC THREATS THEY RECEIVED GIVEN THEIR WORK HISTORY, AND SPECIFIC INFORMATION ABOUT HOW THE TALIBAN WOULD KNOW THEY WORKED FOR GOVERNMENT, LIKE HR LETTERS, IDS, ETC.]

VI. NAME WAS ALSO PERSECUTED FOR BEING IN THE NUCLEAR FAMILY OF ONE FORMERLY ASSOCIATED WITH THE [SELECT APPROPRIATE: U.S. GOVERNMENT/MILITARY AND/OR AFGHAN GOVERNMENT/MILITARY]

The proposed social group here—[SELECT APPROPRIATE: THE NUCLEAR FAMILY OF INDIVIDUALS FORMERLY ASSOCIATED WITH THE U.S. AND/OR AFHGAN GOVERNMENTS/MILITARY]—is a cognizable group. The Fourth Circuit has repeatedly recognized the validity of family-based particular social groups. *See Portillo Flores v. Garland*, 3 F.4th 615, 631 (4th Cir. 2021), citing *Velasquez v. Sessions*, 866 F.3d 188, 194 (4th Cir. 2017) ("this court has plainly held that 'an individual's membership in h[is] nuclear family is a particular social group.'"); *Arita-Deras v. Wilkinson*, 990 F.3d 350, 360 (4th Cir. 2021)("in accordance with our precedent, we treat membership in a nuclear family as a particular social group."); *Crespin-Valladares v. Holder*, 632 F.3d 117, 125 (4th Cir. 2011) (finding family to be a "prototypical" particular social group); *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015); *Salgado-Sosa v. Sessions*, 882 F.3d 451, 457 (4th Cir. 2018); *Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 247 (4th Cir. 2017); *Cruz v. Sessions*, 853 F.3d 122, 127 (4th Cir. 2017), as amended Mar. 14, 2017; *Hernandez-Avalos v. Lynch*, 784 F.3d 944,

949 (4th Cir. 2015); *Hernandez Cartagena v. Barr*, 977 F.3d 316, 320 (4th Cir. 2020) (quoting *Cedillos-Cedillos v. Barr*, 962 F.3d 817, 824 (4th Cir. 2020).

Under this long settled and repeatedly reaffirmed standard, the nuclear family of [FAMILY-NAME] a person [SELECT APPROPRIATE: FORMERLY ASSOCIATED WITH THE U.S. AND/OR AFHGAN GOVERNMENTS/MILITARY] is a cognizable particular social group because the nuclear family "provides a prototypical example of a particular social group cognizable in our asylum framework." *Hernandez Cartagena v. Barr*, 977 F.3d 316 at 320. Specifically, this group satisfies the requirements of immutability, particularity, and socially distinction. *See Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. at 215–18.

A. Immutability

The BIA and Fourth Circuit have recognized familial relationships as an archetypal example of immutability: "*Acosta* itself identifies 'kinship ties' as paradigmatically immutable . . . and the BIA has since affirmed that family bonds are innate and unchangeable." *Crespin-Valladares v. Holder*, 632 F.3d 117, 124 (4th Cir. 2011). "Accordingly, every circuit to have considered the question has held that family ties can provide a basis for asylum." *Id.* at 124–125 (citations omitted).

Here, the applicant's membership in their nuclear family is not a characteristic that they can change. Membership in one's biological family is quintessentially immutable; applicant cannot alter what family they were born into.

B. Particularity

As stated above, the Fourth Circuit has explained that the particularity requirement is "necessary to ensure there is a 'clear benchmark for determining who falls within the group.'" *Amaya v. Rosen*, 986 F.3d 424, 432-433 (4th Cir. 2021) (quoting *Matter of W-G-R-*, 26 I&N Dec. at 213-14)(internal citation omitted). Thus, particularity becomes a "definitional question—an inquiry meant to ensure there is an 'adequate benchmark' for setting the boundaries of the group." *Amaya* 986 F.3d at 432-436 (citing *Lizama v. Holder*, 629 F.3d 440, 447 (4th Cir. 2011*)*; *Matter of M-E-V-G-*, 26 I&N Dec. at 239 (describing particularity as ensuring the group has "discrete" and "definable boundaries"); *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007) (holding that the terms "wealthy" and "affluent" are "too amorphous to provide an adequate benchmark for determining group membership")).

The [FAMILY-NAME] family and the nuclear family of [NAME OF PERSON FORMERLY ASSOCIATED WITH THE U.S. GOVERNMENT/MILITARY AND/OR AFGHAN GOVERNMENT/MILITARY**]** are particular groups. The groups' boundaries are well-defined and are not so ambiguous as to make it difficult to tell who is a member of the [FAMILY-NAME] family and who is not. Unlike a full extended family, where members can join by marriage, the nuclear family of the [NAME OF PERSON FORMERLY ASSOCIATED WITH THE U.S. GOVERNMENT/MILITARY AND/OR AFGHAN GOVERNMENT/MILITARY] are each defined by biological lineage, something that is clearly defined, and which provides an easy and administrable test of inclusion and exclusion.

C. Social Distinction

Social distinction asks whether the "home society actually does recognize that group as being a 'distinct' and identifiable group." *Amaya*, 986 F.3d at 433. In *Matter of W-G-R-*, the Board wrote: "Our precedents have collectively focused on the extent to which the group is understood to exist as a recognized component of the society in question." 26 I. & N. Dec. at 217. The group must be set apart, or distinct, from other persons within the society in some significant way.

In the instant case, it is clear that family carries social distinction in Afghanistan as it carries in virtually every country. *See* Asylum Officer Basic Training Course, Asylum Eligibility Part III: Nexus and the Five Protected Characteristics 23, 33 (March 12, 2009) (explaining that "[i]n most societies … the nuclear family would qualify as a particular social group," and that in some "societies… [even] extended family groupings may have great social significance, such that they could meet the requirement of social 'visibility' or 'distinction.") This point is further established by the fact that the Taliban has adopted the practice of targeting the families of their political and religious enemies. *See e.g.*, *Taliban carrying out door-to-door manhunt, report says*, Aug 20, 2021, available at https://www.bbc.com/news/world-asia-58271797#:~:text=The%20Taliban%20have%20stepped%20up,and%20threaten%20their%20family%20members. ("The Taliban have stepped up their search for people who worked for NATO forces or the previous Afghan government, a report has warned. It said the militants have been going door-to-door to find targets and threaten their family members" and that the Taliban has issued threats "that, unless they give themselves in, the Taliban will arrest and prosecute, interrogate and punish family members on behalf of those individuals.")

D. Nexus

In the context of family-based claims, the Fourth Circuit has repeatedly rejected an "excessively narrow reading" of the nexus requirement. *See Hernandez-Avalos v. Lynch*, 784 F.3d 944, 950 (4th Cir. 2015). "Based largely on [its] interpretation of the term 'central,' [the court has] repeatedly reversed denials of applications for asylum or withholding of removal based on evidence in the record inconsistent with the position that family ties were a central reason for the persecution." *Diaz-Velazquez v. Barr*, 779 Fed.Appx. 154, 162 (4th Cir. 2019) (unpublished) (Quattlebaum, J., concurring). For example, in *Hernandez-Avalos*, the respondent claimed that she was persecuted on account of her relationship to her son, whom she would not let join a gang. *See Hernandez-Avalos v. Lynch*, 784 F.3d at 949. The agency denied her claim because "[i]t reasoned that she was not threatened because of her relationship to her son (i.e. family), but rather because she would not consent to her son engaging in a criminal activity." *Id.* The Fourth Circuit reversed, finding that the agency applied an "excessively narrow reading of the requirement" of nexus, and that nexus was satisfied because Hernandez-Avalos' relationship to her son was a central reason why she was threatened." *Id.* at 950; *see also Diaz de Gomez v. Wilkinson*, 987 F.3d 359, 361 (4th Cir. 2021) (again "[rejecting] the Board's 'excessively narrow' view of the nexus requirement, and [concluding] that [the petitioner] established that her familial ties were one central reason for her persecution").

The Fourth Circuit has also emphasized that "the relevant analysis is not whether the applicant's *family* was persecuted because of a protected ground, but rather whether the

applicant himself was persecuted because of a protected ground." *Hernandez Cartagena v. Barr*, 977 F.3d 316, 320 (4th Cir. 2020) (quoting *Alvarez Lagos*, 927 F.3d at 250) (emphasis in original). It matters not what the persecutor's motivation is to target the family, but instead whether the applicant's family "membership is a central reason why *she, and not some other person* was targeted." *Id.* at 322 (internal citations and quotations omitted). In *Hernandez Cartagena*, the nexus requirement was satisfied where a gang attacked the applicant in order to threaten her parents—the use of the applicant as a conduit to send a message to her parents sufficed, regardless of whether the message to her parents was itself on account of a protected ground. *See id*.

Here the Taliban has targeted members of this family because of their relationship to [NAME OF PERSON FORMERLY ASSOCIATED WITH THE U.S. GOVERNMENT/MILITARY AND/OR AFGHAN GOVERNMENT/MILITARY**]**. This nexus is clearly established by [INSERT FACTS RELATING TO THE TALIBAN'S MOTIVATION TO HARM THE APPLICANT, INCLUDING INFORMATION ABOUT WHY THE APPLICANT WAS SPECIFICALLY PERSECUTED, THE DETAILS ABOUT THE FAMILY TARGETED FOR THEIR WORK, SPECIFIC THREATS THE FAMILY RECEIVED GIVEN THE WORK HISTORY, AND SPECIFIC INFORMATION ABOUT HOW THE TALIBAN WOULD KNOW THEY WERE RELATED TO INDIVIDUALS WHO WORKED FOR GOVERNMENT].

VII. THE TALIBAN, THE DE FACTO AFGHAN GOVERNMENT, IS THE FEARED PERSECUTOR.

A. Legal Standard

The Applicant's past and feared persecutor is the Taliban, which currently controls the government in Afghanistan. The former Afghan government fell to the Taliban on August 15, 2021, making the Taliban the de facto government as recognized by Secretary of State Antony Blinken. Amanda Macias, *Secretary of State Blinken calls Taliban 'the de facto government of Afghanistan*' CNBC (Sept. 13, 2021, 10:30 PM), https://www.cnbc.com/2021/09/13/secretary-of-state-blinken-calls-taliban-the-de-facto-government-of-afghanistan.html. Therefore, applicant need not show that HIS/HER government is unable or unwilling to protect them. *See Boer–Sedano v. Gonzales*, 418 F.3d 1082, 1088 (9th Cir. 2005) (holding that it was legal error for the IJ to require petitioner to report persecution when the persecutors were police officers); *Baballah v. Ashcroft*, 367 F.3d 1067, 1078 (9th Cir. 2004) ("when the government is responsible for persecution, the [state actor] prong of our asylum inquiry is satisfied"); *Orellana v. Barr*, 925 F.3d 145,153; *accord Hernandez-Avalos v. Lynch*, 784 F.3d 944, 951-53.

Although it is clear that the current Afghan government is the feared persecutor in this case, even before the Taliban formally took over the government, the former Afghan government was unable to provide effective protection. "When an applicant claims that she fears persecution by a private actor, she must show that the government in her native country 'is unable or unwilling to control' her persecutor." *Orellana*, 925 F.3d 145 at 151 (4th Cir. 2019) (quoting *Hernandez-Avalos*, 784 F.3d at 949 (4th Cir. 2015)).

An applicant may satisfy the "unable or unwilling to control" element of INA § 101(a)(42)(A) with credible and unrebutted testimony regarding the results of prior interactions with her home government's authorities, provided such testimony comports with the assessments of country conditions experts. *See, e.g.*, *Hernandez-Avalos*, 784 F.3d at 953 ("Hernandez's credible testimony, which is corroborated by the State Department Report, is legally sufficient . . . to establish that the Salvadoran authorities are unable or unwilling to protect her from the gang members who threatened her."); *see also Orellana*, 925 F.3d at 145, in which the Fourth Circuit flatly rejected an adjudicator's conclusion that the government of El Salvador "was able and tried to protect" a female applicant whose "shocking case of domestic violence" mirrors the Hernandez family's almost fact for fact.

In its pointed criticism of the agency's finding that that applicant "had not carried her burden as to the Salvadoran government's response because she did not 'go[] through the entire process' in her effort to obtain protection[,]" the *Orellana* court highlighted several important principles:

(1) Credible testimony that an applicant placed "many" calls to the police, and that the police "often did not respond at all[,]" constitutes "legally significant evidence[.]"

(2) To "focus only on the isolated instances where police did respond [to an applicant's calls for help] constitutes an abuse of discretion."

(3) "Evidence of empty or token 'assistance' cannot serve as the basis of a finding that a foreign government is willing and able to protect an asylum seeker."

Id. at 152–53; *accord Hernandez-Avalos*, 784 F.3d at 952 (finding reversible error where adjudicator "ignored" text in applicant's affidavit explaining that local police would "routinely . . . release[]" her persecutors "within days" of arresting them, and characterizing adjudicator's decision to do so as "surprising" because applicant's testimony was "completely consistent with the . . . State Department Human Rights Report for" her home country).

Two other lessons from *Orellana* deserve special emphasis. First, "there is no requirement that an applicant persist in seeking government assistance when doing so (1) 'would have been futile' or (2) 'have subjected [her] to further abuse.'" 925 F.3d at 155 (quoting *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1058 (9th Cir. 2006)). Second, an applicant may satisfy the "unable or unwilling to control" requirement by demonstrating *either* her native government's inability *or* its unwillingness to control the private source of her persecution. *See id.* at 152 (quoting *Rahimzadeh v. Holder*, 613 F.3d 916, 912 (9th Cir. 2010)) ("the foreign government must be both willing *and able* to offer an applicant protection[.]").

Here the specific evidence in this case show that—even before the government collapsed—the Afghan government simply lacked the ability to prevent the Taliban from carrying out attacks. [INSERT FACTS RELATING TO ANY EVIDENCE OF REPORTING, SEEKING STATE PROTECTION, OR THE LACK OF REACTION FROM AUTHORITIES IN REGARDS TO PAST HARM INFLICTED BY THE TALIBAN.] Regardless of whatever protection may have hypothetically existed in the past, as shown in the next section, it has evaporated in the current environment.

B. Country conditions

The Taliban has been recognized as the de facto Afghan government by Secretary of State Antony Blinken during a congressional hearing in September 2021. Amanda Macias, *Secretary of State Blinken calls Taliban 'the de facto government of Afghanistan*' CNBC (Sept. 13, 2021, 10:30 PM), https://www.cnbc.com/2021/09/13/secretary-of-state-blinken-calls-taliban-the-de-facto-government-of-afghanistan.html. After former Afghan President Ashraf Ghani fled the country on August 16, 2021, Taliban militants entered the presidential palace Kabul in the hours after. *Photos: Afghanistan in crisis after Taliban takeover*, CNN (Sept. 9, 2021), https://www.cnn.com/2021/08/16/middleeast/gallery/taliban-afghanistan/index.html. In the month after, the Taliban took steps towards formalizing its rule of Afghanistan by appointing leaders. Susannah George et al., *Taliban Forms Acting Government in Afghanistan, Saying Permanent Leadership to be Named Soon, as Protests Grow*, WASHINGTON POST (Sept. 7, 2021, 9:08 PM), https://www.washingtonpost.com/world/2021/09/07/afghanistan-kabul-taliban-updates/. The Taliban continues to control Afghanistan, with several international organizations and nations meeting with the Taliban government as the representative for Afghanistan. *With Afghanistan "Hanging by a Thread", Security Council Delegates Call on Taliban to Tackle Massive Security, Economic Concerns, Respect Women's Equal Rights* MEETINGS COVERAGE AND PRESS RELEASES, UN.ORG (Jan. 26, 2022), https://www.un.org/press/en/2022/sc14776.doc.htm. The former government retains absolutely no control over the country. *Id.* As such, Applicant has established HE/SHE has satisfied this element of the refugee definition.

VIII. NAME's FEAR OF FUTURE PERSECUTION IS WELL-FOUNDED.

A. The Applicant's past persecution entitles HIM/HER to the presumption of a well-founded fear of future persecution.

If an applicant establishes that she has suffered harm rising to the level of past persecution on account of one of INA § 101(a)(42)(A)'s protected grounds, she is "presumed to have a well-founded fear of future persecution." *Naizgi v. Gonzales*, 455 F.3d 484, 486 (4th Cir. 2006); *see also* 8 C.F.R. § 1208.13(b)(1). Given the clear degree to which the applicant's past suffering in Afghanistan satisfies the legal criteria for past persecution, *see supra* Part II, and the extensive evidence establishing that this past persecution was perpetrated "on account of" HIS/HER protected characteristics, *see supra* Parts III–V, the applicant has earned the benefit of this presumption.

The Department of Homeland Security ("DHS") may rebut this presumption only by demonstrating, by a preponderance of the evidence, either that (1) there "has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in [her] country of nationality[,]" or (2) the applicant "could avoid future persecution by relocating to another part of [her] country of nationality[.]" 8 C.F.R. § 1208.13(b)(1)(i)(A)–(B), (ii); *see also Li Fang Lin v. Mukasey*, 517 F.3d 685, 693 (4th Cir. 2008) (stating the same). If—as is exceedingly likely here—DHS fails to carry this burden, then the applicant has established the requisite well-founded fear of future persecution. Not only can DHS not rebut the fear, but country conditions have also only worsened since the applicant suffered past persecution.

A Human Rights Watch report published in January 2022 describes how the Taliban takeover has worsened the rights crisis in Afghanistan. *Afghanistan: Taliban Takeover Worsens Rights Crisis*, HUMAN RIGHTS WATCH (Jan. 13, 2022), https://www.hrw.org/news/2022/01/13/afghanistan-taliban-takeover-worsens-rights-crisis (last visited Feb 28, 2022). Women's rights advances and media freedom have been rolled back, and many former government officials have been executed. *Id*. From mid-August 2021 through October 2021, the Taliban conducted summary killings or enforced disappearance of 47 former members of the Afghan national security forces, other military personnel, police and intelligence agents who had either surrendered to or been apprehended by the Taliban. *West Condemns Taliban Over "Summary Killings" of Ex-Soldiers and Police*, THE GUARDIAN (Dec. 5, 2021) https://www.theguardian.com/world/2021/dec/05/west-condemns-taliban-over-summary-killings-of-ex-soldiers-and-police. Furthermore, the Taliban has continued raids searching for those with ties to the U.S. government or former Afghan government officials. Recent raids are part of a massive search operation launched in Kabul and surrounding districts according to the Afghan ministry of interior. Susannah George, *Taliban Launches Sweeping House-to-House Raids across Kabul in Search of Weapons* WASHINGTON POST (Feb. 27, 2022), https://www.washingtonpost.com/world/2022/02/27/taliban-raids-afghanistan/ (last visited Feb 28, 2022). However, residents described mistreatment during the raids, including destruction of property, threats and physical assault. *Id*. If the applicant were to return to Afghanistan, there is a high probability they would be persecuted.

B. Insufficient evidence exists to rebut the Applicant's presumption.

In order for the Department to rebut an applicant's presumed well-founded fear via either prong of 8 C.F.R. § 1208.13(b)(1)(i)(A), it must "prove [that] its view of the evidence is '*more* probable' than the applicant's alternative explanation," and it must also "offer a 'reasoned explanation for why [its] view of the evidence is '*more* convincing than plausible inferences pointing in the other direction." *Ortez-Cruz v. Barr*, 951 F.3d 190, 198 (4th Cir. 2020). If the record is merely "ambiguous" or "inconclusive" as to whether DHS has carried its burden with respect to a given prong, "[t]hat's not good enough." *Id.*

Though it may often be quite "difficult . . . to prove that an individual in another country no longer poses a threat" to an applicant, *id.* at 200, or that the applicant "can safely and reasonably relocate to avoid a serial abuser[,]" *id.* at 202, the very challenge of these tasks "is consistent with the presumption. It puts a thumb on the scale for applicants who show past harm[,]" *id.* at 200, in recognition of the fact that "the 'past serves as an evidentiary proxy for the future.'" *Id.* at 196 (quoting *Matter of N-M-A-*, 22 I. & N. Dec. 312, 318 (BIA 1998)).

1. No fundamental change in circumstances has occurred.

A fundamental change in circumstances capable of rebutting an applicant's presumed well-founded fear "may relate to country conditions in the applicant's country or to the applicant's personal circumstances." U.S. Citizenship and Immigration Services, Well-Founded Fear: Training Module 42 (2019), *available at* https://www.uscis.gov/sites/default/files/files/nativedocuments/Well_Founded_Fear_LP_RAIO.pdf. "However, the change must directly affect the risk of harm the applicant fears on account of the protected ground in order to overcome the presumption." *Id.* "The BIA has emphasized that simply demonstrating a change .

. . cannot substitute for careful analysis of the facts of each applicant's individual circumstances." *Id.* Similarly, at least four federal courts of appeals have held that information "about general changes in [an applicant's home] country is not sufficient" to warrant a rebuttal of the applicant's presumed well-founded fear. *Id.*, n.67 (quoting *Rios v. Ashcroft*, 287 F.3d 895, 901 (9th Cir. 2002) (citing case law from the First, Second, Third, and Ninth Circuits). Instead, the "determinative issue is whether the changes are such that the particular applicant's fear of persecution is no longer well-founded." *Id.*

In *Ortez-Cruz*, which concerned the asylum application of a Honduran woman attempting to flee a violent male persecutor, the Fourth Circuit commented on the types of showings necessary to rebut the presumption of well-founded fear:

> "[T]here are ways in which the government could have shown that [the applicant's] circumstances had fundamentally changed. For example, it could have . . . demonstrated that Honduran law enforcement has improved at protecting . . . victims [of the type(s) of past persecution suffered by the applicant]; [or] elicited testimony from [experts] (or cited documentary evidence, if it exists) about the statistical unlikelihood of an abuser harming a previous victim[.]"

Id. at 200.

Here, if any change has occurred it is for the worse. Indeed, reports state that the Taliban takeover has been disastrous. In the three months after the Taliban takeover in Afghanistan, the United Nations received "credible allegations" of extrajudicial killings of numerous former Afghan national security forces and others associated with Afghanistan's former government, with most taking place at the hands of the ruling Taliban. *Taliban Rule Marked by Killings, "Litany of Abuses," UN says* ALJAZEERA (Dec. 14, 2021), https://www.aljazeera.com /news/2021/12/14/taliban-rule-marked-by-killings-litany-of-abuses-un-says. Given the circumstances, the future risk of harm is even more probable.

2. Internal relocation here is neither possible nor reasonable.

Section 1208.13(b)(2)(ii) sets forth a two-part inquiry for determinations regarding internal relocation. In order to rebut an applicant's presumed well-founded fear, DHS must establish that (1) she "could avoid persecution by relocating to another part of [her native] country"; and (2) "under all the circumstances it would be reasonable to expect [her] to do so." 8 C.F.R. § 1208.13(b)(2)(ii). Where the government is the persecutor, the persecution is presumed to be nationwide as it is presumed that there is no reasonable relocation option available. 8 C.F.R. § 1208.13(b)(2)(iii).

Here, even absent that presumption, relocation is not possible nor reasonable because the Taliban has complete control over the entire country. After former Afghan President Ashraf Ghani fled the country on August 16, 2021, Taliban militants entered the presidential palace Kabul in the hours after. Since then, the Taliban has served as the de facto government, with several world powers engaging with the Taliban as the Afghan government at various levels. Asad Hashim & Mohsin Khan Momand, *After Oslo Talks, What's Next for*

Afghanistan? ALJAZEERA.COM (Jan. 31, 2022), https://www.aljazeera .com/news/2022/1/31/after-oslo-what-next-for-afghanistan. There is no safe place in which to return, and even if there were, it would not be reasonable to expect NAME to return to in search for it.

C. Even without the benefit of a presumed well-founded fear, Applicant's fear of future persecution in Afghanistan is eminently well-founded.

The INA lists past persecution and well-founded fear of future persecution as separate, stand-alone bases for achieving refugee status. *See, e.g.* INA § 101(a)(42)(A) (using "or" to separate the two); 8 C.F.R. § 1208.13(b) ("The applicant may qualify as a refugee either because he or she has suffered past persecution or because he or she has a well-founded fear of future persecution."). Even in the absence of past persecution, NAME can establish HE/SHE has a well-founded fear of future persecution in Afghanistan.

1. Legal standard

To qualify as a refugee on the basis of well-founded fear of future persecution, an applicant "must show (1) that he has a subjective fear of persecution based on race, religion, nationality, social group membership, or political opinion, (2) that a reasonable person would have a fear of persecution in that situation, and (3) that his fear has some basis in objective reality." *Tang v. Lynch*, 840 F.3d 176, 181 (4th Cir. 2016) (quoting *Rusu v. INS*, 296 F.3d 316, 324 (4th Cir. 2002)). "In other words, an asylum applicant must demonstrate a subjectively genuine and objectively reasonable fear of future persecution on account of a statutorily protected ground." *Mirisawo*, 599 F.3d at 396 (4th Cir. 2010) (quoting *Abdel-Rahman v. Gonzales*, 493 F.3d 444, 449 (4th Cir. 2007)).

An applicant may demonstrate the objective reasonableness of her fear of future persecution by showing that "[t]here is a reasonable possibility of suffering such persecution" if she were to return to her home country. 8 C.F.R. § 1208.13(b)(2)(i)(B). The Supreme Court has indicated that even a ten percent likelihood of future persecution can render an applicant's fear well-founded. *See I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987) (agreeing with commentator's observation that an applicant's fear of suffering future persecution upon returning to a native land in which "every tenth adult male" is persecuted would be "only too apparent[ly] . . . well-founded"). Further, the Fourth Circuit has explained that "parallel threats directed at" an asylum applicant's family members will "strengthen the objective reasonableness of his fear." *Crespin Valladares*, 632 F.3d at 126.

To show an applicant's fear is well-founded, she can show that (1) she "possesses or is believed to possess a [protected] characteristic [her] persecutor seeks to overcome"; and that her persecutor (2) "is aware or could become aware that the applicant possesses (or is believed to possess) the characteristic"; (3) "has the capability to persecute the applicant"; and (4) "has the inclination to persecute" her. AOBTC Manual, *Well-Founded Fear*, March 13, 2009 (discussing *Matter of Mogharrabi*, 19 I. & N. Dec. 430 (BIA 1987) and its progeny). With respect to part (2) of this *Mogharrabi* test, the applicant must establish that "there is a reasonable possibility that the persecutor could become aware—or might believe—that the applicant possesses the characteristic." *Id.* Factors relevant to the applicant's satisfaction of part (3) include the extent

to which the applicant's native government is able or willing to control the persecutor, and the extent to which the persecutor has the ability to enforce its will throughout the country. *Id.* Factors relevant to the applicant's satisfaction of part (4) include "any previous threats or harm" made by the persecutor, as well as "the persecutor's treatment of individuals similarly situated to the applicant." *Id.*; *accord Baharon*, 533 F.32 at 232 (internal citations omitted) ("Violence or threats to one's close relatives is an important factor in deciding whether mistreatment sinks to the level of persecution. This is especially so where the harm inflicted on family members adds immediacy and severity to threats directed at [the applicant], making it more reasonable for the [applicant] to fear that he will suffer the same fate.").

Additionally, an applicant can also show they possess a well-founded fear of persecution without evidence that the applicant would be singled out individually if there is a "pattern or practice . . . of persecution of a group of persons similarly situated to the applicant" in that they possess the same protected characteristic as the applicant. *See* 8 C.F.R. 208.13(b)(2)(iii).

2. Application

a. Applicant possesses a protected characteristic.

[INCLUDE FACTS THAT PROVE THE CLIENT HAD A POLITICAL OPINION OF OPPOSITION TO THE TALIBAN IMPUTED TO THEM, AND/OR A RELIGIOUS VIEW ATTRIBUTED TO THEM BY THE TALIBAN BECAUSE OF THEIR ACTIVITIES. ADDITIONALLY, SHOW THAT THEY FIT WITHIN ONE OR MORE OF THE PARTICULAR SOCIAL GROUPS DESCRIBED ABOVE. REMIND ADJUDICATOR THAT THIS PERSON HAS A PROTECTED CHARACTERISTIC AND CITE TO FACTS THAT SHOW IT. HOWEVER, THERE IS NO NEED TO REPEAT HERE THE ANALYSIS ABOVE.]

b. The Taliban is aware or will become aware that Applicant possesses that characteristic.

[CITE TO FACTS IN I-589 OR OTHER SUPPORTING DOCUMCENTS THAT THE TALIBAN ALREADY KNOWS ABOUT PROTECTED CHARACTERISTIC OR COULD EASILY BECOME AWARE.]

c. The Taliban has the capability of persecuting Applicant.

[CITE TO FACTS IN THE RECORD THAT SHOW PAST HARM TO APPLICANT OR SIMILARLY SITUATED INDIVIDUALS AND THAT NO GOVERNMENT CURRENTLY EXISTS TO STOP THEM.]

d. The Taliban has the inclination to persecute Applicant on account of that protected characteristic.

[CITE TO FACTS IN THE RECORD ABOUT HOW TALIBAN HAS PERSECUTED SIMILARLY SITUATED INDIVDIVUALS]

3. Internal relocation here is neither possible nor reasonable.

Where the government is the persecutor, the persecution is presumed to be nationwide as it is presumed that there is no reasonable relocation option available. 8 C.F.R. § 208.13(b)(2)(iii).

Here, even absent that presumption, relocation is not possible nor reasonable because the Taliban has complete control over the entire country. After former Afghan President Ashraf Ghani fled the country on August 16, 2021, Taliban militants entered the presidential palace Kabul in the hours after. Since then, the Taliban has served as the de facto government, with several world powers engaging with the Taliban as the Afghan government at various levels. Asad Hashim & Mohsin Khan Momand, *After Oslo Talks, What's Next for Afghanistan?* ALJAZEERA.COM (Jan. 31, 2022), https://www.aljazeera .com/news/2022/1/31/after-oslo-what-next-for-afghanistan. There is no safe place in which to return, and even if there were, it would not be reasonable to expect NAME to return to in search for it. *See* 8 C.F.R. § 208.13(b)(2)(ii).

IX. THE APPLICANT IS NOT BARRED FROM SEEKING ASYLUM.

Any noncitizen who has "engaged in terrorist activity" is inadmissible. *See* 8 U.S.C § 1182 (a)(3)(B)(i)(I). However, Applicant has not engaged in any activities that would bar HIM/HER from seeking asylum. HE/SHE has never been a member of or provided any support of any kind to a terrorist organization and thus HE/SHE is not covered by the bars listed in INA § 212(a)(3)(B)(i).

NAME is also not subject to the safe third country bar to asylum because HE/SHE never passed through Canada, the only country with which the U.S. has a safe third country agreement. *See* INA 208(a)(2)(E); Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries, Can.-U.S., Dec. 5, 2002; *E. Bay Sanctuary Covenant v. Barr*, 385 F. Supp. 3d 922, 943 (N.D. Cal.), *aff'd sub nom. E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962 (9th Cir. 2020). HE/SHE is not subject to the firm resettlement bar because HE/SHE have never been offered any status in any third country that would permit HIM/HER to lawfully reside there. *Matter of A-G-G-*, 25 I. & N. Dec. 486, 486 (BIA 2011).

Conclusion

For the foregoing reasons, NAME has established that HE/SHE merits a grant of asylum in the United States. We respectfully request the Asylum Office to grant HIM/HER relief so that HE/SHE will not be forced to return to the country from which HE/SHE has escaped.

Respectfully submitted,

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