«DATE\_»

**BY REGISTERED MAIL**

USCIS Vermont Service Center

Attn: Asylum

75 Lower Welden Street

St. Albans, VT 05479-0589

Re: «Client\_First\_Name» «Client\_Last\_Name»

Letter Brief in Support of «Client\_First\_Name»’s Application for Asylum

Dear Sir or Madam:

I am writing to request that «Client\_First\_Name» «Client\_Last\_Name» be granted asylum because of the persecution «Pronoun» has suffered in «Pronoun» home country of «Home\_Country». «Client\_First\_Name» is entitled to a favorable grant of asylum in the United States based on «Pronoun» well-founded fear of future persecution due to «Pronoun» sexual orientation. Because «Client\_First\_Name» was «Sexual\_Orientation», «Pronoun» suffered verbal abuse, harassment, and threats at the hands of «Pronoun» persecutors.

**I. ARGUMENT**

1. **«Client\_First\_Name» meets the statutory definition of refugee**

An individual who meets the definition of a refugee under section 101(a)(42)(A) of the Immigration and Nationality Act (“INA”) and complies with the procedural requirements may be eligible for asylum. 8 U.S.C. § 1158(b)(1)(A)(2002); INA § 208(b)(1)(A). The applicant bears the burden of establishing that [Pronoun] qualifies as a refugee. 8 U.S.C. § 1158(b)(1)(B)(i); INA § 208(b)(1)(B)(i). The statutory burden may be met by either (1) demonstrating past persecution on account of a protected ground and thus, creating a presumption of a well-founded fear of persecution, or (2) demonstrating a well-founded fear of persecution on account of a protected ground. 8 C.F.R. § 1208.13(b)). A protected ground[[1]](#footnote-1) must be at least one central reason motivating the persecution. 8 U.S.C. § 1158(b)(1)(A); INA § 208(b)(1)(A).

In this case, «Client\_First\_Name» meets the definition of a refugee required for asylum. First, «Client\_First\_Name» has a well-founded fear of persecution in «Home\_Country» on account of «Pronoun» membership in a particular social group of «Particular\_Social\_Group». «Client\_First\_Name»’s membership in this particular social group is the central reason for «Pronoun» fear of future persecution and the «Home\_Country» government is unable to protect «Pronoun» from being persecuted or killed on account of being «Sexual\_Orientation».

1. **«Client\_First\_Name» timely filed «Pronoun» application for asylum**

In addition to substantive eligibility, an asylum applicant must show by clear and convincing evidence that «Pronoun» timely filed «Pronoun» asylum application within one year of «Pronoun» last arrival in the United States 8 U.S.C. § 1158(a)(2)(B); INA § 208(a)(2)(B). Here, «Client\_First\_Name» arrived in «Arrival\_City\_», «Arrival\_State» at «Arrival\_Airport\_» on «Arrival\_Date».

1. **«Client\_First\_Name» is entitled to asylum because of the well-founded fear that «Pronoun» will be threatened and harmed because of «Pronoun» sexual orientation**
2. **«Client\_First\_Name» has a well-founded fear of persecution in the future**

An asylum applicant may make an independent showing of well-founded fear of future persecution without regard to past persecution. Mihaylov v. Ashcroft*,* 379 F.3d 15, 21 (1st Cir. 2004). The test requires a showing that there is a “reasonable possibility” of persecution on account of a protected ground if returned. 8 C.F.R. § 1208.13(b)(2)(i); see also Sugiarto v. Holder, 586 F.3d 90, 96-97 (1st Cir. 2009) (citing INS v. Cardoza-Fonseca, 480 U.S. 421, 440 (1987)). The First Circuit in Sugiarto expanded upon the “reasonable possibility” standard, noting that:

[A]n applicant need not provide evidence of a ‘reasonable possibility’ of being ‘singled out individually for persecution’ in the event that the applicant establishes ‘a pattern or practice’ in her country of persecution of ‘a group of persons similarly situated to the applicant’ on account of a protected ground.

Sugiarto v. Holder, at 97.

According to the Supreme Court, a showing of “reasonable possibility” falls below the preponderance by the evidence standard and can be as low as a one in ten chance of future persecution. INS v. Cardoza-Fonseca, at 440.

The well-founded fear standard requires both subjective and objective findings. Id.; see also Matter of Acosta, 18 I&N Dec. 211, 224 (BIA 1985) (overruled on other grounds by Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987)); see also Aguilar-Solis v. INS, 168 F.3d 565, 572 (1st Cir. 1999). The subjective component is satisfied when the applicant demonstrates a genuine fear of return. Alvarez-Flores v. INS, 909 F.2d 1, 5 (1st Cir. 1990). The objective finding requires “that the applicant show ‘by credible, direct, and specific evidence . . . facts that would support a reasonable fear that the petitioner faces persecution.’” Id. (citing Diaz-Escobar v. INS, 782 F.2d 1488, 1492 (9th Cir. 1986)).

In this case, «Client\_First\_Name» both subjectively and objectively has a reason to fear return to Brazil.

* 1. **Fear of future persecution for «Client\_First\_Name» is objectively reasonable**

«Client\_First\_Name»’s fear of persecution is reasonable because of the increasingly targeted violence against LGBTQIA individuals in «Home\_Country».

* 1. **«Client\_First\_Name» has a subjective fear of future persecution**

The subjective element of the well-founded fear standard is met if the applicant’s fears are genuine. See Alvarez-Flores 909 F.2d at 5. Fear is a “subjective condition, an emotion characterized by the anticipation or awareness of danger.” See Matter of Acosta, 18 I&N Dec. at 221 (citing Webster’s Third New International Dictionary 831 (16th ed. 1971).

* 1. **«Client\_First\_Name» fear of persecution is country wide**

A fear of persecution is country wide if the threats and violence the applicant faces persists throughout the country**.** SeeKaiser v. Ashcroft, 390 F.3d 653, 660 (9th Cir. 2004) (receiving death threats over phone from two different cities 400 miles apart in Pakistan found to be country wide persecution.)

1. **«Client\_First\_Name» is a member of a cognizable particular social group defined by «Pronoun» sexual orientation**

An asylum applicant must demonstrate that the persecution alleged was inflicted or would be inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion. See INA § 101(a)(42)(A). The BIA has adopted a three-part test that must be met in order for a proposed particular social group to be cognizable. The social group must be (1) composed of individuals who share a common immutable characteristic, (2) socially distinct within the society in question, and (3) defined with sufficient particularity. See Matter of Acosta, 19 I&N Dec. 211, 233-34 (BIA 1985); Matter of M-E-V-G-, 26 I&N Dec. 227, 237 (BIA 2014); Matter of W-G-R-, 26 I&N Dec. 208, 212 (BIA 2014).

Having an LGBT identity has been found to be a social group by many courts. See Matter of Toboso-Alfonso, 20 I&N Dec. 819, 822-23 (BIA 1990) (holding that a Cuban gay asylum applicant had established membership in a particular social group defined by the status of being a homosexual); Kadri v. Mukasey, 543 F.3d 16 (1st. Circ. 2008). Here, «Client\_First\_Name»’s proposed social group of “«Particular\_Social\_Group»” possesses all characteristics required by the BIA’s test. Through the extensive supporting evidence, «Client\_First\_Name» has established that the particular social group is recognized by courts as an established particular social group and «Pronoun» is a member of it.

1. **«Client\_First\_Name»’s particular social group is defined by immutable characteristics**

‘Membership in a particular social group’ refers to persons who hold a ‘common, immutable characteristic’ . . . that 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, 233-34 (BIA 1985) (finding that membership in a taxi collective did not constitute membership in a particular social group because applicant was free to quit the group).

1. **«Client\_First\_Name»’s particular social group is socially distinct**

Social distinction, for purposes of particular social group, requires that “there must be evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.” Matter of W-G-R-, 26 I&N Dec. 208, 217 (BIA 2014); Matter of M-E-V-G-, 26 I&N Dec. 227, 238 (BIA 2014) (“the ‘social distinction’ requirement considers whether those with a common immutable characteristic are set apart, or distinct, from other persons within the society in some significant way”); Matter of C-A-, 23 I&N Dec. 951, 956-7 (BIA 2006) (“To be socially distinct, a group need not be seen by society; rather, it must be perceived as a group by society”).

1. **«Client\_First\_Name»** **particular social group is defined with the requisite particularity**

Particularity requires that the particular social group “be defined by characteristics that provide a clear benchmark for determining who falls within the group.” Matter of W-G-R-, 26 I&N Dec. 208, 214 (BIA 2014). The particular social group must “be discrete with definable boundaries—it must not be amorphous, overbroad, diffuse, or subjective.” Id. The terms used to describe the group must have commonly accepted definitions in the relevant society. Id. “Circuit courts have long recognized that a social group must have ‘defined boundaries’ or a ‘limiting characteristic,’ other than the risk of being persecuted, in order to be recognized.” Id. at 215. (citing Sanchez-Trujillo v. INS, 801 F.2d at 1576-77 (9th Cir. 1986)); Castellano-Chacon v. INS, 341 F.3d at 548 (6th Cir. 2003).

In Matter of M-E-V-G-, the BIA explained that the particularity requirement is “definitional in nature” and is used to determine the “outer limits of a group’s boundaries.” Matter of M-E-V-G-, 26 I&N Dec. at 241 (recognizing sexual orientation as falling into all three requirements of a particular social group); see also Matter of W-G-R- 26 I&N Dec. at 214 (requiring particular social groups be limited by parameters a society would recognize).

Here, the particular social group is based on sexual orientation and the BIA has found that it has the requisite particularity. See Matter of M-E-V-G-, 26 I&N Dec. at 245 (describing a prior BIA decision, Matter of Taboso Alfonso, articulating that homosexuals in Cuba is a particular social group) . [Particular Social Group] is identical to the particular social group cited to in Matter ov M-E-V-G- with the only difference being the country. Id. Therefore, “«Particular\_Social\_Group»” is a group with well-defined boundaries.

1. **«Client\_First\_Name»’s abusers persecuted «Pronoun» “on account of” «Pronoun» membership in a particular social group**

Another element of asylum is the nexus linking the protected ground and persecution. 8 U.S.C. § 1101(a)(42)(A); INA § 101(a)(42)(A). The Supreme Court has provided a basic standard for determining when persecution is “‘on account of’ an asserted ground.” INS v. Elias-Zacarias, 502 U.S. 478, 482 (1992). In INS v. Elias-Zacarias, the Supreme Court required that the applicant provide some evidence, direct or circumstantial, demonstrating that the underlying motivation to persecute the victim stems from a protected ground enumerated in the refugee definition. 502 U.S. 478, 483 (1992). The exact motivation of the persecutor need not be established; however, the asylum applicant does bear the burden of establishing facts on which “a reasonable person would fear that the danger arises on account of [a protected ground].” Matter of Fuentes, 19 I&N Dec. 658, 662 (BIA 1988). In mixed motive cases, the protected ground must be “‘one central reason’ for the mistreatment.” REAL ID Act § 101(a)(3); 8 U.S.C. § 1158(b)(1)(B)(i); Singh v. Mukasey, 543 F.3d 1, 5 (1st Cir. 2008) (quoting In re J-B-N, 24 I&N Dec. 208, 214 (BIA 2007)). In other words, the protected ground cannot be “‘incidental, tangential, superficial, or subordinate’” to another reason for the persecution. In re J-B-N, 24 I&N Dec. at 213.

Direct evidence of nexus includes statements or actions by the persecutor that suggests persecution on account of a protected ground. See USCIS Gender Guidelines, at 26 (“For example, in a domestic violence claim, an adjudicator would consider evidence that the abuser uses violence to enforce power and control over the applicant because of the social status that a woman may acquire when she is in a domestic relationship. This would include any direct evidence about the abuser's own actions”). In addition, the socio-cultural, legal, and political context in which the persecution occurs should be taken into account when inquiring about motive. Id.; Matter of S-P-, 21 I&N Dec. 486, 495-96 (B.I.A. 1996).

1. **The «Home\_Country» government is unable and unwilling to protect «Client\_First\_Name»**

Where the persecutor is a private actor, rather than the government itself, an applicant for asylum must demonstrate that the government was either unwilling or unable to protect her from her persecutor. Rosales Justo v. Sessions, 895 F.3d 154, 162 (1st Cir. 2018). Proper analysis of the “unwilling or unable” element of asylum considers an applicant’s access to meaningful and effective state protection in light of the record as a whole. Id. at 165-66. Failure to report private abuse to the government is not fatal to an applicant’s claim if the applicant can demonstrate that doing so would have been futile. Id. at 165; Morales-Morales v. Sessions, 857 F.3d 130, 135 (1st Cir. 2017); Matter of S-A-, 22 I&N Dec. 1328 (BIA 2000) (finding applicant had established a state action where country conditions evidence showed that applying to the police would have been futile and dangerous and that legal remedies were generally unavailable to women).

1. **«Client\_First\_Name» merits a favorable exercise of discretion**

In order to determine whether an applicant for asylum merits a discretionary grant of asylum, the adjudicator should consider the totality of circumstances, weighing both favorable and adverse factors. See Matter of Pula, 19 I&N Dec. 467, 473-74 (BIA 1987) (superseded in part by statute on other grounds as stated in Andriasian v. I.N.S., 180 F.3d 1033, 1043–44 & n. 17 (9th Cir.1999)) (“The danger of persecution will outweigh all but the most egregious adverse factors”). Factors to consider include: circumstances surrounding the applicant’s flight from her country of origin and general humanitarian considerations such as age, health, and family ties. Id.

**CONCLUSION**

For the foregoing reasons, «Client\_First\_Name» has established statutory eligibility for asylum.

Repectfully submitted,

«Client\_First\_Name» «Client\_Last\_Name»

By «Pronoun» attorneys,

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«Attorney\_One»

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«Attorney\_Two\_»

DATED: «DATE\_»

1. 8 U.S.C. § 1101(a)(42)(A) (defining “refugee” and listing the protected grounds as, “race, religion, nationality, membership in a particular social group, or political opinion”). [↑](#footnote-ref-1)