



Officer [REDACTED]  
San Francisco Asylum Office  
75 Hawthorne Street,  
San Francisco, CA 94102

[REDACTED], 2018

Re: [REDACTED] (A [REDACTED])

Dear Officer [REDACTED],

You interviewed our client, [REDACTED], on [REDACTED], [REDACTED], 2018 at 8:30am.

## I. INTRODUCTION

[REDACTED] experienced changed circumstances when he was diagnosed HIV+, and these circumstances qualify him for an exception to the one-year bar on asylum applications. [REDACTED] qualifies for asylum because the government of El Salvador is unwilling and unable to protect him and because, should he return to El Salvador, he has a well-founded fear of future persecution on account of his membership in particular social groups.

## II. STATEMENT OF FACTS

[REDACTED] was born in El Salvador on [REDACTED]. [REDACTED]'s father beat him with a belt, electric cord, and his hands, leaving [REDACTED] with bruises and marks. *See* Declaration at ¶ 4 and testimony.

[REDACTED] was abused and then repeatedly raped by a gang member named [REDACTED]. *See* Declaration at ¶ 6-8 and testimony. When [REDACTED] abused [REDACTED] he called him a *maricon* (faggot) and said that this was what he liked. *Id.*

Gang members beat up [REDACTED]'s three gay friends and threatened to kill them if they did not leave El Salvador. *See* Declaration at ¶ 36 and testimony.

In [REDACTED] of [REDACTED], [REDACTED]'s health declined, and he tested positive for HIV. Declaration at ¶ 30. Not long after this, in [REDACTED] of 2017, [REDACTED] was raped by a stranger. Declaration at ¶ 32. While dealing with his HIV+ condition and the recent rape, [REDACTED] was referred by a social worker to the [REDACTED] where he was able to attend an appointment on [REDACTED], 2018. *See* Asylum Application Addendum Signature Date. [REDACTED] interviewed [REDACTED] regarding his immigration history and helped him to submit an I-589 at that time. Declaration at ¶ 33. USCIS received [REDACTED]'s I-589 on [REDACTED], 2018.



█████ fears returning to El Salvador because he will face discrimination and violence on account of his identity as a gay HIV+ man. Declaration at ¶ 35-36 and testimony. In █████'s experience, people in El Salvador do not keep HIV status secret, and many jobs will even require a doctor's letter confirming the applicant's health status. *See id.* █████ believes that he will be identifiable as an HIV+ man because the clinics where he would have to go to seek treatment do not keep this information confidential, if jobs required him to disclose it they would also not keep it confidential, and because if he was unable to get his medication he would appear sick. *Id.* █████ also testified that he believes that people in El Salvador will assume he is gay if they find out that he is HIV+. *Testimony.* █████ is afraid that he will be unable to access life-saving HIV medication because it is expensive and inaccessible in El Salvador. Declaration at ¶ 35 and testimony. █████ fears persecution as a gay man in El Salvador because he previously observed how gay men are treated with insults, his gay friends were beaten and their lives threatened for being gay, because he himself was raped for being gay, and because he has seen news stories documenting violence against gay men, particularly from the gangs, and indifference from police in El Salvador. *See* Declaration at ¶ 36; *see also* Country Conditions Exhibits A-Z. Should he return to El Salvador, █████ fears persecution on account of his identity as a gay man with HIV. Declaration at ¶ 35-36 and testimony.

### III. LEGAL ARGUMENTS

- a. █████ **qualifies for an exception to the one-year bar to asylum because he experienced changed circumstances that materially affect his eligibility for asylum**

█████'s asylum application was filed more than one year after his last entry to the United States, but his changed circumstances—his HIV+ diagnosis—qualify him for an exception to the one-year bar.

The Immigration and Nationality Act provides for a one-year filing deadline for asylum applications. INA § 208(a)(2)(B). If an application is filed after the one-year deadline, the applicant has the opportunity to prove that he “qualifies for an exception” to the one-year filing deadline. 8 CFR § 208.4(a)(2)(i)(B). The two enumerated exceptions are “changed circumstances which materially affect the applicant’s eligibility for asylum [and] extraordinary circumstances relating to the delay in filing the application.” INA § 208(a)(2)(D). In order to qualify for an exception to the one year bar under the changed circumstances exception, the applicant must demonstrate that there are “[changed] circumstances that materially affect the applicant’s eligibility for asylum,” including activities “the applicant becomes involved in outside the country of feared persecution that place the applicant at risk,” and that the application was filed “within a reasonable period given those ‘changed circumstances.’” 8 CFR 208.4(a)(4)(i)(B)-(ii).

█████ was diagnosed HIV+ in September 2017 and his change in medical condition qualifies as a changed circumstance for the purposes of overcoming the one-year filing deadline. These circumstances materially affect █████'s eligibility for asylum because he now fears intensified persecution on account of his HIV+ status, he fears he will be more readily identifiable as a gay man, and he fears additional suffering in the event he is unable to access necessary HIV treatment



medications. ██████'s delay in filing is reasonable given the changed circumstances because he sought legal representation immediately following his HIV+ diagnosis.

**i. ██████ experienced changed circumstances**

██████'s HIV+ diagnosis qualifies as a changed circumstance for the purposes of an exception to the asylum one year filing deadline. *See Manani v. Filip*, F.3d, 2009 U.S. App. LEXIS 1980, 3 (8th Cir. 2009) (asylum application denied on unrelated grounds). Changed circumstances include “[c]hanges in the applicant's circumstances that materially affect the applicant's eligibility for asylum, including changes in...activities the applicant becomes involved in outside the country of feared persecution that place the applicant at risk.” 8 CFR § 208.4(a)(4)(i)(B). Here, ██████'s HIV+ diagnosis “materially affect[s]” his eligibility for asylum because he now has an intensified “well-founded fear of persecution on account of [his] membership in a particular social group,” namely HIV+ gay men from El Salvador. *See* INA § 101(a)(42). Additionally, his current reliance on HIV treatments qualify as new “activities” which “place [him] at risk” because he will likely be unable to access quality HIV treatments in El Salvador and will face additional persecution when seeking this medication. *See* Declaration at ¶ 35, testimony.

**ii. ██████'s changed circumstances directly related to his delay in timely filing for asylum**

██████ only decided to apply for asylum after receiving his HIV+ diagnosis because this change in his circumstances increased the danger that he would die if he returned to El Salvador. *See* Declaration at ¶ 35. After receiving his HIV+ diagnosis, ██████ was informed that his new diagnosis could qualify him for asylum and he was referred by his doctors to speak with an attorney at the ██████. Declaration at ¶ 33. He met with the attorney there and mailed his application for asylum within six months of his HIV diagnosis.

██████ has an intensified and well-founded fear of persecution, should he return to El Salvador, based on his membership in the particular social groups of gay Salvadoran men who have sex with men and HIV+ gay men from El Salvador. *See* Declaration at ¶¶ 35-36. According to a World Bank study, “54 percent of the Salvadoran population believes that HIV/AIDS is God’s way of punishing prostitutes and homosexuals for their lifestyle.” *See* Exhibit Z. As an HIV+ gay man, ██████ is likely to experience discrimination, verbal and physical harassment, violence, and potentially life-threatening discrimination when seeking medical treatment. *See* Declaration at ¶ 33, testimony, and U.S. Dept. of State report on Human Rights in El Salvador 2017. Because ██████'s fear of returning to El Salvador is so intensified by his new HIV+ diagnosis, this change in ██████ circumstances should qualify him for an exception to the one year bar.

**iii. ██████'s delay in filing his asylum application was reasonable given the circumstances**

After receiving his HIV+ diagnosis in ██████ 2017, ██████ was raped in ██████ of 2017, and despite this he sought legal assistance and was able to meet with an attorney within six months of his HIV+ diagnosis. Declaration at ¶¶ 29-32. ██████ was able to complete and file his asylum application within six months after receiving his HIV+ diagnosis, and this time should be



considered a reasonable delay given his circumstances. The Asylum Officer Training Guide encourages Asylum Officers “to give applicants the benefit of the doubt in evaluating what constitutes a reasonable time in which to file” and to consider “[a]n applicant’s education and level of sophistication, *the amount of time it takes to obtain legal assistance*, any effects of persecution and/or *illness*, [and] when the applicant became aware of the changed circumstance.” Asylum Officer Basic Training: One Year Filing Deadline 22 (March 23, 2009) (emphasis added). Additionally, ██████’s HIV+ diagnosis and subsequent rape may be considered akin to an extraordinary circumstance, and thus further rationalize his delay in filing for asylum.

The Chicago Asylum office has found that an HIV+ diagnosis qualifies as a change in circumstances for the purposes of overcoming the one-year filing deadline, but that a delay of 16 months was unreasonable given the circumstances. *Manani v. Filip*, F.3d, 2009 U.S. App. LEXIS 1980, 3 (8th Cir. 2009). ██████ was diagnosed HIV+ in ██████ 2017 and his asylum application was received by USCIS on ██████, 2018. See Exhibit 5, letter confirming HIV diagnosis from Asian Health Services; Applicant’s I-589 receipt. This filing was six months from when he was diagnosed HIV positive. Given ██████ was able to file for asylum in significantly less than *half the time* of the *Manani* case, while dealing with the turmoil of being the victim of a traumatic rape, his delay in filing should be considered reasonable.

- b. ██████ qualifies for asylum because he has a well-founded fear of persecution on account of his membership in a particular social group (HIV+ gay men from El Salvador) should he return to El Salvador, and because the government of El Salvador is unwilling and unable to protect him from future persecution.**

Should he be forced to return to El Salvador, ██████ has a well-founded fear of future persecution on account of his gay identity and HIV+ status. In order to qualify for asylum an applicant must have suffered past persecution or have a well-founded fear of future persecution on account of his race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). ██████ is a member of the particular social group gay men from El Salvador who are HIV+. He fears intensified discrimination and violence on account of his identity and the stigma in El Salvador surrounding HIV. Declaration at ¶ 35. Additionally, ██████ is unlikely to receive protection or assistance from the Salvadoran government. See Country Conditions Exhibits A-M. Accordingly, ██████ should be granted asylum.

#### IV. CONCLUSION

For the foregoing reasons, ██████ respectfully requests that his application for asylum be approved.

Respectfully Submitted,

