ZAIA LAW LLC
Guilherme Castilho Zaia, Esq. (SBN 334469)
11810 Grand Park Ave
North Bethesda, MD 20852
(267) 637-6123

Non-Detained

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
450 Main Street, Room 628
Hartford, CT 06103

In the Matter of	
Joao Ricardo Sampaio Pinto	**File No. A. 241-136-264**
In Removal Proceedings	

Immigration Judge: **Straus, Michael W.** Next Hearing Date: **August 20, 2026 at 1:00 PM**

RESPONDENT'S LEGAL BRIEF IN SUPPORT OF APPLICATION FOR ASYLUM, WITHHOLDING OF REMOVAL AND PROTECTION UNDER CAT

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RESPONDENT'S BRIEF IN SUPPORT OF APPLICATION FOR ASYLUM, WITHHOLDING OF REMOVAL, AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE

Respondent João Ricardo Sampaio Pinto ("Respondent"), by and through undersigned counsel, respectfully submits this brief in support of his application for asylum pursuant to INA § 208, 8 U.S.C. § 1158, or in the alternative, for withholding of removal pursuant to INA § 241(b)(3), 8 U.S.C. § 1231(b)(3), and for protection under the Convention Against Torture ("CAT"), 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18. Respondent seeks asylum based on his past persecution and well-founded fear of future persecution on account of his membership in the following particular social groups: (1) "Brazilian Gay Men"; (2) " LGBTI+ Individuals in Brazil"; and (3) "Homosexual Males with Female Traits in Brazil." Independently and cumulatively, Respondent also seeks asylum on account of his political opinion of opposition to the mistreatment of LGBTI+ Individuals in Brazilian culture, and his political opinion of opposition to the oppression exerted against him by his former partner, Rafael Rodrigues. The persecutors are Respondent's former partner, Rafael Rodrigues, and Brazilian society at large — actors whom the Brazilian government is unable and unwilling to control. In the alternative, Respondent is entitled to withholding of removal and to protection under the Convention Against Torture.

STATEMENT OF FACTS[1]

João Ricardo Sampaio Pinto ("Mr. Sampaio Pinto" or "Respondent") is a gay man born on September 24, 1984, in the city of Poxoréu, in the state of Mato Grosso, Brazil. From early childhood, he displayed prominently feminine traits and behaviors that drew immediate hostility from his family, his community, and his school environment. That hostility escalated, as he aged, from relentless bullying and sexual abuse as a child to a controlling and violent adult intimate relationship, and ultimately to a political climate so hostile that remaining in Brazil became life-threatening. Throughout his life in Brazil, Mr. Sampaio Pinto could not safely be who he is.

A. Background and Childhood in Poxoréu

Poxoréu is a small, deeply conservative city in the interior of Mato Grosso, and Respondent's childhood there was defined by isolation, shame, and concealment.[2] From a very early age, Respondent displayed markedly feminine traits: he played with dolls and playhouses, was interested in things culturally associated with girls, loved pop divas' music, and observed how women dressed.[3] These traits made him immediately visible as different. His neighbors called him effeminate for playing with dolls. Classmates called him "fag," told him he only had friendships with girls, and told him he should use the girls' restroom. His sisters knew he was bullied but never addressed it; there was no dialogue about the issue within the family.[4]

At home, Respondent's father, João Pinto Filho, was physically and verbally abusive toward Respondent, his mother, and his three sisters.[5] Respondent always felt invisible at home; he believed this was because of his sexuality, and that his parents feared what people in town would say.[6] He was only able to come out as homosexual to his parents at age 26. His mother, a devout Seventh-day Adventist, cried and said she did not agree — that, according to the Bible,

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[1]This Statement of Facts is based on the following Respondent's documents: João Ricardo Sampaio Pinto's Passport (Evidence); Declaration of João Ricardo Sampaio Pinto (Evidence Part 02, Exh. 1); Country Conditions Reports (Evidence Part 01, CC1–CC11); Letter of Support written by Maysa Gomes Rabelo (Evidence Part 03, Exh. 1); Letter of Support written by Amanda Cristina Sampaio Vieira Pinto (Evidence Part 03, Exh. 2); Letter of Support written by Danyelly Sampaio Pinto Souza (Evidence Part 03, Exh. 3); Letter of Support written by Ranielly Correia dos Santos (Evidence Part 03, Exh. 4).
[2]*See* Respondent's Declaration, Evidence Part 02, ¶¶ 1, 3.
[3]*See* Respondent's Declaration, Evidence Part 02, ¶¶ 10–11.
[4]*See* Respondent's Declaration, Evidence Part 02, ¶¶ 9–10.
[5]*See* Respondent's Declaration, Evidence Part 02, ¶¶ 4–5.
[6]*See* Respondent's Declaration, Evidence Part 02, ¶ 6.

homosexuality was very wrong.[7] He eventually stopped attending church after hearing that God does not like the behavior of gay people.[8]

The sexual abuse Respondent suffered as a child was severe. When he was approximately eight years old, older neighborhood men demanded oral sex from him on multiple occasions, threatening to tell his parents if he refused, and calling him derogatory slurs. Respondent complied out of fear.[9] At approximately nine years old, a highly respected physical education teacher took Respondent's hand during a car ride and placed it on the teacher's chest and penis, and also placed his own hand on Respondent's penis. The teacher later invited Respondent to his home, but Respondent declined. Respondent could not tell anyone; he felt cornered.[10] As he grew older, Respondent moved to Rondonópolis to work and study,[11] and later to São Paulo, in part to distance himself from his family, where he enrolled in a Hospitality Management course at Uninove.[12]

B. The Abusive Relationship with Rafael Rodrigues

One day, at a bar near the university in São Paulo, Respondent met Rafael Rodrigues, who falsely claimed to be a student at the same university.[13] Their relationship lasted approximately six months.[14] The first months were relatively calm, but from the fifth month onward, things deteriorated markedly as Rafael began using cocaine.[15] Whenever Respondent attempted to end the relationship, Rafael assaulted and threatened him, saying he would kill him and that his body would be found long after Rafael killed him because no one would miss him.[16] During these confrontations, Rafael broke household items, pushed Respondent and left bruises, and told him directly that "gay men deserved to suffer." Rafael was, in Respondent's own words, a homophobic gay man.[17] Rafael systematically destroyed Respondent's self-esteem, telling him

[7] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 7–8.
[8] *See* Respondent's Declaration, Evidence Part 02, ¶ 8.
[9] *See* Respondent's Declaration, Evidence Part 02, ¶ 13.
[10] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 14–16.
[11] *See* Respondent's Declaration, Evidence Part 02, ¶ 17.
[12] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 18–19.
[13] *See* Respondent's Declaration, Evidence Part 02, ¶ 20.
[14] *See* Respondent's Declaration, Evidence Part 02, ¶ 22.
[15] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 24–25.
[16] *See* Respondent's Declaration, Evidence Part 02, ¶ 28.
[17] *See* Respondent's Declaration, Evidence Part 02, ¶ 29.

he should be grateful Rafael was with him because Rafael was more attractive. Respondent's self-esteem was so destroyed he eventually spent money on a gastric balloon procedure that caused him stomach problems.[18]

The abuse escalated into sexual exploitation. Rafael revealed that he had secretly filmed Respondent during a sexual encounter and demanded 20,000 reais in exchange for not releasing the recording.[19] Unable to pay, Respondent remained in the relationship out of fear.[20] Rafael then began bringing other men to Respondent's home and blackmailing Respondent into unwanted sexual contact with them under threat of releasing the video. They used cocaine and marijuana in Respondent's home, and Respondent felt he could say nothing.[21] On one occasion, Respondent discovered a nude photograph of himself taken without his knowledge during one of these encounters. He described feeling like garbage, completely powerless, and stated that the only reason he did not take his own life was that he lacked the courage.[22]

Respondent did not report this abuse to the Brazilian police. In his own words, the police do not care about this kind of thing; they would say it was just "gay drama."[23] This assessment is corroborated by country conditions evidence documenting that Brazilian authorities routinely fail to credit same-sex domestic violence complaints, leaving gay men to endure abuse in silence.[24] His sister Amanda corroborates that the family tried to convince Respondent to seek help but recognized that in Mato Grosso there is "a great deal of resistance against homosexuality" that made reporting futile.[25] His sister Danyelly attests that Rafael held Respondent "in captivity," isolating him from family and friends, and that reporting would have been futile and dangerous.[26] The trauma from the relationship was so severe that Respondent went to therapy in Brazil. Even today, he continues to fear Rafael will leak the video.[27]

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[18]*See* Respondent's Declaration, Evidence Part 02, ¶¶ 30–31.
[19]*See* Respondent's Declaration, Evidence Part 02, ¶¶ 34–36.
[20]*See* Respondent's Declaration, Evidence Part 02, ¶ 37.
[21]*See* Respondent's Declaration, Evidence Part 02, ¶ 38.
[22]*See* Respondent's Declaration, Evidence Part 02, ¶ 39.
[23]*See* Respondent's Declaration, Evidence Part 02, ¶ 40.
[24]*See* Country Conditions, CC10 (Domestic violence also exists among gay couples; understand - UOL News Portal), Evidence Part 01, Exh. 10.
[25]*See* Letter of Support written by Amanda Cristina Sampaio Vieira Pinto, Evidence Part 03, Exh. 2.
[26]*See* Letter of Support written by Danyelly Sampaio Pinto Souza, Evidence Part 03, Exh. 3.
[27]*See* Respondent's Declaration, Evidence Part 02, ¶¶ 43, 45.

C. Deteriorating Political Climate and Final Departure from Brazil

Respondent traveled to the United States on tourist visas in 2013 and 2014. In October 2015, he entered for the third time and remained for six years — the period of his life in which he first felt free to be who he is, walking down the street without shame.[28] In May 2022, he returned to Rondonópolis.[29] His return coincided with the 2022 presidential election, during which incumbent President Bolsonaro's re-election campaign was openly hostile toward LGBTQ+ people. Respondent describes this as a very turbulent period; his mental health completely deteriorated, and he was terrified to go out in public.[30]

During this period, Respondent made a public social media post defending LGBTQ+ rights during the presidential election and received a wave of hateful responses, including statements that gay people were abominations and suggestions of "treatment" for homosexuals.[31] Shortly afterward, at a bar with friends, a group carrying Brazilian flags declared that the "era of gays" would soon be over. Respondent panicked and understood he needed to flee the country.[32] He left São Paulo and traveled through Panama, Honduras, and Belize before making a land crossing into Mexico, presenting himself to U.S. authorities at Tijuana, and being sent to Connecticut.[33] He did not seek protection in transit countries because, as in Brazil, those places have high rates of violence against LGBTQ+ people.[34]

ARGUMENT

A. Respondent Is Eligible for Asylum

To qualify for asylum, an applicant must establish that he is a "refugee" — a person unable or unwilling to return to his country of nationality "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." INA §§ 101(a)(42)(A), 208(b)(1)(A), 8 U.S.C. §§

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[28] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 46–48.
[29] *See* Respondent's Declaration, Evidence Part 02, ¶ 49.
[30] *See* Respondent's Declaration, Evidence Part 02, ¶ 50.
[31] *See* Respondent's Declaration, Evidence Part 02, ¶ 55.
[32] *See* Respondent's Declaration, Evidence Part 02, ¶ 51.
[33] *See* Respondent's Declaration, Evidence Part 02, ¶ 57.
[34] *See* Respondent's Declaration, Evidence Part 02, ¶ 58.

1101(a)(42)(A), 1158(b)(1)(A). The protected ground must be "at least one central reason" for the persecution. INA § 208(b)(1)(B)(i). An applicant who establishes past persecution is entitled to a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). Even absent past persecution, a well-founded fear exists where there is only a ten percent probability of persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431, 440 (1987).

1. The Harm Respondent Endured Rises to the Level of Past Persecution

Persecution encompasses "a threat to life or freedom of, or infliction of suffering or harm upon, those who differ in a way regarded as offensive." *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), modified on other grounds by *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). Adjudicators must weigh the "cumulative" significance of multiple instances of harm. *Poradisova v. Gonzales*, 420 F.3d 70, 79 (2d Cir. 2005) (finding reversible error where the IJ erred in "addressing the severity of each event in isolation, without considering its cumulative significance"); *see also Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1998) (beatings, threats, vandalism, and humiliation may constitute persecution "in the aggregate").

Significant portions of the harm Respondent suffered occurred during his childhood. The United Nations Guidelines for Child Asylum Claims provide that "[t]he harm a child fears or has suffered . . . may be relatively less than that of an adult and still qualify as persecution," and that "[i]ll-treatment which may not rise to the level of persecution in the case of an adult may do so in the case of a child." *UNHCR Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22, ¶¶ 10, 15 (Dec. 22, 2009). In *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045 (9th Cir. 2007), the Ninth Circuit acknowledged that the harm a child fears or has suffered may qualify as persecution on a lower threshold than for adults. This reflects the unique circumstances of children, including their limited capacity to cope with harm, their heightened vulnerability, and the distinct psychological, social, and physical impact that persecution may have on their development. The Second Circuit has similarly recognized that the combination of circumstances "could well constitute persecution to a small child totally dependent on his family and community" and the IJ should view the harm inflicted "from the perspective of a small child". *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006). The United States Bureau of

Citizenship and Immigration Services' own Guidelines for Children's Asylum Claims confirm that childhood harm warrants heightened consideration. *See Guidelines for Children's Asylum Claims*, INS Policy and Procedural Memorandum (Asylum and Refugees), at 14, (Dec. 10, 1998).

a. Sexual Abuse as Persecution

Sexual abuse constitutes one of the most egregious forms of persecution. Physical violence, such as rape, torture, sexual assault, and beatings, has consistently been treated as persecution. *Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000). In *Lopez-Galarza v. INS*, 99 F.3d 954, 961-62 (9th Cir. 1996), the Ninth Circuit held that sexual abuse may constitute persecution. The BIA has likewise recognized that rape is "an extreme form of cruel and inhuman treatment" that qualifies as persecution and constitutes mistreatment sufficiently severe for protection under the Convention Against Torture. *See Matter of H-C-R-C-*, 28 I&N Dec. 809, 813 (BIA 2024).

The physical, psychological, and emotional harms resulting from rape are profound and frequently long-lasting, with enduring effects on survivors' health, well-being, and development, inequivocally rising to the level of persecution. "Rape commonly results in severe and long-lasting psychological sequelae that are complex and shaped by the particular social and cultural context in which the rape occurs.... Commonly reported feelings at the time of the rape include shock, a fear of injury or death that can be paralyzing, and a sense of profound loss of control over one's life." *Lopez-Galarza v. I.N.S.*, 99 F.3d 954, 962 (9th Cir. 1996)

Respondent suffered repeated sexual abuse throughout his childhood: at approximately eight years old, older neighborhood men coerced him into performing oral sex on multiple occasions by threatening to expose him to his parents;[35] at approximately nine years old, a respected teacher sexually touched him during a car ride.[36] These acts were not reported to law enforcement or even to his family, given the entrenched prejudice against homosexuals and Respondent's knowledge of the futility of reporting. "Children may lack the cognitive ability to understand that they are being abused, and that beatings and rapes by adults they should be able to trust are crimes" and "may not only fear retaliation for reporting to authorities, but may also be practically unable to do so because their day-to-day actions are controlled by their abusers". *Bringas-Rodriguez v. Sessions,* 850 F.3d 1051, 1071 (9th Cir. 2017). In Respondent's case, the

[35] *See* Respondent's Declaration, Evidence Part 02, ¶ 13.
[36] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 14–16.

pattern of sexual abuse only confirmed the notion of impunity, and Mr. Sampaio Pinto lived with the profound and lasting trauma such harm inflicted on him at such a young age.

As an adult, he was again repeatedly coerced into unwanted sexual contact with men Rafael brought to his home, under threat of having an intimate video released.[37] Each of these events, directed at Respondent because of his sexual orientation and perceived female traits, on the aggregate, unequivocally rise to the level of persecution. Viewed through the heightened standard applicable to childhood harm, each incident independently reaches the level of persecution.

b. Psychological Harm as Persecution

Persecution can include not only physical harm but also psychological harm. *Kovac v. INS*, 407 F.2d 102 (9th Cir. 1969) (Congress's removal of the word "physical" from the statutory asylum requirement expanded refugee protection to other forms of harm); *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004) ("Persecution may be emotional or psychological, as well as physical").

The psychological harm Respondent suffered was severe, sustained, and directly caused by his sexual orientation and gender expression. He internalized shame so deeply that he was forced to suppress his mannerisms and identity throughout his life in Brazil.[38] The relationship with Rafael brought him to the brink of suicide: upon discovering a nude photograph taken of him without consent, Respondent described feeling like garbage and completely powerless, and driven to the point of contemplating suicide.[39] The trauma was severe enough that he sought therapy in Brazil.[40] He could not sleep for a year out of fear that Rafael would release the video.[41] This level of sustained, identity-targeted psychological harm independently rises to the level of persecution.

c. Cumulative Harm

[37] *See* Respondent's Declaration, Evidence Part 02, ¶ 38.
[38] *See* Respondent's Declaration, Evidence Part 02, ¶ 44.
[39] *See* Respondent's Declaration, Evidence Part 02, ¶ 39.
[40] *See* Respondent's Declaration, Evidence Part 02, ¶ 43.
[41] *See* Respondent's Declaration, Evidence Part 02, ¶ 45.

Viewed cumulatively, as the law requires, the harm Respondent suffered plainly rises to the level of persecution. From childhood sexual abuse by neighborhood men who exploited his fear of exposure, to sexual molestation by a trusted teacher, to relentless bullying, to family rejection, to an adult relationship defined by physical assault, death threats, blackmail, and coerced sexual contact[42] — each element reinforces the others. This is a sustained, lifelong pattern of harm directed at Respondent because of who he is. *See Poradisova*, 420 F.3d at 79; *Matter of O-Z- & I-Z-*, 22 I&N Dec. at 25-26.

2. Respondent Is a Member of the Particular Social Group of "Brazilian Gay Men"

A "particular social group" requires members sharing (1) a common immutable characteristic, (2) defined with particularity, and (3) social distinction within the relevant society. *Matter of Acosta*, 19 I&N Dec. 211, 233 (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, 212-18 (BIA 2014).

Immutability: Respondent's homosexuality is a characteristic beyond his power to change and so fundamental to his identity that he should not be required to change it. In *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990), the Board recognized that the "status of being a homosexual" satisfies this standard. The Board reaffirmed this in *Matter of C-G-T-*, 28 I&N Dec. 740, 745-46 & n.7 (BIA 2023), confirming that sexual orientation remains a cognizable particular social group and that adjudicators "should not expect a respondent to hide his or her sexual orientation."

Particularity: "Brazilian Gay Men" is bounded by two objective, verifiable criteria — sexual orientation (gay men) and nationality (Brazil) — yielding a determinate, non-amorphous class. This formulation mirrors the structure approved in *Matter of C-G-T-*, which recognized "homosexual Dominican males" as sufficiently particular. The Ninth Circuit has held that "all alien homosexuals are members of a 'particular social group.'" *Karouni v. Gonzales*, 399 F.3d 1163, 1172 (9th Cir. 2005).

[42] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 9–16, 28–29, 34–39.

Social Distinction: Gay men are recognized as a socially distinct class within Brazilian society, as documented by country conditions evidence cataloguing targeted persecution of this population.[43] In 2022, one LGBTQIAPN+ person was murdered in Brazil every 32 hours in the country in 2022, and homosexual males were the main targets, accounting for 35.16% of these murders[44]. In a single year, sexual and gender dissident people faced an increase in violence of 39.4%, whereas 72.5% of the victims were homosexual.[45] This is not a mere coincidence: such extreme violence is specifically directed at LGBTQIAPN+ people, notably gay men, *because of* their sexual identity.

Nexus: The harm Respondent suffered was directed at him on account of his sexual orientation. His childhood abusers explicitly targeted him as a perceived homosexual, calling him derogatory slurs tied directly to his gay identity.[46] His family's rejection was expressly based on his homosexuality.[47] Rafael's abuse was ideologically grounded in anti-gay animus: he told Respondent directly that gay men "deserved to suffer," deployed the secretly filmed video as a weapon of sexual coercion specifically because Respondent was gay and therefore exposure would expose him to further humiliation and discrimination and because he could not safely seek police assistance.[48] Rafael brought other men to Respondent's home to enforce that ideology through sexual violence.[49] Rafael's conduct was thus not a personal grievance or a generic financial dispute: it was the expression of a homophobic ideology directed at Respondent *because* he was gay. Sexual orientation was not incidental to any of this conduct; it was its defining cause throughout. The group is not impermissibly defined by the persecution itself, as Respondent's sexual orientation existed independently of and prior to any harm. *See Matter of W-G-R-*, 26 I&N Dec. at 215.

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[43] *See* Country Conditions, Evidence Part 01, CC1 (Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Brazil); CC2 (U.S. Dep't of State, Country Reports on Human Rights Practices: Brazil (2025)); CC3 (Brazilian Federal Public Defenders' Office (DPU), Report on the Murder of LGBTQIAPN+ Individuals in Brazil); CC4 (Atlas of Violence, Violence Against the LGBTQIAPN+ Population).

[44] *See* Country Conditions, Evidence Part 01, CC3 (The Federal Public Defenders' Office (DPU) Report: Murder of LBTQIAPN+ Individuals in Brazil).

[45] *See* Country Conditions, Evidence Part 01, CC4 (Atlas of Violence, Violence Against the LGBTQIAPN+ Population).

[46] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 9, 13.

[47] *See* Respondent's Declaration, Evidence Part 02, ¶ 7.

[48] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 29, 38.

[49] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 29, 38.

3. Respondent Is a Member of the Particular Social Group of "LGBTI+ Individuals in Brazil"

Immutability: Sexual orientation and gender identity are immutable characteristics within the meaning of *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985), and *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, (BIA 1990). These are characteristics that individuals either cannot change or that are so fundamental to identity that they should not be required to change.

Particularity: The term "LGBTI+ individuals" has an internationally recognized, sufficiently defined meaning encompassing lesbian, gay, bisexual, transgender, and intersex persons, among other forms of gender and sexual identities that deviate from the cisgender heterossexual norm. The group is not vague or amorphous; it is recognized by governmental and intergovernmental bodies as a discrete population.

Social Distinction: LGBTI+ individuals are recognized as a socially distinct group throughout Brazil.[50] Brazil is regarded as the nation with the highest rate of killings of LGBTQIAPN+ individuals globally[51]. This population is distinctly recognized — and distinctly targeted. This group is consistently recognized by the Brazilian legal and institutional framework as a discrete segment of society. This recognition is reflected in legislation, judicial decisions, and administrative measures specifically addressing their status, rights, and protection as a distinct social group[52]. Brazil's longstanding political, religious, and social traditions have fostered a deeply entrenched system of heteronormativity and rigid gender norms, in which deviations from traditional conceptions of sexuality and gender expression become highly visible and have historically been condemned rather than accepted. Any expression that deviates from the moral standard is recognized and condemned or retaliated, with the intent of forcing abeyance to the expected norm. Within this context, LGBTQI+ individuals have frequently been

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[50] *See* Country Conditions, Evidence Part 01, CC3 (The Federal Public Defenders' Office (DPU) Report: Murder of LBTQIAPN+ Individuals in Brazil, CC4 (Atlas of Violence - Violence Against the LGBTQIAPN+ Population), CC6 (G1 News Portal, Number of Violent Deaths of LGBTQIAPN+ People in Brazil Increases), CC7 (O Globo News Portal, Attacks Against LGBTQIA+ Population Increase 39.4% in One Year), CC8 (Terra News Portal, Brazil Remains World's Most Violent Country for LGBTQIAP+ People), CC9 (Open Democracy News Portal, Brazil's LGBTQ Community Faces Surging Violence).

[51] *See* Country Conditions, Evidence Part 01, CC3 (The Federal Public Defenders' Office (DPU) Report: Murder of LBTQIAPN+ Individuals in Brazil); Supplemental Country Conditions, Evidence Part 05, CC3 (2024 Observatory of Violent Deaths of LGBT+ Individuals in Brazil - Grupo Gay da Bahia).

[52] *See* Supplemental Country Conditions, Evidence Part 05, CC2 (The State of The World's Human Rights: Brazil - Amnesty International).

portrayed as threats to public morality and the traditional family, reinforcing social stigma, legitimizing discrimination, and normalizing violence against those whose identities challenge prevailing societal expectations.[53]

Nexus: As a gay man with prominently feminine traits who lived openly in Brazil, Respondent is a member of this group. The harassment, social exclusion, family rejection, sexual abuse, threats and humiliation he experienced from his childhood up to the moment he fled Brazil were part of the systemic, nationwide pattern of oppression of LGBTIA+ individuals. His individual persecution is consistent with and corroborated by the documented experience of LGBTI+ Individuals in Brazil generally.

4. Respondent Is a Member of the Particular Social Group of "Homosexual Males with Female Traits in Brazil"

Respondent's persecution was directed not merely at his sexual orientation in the abstract but at his visibly effeminate presentation — the very characteristic that first identified him as a target in childhood and made him visible to his persecutors throughout his life. His feminine presentation made his sexual orientation and membership in the LGBTQIA+ community readily apparent, as his appearance did not conform to prevailing gender norms. The Ninth Circuit recognized this formulation as a cognizable PSG in *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000) ("gay men with female sexual identities"). Although not binding in the Second Circuit, this holding is highly persuasive.

Immutability: Respondent's sexual orientation is immutable under *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985), and *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, (BIA 1990). His feminine traits and gender expression are equally immutable characteristics that he should not be required to suppress. *See Matter of C-G-T-*, 28 I&N Dec. at 745-46 (adjudicators should not expect applicants to hide their sexual orientation or gender expression).

[53] *See* Country Conditions, Evidence Part 01, CC4 (Atlas of Violence - Violence Against the LGBTQIAPN+ Population).

Particularity: The group is bounded by the intersection of sexual orientation (homossexuality), sex (males), and gender expression (female traits) — three objective, verifiable criteria yielding a class more specific than "gay men" alone.

Social Distinction: Respondent was identified and targeted precisely because of his feminine traits from childhood. His neighbors called him effeminate for playing with dolls and playhouses.[54] His classmates identified him as gay based on his mannerisms and friendships with girls.[55] The neighborhood men coerced and exploited him because of his perceived effeminacy and vulnerability.[56] Rafael weaponized Respondent's gay identity and presentation as justification for the abuse he inflicted.[57] Brazilian society — including each of Respondent's persecutors — consistently perceived and treated him as belonging to a recognized, vulnerable, and distinct subclass of gay men defined by their visible effeminacy.

Nexus: The link between Respondent's feminine traits and the harm he suffered is direct and documented throughout the record. He was not simply persecuted for being gay — he was targeted because he was openly, visibly gay in a manner that challenged the hyper-masculine norms of his community. It is this effeminacy, which defied gender behavioral expectations, that denounced Respondent's sexuality and belonging to the LGBTIA+ community and attracted public condemnation and correctional violence by Brazilian society. Every episode of childhood abuse and adult exploitation was preceded by his persecutors' explicit perception and condemnation of his gender expression. Rafael's conduct is no exception: his stated ideology that "gay men deserved to suffer"[58] and his exploitation of Respondent's effeminacy and perceived social vulnerability[59] confirm that it was Respondent's visible, embodied gay identity — his membership in the group of homosexual males with female traits — that made him a target. The inability to seek police protection was itself a direct consequence of belonging to this group: gay men with feminine characteristics who report same-sex domestic violence are systematically

[54] *See* Respondent's Declaration, Evidence Part 02, ¶ 10.
[55] *See* Respondent's Declaration, Evidence Part 02, ¶ 9.
[56] *See* Respondent's Declaration, Evidence Part 02, ¶ 13.
[57] *See* Respondent's Declaration, Evidence Part 02, ¶ 29.
[58] *See* Respondent's Declaration, Evidence Part 02, ¶ 29.
[59] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 30–31, 38.

dismissed by Brazilian authorities, because they're immediately perceived as homosexuals and thus underserving of institutional protection[60]. *See Matter of C-G-T-*, 28 I&N Dec. at 745-46.

5. Respondent's Persecution Was on Account of His Political Opinion of Opposition to the Mistreatment of LGBTI+ Individuals in Brazilian Culture

Political opinion and membership in a particular social group are independently sufficient grounds for asylum; a persecutor may act on more than one protected ground simultaneously. INA § 208(b)(1)(B)(i). An imputed political opinion, whether correctly or incorrectly attributed, can constitute persecution on account of political opinion. *See Hernandez-Chacon v. Barr*, 948 F.3d 94, 102 (2d Cir. 2020). The Supreme Court requires evidence of the persecutor's motive. *See INS v. Elias-Zacarias*, 502 U.S. 478, 482-83 (1992). Political opinion "encompasses more than electoral politics or formal political ideology." *Ahmed v. Keisler*, 504 F.3d 1183, 1192 (9th Cir. 2007). Persecution is motivated by political opinion when the persecutor is "in part motivated by an assumption that [the applicant's] political views were antithetical" to those of the persecutors. *Matter of S-P-*, 21 I&N Dec. 486, 494 (BIA 1996). Courts assess political opinion broadly within the political context of the country. *See Castro v. Holder*, 597 F.3d 93, 100-06 (2d Cir. 2010); *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 545-48 (2d Cir. 2005).

Brazil's longstanding patriarchal and heteronormative social order has historically prescribed rigid expectations regarding gender expression, masculinity, and sexuality, treating heterosexuality and conformity to traditional gender roles as the social norm[61]. Within this framework, men who openly express femininity or identify as gay are perceived as rejecting the very norms that sustain established hierarchies of gender and sexuality[62]. By living openly as an effeminate gay man, refusing to conceal his identity, and expressing himself in a manner that defied conventional expectations of masculinity, Respondent did more than assert his personal identity, he openly challenged a societal and political structure that has long marginalized those

[60] *See* Country Conditions, Evidence Part 01, CC10 (Domestic Violence also exists among gay couples; understand - UOL News Portal).
[61] *See* Country Conditions, Evidence Part 01, CC1 (Inter-American Commission on Human Rights Report - Situation of Human Rights in Brazil); CC5 (Violence Among Homosexual Couples Is Greater Than Among Heterosexual Couples - Publico News Portal); CC8 (Brazil Remains the Most Violent Country in the World for LGBTQIAP+ People, Says Report - Terra News Portal); CC9 (Brazil's LGBTQ Community Faces Surging Violence, but They're Fighting Back - Open Democracy News Portal);
[62] *See* Supplemental Country Conditions, Evidence Part 05, CC4 (Deaths and Violence against LGBTI+ in Brazil Dossier 2023 - Observatory of Deaths and Violence Against LGBTI+ in Brazil).

who do not conform to traditional gender and sexual norms. His visibility constituted an implicit rejection of the patriarchal values that underpin this social order and, consequently, was perceived by his persecutors as a challenge to the legitimacy of those norms.

Furthermore, in Bolsonaro-era Brazil, living openly as a gay man and publicly advocating for LGBTQ+ rights was a political act. Respondent made a public social media post defending LGBTQ+ rights during the presidential election and received a wave of hateful responses.[63] He was directly confronted by a nationalist group declaring that the "era of gays" would end.[64] His open identity, his public advocacy, and his refusal to suppress either constituted, in the eyes of his persecutors, a challenge to the legitimacy of a culture built on the subordination of LGBTI+ individuals — precisely the kind of political opinion that "transcends mere self-protection and represents a challenge to the legitimacy or authority of" the persecutors. *Hernandez-Chacon v. Barr*, 948 F.3d 94, 104 (2nd Cir. 2020) (quoting *Yueqing Zhang* , 426 F.3d at 547-48).

But Respondent's political stance exists independently of any particular presidential administration or electoral cycle. While successive governments have differed in the degree to which they have advanced or restricted LGBTQIA+ rights, the broader political and social framework in Brazil has consistently been shaped by deeply entrenched heteronormative and patriarchal values. These norms permeate public institutions, political discourse, and social expectations, reinforcing traditional conceptions of gender and sexuality regardless of the party in power[65]. Accordingly, Respondent's open identity and public expression as an effeminate gay man constituted a challenge not merely to the policies of a particular administration, but to enduring structures of authority and social control that transcend individual governments. As such, the political nature of his expression derives from its opposition to a longstanding system of gender hierarchy rather than from any temporary political context.

6. Respondent's Persecution Was Also on Account of His Political Opinion in Opposition to Rafael Rodrigues' Oppression

[63] *See* Respondent's Declaration, Evidence Part 02, ¶ 55.
[64] *See* Respondent's Declaration, Evidence Part 02, ¶ 51.
[65] *See* Supplemental Country Conditions, Evidence Part 05, CC4 (Deaths and Violence against LGBTI+ in Brazil Dossier 2023 - Observatory of Deaths and Violence Against LGBTI+ in Brazil).

Independently, Respondent suffered persecution on account of a political opinion opposing Rafael's oppression. Rafael's repeated declarations that "gay men deserved to suffer," directed at Respondent specifically,[66] demonstrate that Rafael's persecution was grounded not in a private grievance but in an ideological conviction that gay men — and Respondent specifically, as a gay man who dared to resist — were legitimate targets for abuse. Rafael imputed to Respondent a political opinion antithetical to his homophobic worldview. *See Matter of S-P-*, 21 I&N Dec. at 494; *Hernandez-Chacon*, 948 F.3d at 102.

Rafael Rodrigues' own sexual orientation does not undermine Respondent's claim. Rafael Rodrigues embraced and enforced the deeply entrenched patriarchal and heteronormative norms of Brazilian society, projecting traditional expectations of masculinity and sexuality onto Respondent. "Homophobia can generate "low self-esteem or feelings of sexual inadequacy, which the individual seeks to compensate for by subjugating their partner.""[67] Indeed, interpersonal violence may occur within same-sex relationships precisely because of the pressure to repress deviations from socially prescribed gender and sexual norms. Homosexual individuals may likewise impose these societal patterns and power structures as a result of the environment in which they are embedded, such that they "end up following standards of masculinity, values such as possessing a partner, which are reproduced among homosexual couples"[68]. By targeting Respondent for his feminine expression and refusal to conform to those expectations, Rafael Rodrigues acted as an enforcer of the very social hierarchy that stigmatizes and marginalizes LGBTQIA+ individuals.

7. The Brazilian Government Is Unable and Unwilling to Control the Persecutors

Persecution may be established where the harm is "inflicted either by the government of a country or by persons or an organization that the government was unable or unwilling to control." *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). Private acts may constitute persecution where the government has proved unwilling to control the persecutors. *Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332, 342 (2d Cir. 2006).

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[66] *See* Respondent's Declaration, Evidence Part 02, ¶ 29.

[67] *See* Country Conditions, Evidence Part 01, CC5, 59 (Violence Among Homosexual Couples Is Greater Than Among Heterosexual Couples - Publico News Portal).

[68] *See* Country Conditions, Evidence Part 01, CC10 (Domestic Violence Also Exists Among Gay Couples; Understand - UOL News Portal).

An applicant is not required to report private persecution to authorities where reporting would have been futile or dangerous. *See Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1058 (9th Cir. 2006)*; see also Matter of C-G-T-*, 28 I&N Dec. at 745. It is well recognized that the 'unable or unwilling' standard can be established in the absence of a report to government officials. *See In re S–A–* , 22 I. & N. Dec. 1328, 1335 (BIA 2000); *see also Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1063-68 (9th Cir. 2017). Here, country conditions evidence and Respondent's own statement[69] permits the clear conclusion that reporting the crimes to authorities would be futile, given general impunity for sexuality and gender-motivated crimes and state omission to protect LGBTIA+ individuals. Despite alarming numbers of violence against the LGBTIA+ population, there is still a gross underreporting, precisely because of the generalized distrust in public authorities and institutions to prosecute such category of crimes and offer effective protection to victims[70]. Besides, as a gay man, reporting could ultimately expose him to further harm, in light of the pattern of humiliation directed at such individuals from law enforcement authorities[71].

Respondent's realistic assessment that reporting to the police would have been futile[72] is corroborated at every level: by his sisters' own recognition that reporting was pointless in Mato Grosso,[73] by country conditions documenting gay men who stayed silent for years for exactly the same reasons,[74] and by evidence that state institutions in Brazil are structurally unable to control violence against LGBTQ+ individuals. A respondent's failure to report harm is not fatal to a claim of persecution where reporting would have been futile or dangerous. *See Matter of C-G-T-*, 28 I&N Dec. at 745.

Persecution against LGBTQIA+ individuals in Brazil is not solely the work of private actors — it is structural and involves state actors as well. The Brazilian State is evidently

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[69] *See* Respondent's Declaration, Evidence Part 02, ¶ 40.
[70] *See* Country Conditions, Evidence Part 01, CC3 (The Brazilian Federal Public Defenders' Office (DPU), Report on the Murder of LGBTQIAPN+ Individuals in Brazil); CC8 (Brazil Remains the Most Violent Country in the World for LGBTQIAP+ People, Says Report - Terra News Portal).
[71] *See* Country Conditions, Evidence Part 01, CC5 (Violence Among Homosexual Couples Is Greater Than Among Heterosexual Couples - Publico News Portal); CC10 (Domestic Violence Also Exists Among Gay Couples; Understand - UOL News Portal).
[72] *See* Respondent's Declaration, Evidence Part 02, ¶ 40.
[73] *See* Letter of Support written by Amanda Cristina Sampaio Vieira Pinto, Evidence Part 03, Exh. 2; Letter of Support written by Danyelly Sampaio Pinto Souza, Evidence Part 03, Exh. 3.
[74] *See* Country Conditions, Evidence Part 01, CC10 (Domestic Violence Also Exists Among Gay Couples; Understand - UOL News Portal).

omissive and negligent when it comes to addressing violence against LGBTI+ people, which ultimately reflects the deeply ingrained institutional LGBTIphobia in Brazil's public security system and judiciary[75]. Brazilian police are documented to treat anti-LGBTQ violence as low-priority, to ridicule victims of same-sex domestic abuse, and to fail systematically to investigate or prosecute violence against gay men.[76] The Atlas of Violence documented a 39.4% increase in attacks against LGBTQIA+ individuals in a single year.[77] The government has proven unable to reverse this trend. To the contrary, in 2024, the number of violent deaths of LGBT+ individuals increased by 8.83%, reaffirming B

razil's status as the country with the highest number of homicides and suicides of LGBT+ persons in the world[78]. Brazil's Federal Public Defenders' Office has itself documented the murder of LGBTQIAPN+ individuals across the country — evidence that the state not only fails to protect but fails even to track and address this violence.[79] The undeniable scenario is: Brazil is the nation with the highest rate of killings of LGBTQIAPN+ individuals in the world, and this remains unchanged throughout the years, denouncing the government's complete inability to reverse it[80].

8. Respondent's Protected Grounds Were at Least One Central Reason for the Persecution He Suffered

A protected ground fails the nexus standard only where it is "incidental, tangential, superficial, or subordinate to another reason for harm." INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-14 (BIA 2007). Here, the record is unambiguous: sexual orientation and gender expression were the explicit, stated reasons for every act of persecution Respondent suffered. His abusers called him slurs tied directly to his perceived gay identity.[81]

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[75] *See* Supplemental Country Conditions, Evidence Part 05, CC4 (Deaths and Violence against LGBTI+ in Brazil Dossier 2023).
[76] *See* Country Conditions, Evidence Part 01, CC1 (Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Brazil); CC2 (Country Reports on Human Rights Practices: Brazil (2025) - U.S. Dep't of State); CC10 (Domestic Violence Also Exists Among Gay Couples; Understand - UOL News Portal).
[77] *See* Country Conditions, Evidence Part 01, CC7 (Attacks Against LGBTQIA+ Population Increase 39.4% in One Year - O Globo News Portal).
[78] *See* Supplemental Country Conditions, Evidence Part 05, CC3 (2024 Observatory of Violent Deaths of LGBT+ Individuals in Brazil - Grupo Gay da Bahia).
[79] *See* Country Conditions, Evidence Part 01, CC3 (Brazilian Federal Public Defenders' Office (DPU), Report on the Murder of LGBTQIAPN+ Individuals in Brazil).
[80] *See* Country Conditions, Evidence Part 01, CC3 (The Brazilian Federal Public Defenders' Office (DPU), Report on the Murder of LGBTQIAPN+ Individuals in Brazil); Supplemental Country Conditions, Evidence Part 05, CC3 (2024 Observatory of Violent Deaths of LGBT+ Individuals in Brazil - Grupo Gay da Bahia).
[81] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 9, 13.

His family rejected him expressly because of his homosexuality.[82] Rafael stated that gay men deserved to suffer.[83] A nationalist group declared that the era of gay people would end.[84] These are not incidental motives; they are the central reason for each act of persecution.

9. Respondent Has a Well-Founded Fear of Future Persecution

Having established past persecution, Respondent is entitled to a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). The government can rebut this presumption only by establishing a fundamental change in conditions or the reasonableness of internal relocation. 8 C.F.R. § 1208.13(b)(1)(i)-(ii).

Subjectively Genuine Fear: Respondent's fear is subjectively genuine. He fled Brazil abandoning six years of the only life in which he felt free, and described his time in the United States as the first period in which he was not ashamed to be who he is.[85] He panicked and fled upon the direct threat at the bar, and continues to fear that Rafael will release the intimate video.[86]

Objectively Reasonable Fear: Respondent's fear is objectively reasonable. A well-founded fear requires only a ten percent probability of persecution. *Cardoza-Fonseca*, 480 U.S. at 431, 440. Country conditions evidence, witness letters,[87] and the documented experience of Brazilian Gay Men confirm that Respondent's fear of violence, sexual assault, and death if returned is far more than ten percent likely.

a. Country Conditions Have Not Improved

Since Respondent left Brazil, conditions for LGBTQIA+ individuals have not improved — they have worsened. Attacks increased 39.4% in a single year.[88] In 2024, the number of

[82] *See* Respondent's Declaration, Evidence Part 02, ¶ 7.
[83] *See* Respondent's Declaration, Evidence Part 02, ¶ 29.
[84] *See* Respondent's Declaration, Evidence Part 02, ¶ 51.
[85] *See* Respondent's Declaration, Evidence Part 02, ¶ 48.
[86] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 45, 51.
[87] *See* Letters of Support, Evidence Part 03, Exhs. 1–4.
[88] *See* Country Conditions, Evidence Part 01, CC7 (Atlas of Violence: With Almost One Case Per Hour, Attacks Against the LGBTQIA+ Population Increase 39.4% In One Year - O Globo News Portal).

violent deaths of LGBT+ individuals remained on the rise, increasing 8.83%[89]. The Atlas of Violence documents ongoing lethal violence against LGBTQIAPN+ Brazilians.[90] Brazil's own Federal Public Defenders' Office has catalogued these murders, confirming that no systemic improvement has taken place.[91] On the contrary, accountability and impunity continue to be significantly low for these types of crimes[92]. Brazil remains the world's most violent country for LGBTQIAP+ people.[93] Brazil has held this position for consecutive years, underscoring a persistent, systemic, and escalating pattern of discrimination and violence against this protected group.

No argument of changed country conditions can be made when they are reported to deteriorate, rather than improve, over the course of the years. Country conditions report a "regressive tendency when it comes to the protection and promotion of LGBTI persons' rights in Brazil, a weakening of the institutional framework of mechanisms for guaranteeing human rights, especially those of LGBTI persons, as well as an increase in hate speech inciting increased attacks against people with different sexual orientations and gender identities"[94].

b. Respondent Cannot Reasonably Relocate Within Brazil

Because Respondent has established past persecution, the government bears the burden of demonstrating that he could safely and reasonably relocate within Brazil. 8 C.F.R. § 1208.13(b)(1)(i)(B), (b)(3). It cannot meet this burden.

Relocation Is Factually Impossible: Anti-LGBTQ violence in Brazil is not concentrated in any single region — it is nationwide. Country Conditions report document violence against the group to which the Respondent belongs throughout the country. The 2023 Deaths and Violence against LGBTI+ in Brazil Dossier documented that lethal violence occurred "scattered throughout the Brazilian territory… recorded in the five macro-regions of the country and in the

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[89] *See* Supplemental Country Conditions, Evidence Part 05, CC3 (2024 Observatory of Violent Deaths of LGBT+ Individuals in Brazil - Grupo Gay da Bahia).
[90] *See* Country Conditions, CC4 (Atlas of ViolenceViolence Against the LGBTQIAPN+ Population); CC6 (G1 News Portal, Number of Violent Deaths of LGBTQIAPN+ People in Brazil Increases), Evidence Part 01, Exhs. 4, 6.
[91] *See* Country Conditions, CC3, Evidence Part 01, Exh. 3.
[92] *See* Supplemental Country Conditions, Evidence Part 05, CC2 (The State of the World's Human Rights: Brazil - Amnesty International).
[93] *See* Country Conditions, Evidence Part 01, CC8 (Brazil Remains World's Most Violent Country for LGBTQIAP+ People - Terra News Portal).
[94] *See* Country Conditions, Evidence Part 01, CC1 (Inter-American Commission on Human Rights Report - Situation of Human Rights in Brazil), ¶ 261

27 units of the federation."[95] There is no region in the country that does not account for violence against the LGBTI+ population, since the social and cultural elements that influence LGBTphobia are intrinsic to the Brazilian culture and manifest nationwide[96]. The Atlas of Violence similarly confirms that LGBTQIAPN+ violence spans all regions of Brazil.[97] There is no safe haven within Brazil for a gay man who cannot and should not be required to conceal his identity. Respondent's own history confirms this: he moved from Poxoréu to Rondonópolis to São Paulo, spanning rural interior Mato Grosso to the nation's largest metropolitan area, yet he was abused and exploited at each destination.[98]

Relocation Is Legally Impermissible: Adjudicators may not require an applicant to relocate to an area where he would necessarily be required to suppress the very characteristic that exposes him to persecution. Thus, "when considering future harm, adjudicators should not expect a respondent to hide his or her sexual orientation if removed to his or her native country". *Matter of C-G-T-*, 28 I&N Dec. 740, 745 (BIA 2023). Anywhere in Brazil, living openly as a gay man with visibly feminine traits would expose Respondent to the same persecution he has already suffered. The discrimination and violence against LGBTQ+ individuals in Brazil are intrinsic to the culture, not confined to a region.[99] Requiring Respondent to return to concealment — to suppress his mannerisms, hide his identity, and live in shame — is precisely what *Matter of C-G-T-* forbids.

11. Respondent's Credible and Corroborated Testimony Establishes His Claim

An applicant's testimony, standing alone, may sustain his burden of proof where it is credible, persuasive, and refers to specific facts sufficient to demonstrate eligibility. INA § 208(b)(1)(B)(ii). *Diallo v. INS*, 232 F.3d 279, 285 (2d Cir. 2000). Where corroboration is found lacking, the applicant must receive notice and an opportunity to explain its absence. *See Liu v. Holder*, 575 F.3d 193, 198 (2d Cir. 2009).

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[95] *See* Supplemental Country Conditions, Evidence Part 05, CC4, 79 (Deaths and Violence against LGBTI+ in Brazil Dossier 2023).
[96] *See* Supplemental Country Conditions, Evidence Part 05, CC4 (Deaths and Violence against LGBTI+ in Brazil Dossier 2023).
[97] *See* Country Conditions, Evidence Part 01, CC7 (Atlas of Violence: With Almost One Case Per Hour, Attacks Against the LGBTQIA+ Population Increase 39.4% in One Year - O Globo News Portal).
[98] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 1–2, 17–20, 29, 49–51.
[99] *See* Country Conditions, Evidence Part 01, CC9 (Open Democracy News Portal, Brazil's LGBTQ Community Faces Surging Violence, But They're Fighting Back).

Respondent's account is detailed, internally consistent, and corroborated independently. His sisters Amanda and Danyelly each independently corroborate the existence and severity of Rafael's abuse, including the blackmail over the secretly filmed video.[100] His friend Maysa corroborates that Respondent confided in her contemporaneously and that she personally witnessed Rafael's possessive behavior.[101] The absence of formal police reports reflects the documented reality that Brazilian Gay Men do not report such abuse, as confirmed by country conditions evidence.[102] On this record, Respondent's testimony is sufficient, and is independently corroborated.

12. Alternatively, Respondent Merits a Discretionary Grant of Humanitarian Asylum

Assuming *arguendo* that the government demonstrated changed conditions or reasonable relocation, Respondent independently qualifies for humanitarian asylum. Under 8 C.F.R. § 1208.13(b)(1)(iii), humanitarian asylum is available where (A) there are compelling reasons arising from the severity of past persecution, or (B) there is a reasonable possibility of other serious harm upon removal. *See Matter of Chen*, 20 I&N Dec. 16, 19 (BIA 1989); *Matter of L-S-*, 25 I&N Dec. 705, 710 (BIA 2012).

The severity, duration, and psychological impact of Respondent's persecution satisfy alternative (A) under 8 C.F.R. § 1208.13(b)(1)(iii)(A). From age eight he suffered repeated sexual abuse; throughout childhood he was bullied, rejected, and forced to suppress his identity; as an adult he was physically assaulted, death-threatened, blackmailed, and subjected to repeated coerced sexual contact — bringing him to the brink of suicide.[103] He required therapy.[104] The cumulative severity and duration of this persecution constitute the kind of "atrocious forms of persecution" that *Matter of Chen*, 20 I&N Dec. at 19, identifies as compelling reasons for being unwilling to return, independent of any change in country conditions.

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[100] *See* Letters of Support, Evidence Part 03, Exhs. 2–3.
[101] *See* Letter of Support written by Maysa Gomes Rabelo, Evidence Part 03, Exh. 1.
[102] *See* Country Conditions, Evidence Part 01, CC10 (Domestic Violence Also Exists Among Gay Couples; Understand - UOL News Portal).
[103] *See* Respondent's Declaration, Evidence Part 02, ¶¶ 13–16, 28–29, 34–39.
[104] *See* Respondent's Declaration, Evidence Part 02, ¶ 43.

Respondent independently satisfies alternative (B) under 8 C.F.R. § 1208.13(b)(1)(iii)(B) as well, because there is a reasonable possibility that he will face other serious harm upon removal — harm so serious that it equals the severity of persecution. *Matter of L-S-*, 25 I&N Dec. at 714. If repatriated, Respondent would be thrust back into a national environment where anti-LGBTQ attacks have surged 39.4% in a single year[105] and where Brazil remains the world's most violent country for LGBTQIAP+ people.[106] The systemic hostility that made it impossible for him to live openly, to seek police protection, or to survive without concealing his identity has not abated — it has intensified. The reasonable possibility that his return would expose him to severe physical harm, sexual violence, and psychological re-traumatization, independent of any nexus to a protected ground, is established by the country conditions record.[107] Humanitarian asylum is warranted.

B. In the Alternative, Respondent Is Entitled to Withholding of Removal

Should the Court deny asylum, Respondent is entitled to withholding of removal under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3). Unlike asylum, withholding is mandatory once the standard is met. Withholding requires a "clear probability" — more likely than not — that Respondent's life or freedom would be threatened on account of a protected ground. 8 C.F.R. § 1208.16(b)(2); *INS v. Stevic*, 467 U.S. 407, 429-30 (1984). Withholding is not subject to any filing deadline. 8 C.F.R. § 1208.16(a). Past persecution triggers a rebuttable presumption that this standard is met. 8 C.F.R. § 1208.16(b)(1)(i). The same evidence that establishes past persecution and well-founded fear — country conditions documenting worsening violence against LGBTQIA+ individuals in Brazil,[108] Rafael's ongoing blackmail threat,[109] and the government's documented inability to protect gay men — establishes that it is more likely than not that Respondent's life or freedom would be threatened upon return. The government cannot rebut the presumption, and the Court must grant withholding.

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[105] *See* Country Conditions, Evidence Part 01, CC7 (Atlas of Violence: With Almost One Case Per Hour, Attacks Against the LGBTQIA+ Population Increase 39.4% In One Year - O Globo News Portal).
[106] *See* Country Conditions, Evidence Part 01, CC8 (Brazil Remains the Most Violent Country in the World for LGBTQIAP+ People, Says Report - Terra News Portal); Supplemental Country Conditions, Evidence Part 05, CC3 (2024 Observatory of Violent Deaths of LGBT+ Individuals in Brazil - Grupo Gay da Bahia)
[107] *See* Country Conditions, Evidence Part 01.
[108] *See* Country Conditions, Evidence Part 01, CC1–CC9, CC11.
[109] *See* Respondent's Declaration, Evidence Part 02, ¶ 45.

C. In the Alternative, Respondent Is Entitled to Protection Under the Convention Against Torture

CAT relief does not require nexus to a protected ground. 8 C.F.R. § 1208.16(c)(2). For an act to constitute torture under *Matter of J-E-*, 23 I&N Dec. 291, 297-301 (BIA 2002), and 8 C.F.R. § 1208.18(a), it must satisfy all five elements: "(1) the act must cause severe physical or mental pain and suffering; (2) the act must be intentionally inflicted; (3) the act must be inflicted for a proscribed purpose; (4) the act must be inflicted by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim; and (5) the act cannot arise from lawful sanctions." The applicant must show that it is more likely than not that he will be tortured if removed. 8 C.F.R. § 1208.16(c)(2), (3).

All five elements are satisfied. (1) *Severe suffering*: Respondent was repeatedly subjected to non-consensual sexual contact under threat of blackmail and exposure,[110] reducing him to the brink of suicide.[111] Rape and forced sexual contact are recognized as among the most severe forms of harm under the Convention and sufficient to warrant its protection. *See Matter of H-C-R-C-*, 28 I&N Dec. 809, 813 (BIA 2024). (2) *Intentionally inflicted*: The conduct was deliberate. (3) *Proscribed purpose*: Rafael's stated purpose was to punish and degrade Respondent for being gay — "gay men deserved to suffer."[112]; the discrimination, abuse, humiliation and threats he suffered throughout his life were directly tied to his sexual identity and gender expression and were intended to repress and correct this identity, viewed as immoral in Brazilian society. (4) *Acquiescence*: Where public officials are aware of torturous activity and breach a legal responsibility to intervene, including through willful blindness, the acquiescence requirement is met. *See Matter of S-V-*, 22 I&N Dec. 1306, 1312-13 (BIA 2000); 8 C.F.R. § 1208.18(a)(7). The country conditions evidence establishes a pattern of governmental indifference to violence against LGBTQ+ Brazilians, including institutional LGBTIphobia and neglect towards this population and documented police failure to address same-sex domestic

[110] *See* Respondent's Declaration, Evidence Part 02, ¶ 13-16, 38.
[111] *See* Respondent's Declaration, Evidence Part 02, ¶ 39.
[112] *See* Respondent's Declaration, Evidence Part 02, ¶ 29.

violence.[113] (5) *Not lawful sanctions*: The conduct is not a lawful sanction. Furthermore, rape can never be considered a lawful sanction under the Convention. *See Matter of H-C-R-C-,* 28 I&N Dec. 809 (BIA 2024).

Given Respondent's history of physical, psychological and sexual abuse and the country conditions documenting murder, assault, and corrective sexual violence against gay men throughout Brazil,[114] it is more likely than not that Respondent will suffer torture if removed to Brazil.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court grant his application for asylum. In the alternative, Respondent respectfully requests that the Court grant withholding of removal under INA § 241(b)(3), or, in the further alternative, protection under the Convention Against Torture.

Respectfully submitted,



Guilherme Castilho Zaia (SBN 334469)
Attorney at Law
11810 Grand Park Ave
North Bethesda, MD 20852
Counsel for Respondent

[113] *See* Country Conditions, Evidence Part 01, CC1 (Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Brazil); CC2 (U.S. Dep't of State, Country Reports on Human Rights Practices: Brazil (2025)); CC3 (Brazilian Federal Public Defenders' Office (DPU), Report on the Murder of LGBTQIAPN+ Individuals in Brazil); CC10 (Domestic Violence Also Exists Among Gay Couples; Understand - UOL News Portal).
[114] *See* Country Conditions, Evidence Part 01.

Joao Ricardo Sampaio Pinto **File No. A. 241-136-264**

Proof of Service

On this day, I, Guilherme Castilho Zaia, served a copy of the following documents:

RESPONDENT'S LEGAL BRIEF IN SUPPORT OF APPLICATION FOR ASYLUM, WITHHOLDING OF REMOVAL AND PROTECTION UNDER CAT

To the following:

Office Location:	**Mailing Address:**
Office of the Principal Legal Advisor Department of Homeland Security Ribicoff Federal Building 450 Main Street, Room 483 Hartford, CT 06103-3060	US Immigration and Customs Enforcement US Department of Homeland Security Office of the Principal Legal Advisor Ribicoff Federal Building 450 Main Street, Room 483 Hartford, CT 06103-3060

by:

☑ Through the EOIR Courts and Appeals System (ECAS), which will automatically send service notification to both parties that a new document has been filed.



Guilherme Castilho Zaia (SBN 334469)
Attorney at Law
11810 Grand Park Ave
North Bethesda, MD 20852
Counsel for Respondent