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Roundtable: Preparing an Asylum Case Based on Sexual Orientation/Gender
Handout: Summary of GLBTHIV Asylum Claims

Holland & Knight LLP

Please note that the information contained in the handout “Summary of GLBTHIV Asylum Claims” is for general education and knowledge. The information is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. If you have specific questions regarding a particular fact situation, please contact legal counsel.

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GLBT ASYLUM CLAIMS BY CIRCUIT

FIRST CIRCUIT:

Case	Key Facts	Outcome
<p>Robert Kibuuka v. Gonzales No. 05-1437, 2006 U.S. App. LEXIS 9364 (1st Cir. Apr. 14, 2006) – unpublished</p>	<ul style="list-style-type: none"> • Ugandan gay male • Asylum / withholding of removal / CAT • He filed his asylum application over 30 months after his arrival to the U.S. and claimed that this delay was because of his severe depression. • He argued that he has a fear of future persecution since homosexuality is illegal in his country. • He claimed that he was once beaten by the police while attending a wedding of two men. • He also sought to reopen the hearing to introduce evidence that he was involved in a homosexual relationship at the time of first hearing. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court denied the asylum claim on the ground that application was not filed within one year of his arrival to the U.S. and his depression was not a extraordinary circumstances to justify the late filing. • Withholding of removal and CAT relief were denied because the applicant failed to prove that he was actually "a member of gay community." • The motion to reopen the hearing was denied because at the initial hearing IJ asked him if he was in a relationship with a man and he answered that he was not. The court rejected his argument that he provided a false answer because he did not know that his answer would be used by the IJ as a ground for decision.
<p>Luis Enrique Galicia v. Ashcroft 396 F.3d 446 (1st Cir. 2005) – published</p>	<ul style="list-style-type: none"> • Guatemalan gay male • Asylum / withholding of removal • He claimed that he has a fear of future persecution if returned to Guatemala • He claimed that he was beaten and verbally abused by his neighbors as result of his homosexuality in 1998. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court denied the asylum and withholding of removal because it found that the applicant failed to show a well-founded fear: • Applicant could not prove that the harassment was by the government or a group the government could not control. • He also had not shown he could not safely live elsewhere in Guatemala.

SECOND CIRCUIT

Case:	Key Facts	Outcome
<p>Dian Hua Lin v. U.S. Attorney General 06-5499-ag NAC, 2007 U.S. App. LEXIS 16622 (2d Cir. July 12, 2007) - unpublished</p>	<ul style="list-style-type: none">• Chinese gay male• Asylum/ withholding of removal	<p><u>DENIED</u></p> <ul style="list-style-type: none">• The court denied the petition for review.• The court found that there was no error in the IJ's finding that Lin failed to establish eligibility for asylum because he did not supply evidence to establish an objectively reasonable fear of persecution.• Chinese law no longer criminalizes homosexual acts and at most Lin experienced "local hostility" and therefore could have avoided any harassment by relocating within China.• Because he failed to establish the objective risk of harm necessary for asylum, he failed to satisfy the higher burden required for withholding of removal.• Lin's CAT claim was deemed waived because Lin did not argue his CAT claim in the petition for review.

<p>Jose Joaquin-Porras v. Gonzales 435 F.3d 172 (2d Cir. 2006) – published</p>	<ul style="list-style-type: none"> • Costa Rican gay male • Asylum / withholding of removal / CAT • He first arrived at the U.S. in 1991 and lived in the U.S. on J-1 and H-1B visas for 9 years. • He argued that he has a fear of future persecution if returned to Costa Rica • He claimed that he was raped by a police officer in Costa Rica and was verbally abused by a police officer in San José because of his homosexuality. • He argued that the one-year deadline to file for asylum should be measured from the date of his last entry to U.S. in 2000. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court denied the asylum application because the application did not meet the One-Year deadline: • Since the applicant was continuously present in the U.S. since his arrival in 1991, his eligibility for asylum should be determined not from the date of his last arrival in the U.S. in 2000. "Last arrival in the U.S." should not read to include an alien's return to a U.S. after a brief trip abroad. • Withholding of removal and CAT relief were denied based on the fact that the applicant's sexual assault was an "isolated act of random violence and insufficient to establish eligibility for withholding removal and CAT relief."
<p>Xiao Biao v. Gonzales No. 04-1897, 2006 U.S. App. LEXIS 1767 (2d Cir. Jan. 23, 2006) – unpublished</p>	<ul style="list-style-type: none"> • Chinese gay male • Asylum / withholding of removal / CAT • He argued that he has a fear of future persecution because of his homosexuality. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court denied the asylum claim based on the one-year filing deadline. • Withholding of removal was denied based on adverse credibility finding. • Applicant did not raise his CAT claim before BIA, thus he failed to satisfy the statutory exhaustion requirement of which this court's jurisdiction is predicated.

<p>Zhong Xing Zhan v. Gonzales No. 06-3832, 2007 U.S. App. LEXIS 4106 (2d Cir. Feb. 22, 2007) – unpublished</p>	<ul style="list-style-type: none"> • Chinese gay male • Asylum / withholding of removal / CAT • He claimed that he has a fear of persecution if returned to China. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • Asylum claim was denied because the applicant failed to establish a well-founded fear. • CAT relief and withholding of removal were denied because the applicant failed to exhaust his withholding of removal and CAT claims before the BIA, therefore the court does not review the IJ's denial of his application for those forms of relief.
<p>Samuel Dario Morett v. Gonzales No.05-5450, 2006 U.S. App. LEXIS 18152 (2d Cir. July 13, 2006) – unpublished</p>	<ul style="list-style-type: none"> • Venezuelan gay male • Asylum / withholding of removal / CAT • He argued that he was abused by several police officers because of his sexual orientation • Police coordinated a five-month surveillance and intimidation campaign against him. • Police threatened him and his family with continuous phone calls and extorted him for a large sum of money. 	<p><u>GRANTED</u></p> <ul style="list-style-type: none"> • The court argued that IJ erred in finding that the occasions of mistreatment were isolated criminal incident. • The court relied on reports from Immigration and Refugee Board of Canada, State Department, and Human Rights First which indicated a practice of abuse by police against homosexuals in Venezuela • Applicant has well-founded fear of persecution if returned to Venezuela. • Withholding of removal and CAT relief were granted.

<p>Sichone v. Gonzales No. 04-6048, 2006 U.S. App. LEXIS 12974 (2d Cir. Mar. 19, 2006) – unpublished</p>	<ul style="list-style-type: none"> • HIV-positive Zambian female • Asylum/Withholding of removal/CAT • Claimed that she would face future persecution because of her HIV-positive status alleging that the government hospitals do not have HIV medications and only people with money can afford treatment at the private hospitals. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court denied the petition for review. Even if Sichone offered sufficient evidence of her membership in a particular social group (Zambians who were HIV-positive), she did not show that any suffering she might experience on account of this membership was actually or effectively at the hands of the government. • The Zambian government's inability to afford HIV medication for all it's people is not extreme treatment that rises to the level of persecution. Background materials also showed that the government had put programs in place to raise HIV awareness. • Because she failed to establish the objective risk of harm necessary for asylum, she failed to satisfy the higher burden required for withholding of removal. The CAT claim shared the same factual premise failing to show that she would be personally subject to persecution.
<p>Himanje v. Gonzales No. 04-6080, 2006 U.S. App. LEXIS 14210 (2d Cir. June 5, 2006) – unpublished</p>	<ul style="list-style-type: none"> • Zambian HIV-positive female • Asylum/ Withholding of removal/CAT • Claimed she would suffer future persecution in the form of a forced marriage because she belonged to a specific group of women from the Tongo tribe who had been sold into marriage and discrimination because of her HIV-positive status. 	<p><u>DENIED in part and GRANTED in part</u></p> <ul style="list-style-type: none"> • Potential/generalized harassment based on her HIV-status did not reach the required level of persecution • But remanded with instructions that the BIA or IJ must provide specific reasons for demanding more corroborating evidence concerning membership in social group relating to the Tonga tribe and consider whether she was entitled to relief from removal on her membership in a social group.

THIRD CIRCUIT:

Case	Key Facts	Outcome
<p>Amanfi v. Ashcroft 328 F.3d 719 (3d Cir. 2003)</p>	<ul style="list-style-type: none"> • Ghanaian male • Asylum/ Withholding of removal/ CAT • In order to avoid being ritually sacrificed, he engaged in a homosexual act with another man. • Claimed he was persecuted by members of a religious cult and by the police who believed he was a homosexual. 	<p><u>DENIED</u> in part and <u>GRANTED</u> in part</p> <ul style="list-style-type: none"> • The petition for review on account of religious persecution was denied. Protection under Convention Against Torture also denied • However, the court recognized claim of persecution on account of his imputed status as a homosexual and remanded
<p>Zehn Xiung Lin v. Attorney General No. 02-3699, 2003 U.S. App. LEXIS 23295 (3d Cir. Nov. 13, 2003) – unpublished</p>	<ul style="list-style-type: none"> • Chinese gay male • Asylum / withholding of removal / CAT • He claimed that he has a fear of future persecution if returned to China • In an interview at the airport Lin claimed that his village wanted to arrest and torture him and he had never been arrested or questioned by the police. • On his application for asylum he claimed that the police tortured, detained and threatened him because of his homosexuality. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • Asylum was denied because the judge found that applicant's testimony lacked credibility. • Withholding of removal was denied because "failure to establish eligibility for asylum forecloses eligibility for withholding of removal." • CAT relief was denied because the applicant could not prove that "it is more likely than not" that he would be tortured if deported.

<p>Onell Orlando Parker v. Attorney General No. 03-4265, 2004 U.S. App. LEXIS 24121 (3d Cir. Nov. 18, 2004) – unpublished</p>	<ul style="list-style-type: none"> • Jamaican gay male • Asylum / withholding of removal • He claimed that he was subjected to widespread hatred and acts of violence by prejudiced individuals because of his homosexuality. • He argued that the police were unable to control the violence or afford protection. • He submitted the reports of Amnesty International describing incidents in which police have failed to respond to "incidents of homophobic violence." 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court denied the asylum claim and withholding of removal. • The court stated that "although Jamaican society evidently takes a harsh view of homosexuality, there is some evidence that officials recognize that violence against gays is unacceptable."
<p>Saeed Akmal v. Ashcroft No. 03-1873, 2004 U.S. App. LEXIS 27339 (3d Cir. Dec. 30, 2004) – unpublished</p>	<ul style="list-style-type: none"> • Pakistani gay male • Asylum / withholding of removal / CAT • He claimed that he would be persecuted on account of his HIV+ status and his imputed social group as homosexual or adulator. • To support the persecution claim, he relied on a incident in which he was threatened with death by an unnamed individual in a club if he spoke in favor of America. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court denied asylum because applicant failed to establish the fact that there is a particular social group comprised of HIV infected people that are discriminated against or sought out for violence. • The court argued that that single incident does not constitute past persecution, thus the applicant did not establish a well-founded fear of persecution. • Withholding of removal was denied because applicant failed to establish eligibility for asylum. • CAT relief was denied because he failed to establish that more likely than not, he would be tortured if deported.

<p>Martynas Satkauskas v. Attorney General of the United States No. 05-3211, 2006 U.S. App. LEXIS 9682 (3d Cir. Apr. 18, 2006) – unpublished</p>	<ul style="list-style-type: none"> • Lithuanian gay male • Asylum / withholding of removal / CAT • He claimed that he has a fear of future persecution if returned to Lithuania • He claimed that he was beaten because of his homosexuality and he was hospitalized following the beating . 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court denied the asylum application because it was not timely filed within one year of his arrival. • The court found that petitioner remained in Lithuania following the beating to complete his university and concluded that he does not have a well-founded fear of persecution. • Withholding of removal was denied because applicant failed to establish eligibility for asylum. • CAT relief was denied because he failed to establish that more likely than not, he would be tortured if deported.
<p>Amos Jean-Pierre v. Attorney General of the United States No. 05-4481, 2006 U.S. App. LEXIS 14955 (3d Cir. Jun. 14, 2006) – unpublished</p>	<ul style="list-style-type: none"> • Haitian gay male • Asylum / withholding of removal / CAT • He claimed that because of his HIV+ status he would be perceived to be a homosexual and would be killed. • He claimed that he fears his ex-wife's family, who had threatened to kill him. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • IJ denied asylum because it was not timely filed within one year of his arrival and applicant failed to establish a well-founded fear of persecution. • This circuit court lacked jurisdiction to review the above-mentioned determinations. • Circuit court denied withholding of removal arguing that "to be eligible for withholding of removal the alien has to demonstrate that there is a greater-than-fifty percent chance of persecution upon his return." • CAT relief was denied because he failed to establish that more likely than not, he would be tortured if deported.

<p>Heru Sugiarto Sewidjaja v. Attorney General of the United States No. 05-4557, 2006 U.S. App. LEXIS 26198 (3d Cir. Oct. 20, 2006) – unpublished</p>	<ul style="list-style-type: none"> • Indonesian gay male • Asylum / withholding of removal / CAT • He claimed that he has a fear of future persecution based on his race, religion and homosexuality. • He claimed that he fears Muslim extremists will attack him because of his sexual orientation. • He testified that Indonesian police officer refused to investigate his claim that his ex-boyfriend took money from him. • He testified that he has been bullied by his peers that he feels he must hide his sexual orientation in Indonesia. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • Asylum claim denied because the applicant did not establish a well-founded fear of future persecution: • He did not establish that he had suffered persecution in past. • The applicant had no evidence that the police officer conduct was based on his religion or sexual orientation. • Peer's harassment does not rise to the level of the being a threat to life or freedom. • Withholding of removal was denied because he did not establish a likelihood of future persecution. • CAT relief was denied because he produced no evidence that he is likely to be subjected to torture in Indonesia.
<p>Adem Ozmen v. Attorney General of the United States No. 05-3528, 2007 U.S. App. LEXIS 5143 (3d Cir. Mar. 5, 2007) – unpublished</p>	<ul style="list-style-type: none"> • Turkish gay male • Asylum / withholding of removal / CAT • He claimed that he has been persecuted in Turkey on account of his sexual orientation and has a well-founded fear or future persecution if returned to Turkey. • He testified that as a child he was teased by his classmates because of his effeminate nature. • He testified that he and four other gay students were arrested and harassed by the police. • On one occasion he was attacked by three fellow students for being homosexual. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court denied the asylum claim because applicant failed to establish a well-founded fear. • According to the court, in order to establish a well-founded fear of persecution, "an asylum applicant must demonstrate a subjective fear of persecution through credible testimony that his/her fear is genuine." • Although he was teased and attacked by fellow students, this does not rise to the level of persecution. • Withholding of removal was denied because applicant failed to establish eligibility for asylum. • CAT relief was denied because he failed to establish that more likely than not, he would

		be tortured if deported.
<p>Juan Pablo Maldonado v. Attorney General of the United States No. 05-4449, 2006 U.S. App. LEXIS 18010 (3d Cir. July 18, 2006) – published</p>	<ul style="list-style-type: none"> • Argentinean gay male • Asylum / withholding of removal / CAT • He claimed that the police arrested and beat him on at least twenty separate occasions as he left gay discos late at night. • His allegations were supported by affidavits from eyewitnesses. 	<p><u>GRANTED</u> – Remanded</p> <ul style="list-style-type: none"> • The court concluded that "although petitioner did not claim that physical assaults resulted in severe injuries or that he was ever detained for more than 12 hours, the mistreatments the applicant suffered at the hands of the police, rises to the level of persecution." • The court relied on the 2001 State Department Reports on Human Rights Practices, which recognized account of Argentinean police targeting, torturing, and harassing gays. • The court held that "since applicant has shown past persecution, it is presumed that he has demonstrated a well-founded fear of future persecution."
<p>Lavira v. Attorney General of the United States 478 F.3d 158 (3d Cir. 2007)</p>	<ul style="list-style-type: none"> • Haitian HIV-positive male amputee • Withholding of removal/CAT • Affiliation with exiled former President Aristide. • Claimed that attempted criminal sale of a controlled substance not a "particularly serious crime" and challenged ineligibility finding under Withholding of Removal. Also claimed he was entitled to relief under CAT because he would be placed in a detention center in Haiti with inhumane conditions and would be singled out for abuse by guards because of his HIV status. 	<p><u>GRANTED</u> – Remanded</p> <ul style="list-style-type: none"> • The court granted the petition for review and remanded directing that the IJ address the "particularly serious crime" designation and the factual evidence supporting Lavira's relief under CAT.

FIFTH CIRCUIT

Case	Key Facts	Outcome
<p>Ochondo v. Gonzales No.06-60546, 2007 U.S. App. LEXIS 4007 (5th Cir. Feb. 23, 2007) – unpublished</p>	<ul style="list-style-type: none">• HIV-positive Kenyan male• Asylum/Withholding of removal/CAT• Argued that IJ and BIA erred by denying his request for cancellation of removal because evidence showed he was abused by his U.S. citizen former spouse. Also argued that the IJ erred by denying withholding of removal on the grounds that he was HIV-positive and that people with HIV are discriminated against in Kenya.	<p><u>DENIED</u></p> <ul style="list-style-type: none">• Petition for review dismissed in part and denied in part• The court does not have jurisdiction to consider Ochondo's challenge to the IJ's and BIA's determination that he did not suffer extreme cruelty. Because he did not raise his due process claim before the BIA, the court cannot consider the claim.• The court found that the IJ's denial for withholding of removal was supported by substantial evidence because Ochondo did not show that he faced persecution from the Kenyan government or a group that the Kenyan government was unwilling or unable to control.

SIXTH CIRCUIT

Case	Key Facts	Outcome
<p>Grijalva v. Gonzales No. 05-3520, 2007 U.S. App. LEXIS 687 (6th Cir. Jan. 8, 2007) – unpublished</p>	<ul style="list-style-type: none"> • Gay Guatemalan male • Asylum/CAT/Withholding of removal • Argued that BIA erred in upholding the IJ's finding that he lacked credibility, therefore denying his application for asylum and relief under CAT. Also argued that BIA erred in reversing the IJ's grant of his request for withholding of removal. 	<p><u>DENIED in part and GRANTED in part</u></p> <ul style="list-style-type: none"> • The court found substantial inconsistencies in the two asylum applications that Grijalva filed and in his testimony concerning his claim that he was persecuted in Guatemala for being an effeminate homosexual; particularly inconsistencies concerning gang rape • The court vacated the BIA decision on withholding of removal and remanded because BIA ignored that Grijalva may show a government's inability or unwillingness to control persons who had harmed/would harm. • The court also vacated the BIA decision on CAT and remanded because willful blindness exhibited by Guatemalan police concerning persecution of homosexuals in that country could fall within the definition of acquiescence
<p>Safadi v. Gonzales No. 03-4592, 2005 U.S. App. LEXIS 16878 (6th Cir. Aug. 9, 2005) – unpublished</p>	<ul style="list-style-type: none"> • Jordanian gay male • Asylum/Withholding of removal • Sought review of BIA decision upholding the findings of the IJ that his testimony was not credible; failing to establish that he was a homosexual and that he would be persecuted if returned to Jordan 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court found there was substantial evidence, significant inconsistencies concerning his alleged relationship with another man, supporting the IJ's finding that Safadi was not a member of a particular social group for asylum eligibility. • The court did not need to decide whether Safadi's sham marriage to a U.S. citizen alone enough to support adverse credibility finding

SEVENTH CIRCUIT

Case	Key Facts	Outcome
<p>Ugochukwu v. Gonzales No. 05-4783, 2006 U.S. App. LEXIS 21621 (7th Cir. Aug. 23, 2006) – unpublished</p>	<ul style="list-style-type: none"> • Nigerian gay male • Asylum/CAT/Withholding of removal • Argued that the IJ and BIA misevaluated evidence of persecution and sought review of the removal order • Claimed IJ and BIA failed to adequately evaluate evidence that as a homosexual he would be subject to imprisonment and torture upon return to Nigeria. (Convicted of an aggravated felony, asylum and withholding of removal had been denied.) 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court held that it could not consider claims that the IJ and BIA had not properly weighed the evidence because it was not a constitutional or legal challenge.
<p>Ali v. Gonzales No. 04-1784, 2005 U.S. App. LEXIS 28149 (7th Cir. Dec. 19, 2005) – unpublished</p>	<ul style="list-style-type: none"> • Algerian gay male • Asylum • Argued that his public admission of homosexuality created changed circumstances that should allow exemption from the 90-day motion to reopen deadline 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court found that public admission of homosexuality while in the U.S. was a change in personal circumstances and did not create "changed circumstances" in country of origin which would excuse untimely filing of motion to reopen • Even if the "change" was a newfound resentment by individuals in Algeria who learned he was gay, Ali failed to develop the argument in his brief.
<p>Kiwanuka v. Ashcroft No. 03-2251, 2004 U.S. App. LEXIS 21620 (7th Cir. Oct. 8, 2004) – unpublished</p>	<ul style="list-style-type: none"> • Ugandan HIV positive male • Asylum • Motion to reopen from Asylum application of political dissident. Moved for a stay of removal. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • Court lacks jurisdiction to review deportation orders.

EIGHTH CIRCUIT

Case	Key Facts	Outcome
<p>Nabulwala v. Gonzales 479 F.3d 972 (8th Cir. 2007)</p>	<ul style="list-style-type: none"> • Ugandan lesbian • Asylum/CAT/Withholding of removal • "Olivia" claimed past abuse by family members because she was a lesbian and injury by an angry mob during a meeting of a lesbian organization advocating gay rights. Family forced her to have sex with a stranger. 	<p><u>GRANTED</u> – Remanded</p> <ul style="list-style-type: none"> • The court found that the IJ erred in concluding that qualification for asylum required demonstration of persecution at the hands of government officials. • A government's inability or unwillingness to control persons who had harmed/would harm, could apply. There were no findings of fact on this determined by the IJ and BIA did not have authority to engage in fact-finding
<p>Shahinaj v. Gonzales 481 F.3d 1027 (8th Cir. 2007)</p>	<ul style="list-style-type: none"> • Albanian gay male • Asylum/CAT/Withholding of removal • Argued that he met burden to establish his eligibility for asylum or withholding of removal 	<p><u>GRANTED</u> – Remanded</p> <ul style="list-style-type: none"> • The court vacated BIA's order and remanded for further proceedings because IJ's adverse credibility findings were not supported by the record • The findings were based on the IJ's personal opinion of how Shahinaj dressed, his lack of membership in any Albanian homosexual organizations, and IJ's personal experience that most homosexual Albanians who sought asylum professed persecution based on being election observers • Although BIA excised these findings, the court found BIA failed to explain how other findings were not tainted by the IJ's bias
<p>Kimumwe v. Gonzales 431 F.3d 319 (8th Cir. 2005)</p>	<ul style="list-style-type: none"> • Zimbabwean gay male • Asylum/CAT/ Withholding of removal • Argued that he satisfied burden of showing well-founded fear of future persecution, based largely on past persecution in Zimbabwe 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court found that Kimumwe failed to show past persecution for asylum, despite the fact that he was held in jail without charges for two months in Zimbabwe after having sex with another male college student. The jailing was for sexual misconduct and not his homosexual status.

		<ul style="list-style-type: none"> • The court also found that Kimumwe failed to prove a well-founded fear of future persecution despite President Mugabe's declarations that homosexuals have "no rights at all" and country conditions illustrating serious human rights abuses. • Because Kimumwe failed to satisfy the burden of proof on his asylum claim, his CAT and withholding of removal claims failed as well.
<p>Salkeld v. Gonzales 420 F.3d 804 (8th Cir. 2005)</p>	<ul style="list-style-type: none"> • Peruvian gay male • Asylum/CAT/Withholding of removal • Claimed that his homosexuality would subject him to persecution if returned to Peru 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • Did not demonstrate that he suffered past persecution because of his homosexual status and did not meet one-year deadline exception for asylum. • The court found that he failed to meet standard for withholding of removal because he could not show clear probability of future prosecution. • Peru does not have laws prohibiting homosexuality, Salkeld was never physically abused in Peru, and there are some areas in Peru that are more hospitable to homosexuals than other areas
<p>Gebremaria v. Ashcroft 378 F.3d 734 (8th Cir. 2004)</p>	<ul style="list-style-type: none"> • Ethiopian HIV positive female • Asylum/Withholding of Removal • Claimed that because of HIV positive status would suffer the "death sentence" and also future persecution based on membership in political group. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • Gebremaria knew of HIV status at first asylum interview but only presented the issue of the political group • Imprisonment of husband was not enough to establish well-founded fear of future persecution.
<p>Molathwa v. Ashcroft 390 F.3d 551 (8th Cir. 2004)</p>	<ul style="list-style-type: none"> • Botswanan gay male • Asylum/Withholding of removal • Argued that application for asylum not time-barred and that as a homosexual would face persecution in Botswana 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • Because Molathwa's asylum claim was denied as untimely, the federal court lacked jurisdiction to review exception to the one year deadline • Found that for withholding of removal, Molathwa presented insufficient evidence to prove that it was more likely than not that he would be persecuted because of his sexual orientation. • The warrantless entry into his apartment in

		<p>Botswana that he shared with his romantic partner did not involve violence, threats or a search and was viewed as an isolated event.</p> <ul style="list-style-type: none">• Molathwa's description of two incidents of mistreatment of homosexuals in Botswana did not show a pattern of harassment.
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NINTH CIRCUIT

Case	Key Facts	Outcome
Morales v. Gonzalez 472 F.3d 689 (9th Cir. 2007) – published	<ul style="list-style-type: none"> • Mexican male-to-female transsexual • Asylum/ CAT/ Withholding of Removal • Claimed asylum based on past persecution, when had been attacked and raped by several men and arrested several times in Mexico 	<p><u>GRANTED</u>—remanded</p> <ul style="list-style-type: none"> • Exercising jurisdiction to review asylum withholding of removal and CAT for alien with criminal convictions • IJ failed to apply correct legal standard for CAT by ignoring whether there was "willful blindness" on the part of government officials.
Hernandez-Montiel v. INS 225 F.3d 1084 (9th Cir. 1999) – published	<ul style="list-style-type: none"> • Mexican male-to-female transsexual • Asylum/Withholding of Removal • Began dressing as woman at age 12, expelled from school, harassment and persecution by Mexican police, fled to US, deported, sister enrolled in program to "cure" him. 	<p><u>GRANTED</u></p> <ul style="list-style-type: none"> • Gay men with female sexual identities in Mexico constitute a particular social group because sexual identity and orientation are immutable, and Petitioner was not just a transvestite who dresses like a woman, but a transsexual who has adopted gendered traits associated with women. • Mistreated because he was a homosexual, therefore, "on account of" his membership in the social group • Established past persecution and well-founded fear of future persecution based on incidents with police, forced to perform oral sex and sodomized by officer with a gun to temple.
Pitcherskaia v. INS 118 F.3d 641 (9th Cir. 1997) – published	<ul style="list-style-type: none"> • Russian lesbian • Asylum/ Withholding of Removal • Claimed asylum based persecution on account of membership in social group of "Russian lesbians" forced to undergo "therapy" to "cure" her, threats from militia for her sexual orientation and affiliation with gay political organization. 	<ul style="list-style-type: none"> • <u>GRANTED</u>—remanded • Remanded, clarifying that persecution does not require showing that actors has subjective intent to punish victims, so it did not matter that they intended to "cure" her and not hurt her.
Maradiaga v. INS No. 95-70238, 1996 U.S. App. LEXIS 38227 (9th Cir. Aug. 20, 1996) – unpublished	<ul style="list-style-type: none"> • Nicaraguan HIV positive male • Asylum/ Withholding of Removal • Political asylum claim, also argues withholding of removal due to medical condition discovered while on visit to Nicaragua. 	<p><u>GRANTED</u>—remanded</p> <ul style="list-style-type: none"> • Remand to determine if medical condition (HIV) amounted to 'extreme hardship'

<p>Ornelas Chavez v. Gonzalez 458 F.3d 1052 (9th Cir. 2006)</p>	<ul style="list-style-type: none"> • Mexican male-to-female transsexual • Withholding of Removal under IIRIRA 9 USC Sec. 1231 /CAT • Childhood abuse due to sexual identity, rape, abuse in while working as a prison guard, no response from supervisor at prison police killed homosexual friends, threatened and attacked by father 	<p><u>GRANTED</u>—remanded</p> <ul style="list-style-type: none"> • No requirement of reporting the incident to show persecution. • Legal standard for CAT not that sanctioned by government official but "by instigation or with the consent or acquiescence," / willful blindness. • Open questions as to whether child abuse constituted torture, prison officials were "public officials," or if there was sufficient evidence that would be tortured upon return.
<p>Vega v. Gonzalez No. 04-70868, 2006 U.S. App. LEXIS 14047 (9th Cir. May 3, 2006) – unpublished</p>	<ul style="list-style-type: none"> • Mexican homosexual male • Asylum, Withholding of Removal/ CAT 	<p><u>GRANTED</u>—remanded</p> <ul style="list-style-type: none"> • Following <u>Karouni</u> • Remand for application of corrects standards. Asylum is "reasonable probability standard" not "clear probability" • Rebuttable presumption of well founded fear of future persecution after past persecution has been established, means burden shifts to government to show change in country conditions or that petitioner could reasonably relocate.
<p>Pena-Torres v. Gonzalez No. 03-72680, 2005 U.S. App. LEXIS 7153 (9th Cir. Apr. 22, 2005) – unpublished</p>	<ul style="list-style-type: none"> • Mexican homosexual male • Asylum/ withholding of removal • Claim centers on interactions with police officer who arrested and detained him nine times for "being gay" (not a crime in Mexico) and forced to perform oral sex. He moved, and was arrested and detained at gay strip club 	<p><u>GRANTED in part DENIED in part</u>—remanded</p> <ul style="list-style-type: none"> • Past persecution satisfied when severely beaten by police leaving a gay bar, and other harassment by police. • Presumption of future persecution was not rebutted as to asylum application when government just said that Mexico is a "vast country" • Presumption rebutted as to withholding of removal
<p>Boer Sedano v. Alberto Gonzalez 418 F.3d 1082 (9th Cir. 2005) – published</p>	<ul style="list-style-type: none"> • Mexican HIV positive gay man • Asylum/ CAT/ withholding of removal • Claim centers on interactions with police officer who arrested and detained him nine times for "being gay" (not a crime in Mexico) and forced to perform oral sex. He moved, and was arrested and detained at gay strip club 	<p><u>GRANTED</u>—Found petitioner statutorily eligible for asylum and remanded</p> <ul style="list-style-type: none"> • Past persecution established because officer's attacks were not just a "personal problem" but motivated by his membership in a particular social group of homosexual men because officer asked first that he was gay.

		<ul style="list-style-type: none"> • Well founded fear based on 1) country conditions include violence against both transvestites and non-cross-dressing homosexual men; 2) "health status" and "social and cultural" constraints made relocation unreasonable; 3) trips back to Mexico alone did not disprove well-founded fear of persecution.
<p>Reyes-Reyes v. Ashcroft 384 F.3d 782 (9th Cir. 2004) – published</p>	<ul style="list-style-type: none"> • Salvadoran gay/ transvestite male • Asylum/ CAT/ Withholding of removal • As 13-yr-old kidnapped by 3 men, raped, beaten for sexual orientation. Future threats. Never told anyone and fled when 17. 	<p><u>GRANTED</u> – remanded</p> <ul style="list-style-type: none"> • Asylum denied because of one year bar • CAT remand for failure to consider torture "with consent and acquiescence of government agent" • Withholding of removal remand rejected bright line rule of IJ that victims of rape have to report incident to prove persecution
<p>Karouni v. Gonzales 399 F.3d 1163 (9th Cir. 2005) – published</p>	<ul style="list-style-type: none"> • Lebanese homosexual HIV positive male shi'ite • Asylum/ Withholding of Removal • Area of Lebanon controlled by Hizbuallah in and Islamic law, considering homosexuality "punishable by death." Lebanese government condemns homosexuality, • Member of prominent Shi'ite family; cousin shot in anus. Does not claim past persecution but claims asylum based on well-founded fear of future persecution because militia came to interrogate him about homosexuality. 	<p><u>GRANTED</u>—remanded</p> <ul style="list-style-type: none"> • Militia interview indicated that he was "outed" in Lebanon and fear of future persecution well founded Note also prominence of his family name and AIDS infection. • Do not fault for returning to Lebanon to visit dying parents twice, when visits consistent with other testimony, remained low-profile and did not associate with homosexuals. • Remand on issue of whether meets higher standard for withholding of removal
<p>Cornejo-Merida v. Ashcroft No. 03-73061, 2004 U.S. App. LEXIS 24654 (9th Cir. Nov. 30, 2004) – unpublished</p>	<ul style="list-style-type: none"> • Peruvian gay male • Asylum/Withholding of removal • Sexually abused by several family members as a child and harassed by other students in school. Witnessed police harassing and beating gay men. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> • The court found that Cornejo did not suffer past persecution by the government or by persons the government was unable or unwilling to control. The sexual assaults inflicted by Cornejo's family members were private conduct and never brought to the attention of the government. • Discriminatory treatment does not rise to level of persecution and Cornejo did not show that it is likely he would be targeted or that persecution of gays was widespread and severe in Peru.

ELEVENTH CIRCUIT

Case	Key Facts	Outcome
<p>Rico v. Attorney General No. 04-13956, 2005 U.S. App. LEXIS 24969 (11th Cir. Nov. 18, 2005) – unpublished</p>	<ul style="list-style-type: none"> Colombian gay, HIV positive male Asylum/ CAT/ Withholding of Removal Due to membership in organization serving gays/lesbian with HIV, targeted by AUC paramilitary group, 100 death threat calls, killed friend member of organization (See below-country conditions) 	<p><u>DENIED</u> – Denial of asylum upheld</p> <ul style="list-style-type: none"> Not credible because did not mention AUC persecution in initial application and changed facts, and other inconsistencies in claim, no evidence of phone calls Rejected argument that he didn't know that could claim asylum on these grounds and didn't want IJ to be prejudiced against his sexual orientation
<p>Rico v. Attorney General No. 06-12590, 2007 U.S. App. LEXIS 9381 (11th Cir. Apr. 25, 2007) – unpublished</p>	<ul style="list-style-type: none"> Colombian HIV positive male Motion to Reopen Claiming that conditions for homosexuals in Colombia have grown significantly worse 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> Country conditions not changed significantly enough to reopen
<p>Paredes v. Attorney General No. 06-13944, 2007 US App. LEXIS 5141 (11th Cir. Mar. 5, 2007) – unpublished</p>	<ul style="list-style-type: none"> Venezuelan gay HIV positive man Asylum/ Withholding of Removal Did not claim past persecution but based claim on pattern or practice of persecution of homosexuals in Venezuela and inability to get HIV drugs on return. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> Failure to establish past persecution or well-founded fear, there may be discrimination against homosexual men in health care system but does not rise to level of persecution, noted repeated trips back to Venezuela
<p>Mockeviciene v. Attorney General No. 06-12334, 2007 U.S. App. LEXIS 15167 (11th Cir. Jun. 26, 2007) –</p>	<ul style="list-style-type: none"> Lithuanian lesbian Withholding of Removal Claimed persecution based on sexual orientation, told husband she was lesbian, he beat her, then police evicted, had her fired two detentions, verbal and physical abuse by police. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> Credibility issues because found that she did not establish clearly that she was a lesbian. Found that discrimination did not rise to the level of persecution
<p>Tavera Lara v. U.S. Attorney General No. 05-16094, 2006 U.S. App. LEXIS 16749 (11th Cir. July 3, 2006) – unpublished</p>	<ul style="list-style-type: none"> Columbian Lesbian female Asylum/ CAT/ Withholding of removal/CAT Fired when told co-workers that she was gay, suffered discrimination and threats. 	<p><u>DENIED</u></p> <ul style="list-style-type: none"> Upheld adverse credibility finding Lots of evidence about lesbians in Columbia

Native Country	Granted	Denied in Part and Granted in Part	Denied
Albania	1		
Algeria			1
Argentina	1		
Botswana			1
China			4
Columbia			3
Costa Rica			1
El Salvador	1		
Ethiopia			1
Ghana		1	
Guatemala		1	1
Haiti	1		1
Indonesia			1
Jamaica			1
Jordan			1
Kenya			1
Lebanon	1		
Lithuania			2
Mexico	5	1	
Nicaragua	1		
Nigeria			1
Pakistan			1
Peru			2
Russia	1		
Turkey			1
Uganda	1		2
Venezuela	1		1
Zambia		1	1
Zimbabwe			1
Totals	14	4	29

Circuit	Granted	Denied in Part and Granted in Part	Denied
First Circuit			2
Second Circuit	1	1	5
Third Circuit	2	1	7
Fifth Circuit			1
Sixth Circuit		1	1
Seventh Circuit			3
Eighth Circuit	2		4
Ninth Circuit	9	1	1
Eleventh Circuit			5
Totals	14	4	29