EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VA

IN THE MATTER OF	)	
	)	
	)	FILE NO: A XXXXXX
	)	
XXXXX,	)	
XXXXXXXXX	)	
	)	
RESPONDENT	)	

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS AND WITHHOLDING OF REMOVAL

I. Facts and Procedural Background of the Case

Mr. XXXXXXX was born in Sudan on January 1, 1980. His parents are both Ethiopian nationals; thus, upon birth, Mr. XXXXXXX never became a Sudanese national, despite having been born there. He entered the United States on June 18, 1982 when he was two years old as a refugee with his mother, XXXXXXX XXXXXXX, his father, XXXXXXX XXXXXXX XXXXXXX, and his sister, XXXXXXX XXXXXXX XXXXXXX. He has resided in the United States and has not left the United States since he was admitted as a child of a refugee on June 18, 1982.

Mr. XXXXXXX's father, XXXXXXX XXXXXXX XXXXXXX was born in Ethiopia on August 21, 1951. See Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit A at 1. He married his first wife and had two children in the mid 1970s. See Id. He and his family fled the ongoing violence in Ethiopia for the Umjara Gadarif Refugee Camp in Sudan. See Id. His first marriage ended shortly thereafter. See Id. Mr. XXXXXXX's mother, XXXXXXX XXXXXXX, was born in Ethiopia on July 13, 1962.

See Declaration of XXXXXXX XXXXXXX, Exhibit B at 1. She fled Ethiopia with her parents to the Umgulja Gedarif Refugee Camp in Sudan when she was young. See Id. XXXXXXX XXXXXXX XXXXXXX and XXXXXXX XXXXXXX were married in the late 1970s and had their first child together, XXXXXXX XXXXXXX XXXXXXX, on January 1, 1980. See Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit A at 1. Their second child, XXXXXXX XXXXXXX XXXXXXX was born on May 16, 1982. See Id. On June 21, 1982, their family was sponsored to enter the United States as refugees by Catholic Charities. See id.; see also XXXXXXX XXXXXXXe XXXXXXX [sic] Refugee Travel Document, Exhibit B-1. XXXXXXX XXXXXXX XXXXXXX's first wife and oldest child entered several years later. See Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit A at 1. He sponsored his second child with his first wife to enter the United States in 1992. See id.

When XXXXXXX XXXXXXX XXXXXXX entered the United States as a refugee with his wife, XXXXXXX, and his two children XXXXXXX and XXXXXXX, they initially settled in Buffulo, New York. See id. After approximately three months, the family then moved to St. Louis, Missouri to join a close friend, who helped the family adjust to the language and culture in the United States. See Declaration of XXXXXXX XXXXXXX, Exhibit B at 1 ("It was good to live close to a friend from our same background because he helped us learn the customs and rules of the United States."). Several years later, the family moved to Virginia. See Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit A at 2. Beginning in the eighth or ninth grade, Mr. XXXXXXX's parents started noticing changes in Mr. XXXXXXX. See id.; see also Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit B at 2; see also

Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit C at 2. Whereas before, he always earned good marks in school and was well liked by his peers and teachers, they began to notice that he was acting strange. See id. He began acting disobedient to his parents and in school. See id. He stopped bathing or cleaning his room. See id. He reported to his parents that he was seeing and hearing things. See id.; see also Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit C, at 2 ("XXXXXXX was always a very stylish dresser and a very social person, but when he started to get sick, his hygiene started to decline and he became very anti-social. He stopped bathing regularly and dressing nicely. He had a short temper and often yelled and [sic] my parents and me. He would lock himself in his room for long periods of time and only come out to use the bathroom and eat. In a very short time, he stopped going to school and lost both of his jobs. This was such a sudden change for XXXXXXX that I could tell there was something wrong with him mentally. He just wasn't the same older brother that I knew."). It was at this time, in 1999, that he was convicted of his first crime. On July 16, 1999, he pled guilty to possessing paraphernalia in Montgomery County in violation of section 5-619(c)(1) of the Maryland Code and was sentenced to six months probation and a fine of $500.00, $400.00 of which was suspended. See "Trial Docket," Exhibit D.

Concerned about his mental health, his parents took him to Fairfax Hospital to receive treatment. See Declaration of XXXXXXX XXXXXXX, Exhibit B at 2 ("All of this behavior was so unlike my son that I eventually realized that there was something seriously wrong with him."). When he was first discharged from the hospital, he continued taking his medication for a short time, but after complaining of side effects he stopped taking his medication. See Declaration of XXXXXXX XXXXXXX

XXXXXXX, Exhibit A at 2. On February 10, 2000, Mr. XXXXXXX and his sister, XXXXXXX, got into an argument over who could use the phone. See Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit C at 2. What started out as a simple quarrel between siblings escalated into a physical altercation. See id. XXXXXXX became scared by her brother's response to their argument, and flagged down a police officer she noticed driving by. See id. Mr. XXXXXXX was arrested and eventually pled guilty to assault and battery on a family member in violation of section 18.2-57.2 of the Virginia Code. See id.; see also "Warrant of Arrest—Misdemeanor (State)," Exhibit E. He was sentenced to 60 days of incarceration, 30 days of which were suspended and 12 months of probation. See id. Mr. XXXXXXX received credit for time served on condition that he undergo a mental health evaluation. See id.

Following this arrest, Mr. XXXXXXX spent several years in and out of mental health treatment facilities. See Declaration of XXXXXXX XXXXXXX, Exhibit B at 2. Beginning in 2003, he began receiving treatment through an out-patient program associated with Fairfax Hospital called Program of Assertive Community Treatment ("PACT"). See Washington Post Article "Allowing the Mentally Ill a Life of Their Own" Exhibit F. Through this program, Mr. XXXXXXX lived in subsidized housing and received mental health treatment and supervision. Despite the best efforts of the case officers, Mr. Gezehegn did not respond well to living on his own. Without constant supervision, Mr. XXXXXXX did not take his medication, and his mental health progress began to deteriorate. He stopped bathing and did not clean his apartment. Despite the financial support he got from his parents and through the mental health program, he inexplicably started begging in the streets. On May 21, 2006, Mr. XXXXXXX was

arrested for urinating in public and was charged with indecent exposure in violation of section 18.2-387 of the Virginia code. See "Warrant of Arrest—Misdemeanor (State)," Exhibit G. Mr. XXXXXXX pled guilty and was sentenced to 30 days in jail, all of which was suspended, and fined $100. See id. On June 13, 2006, Mr. XXXXXXX was arrested for stealing a cup from 7-11 and was found guilty in the General District Court of Fairfax County of petty larceny in violation of section 18.2-96 of the Virginia Code. See "Summons," Exhibit H. He was ordered to pay a civil penalty of $750.00, $500.00 of which was suspended. See id. He was also ordered to "stay out of 7-11." See id.

As a result of these convictions, a Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE) detainer was issued against him. See "Record of Deportable/Inadmissible Alien Form I-213," Exhibit I. The detainer was reactivated in April 2007 following an arrest for trespassing. Id. He entered ICE custody on June 27, 2007 and was transferred to Piedmont Regional Jail, where he has remained since. Id.

The Notice to Appear, dated June 15, 2007, charged that he was convicted of two crimes involving moral turpitude, an aggravated felony, a violation of a law relating to a controlled substance, and a crime of domestic violence. See Notice to Appear, charging Mr. XXXXXXX as removable under INA §§ 237(a)(2)(A)(ii), 237(a)(2)(A)(iii), 237(a)(2)(B)(i), and 237(a)(2)(E)(i), Exhibit J. An amended NTA, served on November 7, 2007 added an addition charge of having been convicted of the offense of Indecent Exposure in violation of VA Code Section 18.2-387. See "Additional Charges of Inadmissibility/Deportability," Exhibit K. Mr. XXXXXXX denied removability as an aggravated felon and submitted a written brief on November 5, arguing that possession of

paraphernalia is not an aggravated felony because the specific subsection Mr. XXXXXXX was convicted under is not punishable as a felony under federal law, the record of conviction supported a finding that the conviction was limited to possession of paraphernalia only, not trafficking, and even if he were to have been convicted of selling paraphernalia, the analogous federal law specifically exempts the type of paraphernalia that Mr. XXXXXXX was convicted of possessing. See Memorandum of Law in Support of Respondent's Eligibility for Cancellation of Removal for Certain Permanent Residents, Exhibit L.

At his Master Calendar Hearing on November 14, 2007, Assistant Chief Counsel Eric Aurelius orally represented the government's decision to withdraw the charge of aggravated felony due to their inability to get the supporting conviction records necessary to meet their burden. Respondent has not been served with an amended Notice to Appear as of the date of this filing.

Mr. XXXXXXX submitted an application for cancellation of removal for certain permanent residents pursuant to INA § 240A(a) and a I-589 application for withholding of removal and protection under the Convention Against Torture on December 5, 2007 and supporting documentation. See Form EOIR-42A, I-589, and Supporting Documentation, Exhibit M. Additional supporting documentation is included with the present filing. His individual calendar hearing is scheduled for March 17, 2008 at 9:00 a.m.

II. Mr. XXXXXXX is eligible for cancellation of removal

Mr. XXXXXXX is eligible for cancellation of removal for certain permanent residents pursuant to INA § 240A(a). He has been a lawful permanent resident for more

than five years, he has resided continuously in the United States for more than seven years after his admission as a lawful permanent resident, and he has not been convicted of an aggravated felony.

III. Mr. XXXXXXX merits a favorable exercise of discretion for his application for cancellation of removal

Mr. XXXXXXX meets the criteria for a favorable exercise of discretion pursuant to Matter of C-V-T-, 22 I&N Dec. 7 (BIA 1998). The Board of Immigration Appeals (BIA) in C-V-T- stated the several factors that the immigration judge must consider when deciding whether to grant cancellation of removal to a lawful permanent resident. The positive factors are: (1) family ties in the United States, particularly ties to lawful permanent residents or U.S. citizens; (2) residence of long duration in the U.S. (particularly when the inception of residence occurred at a young age); (3) evidence of hardship to the respondent and his family if deportation occurs; (4) service in the U.S. armed forces; (5) a history of employment; (6) the existence of property or business ties; (7) evidence of value and service to the community; (8) proof of genuine rehabilitation if a criminal record exists; (9) other evidence attesting to a respondent's good character. Adverse factors include: (1) nature and underlying circumstances of the grounds of removal; (2) the presence of additional significant violations of the immigration laws; (3) the nature, recency and seriousness of a criminal record; and (4) the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident of the U.S. Generally, the immigration judge must weigh the positive factors against the negative factors in exercising his discretion. See id. at 11, citing Matter of Marin, 16 I&N Dec. 581, 584-85 (BIA 1978).

As stated below, Mr. XXXXXXX has demonstrated that he merits a favorable exercise of discretion according to the C-V-T- factors.

A. Mr. XXXXXXX has been a lawful permanent resident of the United States for over twenty years and he became a resident at the age of two

Mr. XXXXXXX has been a lawful permanent resident for over twenty years, having entered the U.S. as a permanent resident when he was only two years old. See Declaration of XXXXXXX XXXXXXX, Exhibit B at 1; see also Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit A at 1. He entered the United States with his mother, his father, and his sister as a refugee and adjusted his status to lawful permanent residence, effective as of the date he entered. See id.; see also copy of Atalklti A XXXXXXX Permanent Resident Card, Exhibit M-1.

B. Mr. XXXXXXX has strong family ties in the U.S. including his father who is a U.S. citizen, and his mother and sister who are lawful permanent residents

Mr. XXXXXXX has strong family ties in the United States, all of whom are lawful permanent residents or U.S. citizens. His parents are both U.S. citizens; his father naturalized in 1992 and his mother naturalized in 2006. See Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit A at 1; see also Declaration of XXXXXXX XXXXXXX, Exhibit B at 1. His sister, XXXXXXX XXXXXXX XXXXXXX is a lawful permanent resident. See Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit C at 1.

C. Mr. XXXXXXX would suffer great hardship if he were removed to Ethiopia

i. Mr. XXXXXXX suffers from paranoid schizophrenia and would be unable to access adequate mental health care in Ethiopia

Mr. XXXXXXX would suffer great hardship if removed to Ethiopia because he would be unable to access adequate mental health care and treatment for his mental illness. When Mr. XXXXXXX was in eighth or ninth grade, he began exhibiting symptoms consistent with paranoid schizophrenia and began treatment at several mental health facilities. See Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit A at 2; see also Declaration of XXXXXXX XXXXXXX, Exhibit B at 2; see also Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit C at 2. He was diagnosed and treated for paranoid schizophrenia in 2005. See "Assignment Form," Exhibit N. Most recently, he was diagnosed and treated for paranoid schizophrenia on April 18, 2007. See "MHS Emergency Services Alert/Referral," Exhibit O at 2, 4 ("Client sent back to FFX ADC from Western State Hospital 02/07 after being found unrestorable. Client detained 3/15/07 after judge requested client be evaluated by mobil [sic] crisis. Client released from FFX hospital 3/27/07 to Carpenters shelter. Client has declined meeting with PACT for f/u. Client briefly stayed at mothers [sic] where he became verbally abusive and aggressive. Client per mothers [sic] report is psychotic, responding to voices and hyper.").

Mental Health is one of the most disadvantaged health programs in Ethiopia, both in terms of facilities and trained manpower. "World Health Organization: Mental Health and Substance Abuse," Exhibit P. Ethiopia has an estimated 800,000 persons categorized as mentally ill. See U.S. Department of State, Country Reports on Human Rights Practices-2006: Ethiopia (March 6, 2007), Exhibit Q at 19. Nonetheless, there is only one psychiatric hospital and less than twenty qualified psychiatric doctors in the entire country to care for the mentally ill. See World Health Organization (WHO) "Report on

Mental Health System in Ethiopia," Exhibit R at 9-10, 14. The psychiatrist-to-population ratio in Ethiopia is 1 to 6 million. "World Health Organization: Mental Health and Substance Abuse," Exhibit P.

There is only one psychiatric hospital in Ethiopia; it has just 360 beds which provide medical care for critically mentally ill patients. See Article by Karen Russo, "Ethiopia's Amanuel Hospital," Exhibit S ("Amanuel Hospital, Ethiopia's only psychiatric hospital, has a chaotic and desperate feel."). There are just .35 beds per 100,000 persons with mental illness. See World Health Organization (WHO) "Report on Mental Health System in Ethiopia," Exhibit R at 10.

In addition to the one psychiatric hospital, there are 53 outpatient clinics, 6 community based psychiatric inpatient units, and one community residential facility in Ethiopia. See id. However, these facilities are heavily underfunded and lacking in resources. See id. For example, there are no follow up care or mobile mental health care teams in the outpatient clinics and they only treat 84 individuals per 100,000 people in Ethiopia. See id. Only half of the outpatient clinics have at least one psychotropic medicine of each therapeutic class (anti-psychotic, anti-depressant, mood stabilizer, anxiolytic, and antiepileptic) available. See id. The community-based psychiatric inpatient units can hold .14 beds per 100,000 populations and the rate of admissions is .3 per 100,000 populations. See id.

Without continual supervision and treatment, Mr. XXXXXXX will not be able to live independently and safely. Mr. XXXXXXX has a history of elusiveness to treatment and poor medication compliance. He suffers from significant life experience and skill deficits, and he needs more than an outpatient clinic weekly appointment. He has had

experiences with both auditory and visual hallucinations in the past. From 2005 until he was detained by immigration in 2007, Mr. XXXXXXX lived in subsidized housing through the PACT Residential Treatment program where he had regular visits from mental health professionals. Despite these regular visits, Mr. XXXXXXX was still unable to stay on track with the necessary medication schedule he was prescribed by his doctor. Mr. XXXXXXX lacks the skills to live independently and requires constant support from doctors and his family to take his medication. Mr. XXXXXXX has a history of uncontrollable episodes without proper treatment and medication. Based on the way he has responded to aggressive outpatient mental health treatment here in the United States, it is clear that Mr. XXXXXXX would not be able to survive living in Ethiopia.

ii. Mr. XXXXXXX would be left to live in the streets in Ethiopia because he does not speak the language and does not know anyone who would be able to help him

Mr. XXXXXXX's situation is further exacerbated by the fact that he has never lived in Ethiopia. Not only does he face cultural and language barriers, he does not know anyone who may help him. He will not be able to find meaningful work in Ethiopia given his lack of employment history in the U.S., his mental illness, and his inability to speak the language in Ethiopia. In Ethiopia, there are no legislative or financial provisions to protect mentally ill persons against discrimination in the work place or to provide housing for the homeless who are severely mentally ill. See U.S. Department of State, Country Reports on Human Rights Practices-2006: Ethiopia (March 6, 2007), Exhibit Q at 5-6. Therefore, even if Mr. XXXXXXX obtains access to the one psychiatric hospital in Addis Ababa, he will not have the financial means to pay for the

medical bills and medicine. Without mental health care assistance and means to sustain himself, Mr. XXXXXXX would be left to live in the streets in a foreign country. His father, XXXXXXX XXXXXXX states: "If XXXXXXX is deported to Ethiopia, he will die. No one will take care of him and he is completely incapable of caring for himself. Eventually, if nothing else, he will simply die of hunger." Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit A at 4. His mother, XXXXXXX XXXXXXX XXXXXXX states: "Because of XXXXXXX's illness, he is not able to take care of himself. He cannot function in regular society. He will not be able to communicate with anyone at all, and thus will not be able to take care of even his basic needs such as getting around or finding a job… If XXXXXXX is deported to Ethiopia, I will consider him dead. He will be out on the streets, unable to take care of even his most basic needs, and he will starve to death. I would be surprised if he survived for one week in Ethiopia." Declaration of XXXXXXX XXXXXXX, Exhibit B at 5. His sister, XXXXXXX XXXXXXX XXXXXXX states: "He won't be able to even communicate with people, much less be able to support himself. He won't be able to get food or shelter. He will quickly fall victim to the elements or to hunger, and he will die. I don't know how to say it any more clearly: XXXXXXX will simply die if he is sent to Ethiopia." Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit C at 4.

D. Mr. XXXXXXX has committed no serious crimes while in the United States and is not a danger to the community

Mr. XXXXXXX is not a danger to the community. All of his very minor crimes corresponded with times in his life when he was struggling with his mental illness and with the challenge of taking regular medication. He acknowledges a need to continue medication. During the past nine months that he has been detained, he has not been

treated by any mental health professionals, but has repeated requested to take medication and receive treatment in a mental health facility. Mr. XXXXXXX cannot be considered a danger on the mere account of his mental illness, but should be considered a potentially productive member of a community that he is eager to participate in, once he is afforded the opportunity to engage in meaningful treatment for his mental illness. The United Stats is one of the few counties in the world with a clinical community that understands the treatment required for paranoid schizophrenia. State and federal policies help the mentally ill, like Mr. XXXXXXX, who need to improve their lives so they can participate as productive members of society and ease their symptoms. Rehabilitation is now a statutorily-set objective for many states and the federal government, who specifically want to re-integrate the severely mentally ill back into the community through state support and treatment. See Arnold v. Arizona Department of Health Services, 160 Ariz. 593, 610 (Az. 1989).

Mr. XXXXXXX has struggled in the past with the necessity for him to be engaged in a treatment plan in order to be a productive member of this community and the United States. The last nine months, however, have been a wake up call for his family who now fully appreciate and understand the scope of his mental illness and the treatment he must receive. Only as a legitimate member of this community can he continue to receive the treatment he needs through state-sponsored healthcare programs like the Fairfax hospital. Individuals with incurable paranoid schizophrenia require a strong social network in order to maintain them on the path to rehabilitation. The social workers and doctors through the PACT program are familiar with his special needs and will continue to treat him if he is released.

Mr. XXXXXXX never chose to be paranoid schizophrenic. The severely mentally ill are often unfairly characterized and stereotyped as members of society conducting random violence. In fact, studies indicate that schizophrenic's violence when un-medicated is limited to simple assault and is often only directed at family members in the home.

Mr. XXXXXXX is a severely mentally ill man who has, regretfully, not always followed his prescribed treatment plan. When he does not take his medication and does not attend counseling, he acts bizarrely and often does illogical, inappropriate things. However, his family is committed to making sure that he follows his prescribed treatment plan in order to achieve a relatively healthy mental state. All but one of his crimes were extremely minor; stealing a cup from 7-11, loitering around 7-11 and urinating in public are offenses consistent with his mental state and his self-imposed homelessness. The possession of paraphernalia charge, while admittedly more serious, was committed nearly nine years ago when Mr. XXXXXXX was much younger, and before he began receiving more concentrated mental health treatment. He was not sentenced to any jail time, and was only sentenced to six months of probation and fined just $100. The lenient punishment is indicative of the fact that it was not a serious crime.

In order to ensure that Mr. XXXXXXX receives treatment and will not commit any further criminal offenses, his family has committed to assisting him. His sister states, "If XXXXXXX is released, he will not be getting into trouble like he did before. With my mom and me watching over him constantly, we can make sure he is on his medication constantly. Before, he was on his own a lot and we would check on him from time to time, but not regularly. He was left on his own too much and was able to stop taking his

medicine. Now, we will be with him and help him each and every day. We will make sure he takes his medicine daily and that he stays healthy." Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit C at 3. His mother states, "Before he was put into immigration custody, his father, sister, and I believed he was doing better. We knew he was receiving treatment from PACT and thought that he would do better. If I had known that his minor criminal convictions and his mental illness could result in him getting deported, I would have made him live with me and would not have left the responsibility of making him take his medication to anyone else. I am his mother. Sometimes social workers and case workers find it hard to make him take his medicine, but with encouragement form his family, he does it." Declaration of XXXXXXX XXXXXXX, Exhibit B at 4. Ms. XXXXXXX has researched the options for mental health services which would be available to Mr. XXXXXXX should he be released, as a result of her residency in Fairfax, VA. See "Mental Health Service Descriptions," "Mental Health Program Sites," and "Fairfax-Falls Church Community Services Board: Fees," Exhibit T.

E. Mr. XXXXXXX's family would suffer great hardship if he were removed to Ethiopia

Mr. XXXXXXX's family would suffer a great hardship if he were removed to Ethiopia. Mr. XXXXXXX has always been very close with his family. His sister, XXXXXXX XXXXXXX XXXXXXX states: "It will be torture to me if XXXXXXX is sent to Ethiopia. I love him so much. I will be terrified every minute of every day knowing that I am comfortable here and he is suffering and dying on his own in Ethiopia. I will not be able to live my normal life. Everything I do will remind me that he is over there suffering. When I eat, I will know he is not eating. When I am in my house, I will know he has no shelter. When I am working, I will know that he is unable to do so and

can't take care of himself. I will just constantly be aware of his suffering and will be suffering right with him." See Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit C at 4. His mother states: "XXXXXXX is my son; he is my blood. It brings me unbearable pain to think of my son being sent to Ethiopia. I know that he will simply die in the streets. This thought is too much for me, his mother, to handle." See Declaration of XXXXXXX XXXXXXX, Exhibit B at 5. His father states, "To visit him one time, it would cost us $2,000. This is too expensive for us to do this regularly. We would be stuck here without being able to visit him. If he is here, he will live with us and we will give him medicine and help him. If he is sent to Ethiopia, he will not know how to behave and will not be able to control himself and obey the laws. He will end up on the streets or in jail. [My family] would suffer terrible pain if we knew that he was in Ethiopia by himself where we are unable to care for him. We would try to support him if he were deported to Ethiopia, but even if I sent him money, he is too sick to take the money and take care of himself." See Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit A at 5.

F. Mr. XXXXXXX has good character

Mr. XXXXXXX's family attests to his good character. His father states, "When he takes his medication, XXXXXXX is a good son and a very productive, law abiding member of society. He does not cause trouble or commit any crimes… He is a benefit to both our family and society." See Declaration of XXXXXXX XXXXXXX XXXXXXX, Exhibit A at 6.

IV. In the alternative, Mr. XXXXXXX should be granted withholding of removal because there is a clear probability that he will face persecution in Ethiopia

Even if denied relief pursuant to Mr. XXXXXXX's application for Cancellation of Removal for certain lawful permanent residents, Mr. XXXXXXX is eligible for and should be granted withholding of removal to Ethiopia. An alien qualifies for withholding of removal under section 241(b)(3) of the INA if he establishes that his life or freedom would more likely than not be threatened on account of his membership in a particular social group if he were to be removed to his country of nationality. See U.S.C. §241(b)(3)(A); c.f., 1231(b)(3)(A)(2000); 8 C.F.R. 208.16(b)(2003). The alien does not need to provide evidence that he would be singled out individually for such persecution if he can establish: (1) that there is a pattern or practice in the country of proposed removal of persecution of a group of persons similarly situated to the applicant on account of membership in a particular social group; and (2) that he is included in and identifies with such social group. See 8 C.F.R. 208.16(b)(2)(i)-(ii)(2003).

A. Mr. XXXXXXX fears threats to his life and freedom on account of his membership in a particular social group if he is returned to Ethiopia

Mr. XXXXXXX fears that, if returned to Ethiopia, his life and freedom would be threatened on account of his membership in a particular social group: indigent, paranoid schizophrenic individuals in Ethiopia.

Mr. XXXXXXX fears threats to his life and freedom on account of his status as an indigent paranoid schizophrenic individual living in Ethiopia. People suffering from paranoid schizophrenia can be considered members of a particular social group because "they share a common, immutable characteristic" that defines the group and that the group members cannot change. See Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985). Schizophrenia is a chronic, life-long disease. Like any other chronic disease, schizophrenics can never change the fact that they are mentally ill, but can only ease the

symptoms of the disease through the help of monitored medication and counseling by licensed mental health professionals. Schizophrenia, unlike many other mental illnesses, is clinically defined by certain observed erratic behavior. They are often grouped together for social purposes for their strange behavior. Ones membership in such a group is clearly visible. See Matter of C-A 23 I&N Dec. 951 (BIA 2006). Indigent, mentally ill individuals living on the streets are especially easy to identify and persecute as they have no place to hide.

While one court has noted that a general category of the "mentally ill" is not considered a social group (See Raffington v. INS, 340 F.3d 770 (8th Cir. 2003)), there are distinguishing features in the definition of the social group to which Mr. XXXXXXX belongs. Mr. XXXXXXX's social group is limited to indigent persons with schizophrenia whose identify, unlike for other mental illnesses (e.g., clinical depression), is socially visible and defined by their outward erratic behavior. Such persons, as a group, can be subjected to mistreatment as a result of their erratic, often socially unacceptable behavior in public spaces. People with schizophrenia in Ethiopia share the common, immutable characteristic of having a chronic illness that requires a consistent treatment program including monitored counseling and medication. In fact, the "chronically mentally ill" have been considered a class for class action certifications. For example, in Arnold v. Arizona Department of Mental Health Services, the Supreme Court of Arizona certified a class of the chronically meanly ill ("CMI") (e.g., schizophrenia) and found that state inaction had resulted in a failure to provide a statutory prescribed adequate level of care for the chronically mentally ill. See Arnold v. Arizona Department of Health Services, 160 Ariz. 593 (Az. 1989). The court concluded that:

> It has been stated that "[t]he moral test of government is how it treats those who are in the dawn of life, the children; those who are in the twilight of life, the aged; and those who are in the shadows of life, the sick, the needy and the handicapped." Arizona has imprisoned its CMI in the shadows of public apathy. The legislature was the first to speak on the issues before us. We find no evidence in this record that the legislature intended to pass sham legislation. The legislature thoroughly, carefully and completely mandated duties of the state and county to the CMI population in Arizona. We hold that the legislature has mandated that the state and the county have a duty to jointly and harmoniously provide mental health care to the plaintiff class. In so holding we note that the duty may well be more expensive in the breach than in the fulfillment.

Id. at 610. The Arizona Supreme Court thus identified a common interest for schizophrenics in their need for what the court considered as morally obligated state care.

Furthermore, persons with mental disabilities have been considered a "social group" in other immigration contexts. In Matter of Faronda-Blandon, a homeless, mentally ill man was granted withholding of removal to Colombia. See Matter of Faronda-Blandon, A74-979-517 (IJ June 15, 2001) (York County Prison, Pa) (Van Wyke, IJ) (The court found that it was more likely than not that he would be persecuted on account of his being a social outcast in Colombia due to his mental and financial status.). In the asylum context, children with developmental disabilities and their support network are considered a social group.

B. Mr. XXXXXXX will be persecuted in Ethiopia on account of his being indigent and paranoid schizophrenic

Mr. XXXXXXX fears that his life and freedom would be threatened in Ethiopia on account of his mental illness. As outlined above, there are inadequate mental health resources in Ethiopia. There is only one mental health hospital serving just 380 patients out of a population of over 800,000 people categorized as mentally ill. Given Mr.

XXXXXXX's economic status, and his inability to speak the language or negotiate the foreign culture in Ethiopia, Mr. XXXXXXX will be homeless. As such, Mr. XXXXXXX will be more easily targeted because his strange behavior as a result of his illness will apparent to the general public.

Because there are no social programs in Ethiopia to protect and provide care for the mentally ill, Mr. XXXXXXX will be completely on his own. Given his behavior and reaction to the treatment he has received in the United States (committing minor crimes such as urinating in public, minor theft crimes, and assaultive behavior towards his family members), it is certain that this behavior will continue and worsen without any treatment in Ethiopia.

V. Conclusion

For the above reasons, Mr. XXXXXXX requests that the immigration judge exercise his discretion in favor of granting his application for cancellation of removal pursuant to INA § 240A(a) or in the alternative, grant him withholding of removal.

Respectfully submitted this
6th day of March, 2008:

_____

Jackie Bliss, Esq.
CAIR Coalition
1612 K Street, NW, Suite 204
Washington, DC 20006

CERTIFICATE OF SERVICE

Respondent's Name: XXXXXXX XXXXXXX XXXXXXX
Alien Number:

On March 7, 2008, I, Bradley Jenkins delivered by hand a copy of the memorandum of law in support of application for cancellation of removal and supplemental supporting documentation to application to the Assistant Chief Counsel for Immigration and Customs Enforcement at the below address.

Department of Homeland Security
Office of the Chief Counsel
901 North Stuart Street, Suite 708
Arlington, VA 22203

_____
Bradley Jenkins

Date: March 7, 2008