I. CLIENT IS ELIGIBLE TO APPLY FOR ASYLUM.

An asylum applicant must show by clear and convincing evidence that he or she has filed his or her application within one year of his arrival in the United States. INA § 208(a)(2)(B). Notwithstanding the one-year deadline, an application for asylum may be considered “if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant’s eligibility for asylum or extraordinary circumstances relating to the delay in filing the application.” INA § 208(a)(2)(D). To qualify for an exception under this standard, the applicant must show that the “circumstances . . . not intentionally created by the [applicant] through his or her own actions or inactions . . . were directly related to the . . . delay in filing the application” and that the applicant filed for asylum within a reasonable period of time given those circumstances. 8 C.F.R. § 208.4(a)(5).

Here, Client qualifies for an exception because he experienced post-traumatic stress disorder (“PTSD”) that directly caused his delay in filing. But for Client’s PTSD, he would have filed his application within the one-year deadline. See id.

A. Post-Traumatic Stress Disorder Qualifies as “Extraordinary Circumstances.”

The Regulations contain an illustrative – not exhaustive – list of circumstances which may be considered “extraordinary” in relation to a delay in filing. The Regulations list “[s]erious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past, during the 1-year period after arrival” as an extraordinary circumstance. 8 C.F.R. § 208.4(a)(5)(i). PTSD constitutes an “extraordinary circumstance” when it prevents an applicant from filing a timely claim. See, e.g., Munoz v. Holder, 407 Fed. App’x 185, 186 (9th Cir. 2010) (“the IJ erred by failing to consider whether [petitioner’s] post-traumatic stress disorder (PTSD), brought on by abuses he claims to have suffered in Guatemala, excused him
from filing his asylum application within one year.”); *Mukamusoni v. Ashcroft*, 390 F.3d 110, 117 (1st Cir. 2004) (“During the April 27, 2000 hearing, the IJ excused Mukamusoni’s late filing of her asylum application because the IJ found her to be suffering from PTSD during the year that she was in the United States, and that this constituted ‘extraordinary circumstances’ justifying the late filing. No dispute remains as to the timeliness of her filing”); *Barry v. Holder*, 361 Fed. App’x 268, 269 (2d Cir. 2010) (noting PTSD may be an extraordinary circumstance excusing an untimely asylum claim where the petitioner demonstrates that his condition prevented him from filing a timely claim). Here, Client suffered from significant mental disabilities, including PTSD, which prevented him from filing his application during the one-year period.

**B. Client’s Mental Disabilities Prevented Him From Complying with the One-Year Deadline.**

Client is the repeated victim of gang violence, and lived with continuous threats of physical harm and death. Ex. A, ¶¶ 18, 47. Before the age of twenty, Client experienced the fear and trauma of the murders of several of his cousins, a brother-in-law, and his father. *Id.* ¶ 23, 30-31, 36-38, 45. After his father’s violent death, Client continued to experience threats and believed that he would be murdered if he stayed in El Salvador. *Id.* ¶¶ 46-48, 72-73.

It is not surprising that his fears continued when he came to the United States. He continued to experience significant mental anguish and disability as a result of the violence and fear he has experienced. *Id.* ¶¶ 50-51, 66-67. He suffered from intrusive thoughts of traumatic content, “grew very depressed” and “was very anxious all the time.” *Id.* ¶ 50-51. He also had difficulty sleeping and had nightmares “almost all the time about [his] father’s death,” and about his own death. *Id.* ¶ 51. He would often “wake up sweating with [his] heart pounding.” *Id.*
Client was evaluated by Doctor, MA, LCPC, who has diagnosed Client with Post Traumatic Stress Disorder (PTSD) and Major Depression Disorder. See Diagnostic Evaluation (“Ex. V”); see also E-mail from Doctor to Attorney (March 1, 2010) (“Ex. W”) (“I evaluated Client . . . [t]he diagnosis I arrive at is Post Traumatic Stress Disorder and Major Depression Disorder”). The essential feature of PTSD is the development of symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury or witnessing an event that involves death, injury, or a threat to another person. Anxiety Disorders, § 309.81 Posttraumatic Stress Disorder (“Ex. X”) at 205. One of the hallmarks of PTSD is the persistent avoidance of any stimuli related to the trauma that one has suffered. Id. at 205. “Persistent avoidance” includes “efforts to avoid thoughts, feelings or conversations about the traumatic event.” Id at 205-06.

Doctor diagnosed Client with post-traumatic stress disorder. Ex. V at 289. As Doctor explained, Client’s life and his family members’ lives were threatened many times by gang members because they opposed and confronted the MS-13. Id. at 289-90. As a result of these traumatic experiences, Client manifested a constellation of symptoms consistent with both major depression and post-traumatic stress disorder. Id. He struggled with sleep disturbances, was extremely preoccupied with worry about his family members, and had symptoms associated with major depression and anxiety. Ex. V at 289-90. Doctor also determined that Client’s thoughts were often interrupted by violent images of the deaths of his family, particularly his father’s, and expressed “extreme sadness, fatigue, lack of motivation and interest.” Ex. at 290.

Applying for asylum would have forced Client to relive the traumatic events from his youth; he would not only have had to recount the abuse and treatment from gang members and the violent murders of his family members, but he would be forced to talk about his past
experience with the El Salvadoran authorities, namely their inability to assist and express statements that they could not protect Client and his family members. Client’s PTSD thus prevented him from recalling all of those events in order to apply for asylum. Consistent with the diagnostic features of PTSD, see Ex. V at 289-90, Client was unable to think about the past and was too afraid to talk to anyone about this past trauma. Ex. A, ¶¶ 50-51, 66. As Client stated, when he arrived in the United States, he felt forced to try to put on a good face outwardly but he felt broken on the inside. Id. ¶ 50. Because of his mental disability, he made deliberate efforts to avoid any thoughts or feelings about the traumatic events he experienced as a teenager and avoided any situation which would arouse recollections. Ex. A, ¶¶ 50-51. See also Ex. X at 293-94. Client’s PTSD prevented him from re-living the horrendous treatment and make an affirmative application for asylum.

Moreover, Client’s fear of authorities prevented him from applying for asylum. Client knew that the murders of H. and his family were brought on by N.’s assistance to the local authorities in El Salvador. See Ex. A, ¶ 33-38. He feared that the MS-13 had a presence in the United States as well and that going to the authorities here would lead to his death just as going to the authorities in El Salvador had led to the deaths of N.’s family. Indeed, it was not until Client was detained and placed in a position where legal services came directly to him, that Client felt safe enough to seek asylum.

C. **Client Filed for Asylum Within a Reasonable Period Given His PTSD**

Once Client was placed in a position where legal services came to him and helped him understand he was safe, he cooperated with his attorneys so that his asylum application could be filed shortly thereafter. Significantly, at the time he filed for asylum, Client still had not yet been diagnosed with PTSD and was not receiving any treatment. In other words, his “extraordinary
“circumstances” had not yet receded at the time he filed his asylum application. Client has therefore filed his I-589 within a reasonable period of time due to the extraordinary circumstances of what he has suffered. See 8 C.F.R. § 208.4(a)(5); See Matter of T-M-H & S-W-C, 25 I&N Dec. 193 (BIA 2010).