

NON-DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
MEMPHIS, TENNESSEE

In the Matters of

ROMEIKE, Uwe Andreas Josef
FUNK, Hannelore ("Mrs. Romeike")
ROMEIKE, D [REDACTED]
ROMEIKE, I [REDACTED]
ROMEIKE, J [REDACTED]
ROMEIKE, C [REDACTED]
ROMEIKE, D [REDACTED]

Applicants for Asylum/Withholding

File Nos.: A087-368- [REDACTED]
A087-368- [REDACTED]
A087-368- [REDACTED]
A087-368- [REDACTED]
A087-368- [REDACTED]
A087-368- [REDACTED]
A087-368- [REDACTED]

Immigration Judge Lawrence O. Burman

Next Hearing: 12/16/09 at 9:00 am

RESPONDENT'S PRE-HEARING BRIEF IN SUPPORT OF
ASYLUM OR WITHHOLDING OF REMOVAL

INTRODUCTION

Uwe Romeike and his wife, Hannelore (hereafter “Mrs. Romeike”), are German parents who have chosen to homeschool their children for religious and conscientious reasons. Homeschooling, however, is more than a personal educational choice; those who choose to homeschool are members of one of the most significant social movements of the late twentieth and early twenty-first centuries.

“Home schooling is . . . a social movement, with a rich history and elaborate organizational apparatus,” says American sociologist Mitchell Stevens in his book, *Kingdom of Children*.¹ “[H]ome schooling is not a random collection of individuals but an elaborate social movement with its own celebrities, networks, and characteristic lifeways.”²

In other words, “homeschoolers,” as members of this movement call themselves, are members of a “particular social group” in the vernacular of United States immigration law. Uwe and Mrs. Romeike are unquestionably members of this particular social group.

Homeschooling is a legal educational option in every major western country except Germany.³ In scores of cases, the German courts have noted that children who have been homeschooled are bright and well educated. According to the German Courts, however, this is irrelevant. The German Federal Constitutional Court has explicitly held that Germany is entitled to forbid homeschooling *precisely because* “homeschoolers” represent a particular social group it may legitimately suppress.⁴

In the 2003 *Konrad* case, the German Federal Constitutional Court reasoned that Germany may legitimately suppress the homeschooling movement because “[t]he general public has a justified interest in counteracting the development of religiously or philosophically motivated ‘parallel societies’ and in integrating minorities in this area.”⁵

Members of the homeschooling movement in Germany are fined exorbitantly. Their wages are garnished and homes and property seized. Their children are taken away from them by the state, and some parents are even incarcerated. This excessive, pervasive, and targeted treatment goes beyond mere *prosecution*; it is *persecution* of members of a particular social group justified by what the German Court described as “counteracting the development of religiously or philosophically motivated ‘parallel societies.’”⁶

United Nations Special Rapporteur Werner Munoz writes that “[t]he promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school. In this context, the

¹ Mitchell Stevens, *Kingdom of Children*, Princeton University Press, Princeton, NJ (2001), 4.

² *Id.*, introduction.

³ See <http://www.effe-eu.org/effe2/index.php?atlas> (site has English language available – click on UK flag for English language); see also Affidavit of Michael P. Donnelly, Esq., paragraph 15, *Tab J*, p. 415; see also Wikipedia entry, *Tab E*, page 120.

⁴ *In the case relating to the constitutional complaint of Mr. Konrad*, German Federal Constitutional Court (1 BvR 436/03, decided 04/29/03), *Tab H*, p. 256.

⁵ *Id.* (emphasis added).

⁶ *Id.* at paragraph bb.

Special Rapporteur received complaints about threats to withdraw the parental rights of parents who chose home-schooling methods for their children.”⁷

Thomas Spiegler is a professor at Friedensau University in Germany where he teaches sociology. He received an award from the German Sociological Association for his dissertation about home education in 2008. He writes in the November 2009 journal *Theory and Research in Education* that “all of the above sanctions, ranging from a fine and a prison sentence up to the loss of child custody, have been applied during the last decade to prevent parents from practicing home education...”⁸

Some homeschoolers, rather than sacrifice either their children or their convictions, have split up and “separated for years—the fathers remaining in Germany to provide for their families and mothers and children living in another country where they are able to safely homeschool.”⁹ Additionally, every year dozens of homeschooling families flee Germany to other countries where members of this particular social group may follow their consciences without persecution. Respondents are one such homeschooling family.

Lead respondent and principal applicant, Mr. Romeike (pronounced “roh-MY-kee”), has applied for asylum or withholding of removal. His wife and five children are derivative beneficiaries of his asylum application. If the alternative relief of withholding becomes necessary, each of Mr. Romeike’s derivatives filed separate I-589 applications so that they may each be considered principal applicants for withholding.

In support of their cases, Mr. Romeike, through counsel, hereby states the following:

FACTS

Mr. Romeike is a 38-year-old¹⁰ citizen of Germany married¹¹ to 36-year-old¹² Mrs. Romeike, also a citizen of Germany. They have five children, natives and citizens of Germany:

- 1.
- 2.
- 3.
- 4.
- 5.

⁷ “Report of the Special Rapporteur on the right to education, Addendum: Mission to Germany,” U.N. Human Rights Council, Fourth session, A/HRC/4/29/Add.3 (03/09/07), paragraph 62, Tab I, p. 326.

⁸ See Affidavit of Michael P. Donnelly, Esq. at paragraph 6 discussing Thomas Spiegler, *Why State Sanctions Fail to Deter Home Education: An Analysis of Home Education in Germany and Its Implications for Home Education Policies*, *Theory and Research in Education*, 297-309 (2009) at 300. Affidavit attached at Tab J, page 413. Spiegler article attached at Tab J, page 394.

⁹ Michael Farris, “New Strategy for Securing Homeschool Freedom in Germany,” Home School Legal Defense Association (05/10/07), Tab I, page 318. See also *In the family case concerning underage children (Dennis Plett)*, German Federal Court of Appeals (XII ZB 42/07, decided 10/17/2007), paragraph 3, in which the German Federal Court of Appeals ruled that it was appropriate for German courts to exercise custodial authority over children who were not present in Germany but had moved to Austria in order to homeschool. Tab H, page 268.

¹⁰ D.O.B. 05/25/1971.

¹¹ D.O.M. 08/02/1996.

¹² D.O.B. 12/03/1972.

From August of 1996 to August of 2008, the Romeike family lived in Bissingen, Germany, in the State of Baden-Wuerttemberg. Mr. Romeike supported his family as a freelance private piano teacher. Mrs. Romeike had also been a professional music teacher.

In the fall of 2006, Mr. and Mrs. Romeike did not send their school-age children to the government elementary school. Instead, they began to homeschool them. Mr. and Mrs. Romeike did the teaching and the curriculum was provided by The Philadelphia School of Siegen, Germany, a private Christian correspondence school. The school was previously accredited as a state-approved private school for on-site students before becoming exclusively a correspondence school. The school work of the Romeike children was graded by staff of The Philadelphia School. Mr. and Mrs. Romeike also became members of a homeschool support group in the state of Baden-Wuerttemberg.

Particular Social Group

Homeschoolers in Germany make up a particular social group as evidenced by several factors. German homeschoolers hold conferences that are exclusively for their participation.¹³ German homeschoolers organize support groups for their exclusive participation.¹⁴

Specific private organizations have been created to serve the needs of homeschoolers. For example, the Netzwerk Bildungsfreiheit has been organized to campaign for the legalization of homeschooling and other alternative forms of education.¹⁵ The organization Schulunterricht zu Hause e.V., (Schuzh) ("Instruction at Home") is a national organization that offers homeschoolers legal counsel in issues related to homeschooling.¹⁶ Bundesverband Natürlich Lernen! e.V. ("The National Association for Natural Learning") is another national organization established to advocate for alternative education for parents who wish to homeschool their children.¹⁷ Schulbildung in Familieninitiative e.V. ("Family Initiative for Education") was formed to provide information and support to families who choose to homeschool in Germany.¹⁸

As Professor Spiegler notes, "[m]any home educators regard themselves as freedom fighters or pioneers of an enlightenment. They see themselves as reformers who have to accept resistance, while they are trying to establish a new common good."¹⁹

¹³ See Affidavit of Michael P. Donnelly, Esq., paragraphs 7-8, p. 413.

¹⁴ See Affidavit of Michael P. Donnelly, Esq., paragraph 6, p. 413.

¹⁵ See the Netzwerk's website at <http://netzwerk-bildungsfreiheit.de/> (the link is to the German language website; see also the discussion in Donnelly's Affidavit at paragraphs 8-9, pp. 413-414.)

¹⁶ See the Schuzh's website at <http://www.schuzh.de/cms/index.php?id=2> (the link is to the German language website; see also the discussion in Donnelly's Affidavit at paragraph 8, pp. 413-414.)

¹⁷ See the Bundesverband's website at <http://www.bvnl.de/> (the link is to the German language website; see also the discussion in Donnelly's Affidavit at paragraph 8, pp. 413-414.)

¹⁸ See the Schulbildung's website at <http://www.sfev.de/> (the link is to the German language website; see also the discussion in Donnelly's Affidavit at paragraph , pp. 413-414.)

¹⁹ Spiegler at 304 (Tab H, p. 402).

Persecution

As detailed in his affidavit in support of his asylum application, Mr. Romeike and his wife and children suffered constant persecution because of their homeschooling. The following is a non-exhaustive list of persecution they suffered:

Threats

- On 09/20/2006, Wolfgang Rose, the principal of the government school, confronted Mrs. Romeike at home, uninvited. He demanded that the children attend the government school, or he would retaliate with unspecified action.
- On 09/21/2006, in writing, Principal Rose repeated his threat.
- On 09/25/2006, Principal Rose confronted both Mr. and Mrs. Romeike at home. He stayed for about 90 minutes. Principal Rose insisted Mr. and Mrs. Romeike could not teach their own children. He rejected and disparaged their motives of religious conviction and their exercise of parental rights regarding educational choice. He demanded that the children attend the government school, or they would suffer consequences.
- On 10/06/2006, by telephone, Mayor Kümmerle, the head law enforcement official in the town of Bissingen, told Mr. Romeike that homeschooling was not in the best interests of the children. He too rejected and disparaged their motives of religious conviction and their exercise of parental rights regarding educational choice. He too demanded that the children attend the government school, or they would suffer consequences.
- On 10/09/2006, in writing, Mayor Kümmerle threatened to fine Mr. and Mrs. Romeike € 30,00 (about \$45.00 USD) per child, per day (about \$675/wk), if they continued to homeschool their children.²⁰ He also threatened to make the Romeike children attend the government school through the use of police force. Both of these specific threats were subsequently made good.
- On 10/24/2006, Principal Rose wrote that he would be reporting the Romeikes' failure to send their children to the government school to the Jugendamt (Youth Welfare Office). The threats by Principal Rose upset Mr. and Mrs. Romeike, as they knew other homeschooling parents had been fined very large amounts, arrested, imprisoned, and had their children taken away.
- On 12/12/2006, Dr. Klein, in person, threatened zero-tolerance enforcement of mandatory attendance at the government school.
- On 12/19/2006, Dr. Klein wrote that the Romeike children were required to attend government school. He threatened continued fines and other consequences.

²⁰ See Letter by Mayor Kümmerle to Mr. and Mrs. Romeike (10/09/06), attached at Tab C, previously submitted.

Physical Harm

- On 10/20/2006 (Friday), at about 7:30 a.m., armed and uniformed police officers entered the Romeike home. Without a written order, the officers forcibly took the Romeike children from the home and drove the crying, traumatized children to the government school.
- On 10/23/2006 (Monday), at about 8:30 a.m., armed and uniformed police officers again came to the Romeike home to forcibly take the children away, and would have succeeded but for the group of German citizens protesting outside the Romeike home.

Intimidation and Belittling

- In November of 2006, Mr. and Mrs. Romeike were confronted by Dr. Klein who, unannounced, brought to the meeting an agent from the Jugendamt, the agency with authority to take children away from their parents.
- The German authorities temporarily excused the Romeike children from attending the government school, based upon a doctor's letter issued November 13, 2006 that claimed enforced attendance at the government school would cause the Romeike children undue stress with psychosomatic consequences. This notice was issued by the health department and the reasoning alarmed Mr. and Mrs. Romeike, as such reasons have been used in other cases in Germany to force homeschooled children into a psychiatric clinic and to take the children away from their parents.
- The German authorities, including civil judges, continually rejected the Romeikes' arguments regarding their consciences, parents' rights, and freedom of educational choice.

Fines

- On 12/19/2006, Mr. and Mrs. Romeike were each fined € 75,60 (about \$112.00 USD), per school-age child, for 22 school days of absence. The total bill was € 453,60 (about \$672.00 USD).
- On 04/03/2007, Mr. and Mrs. Romeike were again fined, per parent, per child.
- On 05/23/2007, Mr. and Mrs. Romeike were fined € 3485,70 (about \$5,115.00 USD).
- On 08/16/2007, Mr. and Mrs. Romeike were again fined.
- On 09/04/2007, Mr. and Mrs. Romeike were fined € 385,92 (about \$571.00 USD).

- On 10/26/2007, Mr. and Mrs. Romeike were again fined € 4430,70 (about \$6,490.00 USD). This time, with the threat that if they did not pay, the authorities would seize their property.
- On 03/26/2008, Mr. and Mrs. Romeike were fined € 2954,00 (about \$4,330.00 USD).

Mr. and Mrs. Romeike attempted to stop the fines through the German court system, but to no avail. To collect these fines, the officials could begin proceedings to take away Mr. Romeike's home.²¹ Mr. Romeike and his family fled Germany before these proceedings could be completed.

On 08/17/2008, Mr. Romeike and his family flew from Germany to the United States of America. At Atlanta, Georgia, they were inspected as Visa Waiver Program (VWP) entrants. They were admitted as visitors, authorized to stay until Saturday, 11/15/2008. They have resided in Tennessee where they continue to lawfully educate their own children at home under Tennessee law.

On Monday, 11/17/2008, the U.S. Citizenship and Immigration Services (CIS) acknowledged the reception of all seven I-589 forms, one for each member of the Romeike family. As a VWP entrant "not yet served with Form I-863, you may file your completed Form I-589 with USCIS Service Center having jurisdiction over your application." Form I-589 Instructions, at page 12. In compliance with the instructions, the Romeikes correctly filed their I-589 forms with CIS. On 01/13/2009, the CIS referred the I-589 forms to the Immigration Court.

ISSUE

Did Mr. Romeike suffer past persecution or does he have a well-founded fear of future persecution on account of his membership in a particular social group or political opinion? Would his life or freedom be threatened in Germany because of a protected ground?

SUMMARY OF THE ARGUMENT

Mr. Romeike is a member of a particular social group of "homeschoolers." Homeschoolers in Germany share both key characteristics of a particular social group, i.e., "particularity" and "visibility." Additionally, Mr. Romeike has, in fact, suffered past persecution and has a well-founded fear of future persecution, because Germany's prosecution of Mr. Romeike rises to the level of persecution. Germany's punishment was and is excessive and is designed to suppress or discourage this particular social group from existing, growing, or flourishing. The prosecution was and is discriminatory and targeted because non-homeschooling truants are not as zealously prosecuted and exceptions to compulsory attendance are not granted to homeschoolers but are granted to others. Germany's persecution of Mr. and Mrs. Romeike and other homeschoolers is also criticized by the international community as contrary to basic rules of human conduct.

²¹ See Affidavits of Mr. and Mrs. Neubronner, Tab D, pages 98-100, previously submitted. See Affidavit of Heiko Krautter Tab G, page 246.

BURDEN OF PROOF

The Romeike family should be granted asylum if they prove by a preponderance of the evidence²² that they are refugees,²³ defined as "any person who is outside any country of such person's nationality ... and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country 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."²⁴ An asylum "applicant may qualify as a refugee either because he or she has suffered past persecution or because he or she has a well-founded fear of future persecution."²⁵

In the alternative, the Romeike family should be granted withholding of removal if they prove a "clear probability" that it is "more likely than not"²⁶ that their "life or freedom would be threatened in [Germany] because of [their] race, religion, nationality, membership in a particular social group, or political opinion."²⁷

ARGUMENT

I. Germany's Punishment of Homeschoolers is on Account of a Protected Ground.

Homeschoolers, as members of a particular and visible social movement, are able to follow their consciences in every major Western country except Germany. The German government, supported by its high courts, has instead taken a position of official intolerance of this particular social group. Germany's Federal Constitutional Court has held that the German government has a legitimate interest in targeting individual homeschoolers for the very purpose of suppressing the homeschooling movement and preventing this particular social group from flourishing.

The reality in Germany is that when authorities discover homeschoolers, the wheels of the state machine begin to turn to progressively increase pressure beginning with demands that the parents violate their consciences and put their children in a state-approved school. Then authorities impose ever-increasing and excessive fines. If payment is not made or submission compelled, wages are garnished and property seized. At the same time, either in parallel or sequentially, the Jugendamt²⁸ may seek to take custody of the children, a criminal prosecution may be initiated, and the parents may be jailed. This is persecution on account of one or more of the qualifying protected grounds.

These facts not only prove that the harm *is* persecution, they also prove that the persecution is *on account of* Mr. Romeike's membership in a particular social group and/or his political opinion.

²² *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985); 8 CFR 1208.13(a), 1208.16(b).

²³ Section 208(b)(1)(A) of the Immigration and Nationality Act (INA).

²⁴ INA 101(a)(42)(A).

²⁵ 8 CFR 208.13(b).

²⁶ *INS v. Stevic*, 467 U.S. 407 (1984); *Lin v. INS*, 238 F.3d 239, 244 (3d Cir. 2001).

²⁷ INA 241(b)(3)(A).

²⁸ The Jugendamt or "Youth Welfare Office" is Germany's equivalent of the Department of Social Services.

A. Membership in a Particular Social Group

According to the Sixth Circuit, “[t]he BIA has defined a ‘particular social group’ as ‘a group of persons all of whom share a common, immutable characteristic.’”²⁹ Additionally, “whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.”³⁰

1. German Homeschoolers Share a Common Characteristic.

The particular social group to which Mr. Romeike belongs consists of those parents who for religious, political, social, academic or conscientious reasons do not send their children to state-approved schools, but choose to educate them at home. The opposition to sending their children to state-approved schools shared by Mr. Romeike and other German homeschoolers is so profound that many, including Mr. Romeike, have chosen to suffer the severe consequences of noncompliance in order to follow their consciences.

Earlier this year, the Sixth Circuit in *Al-Ghorbani v. Holder* favorably quoted an opinion of the Third Circuit that held that Iranian feminists who refuse to follow the government’s gender-specific laws and social norms constitute a particular social group. In *Fatin v. INS*, then-Judge Samuel Alito explained that “if a woman’s opposition to the Iranian laws in question is so profound that she would choose to suffer the consequences of noncompliance, her beliefs may well be characterized as so fundamental to her identity that they ought not be required to be changed.”³¹

The same is true for Mr. Romeike and other members of the German homeschooling social group. Their religious and conscientious beliefs are so fundamental to their identity that they ought not be required to be changed. Homeschoolers in Germany are without question a particular social group.

2. German Homeschoolers Have Both Particularity and Visibility.

The BIA has also stated that “two key characteristics of a particular social group are particularity and social visibility.”³² “The essence of the particularity requirement is whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.”³³ Social visibility, on the other hand, requires “that the shared characteristic of the group should generally be

²⁹ *Al-Ghorbani v. Holder*, --- F.3d ---, 2009 WL 3718297 at *11 (6th Cir. 2009) (internal citations and quotations omitted).

³⁰ *Id.*

³¹ *Fatin v. INS*, 12 F.3d 1233, 1241 (3d Cir. 1993), quoted in *Al-Ghorbani v. Holder*, --- F.3d ---, 2009 WL 3718297 (6th Cir. 2009).

³² *Al-Ghorbani* at *12. See also *Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008); *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *Santos-Lemus v. Mukasey*, 542 F.3d 738 (9th Cir. 2008).

³³ *Id.*

recognizable by others in the community.”³⁴ The shared characteristic “must be considered in the context of the country of concern and the persecution feared.”³⁵

Mr. Romeike meets these requirements. He is a “homeschooler,” a member of the homeschooling movement. He is viewed as a member of this particular social group by 1) German society at large, 2) other members of his particular social group, and 3) his persecutors who are motivated to persecute him because of his membership in the particular social group.

Homeschoolers in Germany make up a particular social group as evidenced by several factors. German homeschoolers hold conferences that are exclusively for their participation.³⁶ German homeschoolers organize support groups both locally and nationwide for their exclusive participation.³⁷ As outlined above, there are also German homeschooling lobbying and legal organizations.

Professor Spiegler writes that “...the home education movement has been slowly growing. Different networks have developed and now a process of professionalization and networking is *visible*. New coalitions occur outside the original milieus and try to connect home educators independent of their individual motives and the question of religious orientation.”³⁸

German homeschoolers consider themselves a social group under threat of persecution as evidenced by the testimony of the numerous families who have submitted affidavits to this tribunal. The German State considers homeschoolers to be a social group and has made ministerial statements about homeschooling at both the Federal and State level.³⁹ Most telling in this regard is the ruling of the German Federal Constitutional Court, which said that the government was entitled to suppress homeschoolers to “counteract the development of religiously or philosophically motivated ‘parallel societies.’”⁴⁰

Homeschoolers in other countries similarly consider themselves to be part of a larger social movement—a particular social group—because of similar beliefs and behaviors. Homeschoolers and homeschooling as a social movement have been the subject of numerous academic and official studies.⁴¹

³⁴ *Id.*

³⁵ *Id.*

³⁶ See Affidavit of Michael P. Donnelly, Esq., paragraph 7 and 8. Tab J, page 413.

³⁷ *Id.*, paragraph 6.

³⁸ (emphasis added) Spiegler at 300, Tab J, page 398.

³⁹ See Letter from Mr. Lambert of the Ministry for Culture, Youth and Sports of Baden Wurttemberg, March 6, 2008, Tab H, page 291; Letter to Mrs. Daniela Ehlbeck of Berlin from Elschenbroich on behalf of the Secretary of the Permanent Conference of the State Ministers for Cultural Affairs in the Federal Republic of Germany dated April 28, 2008, Tab H, page 297.

⁴⁰ *Konrad*, paragraph 8, Tab H, page 258.

⁴¹ See, e.g., Thomas Spiegler, *Why State Sanctions Fail to Deter Home Education: An Analysis of Home Education in Germany and Its Implications for Home Education Policies*, *Theory and Research in Education*, 297-309 (2009); Donald Henderson, Eugene Golanda, and Robert E. Lee, *Legal Conflicts Involving Home Instruction of School-Aged Children*, 64 Ed. Law Rep. 999 (1991); *The Condition of Education 2009*, United States Department of Education, June 2009; Susan A. McDowell, Annette R. Sanchez and Susan S. Jones, *Participation and Perception: Looking at Home Schooling through a Multicultural Lens*, *Peabody Journal of Education*, Vol. 75, No. 1/2, *The Home Education Movement in Context, Practice, and Theory* (2000), pp. 124-146; Katarina Tomasevski,

Mr. Romeike was a member of this particular social group in Germany. He is now a member of this particular social group in the United States. Members of this particular social group, regardless of motivation, are united by a common characteristic that is so fundamental to their identities or consciences that it ought not to be required to be changed. Parents who exercise their human right to direct the education and upbringing of their children in the form of homeschooling exhibit common characteristics which make them a cognizable group and sets them apart from German society at large. Thus, the German State is motivated to persecute Mr. Romeike because he is a homeschooler.

The evidence establishes that German officials target homeschoolers as a social group and proves their motive. The following is a non-exhaustive list:

- The European Union's Petition Committee has investigated Germany's treatment of homeschoolers.⁴²
- The United Nations has pointed out Germany's unacceptable treatment of homeschoolers should be reformed.⁴³
- The U.S. State Department has reported that homeschoolers in Germany face criminal charges and neglect charges.⁴⁴
- Tennessee and Georgia have passed resolutions calling on Germany to allow parents to homeschool.⁴⁵
- Court battles are constantly fought between Germany and homeschoolers.⁴⁶
- This issue generates national media attention in Germany (TV shows, news articles etc.).⁴⁷

Globalizing What: Education as a Human Right or as a Traded Service?, 12 Ind. J. Global Legal Stud. 1 (2005); Ari Neuman and Aharon Aviram, *Homeschooling as a Fundamental Change in Lifestyle, Evaluation and Research in Education*, vol. 17, no. 2-3, 132-143 (2003); Brian Ray, Ph.D., *Strengths of Their Own: Home Schoolers Across America*, National Home Education Research Institute, Salem, OR, 1997; Lawrence M. Rudner, Ph.D., *Home Schooling Works: The Scholastic Achievement and Demographic Characteristics of Home School Students in 1998*, Education Policy Analysis Archives, vol. 7, no., 8 (1999).

⁴² See Notice to Members – Petition 0477/2007, European Union Commission (01/30/2009), Tab I, page 364.

⁴³ See United Nations Human Rights Council “Report of the Special Rapporteur on the right to education” by Vernor Muñoz (03/09/07), Tab I, page 326.

⁴⁴ See U.S. Department of State, Human Rights Report (02/25/09), Tab E, page 104, 106.

⁴⁵ See State of Tennessee, House Resolution 87, adopted by vote of 97-0 (05/26/09), Tab I, page 321; State of Georgia, House Resolution 850 (03/30/09), Tab I, page 324.

⁴⁶ See Affidavit of Gabrielle Eckermann at paragraph 7, Tab J, page 408; and numerous documents regarding past persecution of similarly situated persons, Tab D and Tab G.

⁴⁷ See Associated Press article, “German Family Seeks U.S. Asylum to Homeschool Kids” by Rose French (03/31/09), Tab E, page 121. See article, “7 homeschooling dads thrown in jail” by Ron Strom (10/28/04), Tab I, page 305. See article, “German homeschool advocate says Nazis have returned”, by Bob Unruh (12/23/06), Tab I, page 307.

- German State and Federal officials comment on and explicitly identify this particular social group.⁴⁸

The German State targets homeschoolers because of the supposed larger social implications as distinct from individual educational implications for each child. German officials treat homeschoolers more harshly than parents of children who are simply truant and not receiving *any* education, either at school or at home.⁴⁹

Additionally, Germany's education laws provide for officials to grant exemptions to attendance at state-approved schools. Exemptions are routinely granted for medical and other reasons, such as in the case of parents whose work requires them to travel a great deal. But such exceptions are not granted to homeschoolers, who for religious or conscientious reasons oppose sending their children to state-approved schools and choose to provide them with education at home.

This distinction between those who are eligible for exemption and those who are not further serves to demonstrate that homeschoolers are a particular social group. Homeschoolers are denied exemptions for the express purpose of suppressing the emergence of their particular social group.

In an ironic twist, the *Konrad* Court explains that exemptions are justifiable for people whose occupation requires them to travel because the alternative, that is, requiring the children to attend a state-approved school, "can only be achieved through the separation of the children from the parents."⁵⁰ But exemption is not available to homeschoolers, the Court explains, because of the State's interest in suppressing the homeschooling movement. To achieve *this* interest, German officials have forcibly separated children from their parents. The Romeikes faced this very threat before they left Germany.

In other words, to prevent separation of children from their parents when practical reasons make it difficult to attend state-approved schools, exemptions are available. But separation of children from parents is an acceptable tactic to coerce attendance at state-approved schools when attendance at state-approved schools is opposed as a matter of conscience.

With the German high court's apparent blessing in *Konrad*, harsh treatment of individual homeschoolers creates an *in terrorem* effect to discourage others in the particular social group and people in the general population who would otherwise wish to join the particular social group. The German government's harsh and targeted treatment of homeschoolers serves to define the particular social group, proves its existence, and demonstrates the nexus between the harm and the protected ground for asylum purposes.

B. Persecution is Based Upon Mr. Romeike's Political Opinion.

In order to prove persecution on account of political opinion, the alien must show that it is his own, individual political opinion that a persecutor seeks to overcome by the infliction of

⁴⁸ *Id.* See also *Konrad*, German Federal Constitutional Court (04/29/03), Tab H, page 256.

⁴⁹ See Affidavit of Gabrielle Eckerman at paragraph 14, Tab J, page 409.

⁵⁰ *Konrad*, paragraph 12(bb), Tab H, page 259.

harm or suffering.⁵¹ The German State seeks to overcome Mr. Romeike's own, individual political opinion by escalating persecution.

In evaluating motive in a case in which prosecution for an offense may be a pretext for punishing an individual for his political opinion, U.S. asylum law sets forward a number of factors to consider: the nature of the crime; the severity of the punishment; the applicant's political opinion; the applicant's motives behind his actions; the nature of the act committed by the applicant; the nature of the prosecution and its motives; the nature of the law on which the prosecution is based.⁵²

In this case, the nature of the crime would not be recognized in other western nations, all of which provide for homeschooling. The severity of the punishment Mr. Romeike was subject to, including ever-increasing excessive and coercive fines, property seizure, taking away of children, and even the possibility of imprisonment, is completely out of balance with the minimal offense. His political opinion that he should be permitted to homeschool his children is motivated by his religious view of his role as a parent. In this case, the "nature of the act" is one of giving his children a good education, but the German State has viewed this as irrelevant. The prosecution is based on a law that requires compulsory attendance without exception for homeschooling. Based on these factors, then, it is clear that Germany's prosecution of Mr. Romeike is based on his holding a political opinion that he should homeschool his children based on his religious convictions. The absence of state concern regarding the quality of the children's education indicates that the persecution is political, not merely educational.

Evidence that punishment for a politically related act is disproportionate to the crime can also indicate persecution on grounds of political opinion rather than legitimate prosecution.⁵³ As discussed above, punishment for the politically related act of homeschooling is disproportionate. This fact not only proves that the harm *is* persecution, rather than legitimate prosecution; it also proves that the persecution is *on account of* Mr. Romeike's political opinion.

If a man refused to comply with mandatory military conscription because he disagreed with the war, his refusal would be a political expression. Mr. Romeike refused to comply with compulsory school attendance, because his conscience requires that he homeschool rather than send his children to a government-approved school. His homeschooling is a political expression. The German State is aware of Mr. Romeike's political opinion that he is compelled to homeschool, but it considers his opinion to be in opposition to its stated goal of "counteracting the development of religiously or philosophically motivated 'parallel societies' and in integrating minorities in this area."⁵⁴ As argued above, the anti-homeschooling position of the German authorities is the expression of this political opinion, which motivates the German officials to persecute Mr. Romeike and others who homeschool their children. Thus Mr. Romeike has shown that he was persecuted on account of his actual political opinion.

⁵¹ *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).

⁵² See *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996); quoting *Matter of Izatula*, 20 I&N Dec. 149, 157 (BIA 1990).

⁵³ *Id.*

⁵⁴ *Konrad*, paragraph 8, Tab H, page 258.

C. German Opposition to Homeschooling is Based on Political, Not Educational Concerns.

There is no dispute that the Romeike children were being educated. Rather, the German officials appear to be less concerned about the Romeike children's education and more about their conformity with state-imposed curricula and so-called "tolerance" and "socialization."

Courts have held that prosecution for an offense against the "public order," e.g. for distribution of pamphlets, could be used by the state as a vehicle for the persecution of the individual on the grounds of the political content of the publication. Here, prosecution for truancy was being used by the state as a vehicle for the persecution of the Romeikes on the grounds of their lack of conformity.

The German State's resistance to homeschooling is not about education (acquisition of knowledge) but rather about so-called socialization—the acquisition of social competence, "integration into society" in order to get along in a pluralistic society by forcing children to deal with other children who hold different views. This includes forcing children to yield to teachers and/or curriculum who may promote views that are diametrically opposite to the views of the children's parents.

In *Konrad*, the German Constitutional Court reasoned that while it was possible for the German State to "supervise" parents in the act of "knowledge transfer," this would not adequately address the "socialization" issue.⁵⁵ Homeschooling may adequately impart academic education but German authorities have determined contrary to overwhelming empirical international evidence⁵⁶ that *only* school attendance can achieve the stated "educational goal of conveying social and civic competence."⁵⁷ That, the Court says, is the State's responsibility with respect to education.

Today, German schools impose state-approved curriculum and content which contain values and beliefs about all areas of life. This curriculum, like any, either implicitly or explicitly signals what is good and what is bad, what is right and what is wrong. Mr. and Mrs. Romeike disagreed with many of the values that are inherent in the State approved curriculum. But for the German State, anybody who disagrees is wrong.

In the case of the Plett Family, the highest criminal appeals court in Germany held that homeschooling may be considered *per se* child-endangerment, and the State is fully justified in

⁵⁵ *Konrad*, paragraph 7, Tab H, page 258.

⁵⁶ Studies prove home educated students tested better than their state-educated counterparts and perform better in college/university. See e.g. Brian Ray, Ph.D., *Strengths of Their Own: Home Schoolers Across America*, National Home Education Research Institute, Salem, OR, 1997. The website of the Home School Legal Defense Association (www.hsllda.org) provides access to comprehensive research data regarding the academic efficacy of home education in the United States and in other countries. See also article, "New Strategy for Securing Homeschool Freedom in Germany" by Michael Farris (05/10/07), Tab I, page 318 ("In America, and other countries, research demonstrates that homeschooling does not isolate or create parallel societies but rather, it allows students to become highly engaged in society, enjoying a diverse and real-world educational experience, especially when compared to the institutional, uniform, and age-segregated public school system.").

⁵⁷ *Konrad*, paragraph 7, Tab H, page 258.

taking away custody rights of parents who do so.⁵⁸ European Union law allows the arm of the Germany State to reach throughout Europe such that German officials can petition officials in other countries (even countries where it is legal to homeschool) to have the children forcibly sent back to Germany to attend the public schools.⁵⁹

II. Mr. Romeike Has Suffered Past Persecution.

According to the Sixth Circuit, persecution is defined as “the infliction of harm or suffering by the government, or persons the government is unwilling or unable to control, to overcome a characteristic of the victim.”⁶⁰ Persecution is not limited to physical abuse, but can also include emotional and psychological elements.⁶¹ Additionally, “[t]he harm or suffering inflicted ... also could consist of economic deprivation or restrictions so severe that they constitute a threat to an individual’s life or freedom.”⁶² This is precisely the sort of persecution homeschoolers in Germany are facing.

The German authorities have sought to overcome Mr. Romeike’s fundamental belief that he has the right to direct and provide for the education of his children. They have done so through personal intimidation, threats to remove the children, actual forcible removal of the children, increasingly punitive fines, and attempted property confiscation. Germany’s persecution of Mr. Romeike and other homeschoolers rises above the level of mere prosecution because it is targeted, excessive, discriminatory, and has been criticized by the international community as being contrary to basic human rights and dignities.

A. Mr. Romeike and Other Homeschoolers Were and Are Specifically Targeted by the Government of Germany.

For a persecution claim to be sustained, Mr. Romeike needs to demonstrate that he was targeted by the government because of his membership in a particular social group. As the Sixth Circuit has explained:

[T]he critical factor is the overall context in which the harmful conduct occurred. It is not sufficient that the applicant has been subjected to indiscriminate abuse, such as physical force or violence employed against a crowd of demonstrators, or has been the victim of a random crime. Instead, the applicant must establish that he or she was specifically targeted by the government for abuse based on one of the statutorily protected grounds.⁶³

⁵⁸ See Affidavit of Gabriele Eckermann, paragraph 16, Tab I, page 409. See also *In the family case concerning underage children (Dennis Plett)*, German Federal Court of Appeals (XII ZB 42/07, decided 10/17/2007), Tab H, page 268.

⁵⁹ Affidavit of Gabriele Eckermann, paragraph 18, Tab I, page 410. See also Affidavit of Michael Bauer, Tab G, page 254.

⁶⁰ *Al-Ghorbani v. Holder*, --- F.3d ---, 2009 WL 3718297, 14 (6th Cir. 2009), citing *Khalili v. Holder*, 557 F.3d 429, 436 (6th Cir. 2009).

⁶¹ *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004); *Duarte de Guinac v. INS*, 179 F.3d 1156, 1163 (9th Cir. 1999).

⁶² *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985) (internal citations omitted, overruled on other grounds).

⁶³ *Gilaj v. Gonzales*, 408 F.3d 275, 285 (6th Cir. 2005).

To demonstrate this, we need go no farther than the *Konrad* decision, which specifically singles out homeschoolers as a “philosophically motivated ‘parallel societ[y]’” to be “integrat[ed]” and “counteract[ed].”⁶⁴ Mr. Romeike was not targeted by the government because his children were truant nor because they were not being educated. There has never been any question that they were being educated. He was targeted because he is a “homeschooler,” a member of an officially disfavored social group.

The purpose of punishing a negligent parent through truancy prosecution is to ensure that a child’s education is not neglected and that he receives an appropriate education.⁶⁵ Prosecution is proper and just for a parent who does not provide any education for his child. Prosecuting a parent who *does* educate his child, albeit in a non-government-approved environment, however, is unjust.⁶⁶

German officials relentlessly pursued Mr. Romeike with ever-increasing punishments rising to the level of persecution. But non-homeschooling truants are not so zealously prosecuted.⁶⁷ Germany does not fine into poverty the parent of a habitual truant, confiscating his bank accounts, garnishing his wages, putting him in prison and taking away his children, locking them up in mental wards to counter their alleged school phobia. Yet Germany *is* so zealously persecuting homeschoolers.

B. Germany’s Punishment of Mr. Romeike and Other Homeschoolers is Discriminatory and Excessive.

According to the United Nations High Commissioner for Refugees, “excessive or arbitrary punishment will amount to persecution.”⁶⁸ German officials levied excessive and impoverishing fines against Mr. Romeike in order to punish him for not complying with the compulsory school attendance law. With his modest piano teacher’s income, he could not possibly have both paid the fines and also continued to provide the basics for his family. If Mr. Romeike had not left Germany, the officials would have collected the money fined by seizing the Romeike home.⁶⁹ Mr. Romeike’s children were forcibly seized from the home on one occasion, and a second seizure would have occurred but for the protesting citizens gathered outside the Romeike home. The threat of imprisonment and losing custody of the children caused Mr. Romeike and his wife to suffer emotional trauma. They knew that other homeschool families had been fined into poverty, arrested, imprisoned, and had their children taken away.⁷⁰

⁶⁴ Konrad decision, German Federal Constitutional Court (04/29/03), Paragraph 8, Tab H.

⁶⁵ See *State v. Peterman*, 70 N.E. 550 (Ind.App. 1904) (“The law was made for the parent, who does not educate his child, and not for the parent who employs a teacher and pays him out of his private purse, and so places within the reach of the child the opportunity and means of acquiring an education equal to that obtainable in the public schools of the state.”)

⁶⁶ *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

⁶⁷ See Affidavit of Gabriele Eckermann, paragraph 14, Tab I, page 410.

⁶⁸ United Nations High Commissioner for Refugees, Handbook, at paragraph 85.

⁶⁹ See Affidavits of Mr. and Mrs. Neubronner, Tab D, pages 98-99, previously submitted. See Affidavit of Heiko Krautter, paragraph 15, Tab G, page 247.

⁷⁰ See Affidavit of Mr. Romeike, paragraph 11 and 62, previously submitted. See also the evidence of past persecution of similarly situated persons, attached at Tab D and Tab G.

For example, in June of 2008, because they homeschool their children, Juergen Dudek and his wife, Rosemarie Dudek, were sentenced by a German court to three months in jail. The judge ruled that Mr. and Mrs. Dudek's violation of the truancy law was heightened by the number of their children—four of school age—and by the grave nature of their violation. The court cited the *Konrad* case and Germany's interest in counteracting "parallel societies." The judge ruled that imprisonment was necessary because Mr. and Mrs. Dudek were not deterred by fines. Also, the judge justified jailing Mr. and Mrs. Dudek to make an example of them in order to deter other parents who might dare to homeschool their children.⁷¹

In the context of mandatory military conscription, if certain religions are given alternative service while others are sent to jail, such discrimination would constitute religious persecution.⁷² In the context of compulsory school attendance, if certain parents are allowed exemption from attendance at a state-approved school while others are sent to jail, such discrimination likewise constitutes persecution. Mr. Romeike requested alternative school.⁷³ His request was denied arbitrarily.

Exorbitant fines, property seizures, imprisonment, loss of custody of one's children, and the accompanying psychological suffering individually and/or collectively rise to the level of persecution. The fines alone constitute economic persecution, as explained in the 1978 House of Representatives Report: "The harm or suffering need not [only] be physical, but may take other forms, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or other essentials of life."⁷⁴ The German government's treatment of homeschooling families is so severe that it cannot be defended on the grounds that it is merely a generally-applicable prosecution.⁷⁵

If the fines and property seizure fail to extract the desired compliance, a criminal trial and possible imprisonment will probably follow. Also, taking the Romeike children into state custody would be another weapon for the German government to exert pressure to enforce compliance. Other homeschooled children, while in the state's custody, have been labeled as

⁷¹ Affidavit of Juergen Dudek, paragraphs 8 and 9, *Tab G*, pages 153-154.

⁷² See *Ilchuk v. Att'y Gen. of the U.S.*, 434 F.3d 618, 624-626 (3d Cir. 2006) (reversing BIA denial of withholding for Pentecostal who refused service in Ukraine military; if certain religions are given alternative service while others are sent to jail, that would constitute religious persecution).

⁷³ See Affidavit of Mr. Romeike, previously submitted.

⁷⁴ H.R. Rep. No. 95-1452, at 5, as reprinted in 1978 U.S.C.C.A.N. 4700, 4704, 1978 WL 8575 ("House Report"), cited in *Matter of T-Z*, 24 I&N Dec. 163, 170-171 (BIA 2007) (nonphysical forms of harm, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment, or other essentials of life, may amount to persecution.); *Lukwago v. Ashcroft*, 329 F.3d 157, 168 (3d Cir. 2003) ("Persecution" has been defined as including "threats to life, confinement, torture, and economic restrictions so severe that they constitute a real threat to life or freedom."); see also *Guan Shan Liao v. U.S. Dept. of Justice*, 293 F.3d 61, 70 (2d Cir. 2002) (quoting *Yong Hao Chen v. INS*, 195 F.3d 198, 204 (4th Cir. 1999)).

⁷⁵ See *Edimo-Doualla v. Gonzales*, 464 F.3d 276, 286-287 (2d Cir. 2006) (recognizing that there may be a political purpose to prosecution and that the government would not "summon a political dissident with forms that indicate an intent to persecute"); *Toure v. Att'y Gen. of the U.S.*, 443 F.3d 310, 321-322 (3d Cir. 2006) (former military officer who fled country because his family was in grave danger of being harmed by government officials could not have asylum denied on the theory that his fear of persecution was merely a fear of prosecution for desertion); *Hoque v. Ashcroft*, 367 F.3d 1190, 1197 (9th Cir. 2004) (finding of persecution possible where applicant was wrongly accused and government arresting opponents took power); *Lin v. INS*, 238 F.3d 239, 244 (3d Cir. 2001) (finding of persecution possible even where applicant was sought by Chinese government through lawful subpoena for arrest).

“school-phobic” and forbidden contact with the parents based on the rationale that the parents are the enablers of the phobia.⁷⁶

When the excessive and indiscriminate penalties for refusal to comply with a truancy law are impoverishing fines, property seizure, imprisonment, and loss of one’s children, and where no effective exemption is available for homeschoolers, the religiously or conscientiously motivated homeschooler fears not legitimate prosecution, but rather persecution.

C. Germany’s Persecution of Mr. Romeike and Other Homeschoolers is Criticized by the International Community as Contrary to Basic Rules of Human Conduct.

Another element of prosecution that rises to the level of persecution is “[t]he infliction of suffering or harm, under government sanction... in a manner condemned by civilized governments.”⁷⁷ Germany is the only country among western democracies where there is no freedom to homeschool – in fact, in many western democracies, the freedom for parents to teach their children is enshrined in their constitutions.⁷⁸ In his report to the United Nations Human Rights Council Special Rapporteur on the right to education, Vernor Muñoz recommended that Germany “ensure that the homeschooling system is properly supervised by the State, thereby upholding the right of parents to employ this form of education when necessary and appropriate, bearing in mind the best interests of the child.”⁷⁹

When a law, the violation of which is *malum prohibitum*, does not provide exception for the exercise of a fundamental human right, discriminatory enforcement with excessive punishment constitutes a human rights violation. Under United States law, parents have a fundamental human right to direct the education and upbringing of their own children.⁸⁰ The same is true under international law. For example, the International Covenant on Economic, Social and Cultural Rights, at article 13, stipulates that “[P]arents have the right to choose the appropriate type of education for their children.”⁸¹ The United Nations Declaration on Human Rights at Article 26(3) declares that “[p]arents have a prior right to choose the kind of education that shall be given to their children.”⁸² Violation of a parent’s right to direct his child’s education is a human rights violation. Even our own State Department recognizes Germany’s persecution of homeschoolers as a human rights violation.⁸³

⁷⁶ This is what happened to Melissa Busekros and her parents. See evidence attached at Tab D, page 142.

⁷⁷ *Abdel Masieh v. INS*, 73 F3d 579, 583 (5th Cir. 1996).

⁷⁸ See ATLAS on Freedom in Education in Europe, Germany Report, by Dr. Thomas Langer (December 2008), Tab I, page 353.

⁷⁹ “Report of the Special Rapporteur on the right to education, Addendum: Mission to Germany,” U.N. Human Rights Council, Fourth session, A/HRC/4/29/Add.3 (03/09/07), paragraph 62, Tab I, p. 326.

⁸⁰ *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

⁸¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

⁸² *Universal Declaration of Human Rights*, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948)

⁸³ See U.S. State Department’s Human Rights Report, Tab E, page 110 (“Some religious groups expressed opposition to the government’s prohibition of home schooling. During the year local authorities brought criminal charges against some parents who refused to enroll their children in government-licensed schools for religious reasons. In a December case, a Saxony court dropped neglect charges against the Brause family after the children passed government-administered written examinations.”)

III. Mr. Romeike has a well-founded fear of future persecution.

According to United States law, an alien who has demonstrated past persecution is presumed to have a well-founded fear of future persecution under 8 CFR 208.13(b)(1).⁸⁴ Mr. Romeike has proved past persecution. Even if, for argument's sake, he had not so proved past persecution, the evidence establishes that his fear of future persecution is well founded.

The Sixth Circuit has established that:

In order to establish that the applicant has a well-founded fear of persecution, he must show: (1) that he has a fear of persecution in his home country on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) that there is a reasonable possibility of suffering such persecution if he were to return to that country; and (3) that he is unable or unwilling to return to that country because of such fear.⁸⁵

A "well-founded fear of persecution" means that a reasonable person in similar circumstances would fear persecution.⁸⁶ This "reasonable person" standard permits a finding of asylum eligibility where the probability of persecution is significantly *less* than fifty percent.⁸⁷

In order for an alien to show that it is likely he will become the victim of persecution, his evidence must demonstrate that (1) the alien possesses a belief or characteristic a persecutor seeks to overcome in others by means of punishment of some sort; (2) the persecutor is already aware, or could become aware, that the alien possesses this belief or characteristic; (3) the persecutor has the capability of punishing the alien; and (4) the persecutor has the inclination to punish the alien.⁸⁸ Mr. Romeike has met this *objective* standard with specific facts: He possesses a belief or characteristic (homeschooling) that a persecutor (German authorities) seeks to overcome in others by means of punishment of some sort (excessive fines, wage garnishment, property seizure, arrest, imprisonment and loss of custody of his children); the persecutor is already aware, or could become aware, that Mr. Romeike possesses this belief or characteristic (Mr. Romeike's sincere religious conviction requires him to continue to homeschool his children); the persecutor has the capability of punishing Mr. Romeike (the power of the German government); and the persecutor has the inclination to punish Mr. Romeike (the German government is continuing to persecute homeschoolers).

Mr. Romeike also has a *subjective* apprehension or awareness of danger. Under the BIA ruling in *Matter of Acosta*, the statutory standard for asylum requires the facts to show that an alien's primary motivation for requesting refuge in the United States is "fear," i.e., a genuine apprehension or awareness of danger in another country; no other motivation will suffice. Mr.

⁸⁴ *Matter of H-*, 21 I&N Dec. 337 (BIA 1996).

⁸⁵ *Karomi v. Gonzalez*, 168 Fed. Appx. 719 (6th Cir. 2006) (citing *Pilica v. Ashcroft*, 388 F.3d 941, 950 (6th Cir. 2004)).

⁸⁶ *Velasquez-Velasquez v. I.N.S.*, 53 Fed.Appx. 359, 6; see also *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987) (An applicant for asylum has established a well-founded fear if a reasonable person in his circumstances would fear persecution.)

⁸⁷ *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987) (A reasonable person may well fear persecution even where its likelihood is significantly less than clearly probable.)

⁸⁸ *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).

Romeike has suffered harm in the past, as detailed in his application and affidavit. He suffered ever-escalating fines, proceedings to seize his home, police forcibly taking his children to school, threatened loss of custody of his children, and threatened imprisonment. Other homeschoolers have been and are being similarly persecuted by the German authorities. Mrs. Romeike's own sister and brother-in-law are being so persecuted (*after* the Romeike family left Germany).⁸⁹ It is such subjective fear of persecution that led the Romeike family to flee Germany altogether. A reasonable person in Mr. Romeike's situation would subjectively fear persecution due to the objective facts of such past persecution and the current conditions for homeschoolers in Germany.

If the Romeike family were to return to Germany, and were to follow their consciences continuing to homeschool, they would be further punished.

IV. Mr. Romeike is not subject to any exceptions to eligibility.

Mr. Romeike has authority under 8 U.S.C. 1158 (INA 208) to apply for asylum. He applied for asylum within one year of entering the USA.⁹⁰ He does not have any status in a safe third country,⁹¹ nor was he firmly resettled in another country prior to arriving in the USA.⁹² He has never previously applied for asylum in the USA.⁹³ He has never participated in any persecution of any person.⁹⁴ He has no criminal history.⁹⁵ He is not a danger to the security of the USA.⁹⁶

V. Mr. Romeike warrants a favorable exercise of discretion.

The totality of the circumstances and the actions of the alien should be examined in determining whether a favorable exercise of discretion is warranted.⁹⁷ The "danger of persecution should generally outweigh all but the most egregious of adverse factors."⁹⁸ Asylum should be denied in the exercise of discretion only in exceptional circumstances.⁹⁹

In Mr. Romeike's case, there are no adverse factors of the type that would outweigh a favorable exercise of discretion. Mr. Romeike's claim is in all regards a straight-forward bona fide claim lacking any such "exceptional circumstances" to warrant a denial of discretionary relief. Mr. Romeike's claim warrants a favorable exercise of discretion in a grant of asylum.

VI. If not Asylum, then Mr. Romeike should be granted Withholding of Removal.

An alien may not be removed to a country where his life or freedom would be threatened because of his race, religion, nationality, membership in a particular social group, or political

⁸⁹ See evidence re Dangel Family, Tab G, page 136.

⁹⁰ INA 208(a)(2)(B).

⁹¹ INA 208(a)(2)(A).

⁹² INA 208(b)(2)(A)(iv).

⁹³ INA 208(a)(2)(C).

⁹⁴ INA 208(b)(2)(A)(i).

⁹⁵ INA 208(b)(2)(A)(ii) and (iii).

⁹⁶ INA 208(b)(2)(A)(iv) and (v).

⁹⁷ *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987)

⁹⁸ *Id.*

⁹⁹ *Id.*

opinion.¹⁰⁰ Mr. Romeike has met the burden of proving that his freedom would be threatened in Germany on account of membership in a particular social group, or political opinion. Mr. Romeike's freedom would be threatened because it is more likely than not that he would be persecuted.

In Mr. Romeike's case, he cannot in good conscience place his children in state-run or state-approved schools because his sincere religious convictions require that he and his wife homeschool their children. While other Western countries provide for homeschoolers like the Romeikes, Germany's persecution of homeschoolers amounts to disproportionately severe punishment on account of at least one of the five grounds enumerated in Section 101(a)(42)(A) of the Act.

Absent a showing that his government enacted its conscription laws with the intent of persecuting members of a certain religion, or that the laws are carried out in a persecutory manner against persons with particular religious beliefs, an alien with religious objections to military service does not establish persecution *on account of* religion even though he may be prosecuted for a refusal to perform military service.¹⁰¹ Mr. Romeike does not claim that Germany enacted its compulsory attendance laws with the intent of persecuting members of a certain religion. However, it is plain that Germany is acting in a persecutory manner against persons whose political and philosophical, sincerely-held religious beliefs or conscience forbid them from putting their children in state-run or state-approved schools. Mr. Romeike would be prosecuted for refusal to comply, thus establishing his eligibility for asylum or withholding of removal.

The evidence submitted to the Court in this case proves that to suppress homeschooling German authorities levy ever-increasing fines, seize property to collect such fines, take away children, and enforce jail sentences. The evidence proves that Mr. Romeike's claim is reasonably definite to establish that it is more likely than not he will be persecuted should he not be granted asylum.

Mr. Romeike has established that his "life or freedom would be threatened in [Germany] on account of race, religion, nationality, membership in a particular social group, or political opinion."¹⁰² He has also "establish[ed] that it is more likely than not that he ... would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to [Germany]."¹⁰³ Thus, he is eligible for either asylum or withholding of renewal.

CONCLUSION

If Mr. and Mrs. Romeike return to Germany and homeschool, obeying their consciences and exercising their fundamental human rights as parents, German officials will levy ever-

¹⁰⁰ INA 241(b)(3).

¹⁰¹ See *Matter of Canas*, 19 I&N Dec. 697 (BIA 1988); see also *Canas-Segovia v. I.N.S.*, 902 F.2d 717 (9th Cir. 1990), *vacated*, 502 U.S. 1086 (1992), *aff'd on other grounds*, 970 F.2d 599 (9th Cir. 1992).

¹⁰² 8 CFR 208.16(b).

¹⁰³ 8 CFR 208.16(b)(2).

increasing fines against them, seize their property to pay the fines, take their children away from them, and put them in prison. This constitutes persecution on account of a protected ground.

THEREFORE, Mr. Romeike's asylum application should be granted. In the alternative, Mr. Romeike should be granted withholding of removal.