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UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE IMMIGRATION JUDGE  
SAN FRANCISCO, CALIFORNIA

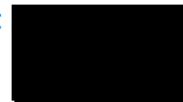
In the Matters of:



Respondents,

In Removal Proceedings.

A Numbers:



Hearing Date: October 18, 2016  
Hearing Time: 1:00 p.m.  
Before Hon. Polly Webber

**RESPONDENTS' BRIEF  
DEMONSTRATING ELIGIBILITY FOR ASYLUM, WITHHOLDING OF REMOVAL,  
AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE**

## I. INTRODUCTION

Lead Respondent, [REDACTED] hereby respectfully submits a brief regarding her eligibility for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”) based on the past persecution she suffered in Honduras and the persecution that she will face in Honduras on account of her political opinion, religion, and membership in a particular social group.

[REDACTED] suffered past persecution on account of her political opinion, religion and membership in the particular social groups of Honduran girls viewed as property, her family as defined by kinship ties, and Hondurans taking concrete steps to oppose gang authority and/or Honduran witnesses who publicly denounce gang activity. As a child, [REDACTED] was severely physically abused by her father. She also witnessed him abuse her mother and sister, but not her brothers. Throughout her life, [REDACTED] has been involved in religion, politics, and community service. She is an Evangelical Christian. In Honduras, she hosted her own Christian radio program, built a church, and reached out to countless at-risk youth to help them avoid or escape lives of crime. She is also a supporter of the Liberal party and during the November 2013 elections, she was a campaign leader and participated in many televised political events. [REDACTED] was also an elected member of her local Citizen’s Advisory Council and voluntary first responder for the Red Cross, who were collaborating with local law enforcement. Due to [REDACTED]’s extensive religious, political, and community activism, she came to the attention of the gang Mara 18, who threatened her to give them medical supplies, constantly watched and followed her, assaulted her and her family members, and threatened them with death. [REDACTED] family members have also been deeply involved in religious and community activism. Her brother [REDACTED] founded a Neighborhood Watch Committee and her mother and brother Ismael are Evangelical pastors. Table A on the following page summarizes the attacks against them.



As ██████ has suffered past persecution on account of protected grounds, she has a presumption of well-founded fear of future persecution. The government cannot rebut the presumption by showing changed circumstances or that ██████ can reasonably relocate to avoid danger. Threats and attacks against ██████ family have been ongoing since she fled Honduras, and she has been told that Mara 18 is still looking for her. She cannot relocate internally in Honduras. She has already faced persecution in two different cities in Honduras, and the Mara 18 gang that threatens her has extensive networks throughout the country.

Even if the Department of Homeland Security (“DHS”) can rebut the presumption of well-founded fear, this Court should find ██████ eligible for asylum on the basis of humanitarian asylum; the harm ██████ suffered was severe and atrocious and she faces other serious harm if she is forced to return to Honduras. Alternatively, this Court should grant asylum to ██████ on the basis that she is able to establish an independent well-founded future fear of persecution on account of protected grounds. ██████ fears torture and death by Mara 18 on account of her religion, political opinion and membership in the particular social groups of her family and Hondurans taking concrete steps to oppose gang authority and/or Honduran witnesses who publicly denounce gang activity.

██████ is additionally able to demonstrate that it is more likely than not that her life or freedom would be threatened in Honduras on account of her religion, political opinion, and membership in a particular social group, thus entitling her to withholding of removal. She will also demonstrate that she warrants protection under CAT.

Thus, this Court should find that ██████ has adequately shown that she warrants protection and relief from removal.

## II. STATEMENT OF FACTS AND PROCEDURAL HISTORY<sup>1</sup>

██████████ was born on March 19, 1976 in Trinidad, Copan, Honduras. She grew up with her mother, father, sister, and four half-brothers (██████████). ██████████ father was severely physically abusive to ██████████ mother, ██████████, and her sister. He was not abusive to ██████████ brothers. ██████████ describes her father as ‘*machista*’ and as wanting to control everything her mother and her and her sister did. ██████████ mother tried many times to take her children and leave ██████████ father, but he always forced them to come back. When ██████████ was about 9 years old, her mother again attempted to save herself and her children from the violence. She moved the family to a new town, La Entrada, but ██████████ father followed. ██████████ mother was eventually able to end the violence against herself and her daughters only by marrying another man who helped to protect them from ██████████ father.

██████████ is an Evangelical Christian. Since she was a child, she has regularly attended church and participated in church activities. ██████████ mother taught her the value of helping others in the community, which has been ██████████ guiding principle throughout her life. As a child, ██████████ helped her mother provide medical services to the poor. ██████████ was also interested in politics from a young age. Many members of her family were members of the Liberal Party, and Blanca has supported the Liberal Party ever since her youth.

When ██████████ was 17, she married her husband ██████████ and they moved to the Rivera Hernandez neighborhood of San Pedro Sula. ██████████ four brothers and sister were already

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<sup>1</sup> The facts in this section are drawn from Exhibit A1, Updated Declaration of Blanca Oneida Orellana Arita in Support of her Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture and the Notice to Appear dated September 28, 2016.

living in that neighborhood. [REDACTED] and [REDACTED] had three children together: [REDACTED] [REDACTED]. [REDACTED] and [REDACTED] became very involved in the Evangelical Church in San Pedro Sula. Their focus was to help at-risk youth. They owned a small construction business, and they loaned their company truck for church events. The truck was used as a mobile stage. The Evangelical pastors drove it into high-crime neighborhoods and preached from the truck bed with microphones. [REDACTED] and [REDACTED] helped out with the singing and the collection. [REDACTED] and [REDACTED] cared deeply about helping the marginalized youth in their community of San Pedro Sula. They gave work at their construction business to street youth, invited them into their home for meals, and brought them to church. Around 1998, [REDACTED] and [REDACTED] bought a piece of land and donated the materials for construction of a new church.

[REDACTED] brothers were also active in the church and in community activism in San Pedro Sula. Around 1998, in response to the rise in crime and insurgence of Mara 18, [REDACTED] brother Francisco founded a Neighborhood Watch Committee in the Rivera Hernandez neighborhood where [REDACTED] and her siblings all lived. Shortly after the Neighborhood Watch Committee was founded, Mara 18 started to systematically murder the members of the Neighborhood Watch Committee. By the year 2000, most of the members had been killed and Francisco was forced to stop his Neighborhood Watch activities. However, he continued to be threatened with death, and, on one occasion, Mara 18 gang members broke into his home, tied him up, and raped his partner in front of him. After that, Francisco went into hiding for many years, living for short times with different family members, including [REDACTED]. This nomadic existence ended with his torture and death in July 2014.

Around 2004, [REDACTED] brother [REDACTED] was attacked by Mara 18 gang members at the church where he worked in San Pedro Sula. They cut him all over his body with machetes. He

was hospitalized for several months. Around this same period, [REDACTED] and [REDACTED] were burgled and robbed twice at gunpoint in their home. [REDACTED] mother convinced [REDACTED] and her siblings to leave San Pedro Sula and move back to La Entrada for their safety.

In La Entrada, [REDACTED] and [REDACTED] again became involved in the Evangelical Church. They worked as family group leaders and helped facilitate dialogue for families whose children were getting involved in gangs. They helped run outreach events for youth at risk of gang recruitment and youth who were gang members. [REDACTED] and [REDACTED] children participated in these activities as members of the church's youth group. [REDACTED] and her children invited street children in their neighborhood to come to their church. [REDACTED] and her mother ran a Christian radio program. [REDACTED] mother became a pastor. In a dangerous neighborhood controlled by Mara 18, [REDACTED] mother bought a piece of land and built a church where she preached. [REDACTED] mother was frequently threatened with death by Mara 18 members who threw stones at the church while she preached. When [REDACTED] mother became too afraid to continue preaching at her church, she instead preached sermons from within her own home, which were audible from the street through their use of microphones. Gang members began to throw rocks at [REDACTED] mother's home. [REDACTED] brother Ismael became a pastor and began preaching at the church [REDACTED] mother had built. He too began to receive death threats from Mara 18. Mara 18 tried to forcibly recruit his son Moises, who refused. Mara 18 murdered Moises in 2013. [REDACTED] was forced to flee Honduras with his remaining children.

[REDACTED] community involvement in La Entrada extended beyond her church activities. She was treasurer of the parent's society in her children's school. Around 2010, she was elected as chairperson of the local Citizen's Advisory Council. In that role, she went door to door in the community giving invitations for community meetings. The following year, she was elected as

secretary of the Citizen's Advisory Council. The year after that, 2012, [REDACTED] husband [REDACTED] was elected as President of the Citizen's Advisory Council, but he had to flee Honduras that same year. [REDACTED] has been assaulted and beaten by Mara 18 members on multiple occasions and had been threatened with death. [REDACTED] suggested the whole family flee, but [REDACTED] was too afraid to make the perilous journey with her three children. She stayed behind with the children and [REDACTED] fled to the United States.

In 2012, inspired by her mother's medical work, [REDACTED] became a volunteer First Responder for the Red Cross. That same year, the Red Cross in La Entrada came under new leadership and established collaborative efforts with the local police. [REDACTED] was in favor of this policy, as she and her family have long been supporters and collaborators with local law enforcement efforts. In addition to her brother's founding of the Neighborhood Watch Committee, her mother makes regular financial donations to the police. While wearing her Red Cross uniform, [REDACTED] was the victim of an attempted kidnapping. On another occasion while wearing her uniform, a moto-taxi driver tried to hit and kill her.

In 2013, [REDACTED] took temporary leave from her work with the Red Cross to become a campaign leader and coordinator for the Liberal Party for the November 2013 mayoral elections in La Entrada. [REDACTED] felt it was important to oust the incumbent Nationalist Party leaders who were believed to be in league with the local gang leaders. [REDACTED] supported the Liberal Party because of her family history in that party and because they have a rule of law platform. [REDACTED] flew the party flag above her house. She held daily strategy meetings in her home and biweekly public political events. She sat at the head table with the candidates during many campaign events that were broadcasted on local television. She went from door-to-door in her community to administer a census and to register people to vote. During the election campaign, the Liberal



Party's vice-mayoral candidate had to flee Honduras because she was threatened with death. The Liberal party mayoral candidate was also threatened, but chose to stay.

Several weeks before the elections, someone poisoned and killed [REDACTED] dog. She got two new dogs. [REDACTED] party won the elections. [REDACTED] was present at the polling station as the Liberal Party representative and observer. Shortly after the election, her two new dogs were also poisoned and killed. [REDACTED] got another dog, who was also killed a few weeks later. About a week after that, [REDACTED] discovered a big circle on the outer wall of her house with a 'B' inside it, painted in human blood. The police told [REDACTED] this was a death threat. [REDACTED] believes the 'B' stands for the first letter of her name. One of the Liberal candidates elected as a congressman was murdered the following year. [REDACTED] believes Mara 18 was responsible for the death of her dogs and for the threatening symbol, because of their alleged ties to the incumbent political party and because these events coincided with known Mara 18 gang members starting to congregate regularly outside [REDACTED] house.

After the elections, [REDACTED] stopped her political activism and returned to the Red Cross, but she was already constantly being watched by Mara 18 gang members. Gang members tried to force her to steal syringes and anesthetic from Red Cross for them to use to tattoo themselves. [REDACTED] refused. A gang member tried to force her to give him ongoing medical care. She refused. A gang member threatened [REDACTED] daughter that he would kidnap her. [REDACTED] sons [REDACTED] and [REDACTED] were assaulted and robbed by gang members on several occasions, and on another, [REDACTED] had a machete thrown at him.

[REDACTED] brother Francisco came to stay with [REDACTED] around April 2014, and a local hitman informed them that they were being watched. In June 2014, Francisco's son who had rebelled from the family and joined Mara 18, came to [REDACTED] mother's home and threatened to

kill [REDACTED] mother and [REDACTED] reported the attack to the police. The multiple attacks and constantly being watched caused [REDACTED] to feel terrified. She knew it was only a matter of time before Mara 18 killed her or her children. She decided that she could no longer stay in Honduras. Her eldest son chose to stay, because he did not want to sacrifice the work he was doing for the church. [REDACTED] and her two younger children travelled to the United States. They presented themselves at a port of entry to request asylum on June 23, 2014.

Since [REDACTED] fled Honduras, her family members have continued to be threatened and attacked. In July 2014, [REDACTED] brother was tortured and murdered during a trip to La Entrada to visit [REDACTED] mother. When his body was discovered, his face was disfigured and his eyes were missing. Since Francisco's death, [REDACTED] mother has increased her financial contributions to the police. She has been threatened with death over the phone by Mara 18. Shortly after [REDACTED] death, [REDACTED] brother [REDACTED] also began to receive death threats. His daughter, who was working as domestic housekeeper in San Pedro Sula, was found strangled to death. About a year later, [REDACTED] step-son was found tied up, tortured, and murdered.

In May 2016, on his way to visit [REDACTED] mother, [REDACTED] father was viciously assaulted and beaten. [REDACTED] children have repeatedly been assaulted and threatened. In September 2016, his son [REDACTED] was kidnapped and tortured by a group affiliated with Mara 18. [REDACTED] son, [REDACTED] [REDACTED], who stayed behind in Honduras says he has been constantly watched and followed by Mara 18. [REDACTED] mother has informed [REDACTED] that Mara 18 is still looking for her. They have called her to ask where [REDACTED] is. No one has been brought to justice for any of the attacks or murders of [REDACTED] family members. Please see Table A at page 2 for a family tree charting these incidents.

On May 18, 2015, [REDACTED] filed a skeletal Form I-589 with the immigration court during a

master calendar hearing. Undersigned counsel informed the immigration judge at that hearing that she had been retained only six days prior, on May 12, 2015. The immigration judge set an individual hearing for September 8, 2016. She also set a deadline of August 17, 2015 for the submission of a declaration and an amended I-589, if necessary. The immigration judge and undersigned counsel further agreed that the rider respondents, Bryan and Nisi, would lodge their I-589s. The I-589s for rider respondents were lodged on June 11, 2015. On August 17, 2015, undersigned counsel filed an amended I-589 and declaration for [REDACTED] (as well as copies of the rider respondents' lodged I-589s). On February 12, 2016, the individual hearing was reset from September 8, 2016 to September 22, 2016. On April 13, 2016, the individual hearing was reset to October 18, 2016. [REDACTED] now files an updated declaration and voluminous supporting documentation in support of her applications for relief.

### III. ARGUMENT

#### A. [REDACTED] is Eligible for Asylum

[REDACTED] will be able to demonstrate that she warrants asylum on account of the severe past persecution that she suffered on account of protected grounds. These protected grounds include her membership in the particular social groups: Hondurans taking concrete steps to oppose gang authority and/or Honduran witnesses who publicly denounce gang activity; [REDACTED] family as defined by kinship ties; and Honduran girls viewed as property by virtue of their position in a domestic relationship. She also suffered persecution on account of her religion and political opinion. In addition, [REDACTED] warrants asylum based on her well-founded fear of future persecution on account of her political opinion, religion, and membership in particular social groups: [REDACTED] family as defined by kinship ties and Hondurans taking concrete steps to oppose gang authority and/or Honduran witnesses who publicly denounce gang activity.

In order to be eligible for asylum, an applicant must have suffered past persecution or have a well-founded fear of persecution “on account of” one or more of the five grounds enumerated in INA § 101(a)(42)(A): race, religion, nationality, membership in a particular social group, or political opinion. See INA § 101(a)(42)(A); INS v. Elias-Zacarias, 502 U.S. 478, 481-82 (1992). The applicant’s well-founded fear must be both subjectively genuine and objectively reasonable. Mgoian v. I.N.S., 184 F.3d 1029, 1035 (9th Cir. 1999). In addition, race, religion, nationality, membership in a particular social group, or political opinion must be at least one central reason for the persecution. INA § 208(b)(1)(B)(i). Furthermore, the source of the persecution must be the government, a quasi-official group, or persons or groups that the government is unwilling or unable to control. See Avetovo-Elisseva v. INS, 213 F.3d 1192, 1196 (9th Cir. 2000). Moreover, an applicant must demonstrate that she could not reasonably relocate within her country of origin to avoid persecution. 8 C.F.R. § 1208.13(b)(2)(ii). ██████ meets this standard.

1. The Harm ██████ Suffered Constitutes Persecution

The Ninth Circuit has defined persecution as “the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive.” Li v. Holder, 559 F.3d 1096, 1107 (9th Cir. 2009) *citing* Gormley v. Ashcroft, 364 F.3d 1172, 1176 (9th Cir. 2004) (internal quotation marks omitted).

a. **Violence By her Father Experienced By ██████ as a Child**

It is well established that physical violence is persecution under INA § 101(a)(42)(A). See Li, 559 F.3d at 1107; Guo v. Ashcroft, 361 F.3d 1194, 1197-98, 1202-03 (9th Cir.2004) (finding beatings of a Chinese detainee to rise to the level of persecution); Chand v. INS, 222

F.3d 1066, 1073 (9th Cir. 2000) (“Physical harm has consistently been treated as persecution.”). Persecution is not limited to physical violence. Matter of O-Z- & I-Z, 22 I. & N. Dec. 23, 25 (BIA 1998) (holding that persecution “encompasses a variety of forms of adverse treatment, including non-life threatening violence and physical abuse or non-physical abuse forms of harm”); Kovac v. INS, 407 F.2d 102, 106-107 (9th Cir. 1969) (in amending section 243(h), Congress intended for persecution to include more than bodily harm: “tyranny over the mind and spirit of a person has been demonstrated as more fearsome than the ancient measures of torture”). Persecution of family members may also rise to the level of persecution. Korablina v INS, 158 F3d 1038 (9<sup>th</sup> Cir. 1998) at 1046.

Moreover, special consideration must be taken into account when assessing harm an applicant suffered as a child as children may be more susceptible to harm than adults and may experience the harm differently. See Hernandez-Ortiz v. Gonzales, 496 F.3d 1042, 1046 (9th Cir. 2007) (holding that when the petitioner is a child, the adjudicator must assess the alleged persecution from a child's perspective). The United Nations High Commissioner for Refugees Child Asylum Claims under Articles 1(A)(2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (“UNHCR Child Asylum Guidelines”) state

Actions or threats that might not reach the threshold of persecution in the case of an adult may amount to persecution in the case of a child...Immaturity, vulnerability, undeveloped coping mechanisms and dependency as well as the differing stages of development and hindered capacities may be directly related to how a child experiences or fears harm.

UNHCR Child Asylum Guidelines, at ¶ 15

Furthermore, “[i]n addition to the many forms of persecution adults may suffer, children may be particularly vulnerable to... severe parental abuse, and other forms of human rights violations such as deprivation of food and medical treatment.” AOBTC Guidelines for

Children's Asylum Claims, USCIS, RAIO, Asylum Division, September 1, 2009, at 39.

Here, ██████ was subjected to repeated physical violence at the hands of her father from a young age. She recalls, "My father beat my sister and I. I remember him hurting me many times." Exhibit A.1., Updated Declaration of ██████ ██████ at ¶3 ("Ex. A.1."). On one occasion, though she was not even a year old, her father threw her into the air and out onto the patio, causing serious injury. *Id.* Additionally, ██████ witnessed the brutal abuse her father inflicted regularly on her mother. She recalls, "What I remember from my childhood is him [my father] beating my mother brutally and often, sometimes several times a week. She was always bruised on different parts of her body". *Id.* Moreover, ██████ describes her father as 'machista,' that he wanted to control her in every way, and that and when she, her mother, and her sister, tried to escape, even by fleeing to another town, her father repeatedly forced them back. Ex.A.1. at ¶¶4-5. As a child, ██████ reports feeling constant fear and hopelessness as a result of this abuse. Ex.A.1. at ¶3. The harm ██████ father subjected her to constitutes various types of persecution, including severe and repeated physical violence and 'tyranny over her mind and spirit' the in the form of forcing her to witness the frequent abuse of her mother and sister and controlling their lives in every way.

**b. Violence and Threats Against ██████ and Family by Mara 18**

As stated above, persecution can include physical violence as well as non-physical forms of harm. Death threats alone have been held to rise to the level persecution. Navas v. INS, 217 F.3d 646, 658 (9th Cir. 2000). Repeated death threats, especially when coupled with other forms of abuse, "require[s] a finding of past persecution." Smolniakova v. Gonzales, 422 F.3d 1037, 1049 (9th Cir. 2005); see also Mamouzian v. Ashcroft, 390 F.3d 1129, 1134 (9th Cir. 2004) (finding past persecution when "harm was "inflicted [on petitioner] on more than one occasion

..., and where the physical abuse was combined with other incidents, such as detention and threats”); *but see* Lim v. INS, 224 F.3d 929, 933, 936 (9th Cir. 2000) (finding the death threats hollow, when there had been nothing more than threats and Mr. Lim had lived in the country for six years undisturbed and the perpetrators had lost power significantly).

Persecution of family members can rise to the level of persecution. In Korablina v. INS, the Ninth Circuit held that the respondent had suffered past persecution where she had suffered one violent attack herself and her family members had been targeted after she fled – namely, her father was the subject of a physical assault and her daughter was the victim of an attempted rape. In making this finding, the Ninth Circuit stated:

In addition, acts of violence against a petitioner's friends or family members may establish a well-founded fear of persecution. This court has required, however, that the violence “create a pattern of persecution closely tied to the petitioner.” Arriaga-Barrientos, 937 F.2d at 414. Persecution is defined as “an extreme concept that does not include every sort of treatment our society regards as offensive.” *Id.* The key question is whether, looking at the cumulative effect of all the incidents a petitioner has suffered, the treatment she received rises to the level of persecution. Singh v. INS, 134 F.3d 962, 967 (9th Cir.1998).

Korablina v INS, 158 F3d 1038 (9<sup>th</sup> Cir. 1998) at 1046.

Here, the cumulative effect of the incidents ██████ suffered at the hands of Mara 18 most certainly rises to the level of persecution. She was subjected to physical harm and a grave threat to her life when a moto-taxi driver attempted to hit and kill her, though thankfully succeeded only in striking her arm with the vehicle. Ex. A.1 at ¶48. She was subjected to non-physical forms of harm that amounted to “tyranny over her mind and spirit.” Armed gang members kept ██████ and her family under constant surveillance. *Id.* at ¶¶ 66-67, 72-73, 79. They attempted to kidnap her. *Id.* at ¶47. They repeatedly killed her dogs. *Id.* at ¶¶57, 59-60. They painted a symbol on her wall in human blood, which she was told by the police represented a death threat

against her. Id at ¶¶62-63. Her nephew who became a member of Mara 18 threatened to kill ██████ while holding a machete. Id. at ¶78. Many members of her family were persecuted: her daughter ██████ was threatened with kidnapping (Id. at ¶73); her sons ██████ and ██████ were repeatedly assaulted and robbed (Id.); her son ██████ had a machete thrown at him and was threatened with death (Id.); her husband ██████ was repeatedly physically assaulted and threatened with death (Id. at ¶41); her mother and brothers were threatened with death (Id. at ¶¶19-20, 29, 33, 90); her father was brutally physically assaulted (Id. ¶91 and Ex.A.15., Photograph of Injuries); her brother ██████ was attacked with machetes (Ex.A.1. at ¶23); her niece (daughter of ██████) was strangled to death (Id. at ¶89 and Ex.A.14, Autopsy Report for ██████); her nephew (son of ██████) was kidnapped and tortured (Ex.A.1 at ¶95), her nephew (step-son of ██████) was tortured and killed (Id. at ¶89); and her brother ██████ partner was raped in front of him and ██████ was later brutally tortured and killed (Id. at ¶¶22, 81-85 and Exs.A.8-12, Death Certificate, Proof of Removal of Body, Prosecutor's Statement, and Photographs of the body). Please see Table A at page 2 for a family tree outlining these instances.

Under Ninth Circuit and Board precedent, the harm ██████ suffered at the hands of Mara 18 gang members rises to the level of persecution. The physical violence accompanied by death threats and extreme violence perpetrated against many members of her family rises to the level of harm required to establish that ██████ suffered past persecution at the hands of Mara 18.

2. ██████ Suffered Past Persecution On Account of Her Membership in a Particular Social Group of Hondurans Taking Concrete Steps Against Gang Authority and/or Honduran Witnesses who Publicly Denounce Gang Activity



a. **Hondurans Taking Concrete Steps Against Gang Authority and Honduran Witnesses who Publicly Denounce Gang Activity Constitute Cognizable Social Groups**

The Board and the Ninth Circuit have provided a framework for determining what constitutes a particular social group. In Matter of Acosta, the Board held that a particular social group referred to individuals who hold a “common, immutable characteristic,” which may be “an innate one such as sex, color, kinship ties, or in some circumstances.... a shared past experience....” Matter of Acosta, 19 I. & N. Dec. 211, 233-234 (BIA 1985), overruled in part on other grounds by In re Mogharrabi, 19 I. & N. Dec. 439 (BIA 1987). The Board specified that the immutable characteristic must be one “that the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *Id.* Since the issuance of the decision in Acosta, this Board has further clarified its definition, indicating that a particular social group must possess social distinction and particularity. *See e.g., Matter of M-E-V-G-*, 26 I. & N. Dec. 232 (BIA 2014); Matter of W-G-R-, 26 I. & N. Dec. 208 (BIA 2014); Matter of S-E-G, 24 I. & N. Dec. 579, 588 (BIA 2008); Matter of C-A, 23 I. & N. Dec. 951, 959-961 (BIA 2006). However, the particular social group does not “generally require a ‘voluntary relationship,’ ‘cohesiveness,’ or strict ‘homogeneity among group members.’” In re A-M-E & J-G-U-, 24 I. & N. Dec. 69, 75-76 (BIA 2007).

The Ninth Circuit has clarified that a particular social group is one in which the members are united by a voluntary association or an innate characteristic that is so fundamental to the identities or consciences of its members that the members of the particular group either can not or should not be required to change it. Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000). In the instant case, [REDACTED] belongs to the particular social group of Hondurans taking concrete steps to oppose gang authority or, alternatively, Honduran witnesses who publicly denounce gang activity.

In Henriquez-Rivas, 707 F.3d 1081 (9th Cir. 2013), the Ninth Circuit stated that witnesses who testify against gang members can establish eligibility for asylum. The Ninth Circuit, applying Board precedent regarding “social visibility” and “particularity”, held that witnesses who testify against gang members could constitute a cognizable particular social group. 707 F.3d 1081 (9th Cir. 2013).<sup>2</sup> In determining the cognizability of the social group, the Ninth Circuit took particular note of the fact that the Salvadoran legislature enacted a special witness protection law to protect individuals who testify against gangs. 707 F.3d at 1092.

In Pirir-Boc, 750 F.3d 1077 (9th Cir. 2014), the Ninth Circuit remanded the petition to the BIA after the BIA found his social group of “persons taking concrete steps to oppose gang membership and gang authority” to not be cognizable. In remanding the decision, the Ninth Circuit held:

We [] advise the BIA to consider Pirir–Boc’s petition in light of Henriquez–Rivas, which addressed a group comparable to Pirir–Boc’s proposed group and found it to be potentially cognizable. In Henriquez–Rivas, the proposed group was “witnesses who testify against gang members.” 707 F.3d at 1083. Here, the proposed group is “persons taking concrete steps to oppose gang membership and gang authority.” The concrete and open steps Pirir–Boc took in opposition to the gang may fall within the framework of Henriquez–Rivas.

Pirir-Boc, 750 F.3d 1077 at 1084 (9th Cir. 2014).

- (1) *The Social Groups of Hondurans Taking Concrete Steps to Oppose Gang Authority and Honduran Witnesses Who Publicly Denounce Gang Activity Share Immutable Characteristics*

Hondurans taking concrete steps to oppose gang authority and Honduran witnesses who

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<sup>2</sup> While Henriquez-Rivas was decided prior to the Board’s decisions in Matter of M-E-V-G- and Matter of W-G-R-, the Ninth Circuit held that these Board’s decisions did not affect the validity of the decision in Henriquez-Rivas. Pirir-Boc, 750 F.3d 1077 (9th Cir. 2014).

publicly denounce gang activity are groups that are united by nationality and a shared past experience. In Matter of Acosta, the Board held that a particular social group referred to individuals who hold a “common, immutable characteristic,” which may be “an innate one such as sex, color, kinship ties, or in some circumstances.... a shared past experience....” Matter of Acosta, 19 I. & N. Dec. 211, 233-234 (BIA 1985). In Matter of Fuentes, 19 I. & N. Dec. 658, 662 (BIA 1988), former Salvadoran police were recognized as sharing a past experience through their profession. A shared past experience is immutable because an experience is something that “cannot be changed... to avoid persecution.” Hernandez–Montiel v. INS, 225 F.3d 1084, 1092–93 (9th Cir.2000), overruled on other grounds by Thomas v. Gonzales, 409 F.3d 1177 (9th Cir.2005) (en banc). In Pirir-Boc, at 1082, the Ninth Circuit found that “Pirir–Boc's proposed group clearly satisfies the BIA's [immutability] standard. The steps Pirir–Boc took in opposition to the gang are a “shared past experience” and “something ... that cannot be changed.” (internal citations omitted). Both the Board and Ninth Circuit have recognized that “witnesses who testify against gang members” is a social group that possesses immutable or fundamental characteristics. Henriquez-Rivas, *supra*. The Ninth Circuit has recognized that “persons taking concrete steps to oppose gang authority” possesses immutable characteristics. Pirir-Boc, *supra*.

Here, ██████ status as a Honduran who takes concrete steps to oppose gang authority and a Honduran witness who publicly denounced gang activity is immutable. ██████ has repeatedly and publicly opposed gang authority and denounced gang activity by: actively and publicly participating in church activities that denounce the gang lifestyle and try to convert youth who are members of gangs (Ex.A.1. at ¶¶12,14, 25-28); personally and individually reaching out to gang-involved youth to convince them to leave lives of crime and enter the church (Id. at ¶¶13, 25, 27); openly coordinating a political campaign for a party running on a

rule of law, anti-gang platform (Id. at ¶¶52-53 and Ex.A.18, Letter from Mayor detailing membership in Liberal Party and campaign role in 2013 elections); refusing to provide medical supplies and medical care to gang members even in the face of threats (Ex.A.1. at ¶¶68-70); undertaking research on crime statistics and strategic-planning about how to bolster law enforcement activities and decrease gang control in La Entrada (Id. at ¶45); assisting law enforcement as a volunteer first responder (Id. at ¶¶43-44 and Exs.A.19-A.25. Nurse’s Assistant Certifications and Confirmation of Service to Honduran Red Cross); reporting gang activity to the police on many occasions that she witnessed gang activity in her neighborhood (Ex.A.1. at ¶¶61, 63, 74); and making a police report against her nephew who had become a gang member and who had threatened her and her mother with death (Id. at ¶78 and Exs.A.16-A.17 Letter from Magistrate’s Court and Criminal Complaint).

Like the respondents in Henriquez-Rivas and Pirir-Boc, ██████ cannot change the fact that she has a long history of openly and publicly opposing and denouncing gang activity through religious, political, and community activism, and through making reports to law enforcement. Therefore, ██████ social group possesses immutable characteristics.

- (2) *The Social Groups of Hondurans Taking Concrete Steps to Oppose Gang Authority and Honduran Witnesses Who Publicly Denounce Gang Activity Possess Social Distinction and Particularity*

The Board has recently reaffirmed the importance of social distinction (previously called social visibility) and particularity as a factor in the particular social group determination<sup>3</sup>. See

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<sup>3</sup> While the Respondent believes her social group satisfies the BIA’s requirements of “social distinction” and “particularity”, she does not believe that the BIA’s requirements of “social distinction” and “particularity” constitute a reasonable interpretation of “particular social group.” In Henriquez-Rivas, the Ninth Circuit held that the term “particular social group” is ambiguous. 707 F.3d at 1087, 1091. Respondent asserts that the Board’s interpretation is not reasonable and thus is not owed deference.

Matter of M-E-V-G-, 26 I. & N. Dec. 227 (BIA 2014); Matter of W-G-R-, 26 I. & N. Dec. 208 (BIA 2014). See also, In Re A-M-E & J-G-U-, 24 I. & N. Dec. 69 (BIA 2007); Matter of C-A-, 23 I&N Dec. 951, 957 (BIA 2006). In addition to possessing the requisite immutable and fundamental characteristics, Hondurans taking concrete steps to oppose gang authority and Honduran witnesses who publicly denounce gang activity possess social distinction and particularity.

In Matter of M-E-V-G-, the Board reaffirmed that the “social visibility” element is required to establish a cognizable “particular social group” and upheld the progeny of cases laying out this requirement. See, i.e., Matter of S-E-G, 24 I. & N. Dec. 579 (BIA 2008); In Re A-M-E & J-G-U-, 24 I. & N. Dec. 69 (BIA 2007); Matter of C-A-, 23 I&N Dec. 951, 957 (BIA 2006). However, the Board clarified that “social visibility” does not mean literal or “ocular” visibility and renamed the element as “social distinction”. Id. at 236. The Board held that the social distinction is determined by the perception of the society in question. Id. The Board explained,

The particular social group analysis does not occur in isolation, but rather in the context of the society out of which the claim for asylum arises. Thus, the ‘social distinction’ requirement considers whether those with a common immutable characteristic are set apart, or distinct, from other persons within the society in some significant way. In other words, if the common immutable characteristic were known, those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it. A viable particular social group should be perceived within the given society as a sufficiently distinct group. The members of a particular social group will generally understand their own affiliation with the grouping, as will other people in the particular society.

Matter of M-E-V-G-, 26 I. & N. Dec at 238.

In Matter of M-E-V-G-, the Board declined to make a ruling on whether the group of “Honduran youths who were actively recruited by gangs but who refused to join” constituted a

cognizable social group and remanded the case for further fact-finding. 26 I. & N. Dec at 251. However, the Board stated that there is no “blanket rejection of all factual scenarios involving gangs.” *Id.* See also, Matter of W-G-R-, 26 I. & N. Dec at 221 (BIA 2014); Matter of A-M-E & J-G-U, 24 I. & N. Dec. 69, 74 (BIA 2007) (holding that a determination of social visibility must be considered in the context of the country of concern and the persecution feared).

In Pirir-Boc v. Holder, the Ninth Circuit held that the Board’s decisions in Matter of M-E-V-G- and Matter of W-G-R- are consistent with its decision in Henriquez-Rivas v. Holder, 707 F.3d 1081 (9th Cir. 2013).<sup>4</sup> 750 F.3d 1077, 1080-1085 (9th Cir. 2014). In Henriquez-Rivas, the Ninth Circuit, applying Board precedent regarding “social visibility” and “particularity”, held that witnesses who testify against gang members could constitute a cognizable particular social group. 707 F.3d 1081 (9th Cir. 2013). The Ninth Circuit held that the determination as to whether a particular group is a cognizable social group is a case-by-case analysis based on the recognition of the particular society in question. Pirir-Boc, 750 F.3d at 1083-84. The Ninth Circuit in determining the cognizability of the social group took particular note of the fact that the Salvadoran legislature enacted a special witness protection law to protect individuals who testify against gangs. 707 F.3d at 1092. Moreover, the Court overruled its previous holding that a group of informants would need to show an additional element of shared birth, racial origin, or other homogenous aspect to find a particular social group. *Id.* at 1093 (overruling Velasco-Cervantes v. Holder, 593 F.3d 975, 978 (9th Cir. 2010) and Soriano v. Holder, 569 F.3d 1162

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<sup>4</sup> The Ninth Circuit noted that the Board in Matter of M-E-V-G- gave the persecutor’s perspective in determining “social visibility” less weight than the Court has suggested in Henriquez-Rivas. Pirir-Boc, Fn. 6. In Henriquez-Rivas, the Ninth Circuit had suggested that the perspective of the prosecutor may be *the most important* factor, while the Board held that it was *one factor* among others to be considered in determining “social visibility.” *Id.*

(9th Cir. 2009)). This decision falls within the holding in Matter of C-A-, which held that informants “who testify against cartel members are socially visible” because they are discovered by the fact that “they *appear as witnesses* or otherwise come to the attention of cartel members.” Henriquez-Rivas, 707 F.3d at 1092 (emphasis in original).

In addition, the Board in In Re A-M-E & J-G-U-, held that “[a]lthough a social group cannot be defined exclusively by the fact that its members have been subjected to harm, we noted that this may be a relevant factor in considering the group's visibility in society.” 24 I. & N. Dec. at 74. In finding that the respondents’ proposed social group failed to possess social visibility, the Board confirmed the IJ’s finding that there was little evidence in the record to show that “wealthy Guatemalans” would be recognized as a group that was more frequently targeted than the general Guatemalan population. Id.

Furthermore, in Matter of E-A-G-, 24 I. & N. Dec. 591 (BIA 2008), the Board rejected a claim that “persons resistant to gang membership,” constituted a particular social group based on a lack of social visibility. The Board held that there was no evidence to establish that “members of Honduran society, or even the gang members themselves, would perceive those opposed to membership as a social group.” Id. at 591. The Board explained that the respondent could not establish that the group would be sufficiently visible, noting that “respondent does not allege that he possesses any characteristics that would cause others in Honduran society to recognize him as one who has refused gang recruitment.” Id. at 594.

In Matter of M-E-V-G-, Matter of W-G-R-, and Matter of S-E-G, the Board further discussed the issue of particularity. In Matter of W-G-R-, decided on the same day as Matter of M-E-V-G-, the Board considered the social group of “former members of the Mara 18 gang in El

Salvador who have renounced their gang membership”. 26 I. & N. Dec at 221. The Board found that the proposed group was not a cognizable social group due to a lack of evidence in the record that demonstrated that Salvadoran society recognized former gang members who have renounced their gang membership as a distinct social group. Id. at 222. The Board also found that the proposed social group lacked particularity because “the boundaries of a group are not sufficiently definable unless the members of society generally agree on who is included in the group, and evidence that the social group proposed...is recognized within the society is lacking in this case.” Id. at 221.

In Matter of S-E-G-, the Board found that Salvadoran youth to whom gang recruitment attempts had been made did not constitute a particular social group. The Board ultimately held that, based on the specific facts of the case, the group lacked both particularity and visibility. Id. at 585-586. In dealing with particularity, the Board explained that the group lacked any unifying relationship or characteristic, which was required to “narrow this diverse and disconnected group.” Id. at 586 (citing Ochoa v. Gonzales, 406 F.3d 1166 (9th Cir. 2005)). Also important was this Board’s finding that the proposed class was not sufficiently particular because “the motivation in targeting young males could arise from motivations quite apart from any perception that the males in question were members of a class.”

In Henriquez-Rivas, the Ninth Circuit held that the proposed social group of witnesses who testified against gangs had sufficient particularity. In support of its finding, the Court found that the social group referred to those who “had testified against M-18 gang members in open court, and thus, ‘can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, a discrete class of persons.’” 707 F.3d at 1093 (citing S-E-G-, 241 I. & N. Dec. 579, 584 (BIA 2008)).



In Pirir-Boc, the Ninth Circuit remanded the BIA’s decision that “persons taking concrete steps against gang membership and authority” lacked particularity and social visibility. In doing so, the Court instructed the BIA, that ‘to be consistent with its own precedent, the BIA may not reject a group solely because it had previously found a similar group in a different society to lack social distinction or particularity, especially where, as here, it is presented with evidence showing that the proposed group may in fact be recognized by the relevant society.’ Pirir-Boc at 1084.

██████████ case is akin to Henriquez-Rivas and Pirir-Boc and can be readily contrasted to the facts presented in Matter of M-E-V-G-, Matter of W-G-R, Matter of A-M-E & J-G-U-, and Matter of E-A-G. The Ninth Circuit held that Henriquez-Rivas satisfied social distinction because the group is limited by those who “appear as witnesses or otherwise come to the attention of cartel members.” Henriquez Rivas, 707 F.3d at 1091 (citing Matter of C-A-, 23 I. & N. Dec at 960). In Pirir-Boc, the Ninth Circuit noted that the IJ considered evidence that there were concerted efforts in Guatemala to combat gang activity and that by openly opposing gangs, Pirir-Boc allied himself with a particular social group of persons directly in opposition to gang activities. The Ninth Circuit in remanding the case to the BIA held that “these are the type of findings that are relevant to determining “whether the people of a given society would perceive a proposed group as sufficiently separate or distinct to meet the ‘social distinction’ test.” M-E-V-G-, 26 I. & N. Dec. at 241.” Pirir-Boc at 1084.

Here, ██████████ participation in opposing gang authority and denouncing gang activity was open, public, and long-standing. As a campaign leader for the Liberal Party during the 2013 elections running on an anti-gang platform, she appeared in multiple televised political events sitting at the head table with the candidates. Ex.A.1. at ¶ 55. She flew the party flag from her

house and held regular public meetings in her home. Id. She went door-to-door in her community campaigning. Id. As a zealous member of the Evangelical Christian church, she lent her company vehicle to be driven to high-crime neighborhoods to preach an anti-gang message on street corners. Id. at ¶ 12. She participated in these events by singing with the group and taking up collection with the crowd. Id. She personally approached many at-risk youth in her neighborhood and tried to convince them to come to church. Id. at ¶¶ 13, 25, 27. She bought the land and donated the materials for the construction of a church. Id. at ¶ 14. She hosted a Christian radio program. Id. at ¶ 28. She was regularly seen and associated with her family members, including her brother Francisco who founded a Neighborhood Watch Committee and her mother and brother Ismael who were Evangelical pastors preaching anti-gang messages. Id. at ¶¶ 29, 33, 82. She was actively involved in and publicly wore the Red Cross uniform, an institution known to be involved in assisting law enforcement efforts against gangs. Id. at ¶ 43 and Exs. A.19.-A.25. She openly refused to provide medical supplies and medical care to gang members. Ex. A.1. at ¶¶ 68, 70. She regularly called the police to report gang activity, which came to the attention of the gang. Id. at ¶74. She made multiple police reports against gang members, which are a matter of public record. Id. at ¶¶49, 63, 78. ██████ has engaged in highly visible gang opposition over a long period of time.

There are concerted efforts to combat gang activity in Honduras and persons like ██████ who participate in such activities are perceived as a group by society. The Ninth Circuit has held that “[i]t is difficult to imagine better evidence that a society recognizes a particular class of individuals as uniquely vulnerable, because of their group perception by gang members, than that a special witness protection law has been tailored to its characteristics.” Henriquez-Rivas, 707 F.3d at 1092. In recognition of the vulnerability of witnesses, in May 2007, the Honduran

Congress passed the Witness Protection Law (*Ley de Protección de Testigos*) whose purpose is [translation] ‘to provide protection to witnesses in the criminal process who are admitted into the program as a result of their effective and efficient participation in that process.’ Ex. C.8.

Concerted efforts to oppose gang authority in Honduras and the resulting violence against such opposition has been widely documented. The U.S. State Department 2015 Human Rights Report for Honduras notes, ‘Organized criminal elements, including local and transnational gangs and narcotics traffickers, were significant perpetrators of violent crimes, and committed acts of murder, extortion, kidnapping, torture, human trafficking, and intimidation of journalists, women, and *human rights defenders*.’ (Emphasis added). Ex. B.1. The UN High Commissioner for Refugees (UNHCR) Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras published in July 2016 notes, “Civic leaders, and other formal and informal community leaders, who represent an alternative source of authority to the gangs or who oppose them, or are perceived by the gangs as doing so, are equally at risk of violent retaliation.” Ex. C.2. Country conditions expert James Smith notes that the non-partisan Congressional Research Service 2015 report on Honduras found that “human rights abuses – such as attacks on journalists and *social activists* – have increased, and the country has one of the highest homicide rates in the world.’ (Emphasis added) Ex. A.2. In March 2015, Lisa Haugaard and Sarah Kinoshian reported, “22 human rights defenders have been killed in Honduras since 2010, according to the Committee of Relatives of the Detained and Disappeared (COFADEH). COFADEH also documents two disappearances, 88 thefts of information, 15 kidnappings and 3,064 improper uses of judicial system to intimidate defenders.” Ex. B.7. Erica Guevara Rosas reported in September 2016, “Crimes against activists are rarely properly investigated, which perpetuate further violence... the absolute lack of political will to protect and support these

activists is often what puts them in mortal danger in the first place.” Ex. C.7. Kristy Siegfried of IRIN news reported in September 2016, “humanitarian agencies responding to gang violence cannot expect any special protection and may themselves become targets. Attempts to negotiate access with gang members controlling a particular “territory” where agencies want to work can also be deemed a criminal offense.” Ex. C.4.

Therefore, [REDACTED] has shown that her social groups possess the requisite social distinction and particularity that Board precedent requires.

**b. [REDACTED] Was Persecuted on Account of Her Membership in These Particular Social Groups**

To qualify for asylum, the applicant must establish the protected ground “was or will be at least one central reason for persecuting the applicant.” INA § 208 (b)(1)(B)(i) (emphasis added). However, the applicant need not demonstrate that the protected ground will be the dominant central reason. Parussimova v. Mukasey, 555 F.3d 734, 741 (9th Cir. 2009). “[A] motive is a ‘central reason’ if that motive, standing alone, would have led the persecutor to harm the applicant.” Id. To demonstrate a nexus between persecution and a statutorily protected ground, the applicant must provide “direct or circumstantial evidence.” See Sangha v. INS, 103 F.3d 1482, 1486-87 (9th Cir. 1997).

The evidence in this case demonstrates that in Honduras gangs routinely target those who openly oppose them, including witnesses who denounce their crimes to the police. The reason the Mara 18 (also known as Pandilla 18) gang cracks down so hard on community members who oppose them is explained by country conditions expert James Smith in his declaration in support of [REDACTED] case, “The Pandilla 18’s *modus operandi* is to control its territory. The Pandilla 18 murders persons or groups that resist their control through social activism.” Ex.A.2 at pages 19-20. The UNHCR Guidelines for Assessing the International Protection Needs of Asylum-Seekers

from Honduras state, “individuals whom the gang members suspect of resisting their authority are reported often to be killed without prior warning, although sometimes the killing is reportedly preceded by threats and/or other attacks against the person concerned.” Ex. C.2.

James David Cantor in a 2014 article in *Refugee Quarterly Survey* writes:

“[Mara street gangs] produce displacement as a result of their perception that the person is an enemy or traitor. Various factors may lead to the formation of such a judgment. Cooperation with the authorities is one example. Policemen and other investigators – especially if they are seen as zealous – may thus attract enmity of the criminal group, as will other persons who denounce the group to the authorities. This includes criminal turncoats – such as the pecetas hated and hunted down by the maras – and inhabitants who report crimes as either a victim or witness. Paranoia about informants is such that the mere act of speaking to a policeman can arouse suspicions. The common factor is the consequence of such labelling, which usually amounts to a death sentence for the person concerned.”

Ex. C.1.

In the instant case, the evidence clearly demonstrates that public opposition to gang members and denouncing their crimes is “one central reason” ██████ suffered persecution. During her campaign leadership for the Liberal Party in the 2013 elections on an anti-gang platform, ██████ had four dogs on three separate occasions poisoned or killed. Ex. A.1. at ¶¶57-61. Shortly after her party won the elections, she found a ‘B’ painted on her wall in human blood and was informed by the police that this constituted a death threat. *Id.* at ¶¶62-63. She believes Mara 18 was responsible for the death of her dogs and the symbol on her wall, as Mara 18 had ties to the incumbent political party and these attacks and threats coincided with Mara 18 beginning to subject ██████ and her family to constant surveillance and physical attacks (on her sons). *Id.* at ¶66. ██████ called the police to report the surveillance and attacks, and the police sent patrols to her neighborhood. *Id.* at ¶74. This prompted the gang to send a local hitman to ██████ home to threaten to kill her if she continued to cooperate with the police. *Id.*

Additionally, when ██████ began volunteering with the Red Cross, which involved liaising with law enforcement to make violence-reduction strategies and providing the police with medical services, she was again subject to attacks. While wearing her Red Cross uniform, men in a van tried to kidnap her. Ex. A.1. at ¶47. While walking down the street in her Red Cross uniform, a moto-taxi driver shouted at her ‘You Red Cross people are sons of bitches’ and attempted to run her over. Id. at ¶48. ██████ states that moto-taxi drivers are known to be linked to gang activity. Id. ██████ reported these attacks to the Red Cross administration and to the police. Id. at ¶49. Thereafter, Mara 18 gang members tried to force ██████ to hand over Red Cross medical supplies and provide medical care, which she refused to do. Id. at ¶¶68-69. In June 2014, ██████ and her mother were attacked by ██████ nephew, Francis, who had joined Mara 18. Id. at ¶78. ██████ said she would call the police, in response to which Francis told her he would kill her if she did. Id.

██████ states in her declaration,

“I recognized quite a few of those young men in the gang that were watching our house. Many of them had grown up in my neighborhood. Those young men know me and my family. They knew about my involvement in the church and in politics. They saw me as someone who was against them.”

Ex.A.1. at ¶67

Theses multiple incidents show that one central reason ██████ was persecuted was due to her opposition to gang authority and her public denouncing of gang crimes as a witness.

3. ██████ Suffered Past Persecution On Account of Her Membership in a Particular Social Group of her Family Defined by Kinship Ties

a. ██████ Family Constitutes a Cognizable Social Group

The Ninth Circuit has held that the immediate members of a certain family would constitute “a prototypical example of a ‘particular social group’”. Sanchez-Trujillo v. INS, 801 F.2d 1571, 1576 (9th Cir. 1986). DHS has also acknowledged that a family could be a social group for purposes of asylum, where the evidence establishes that the victim was targeted because of membership in the family. DHS L-R- brief at 16. In Lin v. Ashcroft, the Ninth Circuit clarified that family qualifies as a social group “[w]here family membership is a sufficiently strong and discernible bond that it becomes the foreseeable basis for personal persecution.” Jie Lin v. Ashcroft, 377 F.3d 1014, 1029 (9th Cir. 2004).

In the recent decision of Rios v. Lynch, 807 F.3d 1123 (9th Cir. 2015), the Ninth Circuit applied the Board’s refined framework for establishing a particular social group and held that “the family remains the quintessential particular social group.” Id. at 1128. The Court held that “few groups are more readily identifiable than the family.” Id. at 1128 (internal quotations omitted) citing Crespin-Valladares v. Holder, 632 F.3d 117, 125 (4th Cir. 2011). The Court affirmed that “family” can be a cognizable social group on its own, without being intertwined with another protected ground. Id. In Rios v. Lynch, the respondent asserted that he feared harm in Guatemala because a gang had targeted his family after his cousin witnessed the gang murder the respondent’s father. Id. at 1126-1128. The Court held that the Board erred in not addressing the family aspect of the respondent’s claim. Id. at 1128.

In the instant case, [REDACTED] family is a group that is defined by kinship ties. Kinship ties are immutable traits as they cannot be changed. Furthermore, the social group of [REDACTED] family possesses social distinction and particularity. In Honduras, family bonds are strong and clearly discernible within the social framework. Tim Merrill, in his book ‘Honduras: A Country Study,’ writes:

‘The family is the fundamental social unit in Honduras... People emphasize the trust, the assistance, and the solidarity that kin owe to one another. Family loyalty is an ingrained and unquestioned virtue; from early childhood, individuals learn that relatives are to be trusted and relied on, whereas those outside the family are, implicitly at least, suspect. In all areas of life and at every level of society, a person looks to family and kin for both social identity and assistance.’

Ex. G.1.

Ann Clutter writes of Hispanic family culture, ‘Traditionally, the Hispanic family is a close-knit group and the most important social unit. The term *familia* usually goes beyond the nuclear family. The Hispanic "family unit" includes not only parents and children but also extended family... Family ties are very strong.’ Ex. G.3.

Therefore, █████ family defined by kinship ties is the type of “cohesive, homogeneous group” that the Board and Ninth Circuit have found to be show sufficient particularity and social distinction. See, Perdomo, 611 F.3d at 666.

**b. █████ Suffered Persecution On Account Of Her Membership in this Particular Social Group**

Here, the evidence clearly demonstrates that █████ membership in her family was at least one central reason for the persecution that she suffered. Like █████ herself, many members of █████ family are involved in religious, political, and social activism against gangs.

█████ mother and brother Ismael and Evangelical pastors that preach anti-gang messages. Ex. A.1. at ¶¶ 29, 33. Both have been threatened with death. *Id.* at ¶¶ 30, 33. Ismael’s son Moises was murdered by gang members after her refused to be recruited. *Id.* at ¶93. █████ husband was active in youth outreach activities in the Evangelical church and was elected president of the local Citizen’s Advisory Council. *Id.* at ¶¶13, 25, 40. He was assaulted by Mara 18 and threatened with death and had to flee Honduras. *Id.* at ¶41. █████ brother █████ was involved in church activism and was attacked with machetes by gang members. *Id.* at ¶23. His daughter and step-son were murdered by gang members. *Id.* at ¶89 and Ex.A.14. █████



brother ██████ founded a Neighborhood Watch Committee, whose members were subsequently almost all murdered by Mara 18. Ex.A.1. ¶¶16-21. ██████ partner was raped in front of him, ██████ children were attacked, and ██████ was eventually brutally tortured and murdered. Id. at ¶¶22, 83-85, 95. ██████ father was brutally physically attacked in May 2016 on a visit to ██████ mother. Id. ¶91 and Ex.A.15. Indeed, almost every member of ██████ immediate family has been persecuted. Please refer to Table A on page 2 of this brief. The only members of ██████ immediate family who have escaped harm are those who have completely distanced themselves from the family. See Table A.

The targeting of those who dared to stand up to gang control by participating in Neighborhood Watch Committees in Honduras has been documented. Ex. D. It has also been documented that in some instances members of the group were systematically killed by the gangs. Ex. D.2. After ██████ founded the Neighborhood Watch Committee, the members of the group were threatened with death by Mara 18 and systematically murdered, in some cases alongside their family members. Ex. A.1. ¶¶19-21. ██████ was attacked and forced to watch Mara 18 gang members rape his partner. Id. at ¶22. He was eventually murdered. Id. at ¶84. When his body was discovered, it could be seen that he had been brutally tortured and mutilated. Id. at ¶85 and Exs. A.8-A.12. His children have been relentlessly attacked. Ex. A.1. at ¶95. His son was recently kidnapped and tortured by a group affiliated with Mara 18. Id. Around the time of ██████ murder, his mother and brother ██████ who were still in La Entrada started receiving renewed death threats. Id. at ¶¶89-90. ██████ father was attacked about a year later. Id. at ¶91. He believes he was attacked because he appeared on the news when ██████ body was found. Id. at ¶92. ██████ states in her declaration:

“My mother believes that if I had not left Honduras just weeks before, I would have been killed together with ██████. When he was in La Entrada, we always went out together.

We were always seen together and everyone knew we were brother and sister.”  
Ex. A.1. at ¶ 86

It is common for family members to be targeted by gang members. In an article published in the Georgetown Immigration Law Journal covering gangs in Central America, Jeffery Corsetti writes, “The close family members of an individual who resists the gangs are often in as much danger as the individual himself.” Ex. C.3. James David Cantor writes of those who have been labeled enemies of the gang that “the family of the person is also a target for vengeance or a means to exert pressure on the individual.” Ex. C.1. The UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras states:

*“Family members, dependants, other members of the households of individuals with any of the profiles above [those who oppose gangs] can reportedly also be a target for attacks and assassination by gangs, organized criminal groups and elements of the security forces, sometimes even after the person who was initially targeted has fled or has already been killed.”*

Ex.C.2.

It can therefore be demonstrated that one central reason [REDACTED] was targeted was on account of her membership in her family.

4. [REDACTED] Suffered Past Persecution On Account of Her Membership in a Particular Social Group of Honduran Girls Viewed as Property by Virtue of Their Position within a Domestic Relationship Defined by Her Age, Gender, Nationality, and Her Status Within Honduran Society

a. **Honduran Girls Viewed as Property is a Cognizable Social Group**

Honduran girls viewed as property is a group united by gender, age, nationality, and status in society. These shared characteristics are immutable, as a person cannot change his or her gender, age, nationality, or how they are perceived in society. Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000). The Ninth Circuit and Board have held that gender is an immutable characteristic. In Mohammed v. Gonzales, 400 F.3d 785 (9th Cir.2005), the Ninth Circuit held that that gender is an “innate characteristic” that is “fundamental to [one’s]

identit[y].” *Id.* at 797. Moreover, in the seminal decision of Acosta, the Board expressly held that one’s sex is a prototypical example of an immutable characteristic. Matter of Acosta, 19 I. & N. Dec. at 233-234. See also Matter of A-R-C-G-, 26 I. & N. Dec. at 392 (“the group is composed of members who share the common immutable characteristic of gender.”). The status of “viewed as property” is also an immutable trait. DHS’ Supplemental Brief, Matter of L-R-, dated April 13, 2009 at 16; Matter of A-R-C-G-, 26 I. & N. Dec. at 392-393.

In addition to possessing the requisite immutable traits, Honduran girls viewed as property possess social distinction and particularity. In Matter of M-E-V-G-, the Board reaffirmed that the “social visibility” element is required to establish a cognizable “particular social group” and upheld the progeny of cases laying out this requirement. See, i.e., Matter of S-E-G-, 24 I. & N. Dec. 579 (BIA 2008); In Re A-M-E & J-G-U-, 24 I. & N. Dec. 69 (BIA 2007); Matter of C-A-, 23 I&N Dec. 951, 957 (BIA 2006). The Board held that the social distinction is determined by the perception of the society in question. Matter of M-E-V-G-, 26 I. & N. Dec at 238.

In Matter of A-R-C-G-, the Board found that the social group “married women in Guatemala who are unable to leave their relationship” is socially distinct. 26 I. & N. Dec. at 393-394. The Board held that,

When evaluating the issue of social distinction, we look to the evidence to determine whether a society...makes meaningful distinctions based on the common immutable characteristics of being a married women in a domestic relationship that she cannot leave. Such evidence would include whether the society in question recognizes the need to offer protection to victims of domestic violence, including whether the country has criminal laws designed to protect domestic abuse victims, whether those laws are effectively enforced, and other sociopolitical factors.

*Id.* at 394.

The Board found that the “unrebutted evidence that Guatemala has a culture of ‘machismo and family violence’” supported the existence of social distinction. Id.

Here, it is clear that the group Honduran girls viewed as property is socially distinct. Country conditions documentation relating to Honduras demonstrates that violence and child abuse is common in the home. Ex. H.5. Moreover, this violence is motivated by the fact that women and children are viewed as property in Honduran society and that a culture of machismo prevails. Ex. H. Dr. Herrera Cuello writes:

‘It is my opinion that in Honduras, children are not treated as people with rights but as the property of their parents, and, by extension, the broader community of adults in general. Children are vulnerable to a host of abuses and exploitations, including child abuse, abandonment, sexual violence and rape, trafficking, and other harms by all of society including family members, community members, gangs and criminal organizations, and governmental authorities. Because of children’s low status in society, many of these harms are invisible or ignored by society.’

Ex. H.6.

Claudia Hermannsdorfer, expert on violence against women in Honduras, writes,

‘Honduran women live in a culture of violence, fear, and repression, where they cannot escape the discriminatory cultural attitudes that bind them. The culture of machismo pervades Honduras. Machismo teaches that women are property of their intimate partners or fathers, that women are second-class citizens, and that women are to be dealt with as seen fit by the masculine sectors of society.’

Ex. H.7.

As it can be demonstrated that Honduran girls are viewed as property in Honduran society and that Honduras has a culture of machismo and family violence, Honduran girls viewed as property constitutes a cognizable social group.

- b. **██████████ Suffered Persecution On Account Of Her Membership in this Particular Social Group**

As stated above, to qualify for asylum, the applicant must establish the protected ground “was or will be at least one central reason for persecuting the applicant.” 8 U.S.C. § 1158(b)(1)(B)(i) (emphasis added). To demonstrate a nexus between persecution and a statutorily protected ground, the regulations specifically permit circumstantial evidence of the prosecutor’s motive. 8 CFR § 208.13(b)(2)(i)(A).

As a child, ██████ and her sister were subjected to frequent physical abuse by her father. Ex. A.1. at ¶3. However, ██████ states that her father never physically abused her brothers and rather treated them with ‘respect.’ Id. at ¶4. ██████ also witnessed her father subject her mother to frequent and severe beatings. Id. at ¶3. ██████ notes that her father was very controlling and wanted to dictate every aspect of the lives of his wife and daughters. Id. at ¶¶4-5. She contends that he was very *machista*. Id. The extent of ██████ father’s violence coupled with his belief that he had the right to control every aspect of his daughters’ lives and that he did not mete out the same treatment on the sons in the household indicates that the reason ██████ father persecuted her and her sister was because they were his daughters within his home that he viewed as his property.

5. ██████ Suffered Past Persecution On Account of Her Religion

Religion is one of the core protected categories of refugee and asylum law in the United States. INA § 101(a)(42). “[R]eligious belief, identity, or way of life can be seen as so fundamental to human identity that one should not be compelled to hide, change or renounce this in order to avoid persecution.” UNHCR Guidelines on International Protection: Religion-Based Refugee Claims at 5. The right to freedom of religion is protected internationally in the Universal Declaration of Human Rights and the Human Rights Covenant.

██████ Evangelical Christian beliefs fall squarely within this protected category. The UNHCR Guidelines note that religion can manifest as belief, identity, or a way of life. For ██████ Evangelical Christianity is all three. Her religion is part of who she is and shapes the way she lives her life. She has been an Evangelical Christian since she was very young and religion is very important to her. Ex. A.1. at ¶7. ██████ religion is protected by domestic and international asylum law.

It is well-documented that the positions of the Evangelical church conflict with the ethos and activities of the gangs in Central America. Robert Brenneman in his book ‘Homies and Hermanos: God and Gangs in Central America,’ writes:

The differences between the two social phenomena [religion and gangs] are considerable and these differences are clearest when examining the value systems of each. While the gang promotes a hedonistic vision of pleasure pursuits, evangelicals, especially the pietistic *hermanos* of barrio evangelicalism, promote strict moralistic prohibitions aimed at eliminating alcohol and tobacco use and curbing and domesticating sexuality.

Ex. E.3.

Members of the Evangelical church are encouraged to participate in political and social activism. Ex. E.2. A study conducted by the Pew Research Center shows that 84% of global Evangelical leaders believe religious leaders should express their views on political matters and more than half feel it is essential to take a public stand on social and political issues when they conflict with moral and biblical principles. *Id.* Indeed, Evangelical churches in Central America have undertaken a central role in attempts to prevent youth from joining gangs and to convince gang members to leave the gang and join the church. Exs. E.3-E.4. Brenneman writes:

With few exceptions, evangelicals view conversion as the most important means of addressing the gang problem and thus create ministries that seek to ‘rescue’ individual gang members and reestablish them within their communities through ‘restoration’ programs.

Ex. E.3.

Evangelical ministries therefore find themselves at odds with the goals of the gangs, for

whose structure it is important to recruit large numbers of low level, young participants. Ex. A.2. and E.6. Country conditions expert James Smith documents this phenomenon in his declaration and states, ‘Evangelical activists who offer at-risk youth an alternative to gang life threatens the gang’s *modus operandi* of recruiting youth.’ Ex. A.2. at page 19. Therefore, it has been necessary for the gangs to retaliate against the church’s activities. For instance, one article published in Christian Post World in 2011, documented the murders of six evangelical pastors in a period of just a few months. Ex. E.5. Evangelical pastors interviewed for the piece stated that such murders are common. Pastor Oswaldo Canales stated when interviewed, “pastors are aware that, due to their evangelistic calling, ‘we have always been subjected to threats; we have been in the cross-hairs of those who are not in keeping with our thinking.’” Id.

Here, ██████ was involved in this type of documented religious activity. Both in San Pedro Sula and in La Entrada, she and her husband and children participated actively in Evangelical efforts to rescue at-risk youth. Ex.A.1. at ¶¶12-14, 25-28. Expert James Smith highlights that a World Bank study of 2015 identified this region as least likely to respond positively to evangelical ministry or social activism. Ex. A.2. at page 15. ██████ religious activities were extensive and included loaning her company truck to be driven to high-crime neighborhoods for preaching, participating in these events, buying the land and donating the materials for a new church to be built, counseling families whose children were involved in gangs, reaching out personally to youth involved in gangs in their neighborhoods, and running a program on a Christian radio station. Ex.A.1. at ¶¶12-14, 25-28. ██████ family members were also heavily involved, most notably her mother and brother ██████ were both pastors and her mother paid to have a church built in a gang-controlled area of La Entrada. Id. at ¶¶29, 33.

██████ and her family’s Evangelical ministry was not well-received in these communities

where Mara 18 was attempting to exercise control. ██████ mother had rocks thrown at her church while she was preaching. Ex. A.1. at ¶30. When she began to preach instead from her home, she had rocks thrown at her home. Id. at ¶32. ██████ mother was threatened with death many times, often by gang members while she was on her way to church. Id. at ¶30. A young man who attended ██████ mother's church was shot to death on the street on his way home from church, and ██████ saw his bullet-ridden body lying in the street. Id. at ¶34. ██████ brother Ismael was also threatened with death for his preaching. Id. at ¶33. Two years after he became a pastor, Mara 18 attempted to forcibly recruit his son ██████. When ██████ refused to join them, they murdered him. Id. at ¶93. After that, ██████ fled with his remaining children to Costa Rica. Id.

The documented conflict between Mara 18 and the Evangelical church in Honduras, coupled with the extent of ██████ religious activities and the direct targeting of her family for religious reasons serves to establish that one central reason ██████ suffered persecution was on account of her religion.

6. ██████ Suffered Past Persecution On Account of Her Political Opinion

Political opinion is another of the core protected categories of refugee and asylum law in the United States. INA § 101(a)(42). "Political opinion" has a broad meaning and is not limited to traditional concepts of political parties or partisan politics. See, e.g., Sagaydak v. Gonzales, 405 F.3d 1035, 1041-45 (9th Cir. 2005)(retaliation against auditor for exposing corruption is persecution on account of political opinion); Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993) (feminism can be a political opinion). Political opinion may be expressed through actions as well as words. See, e.g., Ahmed v. Keisler, 504 F.3d 1183, 1193-98 (9th Cir. 2007)(finding a political opinion where the respondent voiced opposition to treatment of Biharis through hunger



strike and demonstrations).

██████ has been politically active in many ways. She has served in various elected positions on her local Citizen's Advisory Council and, most notably, she served as a campaign organizer for the Liberal party during the 2013 mayoral elections in La Entrada. Ex. A.1. ¶¶38-39, 51-65. In addition to her traditional political activities, ██████ holds a firm political opinion that opposes gang authority and control, which she has expressed through religious activities and social activism. In Honduras, gangs constitute a quasi-governmental entity. Experts have reported that gangs in Honduras exercise control over large areas of the country, with one government official stating that gangs control 40% of the territory. Ex. B.5.

Here, ██████ political opinion was one central reason she was persecuted. ██████ states that she is a member of the Liberal party because they support community institutions and do not do business with gangs or organized crime, unlike the incumbent National Party. Ex. A.1. at ¶53. During the 2013 mayoral elections in La Entrada, ██████ was very visibly and publicly involved in the Liberal Party's political campaign. Ex.A.18. She appeared in multiple televised political events sitting at the head table with the candidates. Ex.A.1. at ¶55. She flew the party flag from her house and held regular public meetings in her home. Id. She went door-to-door in her community campaigning. Id. The mayoral candidate, ██████, was threatened with death during the campaign. Id. at ¶56. The vice-mayoral candidate, ██████, was also threatened and forced to flee Honduras before the conclusion of the elections. Id. About a week before the elections, ██████ dog was poisoned and killed. Id. at ¶57. ██████ got two new dogs. Right after the elections, her two new dogs were also poisoned and killed. Id. at ¶59. She got another dog, but about two weeks later it was also poisoned and killed. Id. at ¶60. About a week after that, ██████ discovered the letter 'B' painted on the wall of her home in human blood

accompanied by a booprint in blood. Id. at ¶62. She called the police, who told her the symbol was a threat of torture and death. Id. at ¶63. Ever since that time, Mara 18 gang members started surveilling ██████ and assaulting her sons. Id. at ¶66. About a year ago, one of the Liberal party candidates who ██████ campaigned with during the 2013 elections was assassinated along with his family members. Id. at ¶65. ██████ explains that the violence against Liberal candidate members is perpetrated by rival political parties but also by gangs who have been cooperating with corrupt incumbent officials. Id. at ¶54.

Violence in Honduran politics is well-documented. Exs. F. Indeed, violence during the November 2013 elections in particular has been extensively reported on, including attacks and assassination of members of the Liberal party. Exs. F.2-F.4, and C.2. The UNHCR in their Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras reports:

“In the political campaigning leading up to both the primaries of 18 November 2012 and the general election of 24 November 2013 that led to the election of the current Hernández administration, threats, armed attacks and homicides were recorded against candidates for political office, leaders of political parties, political party activists and their family members. 13 such homicides were reportedly recorded for the 2012 primaries and 35 for the 2013 general election. Moreover, 9 further armed attacks against such persons were recorded for the 2012 primaries and 17 for the 2013 general election. This political violence reportedly affected all political parties, but particularly the LIBRE party and the *Liberal Party*, and was reportedly concentrated in those departments where organized criminal groups operate, potentially reflecting their interest in penetrating local and national politics.”

Ex. C.2. (Emphasis added)

The persecution ██████ suffered during and immediately preceding her political activism for the Liberal Party and the documented violence against Liberal Party activists serves to establish that ██████ political opinion was one central reason for her persecution.

7. The Honduran Government is Unwilling or Unable to Control ██████ Persecutors

An asylum applicant must demonstrate that the persecution was or will be inflicted by either the government or by persons the government is unable or unwilling to control. Avetovo-Elisseva, 213 F.3d at 1196. The applicant is not required to report third-party persecution to the government where it would be futile or result in further abuse. See Castro-Martinez v. Holder, 641 F.3d 1103 (9th Cir. 2011) (holding that reporting is not a necessary condition to establish government's unwillingness to protect from harm); Afriyie v. Holder, 613 F.3d 924, 931 (9th Cir. 2010) (holding that an applicant may use generalized country conditions information to show that reporting harm would be futile); Ornelas-Chavez v. Gonzales, 458 F.3d 1052, 1057 (9th Cir. 2006) (holding that failure to report is not required if doing so would be futile or subject the applicant).

The evidence in the instant case demonstrates that Honduras' laws and customs effectively deprive persons such as ██████ of any meaningful governmental protection. The U.S. Department of States Human Rights Report for Honduras notes, "Corruption and impunity continued to be serious problems within the security forces. Some members of the police participated in crimes with local and international criminal organizations." Ex. B.1. Amnesty International has reported high rates of impunity for human rights abuses in Honduras, owing to an ineffective criminal justice system and corruption and human rights violations by police. Ex. B.3. The Jesuit Conference of the United States reports:

"Government ability to control gang activity is at best ineffective and at worst complicit. Organized crime has made its way into some sectors of the police, politics and the judicial branch, to the point that it appears to have grown beyond law enforcement's ability to deal with it. Police are frequently compromised or directly responsible for violence: in June, the entire investigative police unit (1400 officers) was suspended over allegations of corruption. Extortion rackets are conducted in coordination with government officials or police. The situation is compounded by a weak justice system:

police corruption and inefficiency, as well as public distrust, mean that only 20% of crimes are reported to the police, and of those, less than 4% are investigated.”

Ex. B.5.

Country conditions expert James Smith notes that while current president Juan Hernandez states that he wishes to combat corruption and impunity, he has made it a budget priority and has resisted the installment of an independent international commission against corruption and impunity. Ex. A.2. at page 10. He further notes that high numbers of Honduran police are corrupt and will ‘rat out’ those who report crimes to gang members, who may kill them in retaliation for their having gone to the police. Id. at page 12.

Here, ██████ made multiple attempts to obtain protection from the Honduran state authorities. She states that she called the police countless times to report armed men and drug transactions in her neighborhood, and that the police refused to respond unless there were ‘dead bodies’. Ex. A.1 at ¶61. ██████ has reported the various attacks she has suffered, and no one has been brought to justice, and it appears the reports she made were not archived properly. She made a police report after the moto-taxi driver tried to run her over. Id. at ¶49. When she went back to the police station for a copy of the report, they could find no sign of it. Id. at ¶50. ██████ states, ‘unfortunately the authorities in Honduras are irresponsible with information, perhaps because they lack resources or they do not give importance to anything less than murder cases.’ Id. She reported the killing of her dogs and the ‘B’ painted in blood on her wall. Id. at ¶63. The police came to make a report. Id. Again, ██████ has not been able to obtain copies of this report and has been told the police cannot find anything in their records. Id. at ¶64. Once ██████ started being constantly watched and followed by Mara 18 gang members, she asked the mayor to ask the police to send occasional police patrols. Id. at ¶74. Rather than protecting ██████ and her family, this action worsened the persecution against them. Id. More heavily armed gang

members started watching her and they sent a hitman to her home to threaten her that they knew she had called the police and she had better be careful or they would kill her. Id. Of [REDACTED] many family members who have been murdered, none of the murders have been solved nor any of the perpetrators brought to justice.

Country conditions reports and [REDACTED] own experience show that the Honduran government is unable and unwilling to protect [REDACTED] from the persecution she faces.

8. Because [REDACTED] Has Established That She Suffered Past Persecution On Account Of Her Membership in a Particular Social Group, Religion, and Political Opinion, She Is Entitled to a Presumption of a Well-Founded Fear of Future Persecution

[REDACTED] suffered past persecution on account of her social group, religion, and political opinion, and therefore, she is entitled to a presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). The government bears the burden of overcoming this presumption by proving by a preponderance of the evidence that there have been changed circumstances in the applicant's home country so that she no longer has such a fear, or that the applicant can avoid future persecution through reasonable internal relocation. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B).

Country conditions clearly demonstrate that there are high levels of violence in Honduras against those who openly oppose gang authority including political activists and Evangelical Christians who do youth outreach. See Sections III.A.2, 5, 6, *supra*. Country conditions expert James Smith quotes the 2016 Congressional Research study which states that although the United States has increased foreign assistance to Honduras, 'these are difficult and long-term endeavors, and significant improvement in living conditions in Honduras likely will require concerted effort by the Honduran government and the international community over many years.' Ex. A.2. at pages 12-13. Moreover, no changes in [REDACTED] personal circumstances

indicate she is at any less risk than she was when she fled. Her son who stayed behind in Honduras continues to be watched by Mara 18, her mother has received calls from gang members asking for [REDACTED] whereabouts, and her family members continue to be attacked and killed. Ex. A.1. at ¶¶88-97. Country conditions expert James Smith writes,

The passage of time does not diminish a *Pandilla 18* vendetta. The United Nations High Commission of Refugees' Guidance Note on Refugee Claims Relating to Victims of Organized Gangs agrees: "Significantly, once an individual or family has been targeted for retaliation, the gravity of the threat does not diminish over time." Indeed a *Pandilla 18* green light, or order to kill, can span generations. [Internal citations omitted].

Ex. A.2. at page 16.

This observation is borne out in the facts of [REDACTED] own case. Her brother Francisco founded the Neighborhood Watch Committee in approximately 1998. Ex. A.1. at ¶16. He was attacked and threatened for many years, but he was not actually tortured and killed until 2014, 16 years after he founded the Neighborhood Watch. Id. at ¶84. For the foregoing reasons, the government cannot show that there are changed circumstances that remove [REDACTED] fear of harm.

Nor can the government show that [REDACTED] can avoid persecution by reasonable internal relocation. After being persecuted in San Pedro Sula, [REDACTED] moved to the city of La Entrada to escape harm. Ex. A.1. at ¶23. However, she continued to be targeted. [REDACTED] persecutors, Mara 18 and their affiliates, have control over extensive areas in the country of Honduras. Ex. A.1. at ¶99 and Ex. B.5. Country conditions expert James Smith writes, "Relocation is also not a realistic option, as the Pandilla 18 has a nationwide network of spies and informants who are adept at locating individuals, including through social media. The gang would learn of her return, and upon learning of her return would seek her out for elimination." Ex. A.2. at page 22.

Therefore, it cannot be established that conditions have changed in Honduras such that

█████ no longer has a fear of harm or that she can avoid future harm through internal relocation.

9. █████ Suffered Severe and Atrocious Past Persecution and Faces “Other Serious Harm” and Is Entitled to Asylum

█████ is entitled to a grant of asylum even in the absence of a well-founded fear of persecution because her past persecution was severe and atrocious, leaving her with lasting trauma, and because she faces “other serious harm” should she return to Honduras. 8 C.F.R. § 1208.13(b)(1)(iii)(A); Matter of Chen, 20 I. & N. Dec.16, 21 (BIA 1989).

The harm █████ suffered meets the threshold of severe and atrocious. The repeated physical abuse as a child, the attempted murder and kidnapping against her as an adult, repeated death threats, constant surveillance, and brutal assaults, torture, and murder of so many of her family members constitute severe and atrocious persecution.

█████ faces “other serious harm” if she returns to Honduras. 8 C.F.R. § 1208.13(b)(1)(iii)(B); Matter of L-S-, 25 I. & N. Dec. 705 (BIA 2012)(in “other serious harm” cases focus should include current conditions such as civil strife and psychological harm to the applicant). There are high levels of civil strife in the country of Honduras. See Sections III.A.2, 3, 5, 6, supra. There are high murder rates particularly for women, who are often subjected to torture and sexual abuse before death, many forms of this torture involving gender-specific mutilation. Ex. H.

Additionally, █████ suffered severe psychological trauma in Honduras and has been diagnosed with Post-Traumatic Stress Disorder and depression. Ex. A.3, Psychological Evaluation of █████ █████. Her symptoms include intrusive memories, flashbacks, nightmares, concentration deficits, memory issues, and dissociation. Marcia Banks, LMFT, concludes ‘a return to Honduras would seriously compromise her function and well-being, as the original threat that precipitated her departure is still present. Re-exposure to scenes of her earlier

ordeals would be re-traumatizing for her and a forced return would exacerbate her sense of powerlessness by depriving her of the ability to control her own future.’ *Id.* at page 7.

For the foregoing reasons, ██████ merits a grant of humanitarian asylum.

10. ██████ Has an Independent Well-Founded Fear of Persecution On Account of Her Religion, Political Opinion, and Membership In A Particular Social Group

a. ██████ **Well-Founded Fear of Persecution Is Subjectively Genuine and Objectively Reasonable**

An asylum applicant’s well-founded fear of persecution must be subjectively genuine and objectively reasonable to qualify for asylum. *See Mgoian v. I.N.S.*, 184 F.3d 1029, 1035 (9th Cir. 1999); *Korablina v. INS*, 158 F.3d 1038, 1044 (9th Cir. 1998). An applicant satisfies the subjective component by credibly testifying that she genuinely fears persecution. *Id.* An applicant generally satisfies the objective component in one of two ways: either by establishing that she has suffered persecution in the past or by showing that she has a good reason to fear future persecution. *Mgoian v. I.N.S.*, 184 F.3d 1029, 1035 (9th Cir. 1999). Even if there is only a one-in-ten possibility of an event occurring, such a possibility can give rise to a well-founded fear of persecution. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987).

In the instant case, ██████ fear of returning to Honduras is subjectively genuine. Exh. A.1. In support of her case, ██████ submits a declaration expressing her intense fear of returning to Honduras. *Id.* at ¶98. She states, “In Honduras, I fear being brutally tortured and killed by gangs. I fear the same fate for my children. I fear that, as a woman, I may be raped and subjected to sexual torture. I fear the same for my daughter, ██████, who is 12 years old.” *Id.*

██████ fear is objectively reasonable. As demonstrated by the evidence in this case and discussed in detail supra in Sections III.A.2, 5, 6, those who publicly oppose gang authority and



who participate in political and religious activities to this end are frequently subjected to extreme forms of violence at the hands of gang members. Moreover, gang members perpetrate these extreme and pervasive forms of violence with virtual impunity. See Section III.A.7 supra. [REDACTED] is no less at risk now than she was when she fled. See Section III.A.8 supra.

**b. The Harm [REDACTED] Faces Rises to the Level of Persecution**

As discussed supra persecution has been defined as “the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive.” Li, 559 F.3d at 1107. It is well established that physical violence is persecution under INA § 101(a)(42)(A). See Li, 559 F.3d at 1107; Guo v., 361 F.3d at 1197-98; Chand, 222 F.3d at 1073; Smolniakova, 422 F.3d at 1048-49; Matter of O-Z- & I-Z, 22 I. & N. Dec. at 25.

Here, based on the fate of many of her family members, [REDACTED] fears torture and death if returned to Honduras. Ex. A.1. at ¶98. As a woman, she additionally fears sexual torture. Id. Country conditions show widespread violence against those who oppose gang authority and high levels of femicide and torture of women. Exs. B, C, H. Therefore, the harm [REDACTED] fears rises to the level of persecution.

**c. [REDACTED] Has a Well-Founded Fear of Future Persecution On Account of Her Religion, Political Opinion, and Membership in a Particular Social Group**

As discussed supra, [REDACTED] suffered past persecution on account of her political opinion, religion and membership in the particular social groups of Honduran girls viewed as property, Hondurans taking concrete steps to oppose gang authority and/or Honduran witnesses who publicly denounce gang activity, and the social group of her family as defined by kinship ties. See Sections III.A.2-6 supra. As discussed supra, these constitute cognizable social groups.

██████ has a well-founded fear of future persecution on account of her political opinion, religion and membership in the particular social groups of Hondurans taking concrete steps to oppose gang authority and/or Honduran witnesses who publicly denounce gang activity, and the social group of her family as defined by kinship ties. Country conditions documentation shows that in Honduras people are often targeted for just these reasons. See Sections III.A.2, 3, 5, 6 supra. ██████ already has an extensive history of religious, political and community anti-gang activism. Mara 18 has already singled her out for persecution. The passage of time does not lessen Mara 18 vendettas. Ex. A.2. at page 16. Almost every member of ██████ immediate family has been subjected to harm. See Table A on page 2. For the foregoing reasons, ██████ has a well-founded fear of future persecution on account of these protected grounds.

As discussed supra at Section III.A.7, the Honduran government is unable and unwilling to protect ██████ from the harm she faces. Additionally, ██████ cannot avoid persecution by reasonable internal relocation. See Section III.A.8 supra.

**B. ██████ is Eligible for Withholding of Removal**

To qualify for withholding of removal, an applicant must demonstrate that his or her “life or freedom would be threatened in that country because of the [petitioner's] race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3); INA § 241(b)(3). An applicant may establish eligibility for withholding of removal by establishing an independent showing of a clear probability of future persecution. 8 C.F.R. § 1208.16(b)(2). See also, Tamang v. Holder, 598 F.3d 1083, 1091 (9th Cir. 2010). In addition, the applicant must demonstrate “that it is more likely than not that he would be subject to persecution on one of the specified grounds.” Al-Harbi v. INS, 242 F.3d 882, 888 (9th Cir. 2001) (internal quotation marks omitted). Withholding of removal is not discretionary: “[t]he

Attorney General is not permitted to deport an alien to a country where his life or freedom would be threatened on account of one of the [ ] protected grounds.” Id. See also Delgado v. Holder, 648 F.3d 1095, 1101 (9th Cir. 2011). Moreover, an applicant must demonstrate that she could not reasonably relocate within his country of origin to avoid persecution. 8 C.F.R. § 1208.16(b)(2). [REDACTED] meets this standard.

As discussed in Section III, supra, [REDACTED] has been targeted by Mara 18 on account of protected grounds, including cognizable particular social groups. Due to her membership in her family and her political, religious, and community activism, she has been subjected to physical assault, attempted kidnapping, attempted murder, death threats, and constant surveillance. Her husband and children have been threatened and assaulted. Her brother [REDACTED] was brutally tortured and murdered. Several of her nieces and nephews have also been tortured and/or murdered. Country conditions documentation shows that it is common for anti-gang political, religious, and community activists and their family members to be targeted. See Sections III.A.2, 3, 5, 6 supra. [REDACTED] fears that if she returns to Honduras she will be tortured and killed. She fears the same fate for her children. Torture and murder clearly constitute a threat to life or freedom, and the evidence clearly demonstrates that it is more likely than not that [REDACTED] will suffer such harm.

Lastly, the evidence clearly demonstrates that the perpetrators of the violence [REDACTED] faces can act with impunity and that such violence is widespread in Honduras, making relocation impossible. See Section III.A.7, supra; Section III.A.8, supra.

C. **[REDACTED] is Eligible for Protection Under Article Three of the Convention Against Torture**

To qualify for relief under CAT, an applicant must establish that it is more likely than not

that she would be tortured if removed to her country of origin. 8 C.F.R. § 1208.16(c)(2); see Khup v. Ashcroft, 376 F.3d 898, 906 (9th Cir. 2004). Under CAT, “torture” is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for . . . any reason based on discrimination of any kind . . . .” 8 C.F.R. § 1208.18(a)(1) (2000). Moreover, the torture must be “at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” 8 C.F.R. § 1208.18(a)(1). The Ninth Circuit explained, “relief under the Convention Against Torture requires a two part analysis—first, is it more likely than not that the alien will be tortured upon return to his homeland; and second, is there sufficient state action involved in that torture.” Garcia-Milian v. Holder, 755 F.3d 1026 (9th Cir. 2013)(quoting Tamara-Gomez v. Gonzales, 447 F.3d 343, 351 (5th Cir. 2006)). If ██████ establishes that it is more likely than not that she will be tortured in Honduras, relief under CAT is mandatory. 8 C.F.R. § 1208.16(c).

The Ninth Circuit has routinely held that the types of violence ██████ faces constitute torture. See, i.e. Bromfield v. Mukasey, 543 F.3d 1071, 1079 (9th Cir. 2008)(“Acts constituting torture are varied, and include beatings and killings”); Al-Saher v. I.N.S., 268 F.3d 1143 (9th Cir. 2001)(applicant’s subjection to repeated beating and cigarette burns was considered torture); Lopez-Galarza v. I.N.S., 99 F.3d 954, 962 (9th Cir. 1996)(“Rape at the hands of government authorities while imprisoned on account of one's political views can be an atrocious form of punishment indeed.”); Xiao v. Ashcroft, 98 F. App'x 632, 634 (9th Cir. 2004)(“multiple beatings and electric shock constitute past torture”).

As discussed supra, ██████ is more likely than not to suffer torture and even death in Honduras. See Section III.B. Factors that an adjudicator must consider in a claim for relief under CAT include: “Evidence of gross, flagrant or mass violations of human rights within the country

of removal, where applicable; and . . . [o]ther relevant information regarding conditions in the country of removal.” Konou v. Holder, 09-71454, 2014 WL 1855660 (9th Cir. May 9, 2014). Furthermore, the Ninth Circuit explained, “[i]t is well-accepted that country conditions alone can play a decisive role in granting relief under [CAT].” Id (citing Nuru v. Gonzales, 404 F.3d 1207, 1219 (9th Cir. 2005)). [REDACTED] has provided extensive evidence detailing the flagrant and mass violations of the human rights of women and religious, political and community activists in Honduras. See Sections III.A.2-8 supra. Violence against those who oppose gangs is rampant, and the laws enacted to protect women like [REDACTED] are ineffective. Id. Moreover, [REDACTED] own experiences evidence the widespread violence by gang members and the culture of impunity that exists for the perpetrators. Ex. A.1. Therefore, it is more likely than not that [REDACTED] will suffer torture if she is forced to return to Honduras.

Lastly, the torture [REDACTED] is more likely than not to suffer will be by government officials or with the acquiescence of government officials. The Ninth Circuit has held that to constitute torture at the hands of government actors, the harm caused had to have been “specifically intended by officials to inflict severe physical pain.” Al-Saher v. I.N.S., 268 F.3d 1143, 1147 (9th Cir. 2001) (being subjected to repeated beatings and cigarette burns while in government custody was found to be torture).

Acquiescence of public officials must include an awareness of the persecution and a failure to intervene and prevent the activity that breaches a legal responsibility to do so. 8 C.F.R. § 1208.18(a)(7). According to the Ninth Circuit:

Public officials acquiesce in torture if, “prior to the activity constituting torture,” the officials: (1) have awareness of the activity (or consciously close their eyes to the fact it is going on); and (2) breach their legal responsibility to intervene to prevent the activity because they are unable or unwilling to oppose it.

Garcia-Milian v. Holder, 755 F.3d 1026 (9th Cir. 2013). See also, Ornelas-Chavez v. Gonzales,

458 F.3d 1052, 1059 (9th Cir.2006); Afriyie v. Holder, 613 F.3d 924 (9th Cir. 2010)(“reversed denial of CAT and remanded where there was substantial evidence that the police were unable or unwilling to protect Baptist preacher in Muslim area in Ghana who could suffer torture”); Bromfield v. Mukasey, 543 F.3d 1071, 1078 (9th Cir. 2008)(IJ was mistaken in requiring a homosexual individual to show that government actors would inflict torture and not just acquiesce to persecution). “Importantly, an applicant for CAT relief need not show that the entire foreign government would consent to or acquiesce in his torture. He need show only that ‘a public official’ would so acquiesce.” Madrigal v. Holder, 716 F.3d 499, 509–10 (9th Cir. 2013)(“If public officials at the state and local level in Mexico would acquiesce in any torture [applicant] is likely to suffer, this satisfies CAT's requirement that a public official acquiesce in the torture, even if the federal government in Mexico would not similarly acquiescence”). Furthermore, the preventative measure by some government actors, do not exclude the possibility of acquiescence. De La Rosa v. Holder, 598 F.3d 103 (2d Cir. 2010).

Country conditions show that Honduran government actors are aware of the violence perpetrated by gangs and are often complicit in it. See Section III.A.7, supra. As the Honduran government is aware of the torture and killings carried out by gangs and routinely breaches their legal responsibility to prevent it, the Honduran government acquiesces to the torture that ██████ is more likely than not to face if returned to Honduras. See Garcia-Milian v. Holder supra.

#### IV. CONCLUSION

Thus, based on all of the above-referenced evidence and arguments, this Court should find that ██████ warrants a grant of asylum because of the severe and atrocious persecution she suffered in Honduras on account of her membership in particular social groups, political opinion, and religion and the persecution and other serious harm that she will likely suffer if returned to

Honduras.

Date submitted: October 3, 2016

Respectfully submitted,

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