

U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
ASYLUM OFFICE - NEWARK, NJ
MANHATTAN BRANCH

-----X
In the Matter of:

████████████████████

File No. A ██████████

Asylum applicant

-----X

BRIEF IN SUPPORT OF
████████████████████
APPLICATION FOR ASYLUM

Fernanda Bertolaccini, Esq.
Deirdre Stradone, Esq.
Sanctuary for Families
30 Wall Street, 8th Floor
New York, NY 10005

Pro Bono Counsel for ██████████

threatened him into saying silent; telling him that if he made any noise or told anyone, her family would abandon him and his brother.

During this same period, ██████, left unsupervised for several hours during the day, experienced additional sexual abuse at the hands of older children in the neighborhood. Adolescent boys in his neighborhood, viewing him as a feminine or gay, invited him to play video games into one of their homes. Once inside the house, the two older boys raped ██████, calling him “huiiro culero” (“feminine boy” or “faggot boy”) and threatening to attack his brother if he told anyone what happened.

██████ continued to experience threats and abuse by other children in school relating to his physical appearance and perception by others that he was gay. In middle school, ██████ was bullied and called derogatory names like “faggot” because he spoke and dressed differently than other boys. Other students tripped, pushed, hit, and kicked ██████, and they also threw rocks at him, all while calling him derogatory names for gay people.

In around ██████, ██████ additionally experienced threat to his life by MS-13 gang, resulting from his mother’s relationship with an affiliate of the gang, ██████ (“██████”). In 2015, ██████, a man with familial connections to the MS-13 and most likely a member of the gang, started dating ██████’ mother, Ms. ██████. Prior to the start of this relationship, ██████, ██████, and ██████ were friends. It is through their friendship with ██████ that Ms. ██████ initially met his acquaintance. Shortly after the relationship began, ██████ began abusing and threatening ██████’ mother—beating her, locking her in the house, and isolating her from family and friends. Ms. ██████ fled to El Salvador, under the pretense of caring for a sick aunt, to escape ██████. Using methods unbeknownst to ██████ and Ms. ██████, ██████ ultimately found her and threatened her. In mid-██████, Ms. ██████ briefly returned to Honduras to obtain medical documents for her aunt. Around ██████ while ██████ was still in Honduras, ██████ and ██████ witnessed ██████ beating their mother in the streets. ██████ and his brother confronted ██████ which in a physical altercation with between ██████ and his brother and ██████ and his brothers. During that fight, ██████ and his brothers warned them that they would now have problems with the MS-13 gang. After this fight, when Ms. ██████ was hiding at ██████’s home and refused to return to ██████, he threatened her, “if you don’t come back now, you will pay the consequences. If you don’t come back now, I am going to put your son in a body bag!”

By ██████, ██████’ mother, Ms. ██████ had again fled to El Salvador to hide from Nelson. In the wake of her departure, ██████ demanded that ██████ and ██████ disclose to him the location of their mother, but they refused. On ██████, members of the MS-13 gang stormed into the barbershop and, without saying anything and murdered ██████ and his friend ██████ who was receiving a haircut—all in the presence of several witnesses. According to some of the witnesses, the men were carrying guns and wearing masks and vests with the letters “DPI” on them. Although “DPI” stands for *Dirección Policial de Investigaciones*, a criminal investigation service within the Honduran police force, ██████ knew that these men were not actually part of the Honduran police force, even if they may have been receiving protection from the police force. At the funeral for ██████, when Ms. ██████ refused

to leave with ██████ when she commanded that he leave, he threatened her, “Remember, you only have one son.”

██████ later understood that members of MS-13 had acted on ██████’s orders, and that they killed ██████ on ██████’s behalf. ██████’s words and actions demonstrated that he wanted to punish ██████ and his brother for refusing to disclose their mother’s location to ██████, and, by killing her sons, he sought to punish Ms. ██████ for leaving him. ██████ seemed to command influence with and have the trust of the leader of the MS-13 gang, known as ██████, and having spoken to ██████ ██████ came to believe that ██████ convinced the gang members to go after and kill ██████ and ██████. ██████ later learned that ██████ had conjured a false narrative about them, and convinced the MS-13 gang leader of ██████ and ██████ being members of a rival gang, Barrio 18, when in fact ██████ and his brother were not, and had never been, members of a gang.

After ██████’s death and for five year afterwards, ██████ continued to be pursued, stalked, and threatened by the MS-13 gang members. He was at various times chased by cars trying to run him down as he rode his motorcycle. He was stalked, harassed and threatened with text messages from gang members who called him a “snitch” and communicated in emojis with blood and guns. ██████ relocated to different towns, including ██████ and ██████ ██████ to escape the persistent threats and attempts at his life.

Unfortunately, the threats continued and escalated after MS-13 gang leaders were arrested by local enforcement. After this arrest, ██████ posted a signed comment on the National Police Department’s website thanking the police for capturing his brother’s assassins. After posting this comment, ██████ experienced more cars following him and trying to run him off the road and gang members appearing at his place of work. In one instance, a car forced ██████ to slide his bike to the ground to escape being run over by the car, causing cuts and injuries that resulted in scars on his arms.

In ██████ ██████ fled Honduras, leaving behind his girlfriend and young son, for both his safety and the safety of his family. He is now seeking asylum to escape these serious threats to his life.

III. Evidence in Support of Stevens’s Claims

A. ██████ Has Suffered Past Persecution On Account of His Membership in the Particular Social Group of “Sons of ██████” and his Actual and Imputed Anti-Gang Political Opinion

1. ██████ is a Member of the Particular Social Group “Sons of Ms. ██████ ██████”

In order to claim “membership in a particular social group,” an applicant must establish that the group is (1) composed of members who share a common immutable characteristic, (2)

defined with particularity, and (3) socially distinct within the society in question.”² An “immutable characteristic” is one that the proposed members “either cannot change, or should not be required to change because it is fundamental to their identities or consciences.”³ Under the standard set by the BIA, a group is “defined with particularity” when it is described by terms with discrete and definable boundaries that are commonly understood and accepted in society, and a group is “socially distinct” when it is perceived by society as a distinct group.⁴

Family can be the basis for a particular social group, and “the inquiry in a claim based on family membership will depend on the nature and degree of the relationships involved and how those relationships are regarded by the society in question.” Matter of L-E-A-, 27 I&N Dec. 40, 43 (BIA 2017) (finding the immediate family of the respondent’s father to constitute a cognizable particular social group).⁵ ██████’s nuclear family consists of his mother, Ms. ██████, and brother, ██████. ██████ and his brother acquired membership in Ms. ██████ nuclear family at birth, and ██████’s family origin and kinship ties cannot be changed. ██████ will always be the son of Ms. ██████. In Matter of Acosta, the BIA defined that “kinship ties” are immutable and innate.⁶

This group is sufficiently particular because it is limited to a discrete and distinct set of individuals – Ms. ██████ only has two sons, ██████ and his deceased brother ██████.⁷ The group is socially distinct as it is “easily recognizable and understood by others to constitute a social group.”⁸ As explained by ██████, “our neighborhood was small and close-knit. Everyone knows everyone else. People in the neighborhood knew that my mother was Ms. ██████ and that ██████ was my older brother.”⁹ ██████ also asserts that it is very clear to ██████ and the MS-13 who the sons of Ms. ██████ are. ██████ explained that he and ██████ were friends with ██████ before the start of ██████’s relationship with Ms. ██████. Ms. ██████ further corroborates that she met ██████ through ██████, that he was often at her sons’ shared home and barbershop, and she frequently brought food over to her sons and ██████.¹⁰ After the relationship with ██████ and Ms. ██████ turned violent and ██████ and ██████ intervened to protect their mother, ██████ had a meeting with members of the MS-13 and explained to them that he had had issues with “how ██████ treated our mother.”¹¹

The mother-son relationship between ██████ and Ms. ██████ is the same “nature and degree” of the particular social group recognized in Matter of L-E-A and as such, “Sons of Ms. ██████” is a cognizable particular social group.

² Matter of Acosta, 19 I&N Dec. 211 (BIA 1985)

³ Acosta, 19 I&N Dec. at 233.

⁴ See M-E-V-G-, 26 I&N Dec. 227, 238-240 (BIA 2014); In Re W-G-R-, 26 I&N Dec. 208, 214-216 (BIA 2014).

⁵ See also In Re C-A-, 23 I&N Dec. 959 (nothing that “family relationships are generally easily recognizable and understood by others to constitute social groups.”); Vumi v. Gonzales, 502 F.3d 150, 155 (2d. Cir.

2007)(acknowledging the Board’s long-standing recognition of family members as a possible particular social group).

⁶ Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985)

⁷ W-G-R-, 26 IN& Dec. 208, 210 (BIA 2014)

⁸ Matter of C-A-, 23 I&N Dec. 951, 959 (BIA 2006)

⁹ ██████ Affidavit

¹⁰ ██████ Affidavit

¹¹ ██████ Affidavit

2. ██████ Has An Actual or Imputed Anti-Gang Political Opinion

Applicants for asylum based on political opinion must show that (1) the persecutors believed the victim held a particular political opinion and (2) that the persecutors targeted the victim because of that opinion.¹² For an opinion to qualify as “political,” it need not pertain to a particular political group and may be expressed through actions or words.¹³ The applicant need not consider himself an activist or dissident, or “couch [his] resistance in terms of a particular ideology.”¹⁴ Rather, political opinion “should be understood in the broad sense, to incorporate...any opinion on any matter in which the machinery of state, government, and police may be engaged.”¹⁵ “Even an opinion “*wrongly imputed* to the victim by her persecutors constitutes a ‘political opinion’ for the purposes of asylum.”¹⁶

A country-specific inquiry is necessary to understand the importance of ██████’ beliefs and actions and why they should be construed as a “political opinion.” The gangs in Honduras represent a de facto government. They “(1) are frequently acknowledged by officials of the Northern Triangle governments and the public as de facto authorities in areas under their control, (2) routinely engage in activities normally associated with governance...(3) at times negotiate with governmental and non-governmental representatives to determine, directly or indirectly, governmental and non-governmental policies and practices, and (4) operate in direct collusion with corrupt state officials across multiple levels of government. Without a political agenda and the means to operationalize that agenda, gangs simply could not function at the level that they do.”¹⁷

██████’s opinion is more than just a general aversion to the gang. ██████ possess a political opinion, stemming from his youth, that he opposes the gang’s ideology and use of threats and violence to accomplish their goals. As a child, he spoke politely, believing that the use of curse words, commonly used among gang members, attracted “badness” or made one unhappy. When he was in school, and the other students bullied him by throwing his school supplies over the school wall to where the gangs congregated, ██████ refused to go off school property. He was afraid to run into the gang members and be kidnapped and recruited, as he did not support their beliefs and views. As an adult, in ██████, he became involved with ██████ a central political party that opposed corruption and gang control. He disagreed with “all that the gangs consider as signs of strength.” ██████ “understood the MS-13 also believes in machismo, control and domination of women through violence. They use their organizations to hurt the people, not just to bypass the laws and order of Honduras. I believe my mother and all women always had the freedom to choose her partners and leave whenever they want. I believe

¹² Rodriguez Tornes v. Garland, 993 F.3d 743, 752 (9th Cir. 2021); citing Ahmed v. Keisler, 504 F.3d 1183, 1192 (9th Cir. 2007).

¹³ See Chang v. INS, 119 F.3d 1055, 1093 (3d Cir. 1997), *superseded by statute on other grounds as stated in Li v. Attorney General*, 633 F.3d 136 (3d Cir. 2011).

¹⁴ Id. at 1063.

¹⁵ U.S. Citizenship and Immigration Services RAIO Directorate – Officer Training, “*Nexus and the Protected Grounds*,” citing Guy Goodwin-Gill, *The Refugee in International Law* 30 (1983)

¹⁶ Zhou v. Gonzales, 437 F.3d 860, 866 (9th Cir. 2006) (emphasis added).

¹⁷ Thomas Boerman, “*Family As A Social Construct In El Salvador, Honduras, And Guatemala: Visibility and Vulnerability of Family Members of Individuals Targeted by Organized Criminal Groups*” Immigration Briefings: Thomson Reuters (December 2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3520124

that I have the freedom to stand up for my mother and brother, that differences can be solved with dialog and not violence.”¹⁸ In further support of his opinion, after the arrest of two men in conjunction with the assassination of ██████, ██████ publically praised the Honduran police force. In addition to the actual anti-gang political opinion held by ██████, the gang further imputed an anti-gang opinion to him by wrongfully believing he was the member of a rival gang and that he had reported the MS-13 gang members responsible for ██████’s murder to the police.

Thus, ██████ made clear through these and other action that he did not believe in the MS-13 ideology and mode of operation. Motivated by his profound beliefs in the rights of individuals to live safely and freely, he refused to comply with his culture’s prevailing deference to the MS-13. For this defiant political expression, he was punished severely by the MS-13.

3. ██████ Suffered Harms Rising to the Level of Persecution

Persecution is “the infliction of harm or suffering by a government, or persons a government is unwilling or unable to control, to overcome a characteristic of the victim.”¹⁹ Persecution “is not limited to physical harm or threats of physical harm and may include threats of economic harm.”²⁰ Emotional harm alone may constitute persecution even when there is no physical harm.²¹ Evidence of physical abuse provides “significant support” for a finding of past persecution.²² “Threats may amount to persecution if they are imminent, concrete, or so menacing as to cause significant actual suffering or harm.”²³ When combined with other persecutory behavior, death threats may rise to the level of past persecution.²⁴ When evaluating whether harm qualifies as persecution, events must be considered cumulatively.²⁵

A threat constitutes persecution when it shows 1) intention to inflict harm (menacing) and 2) when it is corroborated by credible evidence (concrete).²⁶ For instance, death threats (without accompanying physical harm) and “even non-death threats” (without accompanying physical harm) can constitute persecution when evaluated cumulatively.²⁷ To evaluate whether a threat is “concrete and menacing” in the absence of physical harm, courts consider whether acts of mistreatment would have corroborated the verbal threat with “the ultimate effect of placing the petitioner’s life or liberty in peril.”²⁸ In individual cases, threats of violence that are coupled with physical harm (even if such physical harm has not been severe or repeated) have been found

¹⁸ ██████ Affidavit

¹⁹ Matter of Kasinga, 21 I & N Dec. at 365.

²⁰ Matter of T-Z-, 24 I&N Dec. 163, 169 (B.I.A. 2007).

²¹ Matter of A-K-, 24 I&N Dec. 275, 278 (B.I.A. 2007).

²² See Rizal v. Gonzales, 442 F.3d 84, 92 (2d Cir. 2006); see also Janjua v. Lynch, 13-113 NAC, 620 Fed. App’x 21, 24 (2d Cir. July 1, 2015) (adjudicators must “be keenly sensitive to the fact that a ‘minor beating’ or, for that matter, any physical degradation designed to cause pain, humiliation, or other suffering may rise to the level of persecution”).

²³ Ci Pan v. U.S. Att’y Gen., 449 F.3d 408, 314 (2d. Cir. 2006)

²⁴ See Gashi v. Holder, 702 F.3d 130, 138 (2d Cir. 2012) (an applicant suffered past persecution when he was “repeatedly warned, threatened with death, and attacked with deadly weapons including a knife and a metal knob”).

²⁵ Poradisova. Gonzales, 420 F. 3d 70, 79-80 (2d Cir. 2005).

²⁶ Blanco v. Attorney General, 967 F.3d 304, 312 (3d Cir. 2020)

²⁷ Montero-Cabrera v. Barr, 833 Fed. App’x. 451 (9th Cir. 2020) (internal citations omitted).

²⁸ Herrera-Reyes v. Att’y Gen. U.S., 952 F.3d 101 (3d Cir. 2020).

to establish past persecution.²⁹ First, ██████ directly threatened Ms. ██████ that, “I am going to put your son in a body bag!” One month after this threat, ██████ was murdered. After ██████’s death, ██████ again threatened her, “Remember, you only have one son left.”³⁰ In Honduras, ██████ himself suffered a series of “specific and menacing” death threats, accompanied by “near-confrontations” of violence.³¹ On four separate occasions, in three different towns, members of MS-13 stalked ██████, followed him in cars while he was on his motorbike, and attempted to kill him multiple times by running him off the road. The gang also sent numerous death threats to him via text messages. These concrete and menacing threats constitute persecution. The threats against the lives of Ms. ██████’s sons, coupled with the murder of ██████, reinforces the argument that these death threats are concrete.

Due to these traumatic events, ██████ suffers from Post Traumatic Stress Disorder (“PTSD”) and Persistent Depressive Disorder.³² Taken together, this systematic pattern of at least five years of violence ██████ suffered clearly rises to the level of past persecution.

4. These Harms Were On Account of His Membership in the Particular Social Group of “Sons of Ms. ██████” and his Actual and Imputed Anti-Gang Political Opinion

Asylum applicants must demonstrate a “nexus” between their fear of persecution and “one or more of the grounds enumerated.” 8 U.S.C. § 1101(a)(42). Direct and circumstantial evidence regarding a persecutor’s motive should be considered and reasonable inferences may be made based on evidence in the record.³³ ██████ does not need to demonstrate conclusively why the persecution against him occurred.³⁴ Rather, as the record makes clear here, he must show that it is reasonable to believe that ██████ and the MS-13 harmed ██████ because of an animus against the family, namely Ms. ██████, and ██████’s actual and imputed anti-gang political opinion.³⁵

For the first approximately twenty years of ██████’s life, he had limited, if any interactions, with the MS-13 gang members who patrolled and controlled his neighborhood. The timing of the murder of ██████ and the threats, stalking, and multiple attempts at murdering ██████ is illustrative: the violence against the sons of Ms. ██████ happened after Ms. ██████ first fled ██████ and further escalated when Ms. ██████ was able to definitively escape ██████—when she entered the U.S. and ██████ was deported to Honduras. In or around late 2015 or early 2016, Ms. ██████ told ██████ that she was going to leave him because of the domestic violence. During one argument, ██████ threatened her,

²⁹ Blanco, 967 F.3d at 314-315.

³⁰ Ms. ██████ Affidavit at 37; 44

³¹ Mashiri v. Ashcroft, 383 F.3d 1112, 1119 (9th Cir. 2004)(Threats of serious harm “may be compelling evidence of past persecution, particularly when they are specific and menacing and are accompanied by evidence of violent confrontations, near-confrontations, and vandalism.”)

³² Psychiatric Evaluation of Dr. ██████).

³³ Matter of L-E-A-, 27 I&N Dec. 40, 44 (BIA 2017); see Matter of D-R-, 25 I&N Dec. 445, 453 (BIA 2011).

³⁴ Matter of T-M-B-, 21 I&N Dec. 775 (BIA 1997).

³⁵ Matter of LEA, 27 I&N Dec. 40, 44 (BIA 2017); see also Matter of T-M-B-, 21 I&N Dec. 775 (BIA 1997); Matter of S-P-, 21 I&N Dec. 486 (BIA 1996)

“Remember, you have children and they are here.”³⁶ Understanding that it was a threat against her sons’ lives, but not initially believing in the validity of this threat, Ms. ██████ first fled to a different area of Honduras, before escaping to El Salvador. In or around September ██████, when Ms. ██████ was hiding at ██████’s home, ██████ called her and threatened, “If you don’t come back, you will pay the consequences. If you don’t come back now, I am going to put your son in a body bag!”³⁷ Soon after this threat, ██████ attempted to run ██████ over in his car as he walked in the street, and as ██████ turned around, he saw Nelson smiling back at him. In ██████ in or around one month after this threat, when Ms. ██████ was hiding in El Salvador, ██████ was murdered by a MS-13 gang member. ██████ ██████, who was present outside the building at the time of ██████’s murder, reports that ██████ had driven past ██████’s place of business multiple times earlier that day, and was at a nearby corner at the time of the murder.³⁸ ██████ and Ms. ██████ later learned that one of ██████’s brothers, “█████,” murdered ██████.³⁹ On the day of the funeral, a car followed ██████ home on his motorbike. In or around ██████ Ms. ██████ again expressed her desire to end her relationship with ██████ and leave Honduras alone. In response, ██████ again threatened her, “You have only one son.”⁴⁰ In ██████ after Ms. ██████ safely entered the U.S. and ██████ had been deported to Honduras, a car attempted to run ██████ off the road.

“Kinship criterion...applies only where the motivation for persecution is *kinship*.”⁴¹ For particular social groups involving family membership, an applicant must demonstrate that the family relationship is at least one central reason for the claimed harm and not merely incidental to the harm.⁴² It is clear that ██████’s relationship to his mom is the reason why he, and not another person, was targeted with stalking, death threats, and attempted murder. Here, as part of ██████’s abuse of Ms. ██████, he threatened to murder her children. If not for ██████ and ██████’s relationship to their mother and role as a pawn in ██████ campaign of violence against her, ██████ would not have been murdered and ██████ would not have experienced numerous attempts on his life. ██████ previously had a close friendship with Ms. ██████ ██████’s sons and there were never any issues, threats, or violence between the men until they attempted to protect her from ██████’s violence and until Ms. ██████ attempted to leave him. ██████’s motive was undeniably to control Ms. ██████ and then punish her for her disobedience. He targeted her sons as a means to succeed in this aim. ██████ would not have targeted ██████ and ██████ if they were not her sons.

³⁶ Ms. ██████ affidavit

³⁷ Ms. ██████ affidavit

³⁸ Mr. ██████ affidavit

³⁹ See affidavit of Ms. ██████, “█████’s father...explained that one day, he was at ██████’s mother’s house and he overheard the men talking and planning someone’s murder....They are from the MS-13. He told me that he did not realize who they were talking about killing until it was too late, and ██████ was killed.”

⁴⁰ Ms. ██████ affidavit

⁴¹ Perlera-Sola v. Holder, 699 F.3d 572, 576 (1st Cir. 2012)

⁴² Matter of L-E-A-, 27 I&N Dec. 40, 46 (BIA 2017).

In addition to being targeted because he is Ms. ██████ son, ██████ was threatened with death and almost killed by the gangs multiple times because of his imputed or actual anti-gang political opinion. General resistance to gangs or anti-gang opinions in response to “general conditions of violence and civil unrest does not substantiate a well-founded fear of persecution on account of political opinion.”⁴³ However, “the difficulty of determining motive in situations of general civil unrest should not... diminish the protections of asylum for persons who have been punished because of their actual or imputed political views...”⁴⁴

Here, a member of the gang MS-13 informed ██████ that ██████ told ██████, a “sicario” (killer for a gang) for MS-13, that ██████ and his brother ██████ were members of a rival gang. Even though ██████ and his brother were never members of any gang, his persecutor believed they were, constituting an imputed opinion. Although ██████ was motivated to inform ██████ and MS-13 that ██████ was a rival gang member due to his own obsession with ██████’s mother, ██████ and MS-13’s subsequent persecution of ██████ was not based on this personal conflict. ██████ lied about ██████’s gang affiliation precisely because he knew if ██████ and the gang saw the brothers as members of a rival gang, “he would be angry and murder” them. ██████’s behavior is consistent with gang behavior in Honduras, as those suspected of associating with a particular gang “face persecution and murder by rival gang members, social cleansing squads and security forces conducting raids in gang areas.”⁴⁵ MS-13 and its rival gangs in the Northern Triangle are more than mere criminal entities, as they “routinely engage in activities normally associated with governance” such as “tax collection and collaborate with governmental representatives to ‘influence elections’ or to obtain favorable governmental policies and practices. These gangs need to be understood as political actors, because “without a political agenda and the means to operationalize that agenda, gangs simply could not function at the level that they do.”⁴⁶

Upon the arrest of ██████ for the murder of ██████, ██████ received a threatening text message from an unknown number, referring to him as a “snitch.” The messages continued and included the word “snitch” or emojis of blood and a gun. This was the first time that ██████ had received a threatening message from an unknown number. ██████ heard rumors that the gang believed that ██████ or his family reported ██████. These statements and threats is direct evidence that the gang was motivated by ██████’s perceived or actual anti-gang beliefs.⁴⁷ Furthermore, ██████ publicly vocalized an anti-MS-13 political opinion and faced subsequent persecution

⁴³ Santos-Lemus v. Mukasey, 542 F.3d 738, 741 (9th Cir. 2008), *abrogated on other grounds by* Henriquez-Rivas v. Holder, 707 F.3d 1081 (9th Cir. 2013).

⁴⁴ Garcia-Martinez v. Ashcroft, 371 F.3d 1066, 1073 (9th Cir. 2004); *quoting* Arulampalam v. Ashcroft, 353 F.3d 679, 685 n. 4 (9th Cir.2003).

⁴⁵ Internal Displacement Monitoring Centre, *A Web of Violence: Crime, corruption and displacement in Honduras* (March 2019), available at <https://www.internal-displacement.org/sites/default/files/publications/documents/201903-honduras-web-of-violence-en.pdf> at p. 22,

⁴⁶ Thomas Boerman, “Family As A Social Construct In El Salvador, Honduras, And Guatemala: Visibility and Vulnerability of Family Members of Individuals Targeted by Organized Criminal Groups” Immigration Briefings: Thomson Reuters (December 2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3520124 at p. 12.

⁴⁷ Matter of N-M-, 25 I&N Dec. 526, 532 (BIA 2011); *see also* Njuguna v. Ashcroft, 374 F.3d 765, 772 (9th Cir. 2004)(finding nexus where the alleged persecutor accused the alien of being involved in a plot to defame and humiliate the Kenyan Government).

from the gang. When the murderers of his brother were arrested, the Honduran police uploaded a video of their arrest on ██████████ ██████████ engaged in political speech by posting a comment thanking the police officers for arresting his brother's killers. In response, shortly after ██████████ posted his opinion, a suspected MS-13 member attempted to kill or injure ██████████ by running his motorcycle off the road via a car chase. ██████████ indeed did crash, scarring his arms. Although he was able to survive, ██████████ knew that "this was premediated to make me crash."

██████████'s opinion rose above general disdain for gang violence; he expressed his specific support of the Honduran government's choice to arrest the MS-13 members that murdered his brother. If a claim for persecution based on political opinion is plausible and at least supported by circumstantial evidence, "it must be credited in the absence of an explanation that is at least as plausible."⁴⁸ A short timeframe between the "actual or imputed assertion" and subsequent persecution also constitutes "indirect evidence of a nexus."⁴⁹ This close connection in time between ██████████'s public comment on the Honduran police arrest of MS-13 gang members and the attempted murder of ██████████ constitutes "indirect evidence of a nexus."⁵⁰ This evidence underscores the pervasiveness of violence against individuals the gang views as "snitches" or in opposition to their behaviors.⁵¹ "People accused of enmity are highly vulnerable to extreme reprisals....those suspected of belonging to or associating with a gang...face persecution and murder by rival gang members....Reporting a crime or being suspected of passing information to the authorities violates that code of *ver, oir, y callar* ("see, hear, and shut up,") and also invites extreme retaliation."⁵² The Second Circuit has "accept[ed] the proposition that an imputed political opinion, whether correctly or incorrectly attributed, can constitute a ground of political persecution."⁵³

██████████'s testimony, along with the supporting affidavits of Ms. ██████████ Mr. ██████████ and Ms. ██████████, and voluminous country condition packet attached, provide sufficient proof that the MS-13 targeted ██████████ both because of he is the son of Ms. ██████████ and his anti-gang political opinion.

B. ██████████ Suffered Past Persecution Due to His Imputed Membership in the Particular Social Group of "Honduran Gay Men"

1. Stevens is an Imputed Member of the Particular Social Group of "Honduran Gay Men"

⁴⁸ *Madrigal v. Holder*, 716 F.3d 499, 505 (9th Cir. 2013); *citing Navas v. INS*, 217 F.3d 646, 657 (9th Cir. 2000).

⁴⁹ *Rodriguez Tornes* at 752, *quoting Khudaverdyan v. Holder*, 778 F.3d 1101, 1107 (9th Cir. 2015).

⁵⁰ *Rodriguez Tornes* at 752, *quoting Khudaverdyan v. Holder*, 778 F.3d 1101, 1107 (9th Cir. 2015).

⁵¹ *Matter of N-M-*, 25 I&N Dec. 526, 533 (BIA 2011); *see also Castro v. Holder*, 597 F.3d 104 (2d Cir. 2010) (stating that evidence of pervasive corruption, including direct ties between corrupt elements and the president of Guatemala, made it likely that the alien's whistleblowing actions would be perceived to reflect political opposition to the governing regime).

⁵² Internal Displacement Monitoring Centre, *A Web of Violence: Crime, corruption and displacement in Honduras* (March 2019), available at <https://www.internal-displacement.org/sites/default/files/publications/documents/201903-honduras-web-of-violence-en.pdf>

⁵³ *Chun Gao v. Gonzales*, 424 F.3d 122, 129 (2d Cir. 2005)

“Honduran Gay Men” is a cognizable social group and Stevens was targeted for being a perceived member of that group. The BIA has held that “[p]ersecution for ‘imputed’ grounds...can satisfy the ‘refugee’ definition in the INA....”⁵⁴ The Court in Matter of Toboso-Alfonso⁵⁵, established sexual orientation as “membership in a particular social group” and paved the way for asylum based on sexual orientation.⁵⁶ Moreover, this group satisfies the particularity and social distinction elements.

The members of the LGBT community in Honduras are marked by common, readily ascertainable attributes and identified using terms that are commonly understood and accepted in society. These individuals face “widespread discrimination,” and “live in an ‘extreme situation’ where their human rights are not respected.”⁵⁷ In June and July of 2019, seven LGBT individuals were killed, and a lesbian student was suspended from school after she was outed in September 2019.⁵⁸ According to the Immigration and Refugee Board of Canada’s “Honduras: Information Gathering Mission Report,” sexual minorities have been stoned to death, mutilated and killed in “dehumanizing” ways.⁵⁹ Further, the Report found, “it is ingrained in society as a whole to discriminate on the basis of sexual orientation and gender identity” and there is a “lack of political will” to make real, effective change.⁶⁰

In Honduras, homosexual men are socially distinct because such members are identifiable in their communities by outward behavior that is often stereotyped as being homosexual. Here, despite the fact that Stevens is a heterosexual man, his attributes including his speech and language, demeanor, style of clothing, and ear piercings, have all contributed to the perceptibility of his homosexuality within the Honduran culture.

2. ██████ Suffered Harms Rising to the Level of Persecution on Account of His Imputed Sexual Orientation

Throughout his life in Honduras, ██████ suffered harms rising to the level of persecution because his persecutors perceived that he is gay.⁶¹ When ██████ was close to six years old, he

⁵⁴ Amanfi v. Ashcroft, 328 F.3d 719, 721 (3rd Cir. 2004)(citing In re S-P-, 21 I&N Dec. 486 (BIA 1996).

⁵⁵ 20 I. & N. Dec. 819 (B.I.A. 1990).

⁵⁶ Since Matter of Toboso-Alfonso, countless courts have found that sexual orientation forms the basis of a social group and have granted asylum to homosexuals on this basis. *See e.g.*, Nabulwala v. Gonzalez, No. 05-4128 (8th Cir. 2007) (noting that government’s unwillingness or inability to control private actor may apply in lesbian asylum case and remanding case); Karouni v. Gonzalez, 399 F.3d 1163 (9th Cir. 2005) (holding that “all alien homosexuals are members of a ‘particular social group,’ and finding that Karouni—a gay, H.I.V. positive man from Lebanon—had established well founded fear of future persecution); Boer-Sedano v. Gonzalez, 418 F.3d 1082 (9th Cir. 2005) (holding that gay Mexican man with AIDS who was sexually and physically abused by Mexican police officer was statutorily eligible for asylum); Pitcherskaia v. INS, 118 F.3d 641, 645 (9th Cir. 1997) (reversing order denying asylum to lesbian from Russia who, among other abuses, had been forced to undergo electroshock therapy to “cure” her of her homosexuality).

⁵⁷ Gov’t of Canada, Immigration and Refugee Board of Canada, *Honduras: Information Gathering Mission Report* (Feb. 2018).

⁵⁸ U.S. Department of State, Honduras 2020 Human Rights Report, (2021).

⁵⁹ Immigration and Refugee Board of Canada, *supra* note 156.

⁶⁰ *Id.*

⁶¹ Amanfi v. Ashcroft, 328 F.3d 719, 730 (3rd Cir. 2004).

was lured into a home by two older children, friends of his brother, with promises of playing a videogame. Once inside the home, the two other boys attacked ██████, forcing him to remove his clothing and then brutally raped him. During the rape, the older boys called him derogatory names for a gay man, such as “feminine boy” or “faggot boy.” As adolescent and teenager, he was regularly bullied in school by his classmates. He was smaller in size, followed fashion trends, and spoke politely. As a result of these behaviors, his classmates believed that he was gay and referred to him as “faggot,” punched him, pushed him to the ground and kicked him, threw rocks at him, and stole his school supplies.

This abuse suffered by ██████ as a young child and adolescent must be assessed with regards to the context in which it occurred. When determining whether the harmful acts rise to the level of persecution, the question is whether the harmful acts constitute persecution *from the perspective of a child*, and thus what constitutes persecution of a child may be less than what constitutes persecution of an adult. The Asylum Officer Basic Training Course instructs:

“The harm a child fears or has suffered may still qualify as persecution despite appearing to be relatively less than that necessary for an adult to establish persecution. This is because children, dependent on others for their care, are prone to be more severely and potentially permanently affected by trauma than adults, particularly when their caretaker is harmed.”⁶²

For example, a child’s mistreatment by teachers, school officials, and even other children may constitute persecution.⁶³ Further, even without taking into consideration ██████’s young age at the time of these threats, physical attacks, and rape, they clearly rise to the level of persecution. “[R]ape is sufficiently serious to constitute persecution.”⁶⁴

As an adult, ██████ was refused entrance into the Honduran National Air Force Academy. ██████ passed the required knowledge, physical, and medical testing. However, when interviewed, the officer saw that ██████ had his ears pierced, he refused to allow ██████ to enter the academy, telling him, “they only had men serving” and only “faggots” had their ears pierced. It is clear from the derogatory comments of the interviewing officer that ██████ was refused enrollment and employment due to his perceived sexual orientation.

According to the most recent U.S. Department of State Human Rights Report, “threats and violence against...lesbian, gay, bisexual, transgender, and intersex persons” remain among Honduras’s most significant human rights threats.⁶⁵ “Sexual minorities in Honduras face widespread discrimination on a daily basis throughout the country” and “live in an ‘extreme

⁶² U.S. Citizenship and Immigration Services, Asylum Officer Basic Training Course, *Guidelines for Children’s Asylum Claims* 37 (Sept. 1, 2009) (hereinafter “AOBTC Children’s Asylum Guidelines”). See Also Jorge-Tzoc v. Gonzales 435 F.3d 146, 150 (2d Cir. 2006)(finding that the harm a child fears or has suffered can be relatively less than the harm required to rise to the level of persecution for an adult, and still qualify as persecution)

⁶³ Kholyavskiy v. Mukasey, 540 F.3d 555, 571 (7th Cir. 2008) (between the ages of eight and thirteen, Jewish applicant was regularly mocked and urinated on by his classmates, forced by teachers to identify himself as a Jew, had his pants pulled down by classmates, and was attacked by a classmate’s dog).

⁶⁴ Mei Fun Wong v. Holder, 633 F.3d 64, 76 (2d Cir. 2011) (internal quotations omitted).

⁶⁵ U.S. Department of State, Honduras 2020 Human Rights Report, (2021).

situation' where their human rights are not respected and they remain invisible."⁶⁶ The record here clearly suggests a systematic and pervasive pattern and practice of persecution against the LGBT community in Honduras.⁶⁷ "In addition, private actors (such as family members, teachers, neighbors, and others) may target children for rape or other sexual abuse on the basis of the child's actual or perceived sexual orientation or gender identity. Common examples include sexual violence towards transgender girls and towards gay boys perceived to behave in a feminine way." Further, from both the direct evidence of the interviewer's comments and the indirect evidence of country condition reporting, the persecutor's motivation in denying employment to Stevens was established.⁶⁸

The record clearly establishes that Stevens was verbally, physically, and sexually assaulted and denied employment due to his perceived sexual orientation.

C. ██████ Suffered Past Persecution Due to His Membership in the Particular Social Groups of "Honduran Children Without Effective Familial Protection"

1. ██████ is a Member of the PSG of "Honduran Children Without Effective Familial Protection"

Children or a subset of children may form the basis of a particular social group.⁶⁹ Age or the status of being a child is immutable as children share characteristics such as developmental stages, and children often have a particular status in society. Furthermore, the BIA has acknowledged that "the mutability of age is not within one's control, and that if an individual has been persecuted in the past on account of an age-described particular social group, or faces such persecution at the time when that individual's age places him within the group, a claim for asylum may still be cognizable."⁷⁰ Age is not something that can be changed at will and thus it is immutable while it lasts. In addition, the status of lacking effective familial protection is also an immutable characteristic because it is beyond the child's control to change.

"Honduran children lacking effective familial protection" is defined with particularity because it is limited in scope since not all children lack the familial protection that parents and

⁶⁶ Immigration and Refugee Board of Canada, *supra* note 156 (Vol. II, Ex. U).

⁶⁷ *In re A-M-23* I. & N. Dec. 737, 741 (BIA 2005) Generally, only one or a few incidents are insufficient to show persecution on a wide enough scale. See, e.g., *Tjandra v. Holder*, 462 Fed.Appx. 105 (2d Cir. 2012); *In re A-M-*, 3 I. & N. Dec. 737, 742 (BIA 2005). Conversely, showing many, repeated incidents of persecution are sufficient to demonstrate that it exists on a wide enough scale. See *Kandaswamy v. Holder*, 466 Fed.Appx. 35, 38 (2d Cir 2012). In *Kandaswamy v. Holder*, the Second Circuit found that the BIA's conclusion that no pattern or practice of persecution had been demonstrated was undermined by documentary evidence that showed "a high level of violence," against ethnic Tamils by "Sri Lankan government, government-supported paramilitary groups, and other actors." *Kandaswamy v. Holder*, 466 Fed.Appx. at 38. In a similar 'pattern or practice' case the Second Circuit has reiterated that state department and UNHCR reports "do not simply demonstrate isolated incidents of violence against Tamils," where these reports demonstrate "widespread violence," against the Tamil ethnic group in Sri Lanka. *Siubalasingam v. Holder*, 477 Fed.Appx. 757, 759 (2d Cir. 2012).

⁶⁸ *Karouni v. Gonzales*, 399 F.3d 1163, 1174 (9th Cir. 2005)

⁶⁹ UNHCR Guidelines, ¶ 50 ("Age and other characteristics may give rise to groups such as 'abandoned children'"); *Lukwago v. Ashcroft*, 329 F.3d 157, 178 (3d Cir. 2003) (finding "former child soldiers who have escaped" to be a cognizable particular social group).

⁷⁰ *S-E-G-*, 24 I. & N. Dec. 579, 583-84 (BIA 2008).

family members can provide. The group is socially distinct within Honduran society because Honduran children living in situations without any familial protection, including from parents, are known to be extremely vulnerable to violence, including physical abuse.⁷¹ There is a perception that children are inferior to adults and “this perception is especially common among relatives who have taken over the caretaking of a child because the child has been abandoned...by his parents, or the parents have migrated to another country and left the child behind.”⁷² These children face an increased risk of physical and sexual violence, and face additional barrier in trying to seek help as they do not have a parental figure who can speak on their behalf.⁷³

██████████ was a Honduran child who lacked effective familial protection in Honduras. As a child, ██████████’s mother was frequently out of the home, first while living in the U.S. and continued to be absent even upon her return to Honduras due to the substantial number of hours she had to work to support herself and her two children.

2. ██████████ Suffered Harms Rising to the Level of Persecution on Account of His Membership in this Particular Social Group

When ██████████ was around three years old, his mother left the family home to go to the United States and then returned a few years later. ██████████ and his brother did not have the physical presence and emotional support of their mother for many years. This was through no fault of her own, Ms. ██████████ made the impossible decision of having to work long hours in order to financially support her children, rather than being a constant physical presence in their lives. As a child, Ms. ██████████ absence made ██████████ vulnerable to numerous forms of child abuse. As young as three years old, ██████████ was physically abused by his Uncle ██████████ Uncle ██████████ beat ██████████ punching him with his fists, kicking him, and beating him with electric domestic cables and wooden rulers. ██████████ was also sexually abused at five or six years old by his neighbor’s twelve-year daughter. At this time, because Ms. ██████████ worked long and late hours, ██████████ often slept over his neighbor’s home. During these overnight visits, the neighbor’s daughter asked Stevens to sleep in bed with her, and she touched his penis, forced him to kiss her between her breasts, and touch her genital area, over his objections. She threatened that if he told anyone, her family would abandon him. As a young child, without the regular presence of his mother, this was a viable threat. These are all clear examples of verbal, physical, and sexual abuse that rise to the level of persecution.

Country conditions indicate that parent-youth relationships are significant protective factors for youth in Honduras.⁷⁴ Without it, these “unprotected young people are recognizable to

⁷¹ Declaration of Dr. Ubaldo Herrera Coello ¶ 23 (““Although children as a whole tend to be vulnerable due to their inferior status within families and society at large, particular groups of children are especially vulnerable to certain kinds of harm, including abandoned children and children who lack parents or other close family members, such as grandparents, to protect and care for them, children living in economically marginalized communities, and street children.”

⁷² Declaration of Dr. Ubaldo Herrera Coello ¶ 17.

⁷³ Declaration of Dr. Ubaldo Herrera Coello ¶ 25.

⁷⁴ *Honduras, 2017: Violence Against Children Survey*, Government of Honduras, (April 2019), available at <https://www.togetherforgirls.org/wp-content/uploads/2019-Honduras-VACS-Report-English.pdf>.

the public in general...within their neighborhoods and small communities.”⁷⁵ The Inter-American Commission on Human Rights highlights Honduras’ particularly fragile institutional framework for guaranteeing children’s rights, the absence of comprehensive protection, and the lack of access to basic services for children and adolescents. It reports that the prevalence of sexual abuse during childhood is 7.8%, the highest in Central America.⁷⁶ Additional reporting shows that as many as 9.9% of males experienced sexual violence before the age of eighteen and 40.7% of males suffered physical violence in childhood.⁷⁷ “For males, [the populations most vulnerable to violence] included...those whose parents migrated in childhood for six months or more.”⁷⁸

Without effective familial protection, ██████ suffered verbal, physical, and sexual childhood abuse until his mother married and he was able to live with her full-time.

D. The Honduran Government is Unwilling or Unable to Protect Him

To qualify for asylum, an applicant must show that the harm she suffered was inflicted by the government or by private actors that the government is “unable or unwilling to control.”⁷⁹ “[I]t is well established that private acts may be persecution if the government has proved unwilling to control such actions.”⁸⁰ “A government that can offer its citizens only ineffective assistance is a government unable to protect them.”⁸¹

The Honduran government failed ██████ in numerous ways, since he was a young child facing domestic violence and sexual abuse, through his teenage years when he was consistently beaten by his classmates, until his adulthood when his mother’s former intimate partner and the MS-13 killed his brother and attempted to murder him on four occasions. “Honduras has been known as one of the most violent countries in the world... Violence and crime in Honduras are likely to go unpunished for a number of reasons. Historically, Honduras has had a weak police force. Criminal investigation is severely hampered by limited funding, a lack of high-tech investigative tools, corrupt officers, and poor police education. Even when the police are able to do their jobs, the judicial system is overwhelmed, with a backlog of over 180,000 cases due to inefficient processes and a lack of resources. The weaknesses in the police and judicial system mean that many cases are left in impunity: 76% of homicide cases are not investigated, and 87%

⁷⁵ Thomas Boerman, *Family as a Social Construct in El Salvador, Honduras, and Guatemala: Visibility and Vulnerability of Family Members of Individuals Targeted by Organized Criminal Groups*, Immigration Briefings: Practical Analysis of Immigration and Nationality Issues, Vol. 19:12 (December 2019).

⁷⁶ *Situation of Human Rights in Honduras*, Inter-American Commission on Human Rights, (August 27, 2019), available at <https://www.oas.org/en/iachr/reports/pdfs/Honduras2019-en.pdf>.

⁷⁷ *Honduras, 2017: Violence Against Children Survey*, Government of Honduras, (April 2019), available at <https://www.togetherforgirls.org/wp-content/uploads/2019-Honduras-VACS-Report-English.pdf>.

⁷⁸ *Id.*

⁷⁹ *See, e.g., Matter of McMullen*, 17 I. & N. Dec. 542, 544 (B.I.A. 1980); *Matter of Pierre*, 15 I. & N. Dec. 461, 462 (B.I.A. 1975); *see* 8 U.S.C. § 1101(a)(42)(A) (a refugee is a person who is “unable or unwilling to avail himself or herself of the protection of [their] country”).

⁸⁰ *Ivanishvili v. U.S. Dept. of Justice*, 433 F.3d 332, 342 (2d. Cir. 2006)

⁸¹ *Scarlett v. Barr*, 957 F.3d 316, 334 (2d. Cir. 2020)

of cases never reach any sort of judicial resolution. This rate of impunity means that people aren't held accountable for their crimes, leading to flourishing criminal activity.”⁸²

1. The Hondurans Government is Unwilling or Unable to Protect ██████████ from Gang Violence

In Honduras, gangs like the Mara Salvatrucha (MS-13) are widespread and “exercise territorial control over neighborhoods,” especially in urban areas.⁸³ Gangs are “considered largely responsible for Honduras’ sky high murder rate.”⁸⁴ MS-13 is a transnational organization and has influence throughout Honduras.⁸⁵ The group has a chilling reputation for violence, murder and intimidation.⁸⁶

Anyone who is suspected of belonging to a rival gang or refusing to comply with gang demands is “highly vulnerable to extreme reprisals.”⁸⁷ Such people and their friends and family face risk of torture, rape, and murder.⁸⁸ Because of the centrality of the family as a social unit in Honduras, threatening the entire family unit is an effective method for gangs to inflict terror and demands on their primary target, pressuring compliance.⁸⁹ So, for example, when a woman has survived sexual or domestic violence perpetrated by a gang member, the risk the woman continues to face is likely to extend to their entire family.⁹⁰ Because one cannot avoid being identified as part of a family, internal relocation within Honduras is generally insufficient to avoid targeting from gangs. Thus, membership in a family unit can amount to a “a virtual death sentence.”⁹¹

Despite attempts at reform, the judiciary and police remain largely corrupt and ineffective in responding to gang violence.⁹² Generally, the Honduran state “is largely unable or unwilling to protect its citizens, and people have a deep mistrust of the authorities and fear of reprisals,”

⁸² **Association for a More Just Society, *Violence in Honduras (April 2020)***, available at https://www.asj-us.org/learn/honduras-violence?gclid=EAIaIQobChMIImZvA7Na09gIVjZlCh1s-gcZEAAYASAAEgKhFPD_BwE%20.

⁸³ Human Rights Watch, *World Report 2021: Events of 2020: Honduras*, available at <https://www.hrw.org/world-report/2021/country-chapters/honduras> at p. 2.

⁸⁴ International Crisis Group, *Fight and Flight: Tackling the Roots of Honduras’ Emergency* (October 25, 2019), available at <https://www.crisisgroup.org/latin-america-caribbean/central-america/honduras/077-fight-and-flight-tackling-roots-honduras-emergency> at p. 35.

⁸⁵ Inter-American Commission on Human Rights, *Human Rights Situation in Honduras* (2019), available at <https://www.oas.org/en/iachr/reports/pdfs/Honduras2019-en.pdf> at p. 127.

⁸⁶ Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *2020 Country Reports on Human Rights Practices: Honduras* (March 30, 2021), available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/honduras/> at p. 3.

⁸⁷ Internal Displacement Monitoring Centre, *A Web of Violence: Crime, corruption and displacement in Honduras* (March 2019), available at <https://www.internal-displacement.org/sites/default/files/publications/documents/201903-honduras-web-of-violence-en.pdf> at p. 22.

⁸⁸ *Id.*

⁸⁹ Thomas Boerman, “Family As A Social Construct In El Salvador, Honduras, And Guatemala: Visibility and Vulnerability of Family Members of Individuals Targeted by Organized Criminal Groups,” (December 2019) Immigration Briefings: Thomson Reuters, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3520124

⁹⁰ *Id.* at 27.

⁹¹ *Id.*

⁹² Human Rights Watch, *World Report 2021: Events of 2020: Honduras*, available at <https://www.hrw.org/world-report/2021/country-chapters/honduras> at p. 2.

especially in urban areas under gang control.⁹³ Corruption and collusion scandals extend to the highest levels of Honduras' government, including the former president.⁹⁴ Victims of violent crimes are "afraid or unwilling to report crimes."⁹⁵ Asylum seekers from Honduras report that they fear the police passing on information that they report back to gangs, as they have seen those who reported crime turn up dead within days of reporting.⁹⁶ Sources suggest collusion between gang members and the police. For example, one source documents an instance where MS-13 members wore police uniforms to successfully invade a court building to free a gang leader.⁹⁷

Moreover, according to a 2020 report from the U.S. Department of State, the police in Honduras simply do not have the resources to effectively respond to or investigate cases of violent crime, allowing criminal groups to "operate with a high degree of impunity."⁹⁸ A 2020 NGO reported that in Honduras, 76% of homicide cases go uninvestigated and 87% of cases never reach any judicial resolution.⁹⁹

On October 25, 2016, approximately nine days after the murder of ██████, Ms. ██████ ██████ and demanded she leave the ██████ a. Two men were eventually detained for the murder of ██████ but were released. ██████ himself did not report the threats and harassment to the police. However, ample evidence demonstrates that doing so would have been futile. Showing that a country's laws or customs deprive victims of meaningful recourse to protection may establish governmental inability or unwillingness to protect.¹⁰⁰

⁹³ Internal Displacement Monitoring Centre, *A Web of Violence: Crime, corruption and displacement in Honduras* (March 2019), available at <https://www.internal-displacement.org/sites/default/files/publications/documents/201903-honduras-web-of-violence-en.pdf> at p. 34.

⁹⁴ Emily Palmer and Elisabeth Malkin, "Honduran President's Brother Is Found Guilty of Drug Trafficking," NY Times (October 18, 2019), available at <https://www.nytimes.com/2019/10/18/world/americas/honduras-president-brother-drug-trafficking.html> at p. 1-2.

⁹⁵ *Id.* at 5.

⁹⁶ Physicians for Human Rights, "If I went back, I would not survive": *Asylum Seekers Fleeing Violence in Mexico and Central America* (October 2019), available at <https://phr.org/our-work/resources/asylum-seekers-fleeing-violence-in-mexico-and-central-america/> at p. 19.

⁹⁷ "Three Honduran policemen killed in shootout to free MS-13 leader" Al Jazeera (February 14, 2020), available at <https://www.aljazeera.com/news/2020/2/14/three-honduran-policemen-killed-in-shoot-out-to-free-ms-13-leader> at p. 1-2.

⁹⁸ Overseas Security Advisory Council: Bureau of Diplomatic Security, U.S. Dep't of State, *Honduras 2020 Crime & Safety Report*, (March 31, 2020), available at <https://www.osac.gov/Country/Honduras/Content/Detail/Report/14441101-11fd-487c-9d15-18553e50609c> at p. 5.

⁹⁹ Association for a More Just Society, *Violence in Honduras* (April 2020), available at https://www.asj-us.org/learn/honduras-violence?gclid=EAIaIQobChMIImZvA7Na09gIVjIzICh1s-gcZEAAYASAAEgKhFPD_BwE%20 at p. 4.

¹⁰⁰ See *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073-74 (9th Cir. 2017)(providing that where "ample evidence demonstrates that reporting [persecution to the police] would have been futile and dangerous," applicants are not required to report their persecutors.")

2. The Honduran Government is Unwilling or Unable to Protect ██████ from Homophobic Violence

As mentioned *supra*, LGBTQ individuals in Honduras are persecuted in both public and private domains, including at the hands of state authorities and gangs. Country conditions show that hate crimes against LGBTQ individuals go unpunished. The Honduran government does not offer any effective protection for LGBTQ individuals. On the contrary, reports show that the Honduran police do commit exactions against this community. Therefore, it is established that the persecutors, whether that is neighbors, gang members, and state authorities, have the capability to harm Stevens and the Honduran government will not protect him.

3. The Honduran Government was Unwilling or Unable to Protect ██████ from Childhood Abuse

The Honduran government has proven incapable of both protecting the rights of children and ensuring that children have access to basic services such as education and healthcare.¹⁰¹ Accordingly, because family is the most visible social institution in Honduras and there is no government safety net, Honduran children who lack adequate adult protection are recognized in Honduran society as a distinct social group.¹⁰²

Regardless of parental protection, child abuse remains a serious problem in Honduras.¹⁰³ Honduras has the highest rate of childhood sexual abuse in Central America.¹⁰⁴ Twenty-nine and a half percent of Honduran males experience physical violence before the age of 18, and 9.9% experience sexual violence before the age of 18.¹⁰⁵ Moreover, Honduran male children whose parents migrated in childhood for a period of 6 months or more are at a heightened risk of experiencing violence.¹⁰⁶ Honduran males who have experienced physical or sexual violence in childhood are significantly more likely to experience mental distress and have thoughts of suicide.¹⁰⁷

The record indicates that the Honduran government is unwilling or unable to control child abusers, abusive male partners of women, individuals who wish to harm LGBTQ individuals, and the MS-13.

¹⁰¹ *Honduras: Events of 2020*, HUMAN RIGHTS WATCH, available at <https://www.hrw.org/world-report/2021/country-chapters/honduras#c007ac>.

¹⁰² Thomas Boerman, *Family as a Social Construct in El Salvador, Honduras, and Guatemala: Visibility and Vulnerability of Family Members of Individuals Targeted by Organized Criminal Groups*, IMMIGRATION BRIEFINGS: PRACTICAL ANALYSIS OF IMMIGRATION AND NATIONALITY ISSUES, Vol. 19:12, 1, 9 (December 2019).

¹⁰³ *2020 Country Reports on Human Rights Practices: Honduras*, U.S. DEPT. OF STATE: BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, (March 20, 2021), 20, available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/honduras/>.

¹⁰⁴ *Situation of Human Rights in Honduras*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, (August 27, 2019), 104, available at <https://www.oas.org/en/iachr/reports/pdfs/Honduras2019-en.pdf>.

¹⁰⁵ *Honduras, 2017: Violence Against Children Survey*, GOVERNMENT OF HONDURAS, (April 2019), xi, available at <https://www.togetherforgirls.org/wp-content/uploads/2019-Honduras-VACS-Report-English.pdf>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 36.

E. ██████ Has a Well-Founded Fear of Future Persecution

As ██████ has demonstrated that he has suffered past persecution on account of a several protected groups, he is entitled to a presumption of a well-founded fear of future persecution, unless DHS can show by a preponderance of the evidence that (1) circumstances have fundamentally changed within his country, or (2) he could reasonably be expected to safely relocate within his country. 8 C.F.R. §208.13(b)(1). In this case, DHS cannot overcome its burden and ██████ cannot reasonably be expected to relocate safely within Honduras. Therefore, he is eligible for asylum based on his presumptive well-founded fear of future persecution.

1. DHS cannot overcome its burden in proving that country conditions have fundamentally changed in Honduras for ██████

The government cannot demonstrate a fundamental change in the circumstances for Honduran men, like ██████ who are targets for gang violence. As discussed *supra* and in substantial detail in the attached annotated country condition reporting, Honduras remains unsafe for individuals targeted by the MS-13 and the LGBT community. As explained in the expert affidavit of Dr. ██████ “gangs’ threats do not lose validity over time; rather, gangs are likely to pass down knowledge of their enemies, thereby ensuring that death threats are never neutralized.”¹⁰⁸

2. ██████ could not reasonably be expected to safely relocate in Honduras

For individuals like ██████ persecuted by nongovernmental actors, relocation alternatives must be both safe *and* reasonable in light of all circumstances.¹⁰⁹ Internal relocation for ██████ would be neither safe nor reasonable. The record makes clear that after ██████ colluded with the MS-13 to order the assassinations of ██████ and ██████ and after the MS-13 believed that ██████ was a rival gang member and opposed their ideology, ██████ fled and hid in two different towns within Honduras. Each time, the MS-13 stalked him down, entered his place of business, and attempted to kill him. Because of ██████’s well-documented affiliation with the MS-13, as well as the MS-13’s ability to locate individuals throughout Honduras and Central America, ██████ cannot be safe anywhere in Honduras and it would be impossible to escape the gang’s reach.

F. ██████ Qualifies for Humanitarian Asylum

An applicant who has shown past persecution may still be eligible for humanitarian asylum even in the absence of a well-founded fear of future persecution if “the applicant has demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution; or the applicant has established that there is a

¹⁰⁸ Declaration of ██████ at ¶ 84 (Vol. I, Ex. C)

¹⁰⁹ See 8 CFR § 1208.13(b)(3); Matter of M-Z-M-R-, 26 I&N Dec. 28, 34-36 (BIA 2012).

