

June 21, 2016

VIA USPS Priority Mail

USCIS
Texas Service Center
Attention: Asylum
PO Box 851892
Mesquite TX 75185-1892

RE: I-589, Application for Asylum, Withholding of Removal and Relief under the Convention Against Torture (CAT)
Requestor's Name: [REDACTED] (A# [REDACTED])

Dear Officer,

I submit this letter brief and supporting documentation on behalf of the compelling asylum claim of [REDACTED] ("[REDACTED]" was designated as an unaccompanied alien child (UAC) by Customs and Border Patrol upon his entry to the United States on [REDACTED]. Because he has been designated a UAC, [REDACTED] is eligible to affirmatively apply for asylum before U.S. Citizenship and Immigration Services (USCIS). [REDACTED] is eligible for and deserving of asylum because he suffered past persecution and has a well-founded fear of future persecution on account of the following grounds:

- Membership in the particular social group of immediate family members of [REDACTED] an employee of the National Police Force in Colonia [REDACTED]
- Political opinion against the Mara Salvatrucha (or "MS-13") and other similar criminal organizations that the MS-13 has imputed to [REDACTED]

Enclosed is his I-589 Application for Asylum, my G-28 Notice of Entry of Appearance, and documentation supporting his request, as outlined in the below exhibit list.

I. INTRODUCTION: SUMMARY OF ASYLUM ELIGIBILITY

[REDACTED] is an eighteen year old young man from El Salvador. He fled El Salvador along with his brother, [REDACTED] and now seeks asylum because he fears he will be murdered by MS-13 gang members who have threatened him on account of his family relationship with his father, Mr. [REDACTED] a Salvadoran police administrator, and because of his anti-gang political opinion.

¹ See Ted Kim, Acting Chief, Asylum Division, *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*, U.S. Citizenship and Immigration Services, May 28, 2013, available at <http://www.uscis.gov/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Formal%20Recommendations/CISOMB%20UAC%20Recommendations%20.pdf>.

During the summer of 2014, when [REDACTED] was sixteen years old, MS-13 members were arrested at their local headquarters, which is close to [REDACTED] home, and brought to the police station where [REDACTED] father works as a police administrator. The MS-13 members saw [REDACTED] father there in his police administrator uniform. They recognized Mr. [REDACTED] as a resident of the neighborhood where the MS-13 headquarters is located and drew the conclusion that he assisted the police in arresting them. Shortly after those MS-13 members were released from prison, a group of MS-13 members approached Mr. [REDACTED] [REDACTED] to tell him that he and his family would suffer, due to his work for the police. These MS-13 members showed up, day and night, at the [REDACTED] [REDACTED] family home, banging on the door and demanding that everyone inside come out to face death.

MS-13 members also confronted [REDACTED] outside of his school. One grabbed him from in front by the neck and the other got behind him and grabbed him by the backpack. They told him to pass the message along to his father that both [REDACTED] and [REDACTED] would die, to “pay the consequences” of their father’s actions. MS-13 members also followed [REDACTED] brother [REDACTED] home from school, pushed him when he tried to get away, and told him that they knew of his father’s involvement with the police. After saying this, they then challenged [REDACTED] [REDACTED] to join their gang and threatened him when he refused to join.

As a 20 year veteran of the police, Mr. [REDACTED] [REDACTED] knew what would happen if he made a formal police report about these threats. He knew that, in El Salvador, MS-13 members consistently found out who made a police report and retaliated against them. He asked a police officer friend to monitor the family’s neighborhood, but this did not protect him or his children from ongoing threats.

Terrified, [REDACTED] and [REDACTED] fled to the U.S. to seek asylum. They arrived in the United States on December 16, 2014, and now reside safely with their mother in [REDACTED] Maryland. Mr. [REDACTED] stayed behind in El Salvador, but he lives in fear, spending many nights at the police station to avoid being targeted at the family home.

[REDACTED] is eligible for asylum due to past persecution by the MS-13 and a well-founded fear of future persecution by this same criminal organization. He has suffered past persecution on account of his membership in the protected social group of immediate family members of Mr. [REDACTED] [REDACTED] and on account of his anti-gang political opinion. The Salvadoran government is unable to protect [REDACTED] from the MS-13 and there is nowhere he could safely relocate within El Salvador. [REDACTED] is a hard-working student dedicated to his education and to living a life in line with his strong Christian values. He is eligible for and deserving of asylum.

II. SUMMARY OF THE FACTS

A. [REDACTED] personal history

1. [REDACTED] *lived in a happy home throughout his childhood and adolescence in El Salvador, with his father, a police administrator.*

██████ is an eighteen-year-old young man from Colonia ██████ El Salvador. He is the son of ██████ and ██████. *See attached Birth Certificate.* For the past twenty years, ██████ father, Mr. ██████ has worked as an administrator for the police department in Colonia ██████. *See attached National Civil Police Identification Card; Letter from the Chief of Police Administration for the Department of ██████; Affidavit of ██████* ¶ 4 (*hereinafter, "██████ Aff.;"*); *Affidavit of ██████* ¶ 4 (*hereinafter, "██████ Aff.;"*). In El Salvador, ██████ lived throughout his childhood and adolescence with his father, ██████ his mother, and his brothers ██████ and his older half-brother ██████. *Aff. ¶¶ 2-3.* ██████ and ██████ have the same mother. ██████'s father was a police officer in another town. ██████ *Aff. ¶¶ 2, 18-19;* ██████ *Aff. ¶¶ 2, 18-19.* ██████ has had a close relationship with his father throughout his childhood. They have always spent lots of time together, attending church, playing soccer, eating meals cooked by Mr. ██████ and enjoying the weekends together as a family. ██████ *Aff. ¶ 3.*

2. MS-13 members punish ██████ father and his family for ██████ father's work on behalf of the Salvadoran police and perceived status as a police officer.

Starting in the summer of 2014, MS-13 members began to threaten ██████ father, Mr. ██████ and ██████ brother ██████ because MS-13 learned that Mr. ██████ worked with the police and believed that he was an officer. ██████ *Aff. ¶¶ 6-7;* ██████ *Aff. ¶¶ 6-7.*

The family's problems began when several members of a local MS-13 group were apprehended during a raid of an MS-13 stronghold located in the same neighborhood as ██████ family home. ██████ *Aff. ¶ 6;* ██████ *Aff. ¶ 6.* These MS-13 members were taken to the local police station, where they saw Mr. ██████ at work as a police administrator. *Id.* Perhaps because Mr. ██████ uniform is so similar to that of the local police officers, the MS-13 members concluded that Mr. ██████ was a police officer. ██████ *Aff. ¶¶ 4, 6-7.* The MS-13 members decided that Mr. ██████ was involved in the raid that led to their arrest, given that they had seen Mr. ██████ in the neighborhood where their stronghold was located and where he and his family also lived, and then saw him at the police station in uniform. ██████ *Aff. ¶ 8;* ██████ *Aff. ¶ 8.* Soon after these MS-13 gang members were released from jail, a group of MS-13 members approached Mr. ██████ directly to tell him that, because he worked for the police, his whole family would suffer. ██████ *Aff. ¶ 7;* ██████ *Aff. ¶ 7.* Mr. ██████ attempted to explain that he was not a police officer, but rather an administrator for the police, but the MS-13 members did not believe him. *Id.* Whether because they believed Mr. ██████ to be responsible for the raid or merely because of Mr. ██████ connection with the police in general, it is clear that MS-13 members began targeting Mr. ██████ and his children, ██████ and ██████ after they learned of Mr. ██████ work with the police.

3. MS-13 members repeatedly threaten ██████ and his family with death on numerous occasions.

After the MS-13 gang members threatened Mr. [REDACTED] in person, members of the MS-13 began to come to the family home two to three times a week to threaten Mr. [REDACTED] and [REDACTED]. Each time that they came to the family's home, the MS-13 members banged on the front door, yelled for everyone inside to come out of the house, and threatened to kill them. [REDACTED] Aff. ¶ 9; [REDACTED] Aff. ¶ 9. The gang members came to their home both at night, when [REDACTED] and their father were in the home, and also during the day, when [REDACTED] was there alone. [REDACTED] Aff. ¶ 9; [REDACTED] Aff. ¶ 9. On the nights that the gang members came to their house with these death threats, [REDACTED] could not sleep. [REDACTED] Aff. ¶ 9. Mr. [REDACTED] friends in the police force also told Mr. [REDACTED] that the MS-13 was watching the area around the family's home. [REDACTED] Aff. ¶ 9.

In September 2014, MS-13 members waited outside [REDACTED] school and confronted him when he left school at the end of the day. [REDACTED] Aff. ¶ 10. Two gang members surrounded him and grabbed him. One got in front of him and grabbed him by the neck. *Id.* The other got behind him and grabbed him by his backpack. *Id.* The one holding [REDACTED] by the neck flashed a pistol, and threatened to kill him and his family. [REDACTED] Aff. ¶ 10. They told [REDACTED] to pass the message to his father that [REDACTED] and his brother would "pay the consequences." *Id.* at ¶ 10. They told [REDACTED] that they would kill not only him and his family, but also anyone else whom he talked to about these threats. *Id.* During that same month, MS-13 members followed [REDACTED] home from school, pushed him and confronted him, telling him that they knew his father was a police officer. [REDACTED] Aff. ¶ 12; [REDACTED] Aff., ¶ 10. They then repeatedly insisted that he join their gang, and threatened to kill him if he did not join their gang. *Id.* After [REDACTED] and [REDACTED] suffered these threats and realized that the gang members had figured out both where they lived and where they attended school, they were too afraid to leave their home to attend school or go to church. [REDACTED] Aff. ¶ 11; [REDACTED] Aff., ¶ 13.

[REDACTED] father asked a police officer friend to patrol his family's neighborhood and protect them from the MS-13, but this officer was unable to protect the family from these ongoing threats. [REDACTED] Aff. ¶ 13; [REDACTED] Aff. ¶ 12. Mr. [REDACTED] and the children did not make a formal police report because Mr. [REDACTED] knew that the MS-13 are able to find out when one makes a police report and retaliate against the person who makes the report. *Id.* [REDACTED] and [REDACTED] spent a month in hiding in their home after suffering these threats, then fled El Salvador. [REDACTED] Aff. ¶ 14; [REDACTED] Aff. ¶ 13. They entered the United States on December 16, 2014, and were later reunited with their mother. [REDACTED] Aff. ¶ 17; [REDACTED] Aff. ¶ 16. They now live safely in Maryland, and are enrolled in school. [REDACTED] Aff. ¶ 21; [REDACTED] Aff. ¶ 21.

After his sons fled El Salvador for the United States, Mr. [REDACTED] has avoided returning to his home as much as possible, for his own safety. He often sleeps at the police station for his safety. [REDACTED] Aff. ¶ 22; [REDACTED] Aff. ¶ 22.

[REDACTED] older half-brother, [REDACTED] was also forced to flee El Salvador. [REDACTED] father, [REDACTED] was killed by MS-13 on [REDACTED], because he was a police officer in [REDACTED] and had arrested MS-13 members. Declaration of [REDACTED] Jr., ¶ 7-12; [REDACTED] Aff. ¶¶ 18-19; [REDACTED] Aff. ¶¶ 18-19. A few years earlier, MS-13 members also

killed [REDACTED] uncle, who also was a police officer. Declaration of [REDACTED] Jr., ¶ 13. [REDACTED] fled to the United States after his father's murder and sought relief from deportation before the Arlington, Virginia Immigration Court. Declaration of [REDACTED] Jr., ¶ 15.

4. [REDACTED] *Christian background and deeply held beliefs form the basis of his resistance to gang recruitment.*

[REDACTED] parents taught him to respect others and to live by Christian values. Because of his strong moral values, [REDACTED] never wanted to join a gang. [REDACTED] Aff. ¶¶ 15-17. [REDACTED] identifies his primary goals in life as serving God, living an honest life, and getting an education. [REDACTED] Aff. ¶ 17. His dedication to achieving these goals is evident in the attached Honor Roll Recognitions he has received for his schoolwork at [REDACTED] High School. As [REDACTED] explains it, he would never join the MS-13 because it is against who he is. *Id.* at ¶ 7. When he was fifteen years old, MS-13 members pressured him at school to join their gang, but he resisted their recruitment efforts and luckily escaped with his life. *Id.* at ¶ 12. However, [REDACTED] knows that some of his teenage school friends who have refused to join the MS-13 gang have been killed as a result of their refusal. *Id.* at ¶ 16.

B. Country Conditions in El Salvador

1. *The Mara Salvatrucha is a powerful international criminal organization with a pervasive presence throughout El Salvador.*

Third generation, international criminal gangs exert pervasive control at every level of Salvadoran society and government.² Although gang violence plagues much of Central America, El Salvador has the highest concentration of gang members in the region and is the nation most affected by gang violence.³ The most powerful of these gangs are the Mara Salvatrucha, commonly known as the MS-13, and the Mara 18 (“18th Street Gang”).⁴ These organizations have grown over the last several decades from localized street gangs into “highly integrated criminal organizations that operate at the state level.”⁵ The MS-13, which is the gang present in [REDACTED] and [REDACTED] neighborhood, has caused particular concern due to its highly coordinated national and international level criminal activity. In 2012, the U.S. Treasury Department designated the MS-13 as a “transnational criminal organization.”⁶ In 2015, the Department stated, in support of its ongoing sanctions of MS-13: “MS-13 ranks among the most

² See e.g. Max Manwaring, *A Contemporary Challenge to State Sovereignty: Gangs and Other Transnational Criminal Organizations in Central America, El Salvador, Mexico, Jamaica and Brazil*, December 2007, available at <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB837.pdf> at pages 5-6 (defining third generation gangs as groups with broad market focused and political goals which begin to control ungoverned territory within a nation state and begin to acquire political power in poorly governed space).

³ U.N. High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador, 15 March 2016, HCR/EG/SLV/16/01, available at: <http://www.refworld.org/docid/56e706e94.html> (last visited June 15, 2016) at p. 12.

⁴ *Id.*

⁵ Roberto Rodriguez Melendez, *Declaration of Roberto Rodriguez Melendez, Legal Expert on the Situation of Violence Against Children in El Salvador*, November 26, 2014.

⁶ U.S. Department of the Treasury Press Center, *Treasury Sanctions Leadership of Central American Gang Ms-13*, April 16, 2015, available at <https://www.treasury.gov/press-center/press-releases/Pages/j110026.aspx>.

dangerous and rapidly expanding criminal gangs worldwide.”⁷ The government of El Salvador classifies the MS-13 as a terrorist organization.⁸ Hundreds of local branches of the MS-13 and 18th Street Gang are present throughout all four regions of El Salvador.⁹ In addition, the MS-13 and 18th Street Gang are constantly seeking to expand their influence to neighborhoods adjacent to those they currently control.¹⁰ Hotspots of extreme gang violence shift rapidly throughout the country.¹¹ [REDACTED] where [REDACTED] and his family resided, and where his father still resides, is currently a hotspot for particularly severe gang violence.¹²

The MS-13 has a clearly established hierarchy, with international leaders that coordinate the broad activities of the gang, and issue directives to lower level authorities, who in turn issue orders to lower level *clickas*, or local branches. This organized power structure allows the MS-13 to communicate effectively among its various local branches and to act as a unit at a national level, such as when the organization executed the now-defunct 2012 “truce” with the government and the 18th Street Gang.¹³ Given this pervasive presence throughout the country, national-level coordination and avenues of clear communication between local MS-13 branches, the MS-13 presents a powerful challenge to state authority throughout El Salvador.¹⁴

2. The Mara Salvatrucha targets police and their families for persecution.

Over the last several years, the MS-13 and the 18th Street Gang have begun targeting police officers and their families in increasing numbers.¹⁵ In 2015, more than sixty police and

⁷ *Id.*

⁸ Elizabeth G. Kennedy, MSC, United States Fulbright Fellow in El Salvador, Expert Letter regarding MS-13 and M 18 in El Salvador, October 27, 2014 at p. 2; Federal Bureau of Investigation, *Transnational Gangs: Part 1: Understanding the Threat*, January 2016, available at <https://www.fbi.gov/news/stories/2016/january/transnational-gangs-part-1-understanding-the-threat>.

⁹ UN High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador, 15 March 2016, HCR/EG/SLV/16/01, available at: <http://www.refworld.org/docid/56e706e94.html> (last visited June 15, 2016) at pp. 7, 10.

¹⁰ *Id.* at 10.

¹¹ *Id.* at 7.

¹² *Id.*

¹³ Melendez, *supra* note 5 at p. 5.

¹⁴ Expert Affidavit of Dr. Kimberly Gauderman, Associate Professor of Latin American History, University of New Mexico, July 12, 2014.

¹⁵ See Federal Bureau of Investigations, *Transnational Gangs: Understanding the Threat*, 2016 (describing the gangs as very structured organizations that are using military grade weapons against the police, military and prosecutors); Kennedy, *supra* note 8, at p. 7; U.N. High Commissioner for Refugees, *supra* note 3 at p. 41 (targeting of police officers and their families escalated sharply in 2015), Research Directorate, Immigration and Refugee Board of Canada, *El Salvador: the presence and activities of Mara Salvatrucha (MS or MS-13) and of Barrio 18 (Mara 18 or M-18) in El Salvador, including recruitment; information on measures taken by authorities to fight maras, including legislation and protection offered to victims of the maras (2011-June 2014)*, available at <https://www.justice.gov/sites/default/files/eoir/legacy/2015/01/08/SLV104900.E.pdf>, at p. 6 (“Intimidation and killing of police officers, crime victims and witnesses created a climate of fear.”); Matt Chandler, *El Salvador gangs target police after failed truce*, Al Jazeera America, May 6, 2015, available at <http://america.aljazeera.com/articles/2015/5/6/el-salvador-gangs-target-police-after-failed-truce.html>.

security officers were reported as murdered by gangs.¹⁶ As of April 2016, fifteen police officers have been reported as murdered by gangs since the start of 2016 and, according to a 20 year veteran of the Salvadoran police, twenty five family members of police had also been murdered in the first four months of 2016.¹⁷ In January of 2016 alone, gang members killed “a cop’s father, a soldier’s brother, the wives of two police officers, and a woman and her son who were relatives of a cop.”¹⁸ With the number of police assassinations climbing each month, the police know that simply by going home at night they put their families at risk, so they often sleep at police stations.¹⁹

Although police and armed forces have long been targets of gangs, after the truce between MS-13, the 18th Street Gang and the government ended in 2014, the gangs began to target police officers and their families more systematically.²⁰ Reports indicate that, in 2015, gang members were ordered to kill a specified number of police officers in the territory they control.²¹ Through their monitoring of neighborhoods, the gangs find out where the police and their relatives live and target them when they are off duty and at home, because they are more vulnerable there than while armed and surrounded by other officers.²² Low-level police officers and their children are more vulnerable because they live in the same neighborhoods as the gang members.²³

This targeting of police and their families is not just for the purpose of revenge, but is a purposeful effort to control the state response to gang presence.²⁴ According to Salvadoran police administration, gangs are attacking police in order to show their ability to directly oppose the state.²⁵ Because the individual officers in the police and security forces live in fear of harm to themselves and their families individually, it is easier to corrupt certain officers and get them to act on behalf of the gangs.²⁶ Family members are targeted, both because threats to their lives strongly encourage police to comply with gang demands, and because they are perceived to share the position of defiance to gang control embodied by their family members who are employed by the police.²⁷ These targeted killings of police and their families accomplish the gangs’ goals of limiting the police’s ability to respond as a cohesive unit to gang violence.

3. Children are especially at risk of harm from the MS-13.

¹⁶ Christopher Sherman, *Gangs declare war on police in El Salvador as violence rages*, Associated Press, April 12, 2016, available at various locations, including http://www.richmond.com/news/national-world/ap/article_17685995-3349-5a71-a6dc-6d9d7eef9b60.html?mode=image&photo=.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ U.N. High Commissioner for Refugees, *supra* note 3 at pages 40-41.

²¹ *Id.* at p. 40-41.

²² Sherman, *supra* note 15 (quoting a 20 year veteran of the Salvadoran police as stating that the officers working for her were afraid of being targeted by gangs while off duty because they are more vulnerable in their free time); U.N. High Commissioner for Refugees, *supra* note 3, at p. 24.

²³ *Id.* (“Our children go to school where the criminals go. Our kids walk in the same places where the criminals’ kids walk.”).

²⁴ Kennedy, *supra* note 8 at p. 2.

²⁵ Chandler, *supra* note 14 at p. 2.

²⁶ Kennedy, *supra* note 8, at p. 3-4.

²⁷ *Id.* at p. 3-4, 8; U.N. High Commissioner for Refugees, *supra* note 3 at p. 42.

In addition to families of police officers, the violent crime in El Salvador disproportionately affects children and youth. Adolescent boys face the most significant violence at the hands of gangs.²⁸ In a country where gang violence is the principle cause of homicides, “the vast majority of homicide victims are reported to be male and between the ages of 15 and 34.”²⁹ In particular, children who actively oppose the gangs by resisting recruitment into their ranks are viewed as actively defying gang control, and are punished accordingly.³⁰ Unfortunately, the Salvadoran government’s recent, limited efforts to implement legislation to protect children have been crippled by a variety of challenges, including the institutional weakness, corruption and limited capacity of the Salvadoran government, as well as cultural norms surrounding children in El Salvador.³¹ As a result, “children and adolescents in El Salvador have little prospect of being protected from the many serious harms they face.”³²

4. The MS-13 exerts political control over the territories it governs.

The MS-13 and the 18th Street Gang impose and enforce a system of regulations in the territories they govern that operates in practice as the rule of law in those territories. The MS-13 has the power to designate territory, levy “taxes” through extortion, control its territory through the enforcement of its own rule of law, exert social control, impose curfews, influence local governing bodies and national elections, and punish dissidents.³³ Additionally, the MS-13 and the 18th Street Gang exercise “extraordinary levels of social control,” imposing rules about what individuals within their respective territories can wear, where they can go, what time of night they must be in their homes, and whom they can talk to and about what.”³⁴ The gangs impose their rules not just on individuals but also on institutions in El Salvador. For instance, in July of 2015, they ordered bus companies to halt service and paralyzed public transport in the capital, San Salvador.³⁵ To enforce their demand for a complete halt to public transit, gangs killed seven bus drivers.³⁶ The MS-13 and 18th Street Gang reportedly exert control over political groups at both the local and national level as well. For instance, gangs have required community councils to carry out their orders, influenced which political parties can campaign within their territories, and sought to influence the outcome of national elections.³⁷ Indeed, at this point, the MS-13 and the 18th Street Gang have evolved to

²⁸ Mariana Sanchez-Aizcorbe, *Why are so many young boys disappearing in El Salvador?*, Al Jazeera America, September 25, 2014, available at america.aljazeera.com.

²⁹ U.N. High Commissioner for Refugees, *supra* note 3 at p. 10.

³⁰ Kennedy, *supra* note 8 at p. 3 (“If a resident refuses to join the gang after being ordered to do so, the refusal to join is not viewed by the gang so much as a determination of affiliation. Rather the MS-13 and M-18 view the refusal as a repudiation of their power and a defiance of their order.”)

³¹ *See generally*, Melendez, *supra* note 3, pages 14-27. Also note that the institutional weakness and corruption within the Salvadoran government are discussed further in Section 5 below.

³² *Id.* at p. 26.

³³ Kennedy, *supra* note 8 at p. 3; *see also* Guaderman, *supra* note 13 at p. 7.

³⁴ U.N. High Commissioner for Refugees, *supra* note 3 at p. 12.

³⁵ Elisabeth Malkin, *El Salvador Cracks Down on Crime, but Gangs Remain Unbowed*, NEW YORK TIMES, Aug. 11, 2015 available at <http://www.nytimes.com/2015/08/12/world/americas/el-salvador-cracks-down-on-crime-but-gangs-remain-unbowed.html>.

³⁶ *Id.*

³⁷ U.N. High Commissioner for Refugees, *supra* note 3, at p. 12 (regarding local community councils); *supra* at p. 17 (enforcing public transportation strikes, p. 16, controlling political parties and seeking to influence elections).

“resemble in many parts of El Salvador as the sole and dominant form of on the ground power.”³⁸

The MS-13 and the 18th Street Gang are constantly fighting over control of territory in El Salvador, so both entities assiduously defend their absolute control of the territories they govern.³⁹ Citizen refusal to obey the controlling gang’s orders is seen as defiance to gang control of that territory.⁴⁰ The UNHCR has observed that, in El Salvador, “expressing objections to the activities of gangs may be considered as amounting to an opinion that is critical of the methods and policies of those in control.”⁴¹ The consequences of disobedience of the rules imposed in gang-controlled territories are clear.⁴² Death threats are swiftly carried out.⁴³ Rape, kidnapping, and murder are common forms of punishment, particularly for children who do not comply with the requirements of the gangs controlling their territory.⁴⁴ Forced disappearances, mostly of young men, have also increased within the last year.⁴⁵ 90% of the victims of these disappearances end up dead.⁴⁶ El Salvador is currently the country with the highest homicide rate in the world.⁴⁷ This homicide rate is particularly high in the central zones of El Salvador, including the [REDACTED] region where [REDACTED] resided and where his father still resides.⁴⁸ The MS-13 and the 18th Street Gang exact consequences for both active defiance and perceived defiance of their rules. They therefore punish family members of those who have defied them, based on their assumption that the family members of the defiant individual share that individual’s position.⁴⁹

Those who violate the rules established by a local branch of the MS-13 can be subjected to violent reprisals anywhere within the territory of El Salvador. If a local branch of the MS-13 decides to pursue someone who has fled from their territory, they can communicate with branches throughout the country to pursue this person.⁵⁰ When a new person comes into gang-

³⁸ Kennedy, *supra* note 6 at p. 2.

³⁹ See U.N. Office of Drugs and Crime, *Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment*, September 2012, available at https://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf (last visited June 15, 2016).

⁴⁰ Kennedy, *supra* note 8 at p. 2.

⁴¹ U.N. High Commissioner for Human Rights, Division of International Protection, *Guidance Note on Refugee Claims relating to Victims of Organized Gangs*, March 2010, available at https://www.ilw.com/seminars/201008_citation3b.pdf.

⁴² *Id.*

⁴³ U.N. High Commissioner for Refugees, *supra* note 3, at 30 (indicating that individuals perceived as opposing the gangs are often either killed without warning, or killed following death threats).

⁴⁴ Amanda Taub, *The awful reasons tens of thousands of children are seeking refuge in the United States*, Vox, June 30, 2014, available at <http://www.vox.com/2014/6/30/5842054/violence-in-central-america-and-the-child-refugee-crisis>.

⁴⁵ U.N. High Commissioner for Refugees, *supra* note 3 at p. 10.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*; Robert Muggah, *It’s Official: San Salvador is now the murder capital of the world*, Los Angeles Times, March 2, 2016, available at <http://www.latimes.com/opinion/op-ed/la-oe-0302-muggah-el-salvador-crime-20160302-story.html> (stating that in 2015, more than half of the country’s homicides occurred in San Salvador, La Libertad, Soyapango and [REDACTED]).

⁴⁹ Kennedy, *supra* note 8 at p. 8.

⁵⁰ Kennedy, *supra* note 8, at p. 3.

controlled territory, the controlling gang notices.⁵¹ If the MS-13 decides to exact consequences for perceived opposition, there is nowhere safe in the country for the perceived dissenter.

5. The Salvadoran government is unable to protect individuals targeted by the MS-13.

El Salvador is widely considered a failed state.⁵² The U.S. State Department, in its 2015 Human Rights Report for El Salvador, observed that the country suffers from the twin problems of “widespread corruption” and “weaknesses in the judiciary and the security forces.”⁵³ These problems, coupled with the limited capacity of this small government to carry out and enforce the laws, have created a culture of impunity for crime within the country.⁵⁴

El Salvador has struggled with “endemic political instability and institutional weakness” since the bloody Salvadoran civil war of 1979 to 1992.⁵⁵ The U.S. Department of State observes that today “corruption and criminality” are serious and pervasive within both the judiciary and the police.⁵⁶ The gangs purposefully exploit this situation in order to acquire weapons, silence witnesses, and otherwise influence investigations against them.⁵⁷ In an environment where bribes and threats are perceived as normal, gangs have infiltrated law enforcement and the legal system at every level.⁵⁸

The small, resource-poor Salvadoran government also suffers from limited capacity to respond competently to the advances of international criminal organizations. Inadequate government funding of proposed security measures keeps law enforcement officials from effectively protecting the public and enforcing the law.⁵⁹ Even though El Salvador has enacted some good laws and initiatives to fight crime and the problems that cause it, in practice these laws are not carried out.⁶⁰ Additionally, the power of transnational criminal gangs outstrips the limited resources of this small country in nearly every meaningful way. First, the numbers of gang-involved individuals is far greater than the number of Salvadoran security officers.

⁵¹ Jude Joffe-Block, *Gang Violence awaits a teen from El Salvador after his failed attempts to reach the U.S.*, PRI’s The World, September 18, 2014, available at www.pri.org, at p. 5; Elliot Young, Chair of Lewis and Clark History Department, *Expert Declaration*, at p. 5.

⁵² Kennedy, *supra* note 8 at p. 6 (impunity is linked to failed rule of law); Elliot Young at p. 2, Dree Collopy, *Asylum Primer: A Practical Guide to U.S. Asylum Law and Procedures, Seventh Edition* (2015).

⁵³ United States Department of State, Bureau of Democracy, Human Rights and Labor, El Salvador 2015 Human Rights Report, available at <http://www.state.gov/documents/organization/253225.pdf>.

⁵⁴ *Id.*

⁵⁵ Melendez, *supra* note 3, at p. 8; Young, *supra* note at p. 3.

⁵⁶ *Id.* at p. 24-25 (stating that the judiciary is reported to be particularly inefficient and subject to corruption and reporting that in 2012 alone, there were reports of ongoing investigations into complaints against 487 of the 600 serving judges in El Salvador); Research Directorate, Immigration and Refugee Board of Canada, *supra*, note 14, at p. 5.

⁵⁷ Guaderman *supra* note 13, at p. 16 (describing the general situation, as well as providing an anecdote of a former gang member who was murdered while in jail by a group of hooded men who entered the jail and shot him before he was due to testify against another Barrio 18 member).

⁵⁸ Kennedy, *supra* note 8 at p. 5; Guaderman, *supra* note 13 at p. 15 (gangs have infiltrated the PNC at the highest levels).

⁵⁹ See e.g., Immigration and Refugee Board of Canada, *supra* note 14, at pp. 5-6; Melendez, *supra* note 5 at p. 11 (“the high rate of violence far outpaces the limited resources of the Salvadoran justice system.”); Kennedy, *supra* note 6 at p. 6 (“El Salvador is a small country with very limited capacity and resources.”)

⁶⁰ Kennedy, *supra* note 8 at p. 6.

Although estimates of gang membership in El Salvador vary widely, a 2013 study by the Universidad Centroamericana's Public Opinion Institute estimated that gang members in MS-13 and the 18th Street Gang is between 250,000 and 400,000, when counting active and retired gang members and their families.⁶¹ In contrast, there are about 21,315 police officers in El Salvador.⁶² Additionally, in many regions of El Salvador, including [REDACTED] where [REDACTED] and his family lived, MS-13 members are receiving military operations training from Mexican drug cartels.⁶³ They also have begun to acquire more military grade weaponry, outmatching the police in both numbers and ammunition.⁶⁴ Police, whose traditional role is to keep order among civilians during peacetime, cannot respond effectively to the numbers, tactics and levels of violence presented by the MS-13 and the 18th Street Gang.⁶⁵

Salvadoran citizens who have experienced decades of weak and corrupt government institutions as well as a present environment of pervasive impunity for crime often have no confidence in the government's ability to protect them from these criminal entities. As a result of both low confidence in the government and awareness of the gangs' consistent and violent consequences imposed on those who defy them, crime often goes unreported in El Salvador.⁶⁶ For instance, according to a survey conducted by the National Council for Small and Medium Businesses (Consejo Nacional de la Pequeña Empresa de El Salvador, CONAPES), 79 percent of business owners are being extorted by the gangs, and 84 percent of these extortion victims did not file a complaint with the authorities because of threats and killings committed by gang members against those who do report crimes.⁶⁷ In another recent example of this public perception, Salvadoran minors fleeing the country expressed to interviewers from the Women's Refugee Committee the view that, "while the police in ... El Salvador have always been corrupt, they are now effectively controlled by the gangs in varying degrees."⁶⁸ This public perception of government ineffectiveness in controlling the gang problem further contributes to the ability of international criminal gangs to operate with impunity within El Salvador. Indeed, the public perceives the gangs, rather than the legitimate government, as politically dominant. In a recent study conducted throughout four different departments of El Salvador, Salvadorans reported that they see the gangs as the only actor effectively able to exert control where they live.⁶⁹

⁶¹ *Id.* at p. 2; see also Immigration and Refugee Board of Canada, *supra* note 14 at p. 1 (citing different sources that put the numbers between 20,000 and 70,000, counting gang members alone).

⁶² Immigration and Refugee Board of Canada, *supra* note 34 at p. 5 (citing a 2011 World Bank study).

⁶³ *Id.*; see also Guaderman, *supra* note 13 at p. 8 (stating that some sub groups of MS 13 and Barrio 18 are receiving military training and mutating toward a drug trafficking structure).

⁶⁴ U.N. High Commissioner for Refugees, *supra* note 3 at p. 16; Immigration and Refugee Board of Canada, *supra* note 14 at p. 4.

⁶⁵ Guaderman, *supra* note 13 at p. 17 (explaining that "traditional police were never designed, created and deployed to face the overwhelming superiority of firepower, weaponry and tactics being used by transnational organized criminals.")

⁶⁶ U.N. High Commissioner for Refugees, *supra* note 3 at p. 26; see also, Immigration and Refugee Board of Canada, *supra* note 14, at p. 3 (quoting the President of the Salvadoran Public Transit Association, who reported that, when a complaint is filed with the police about extortion on buses, the gangs find out and homicides on public transport increase).

⁶⁷ Immigration and Refugee Board of Canada, *supra* note 14, page 3; see also Guaderman, *supra* note 13 at p. 13 (As of 2013, police investigators estimated that only 10% of extortion victims filed police reports).

⁶⁸ *Forced From Home: The Lost Boys and Girls of Central America*, Women's Refugee Commission, October, 2012, available at <https://www.womensrefugeecommission.org/component/zdocs/document?id=856-forced-from-home-executive-summary>.

⁶⁹ Kennedy, *supra* note 8, at p. 4.

The public perception that the Salvadoran government is unable to protect them from international criminal entities is supported by extensive evidence. There is an extremely high level of impunity within the country for those crimes that are reported.⁷⁰ As of 2014, the overall criminal conviction rate stood at less than 5% of crimes actually reported, and the rate of conviction for crimes against children was even lower.⁷¹ Given this reality, Salvadorans know that they will not be able to avail themselves of the protection of their government by reporting crime victimization.

III. ASYLUM ELIGIBILITY

A. The Arlington Asylum Office has initial jurisdiction over [REDACTED] asylum claim because he was designated an unaccompanied minor at his time of entry to the United States.

Under the Trafficking Victims Protection Reauthorization Act (TVPRA), unaccompanied minors are exempt from the one year filing deadline governing other asylum claims⁷² and USCIS has initial jurisdiction over their asylum applications.⁷³ [REDACTED] has been determined by the Department of Homeland Security (“DHS”) to be an unaccompanied alien child (“UAC”) for purposes of the INA. *See* Ex. F, Office of Refugee Resettlement Verification of Release (reflecting that [REDACTED] was designated a UAC when he entered the United States). Thus, the Arlington Asylum Office has initial jurisdiction over [REDACTED] asylum application. *See* INA § 208(b)(3)(C).

B. [REDACTED] is a refugee, as defined by the Immigration and Nationality Act.

An individual is eligible to receive asylum if he demonstrates that he meets the definition of a refugee under INA § 101(a)(42)(a). A refugee is “any person who is outside his country of nationality . . . and who is unable or unwilling to return to, and is unable to avail himself of the protection of that country because of past persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” *Id.* [REDACTED] is unable to return to El Salvador because of past persecution and a well-founded fear of future persecution by the MS-13 gang on account of his membership in the particular social group of members of the immediate family of his father, Mr. [REDACTED] [REDACTED] and on account of his anti-gang political opinion.

C. [REDACTED] is a member of the particular social group of immediate family members of [REDACTED] [REDACTED] an employee of the National Police Force in Colonia [REDACTED]

1. Particular Social Group defined

⁷⁰ Melendez, *supra* note 5, at p. 8.

⁷¹ Immigration and Refugee Board of Canada, *supra* note 14 at p. 5; U.N. High Commissioner for Refugees, *supra* note 3 at p. 24; Melendez, *supra* note 5 at page 11.

⁷² *See*, INA § 208(a)(2)(E); *See also*, TVPRA, P.L. 110-457, § 235(d)(7)(A).

⁷³ USCIS Asylum Division, *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*, May 28, 2013, available at uscis.gov.

A particular social group within the meaning of the statute is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. *Matter of W- G- R-*, 26 I&N Dec. 208, 210 (BIA 2014). An immutable characteristic is one that “the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985) *overruled on other grounds by In re Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). The concepts of particularity and social distinction require “that the group have particular and well-defined boundaries, and that it possess a recognized level of social visibility.” *Matter of W- G- R-*, 26 I&N at 210 (quoting *Matter of S- E- G-*, 24 I&N Dec. 579, 584 (BIA 2008)) (internal quotation marks omitted). In other words, a group is defined with particularity if the group is “‘sufficiently distinct’ that it would constitute ‘a discrete class of persons,’” and is socially visible if the shared characteristic of the group is generally recognizable by others in the community. *Id.* (quoting *Matter of S- E- G-*, 24 I&N at 584).

The social group of immediate family members of Mr. [REDACTED] [REDACTED] is quite factually analogous to social groups that were held to be eligible for asylum in cases such as *Crespin-Valladares* and *Hernandez-Avalos*, and fully satisfies the requirements of immutability, particularity and social distinction. See *Crespin-Valladares v. Holder*, 632 F.3d 117, 126-27 (4th Cir. 2011); *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 950 (4th Cir. 2015).

2. Immediate family members of [REDACTED] [REDACTED] [REDACTED] are members of a qualifying particular social group of individuals protected under U.S. asylum law.

UNHCR Guidance recognizes that family members of gang resisters deserve status as a particular social group.⁷⁴ Moreover, for more than a decade, the Fourth Circuit has repeatedly affirmed in one published decision after another that a “family” can constitute a particular social group for purposes of asylum. See *Lopez-Soto v. Ashcroft*, 383 F.3d 228, 235 (4th Cir. 2004) (“We join our sister circuits in holding that ‘family’ constitutes a particular social group” and “[t]he family provides a prototypical example of a particular social group.”) (citing *Iliev v. INS*, 127 F.3d 638, 642 & n. 4 (7th Cir. 1997)); *Crespin-Valladares*, 632 F.3d at 125 (“every circuit to have considered the question has held that family ties can provide a basis for asylum.”); *Hernandez-Avalos*, 784 F.3d at 949 (4th Cir. 2015) (“the government correctly acknowledges that membership in a nuclear family qualifies as a protected ground for asylum purposes.”); *Cordova v. Holder*, 759 F.3d 332 (2014) (remanding for reconsideration by the Immigration Judge a case where the PSG was “family members of persons who have been killed by rival gang members.”) Notably, the family members the Fourth Circuit held were eligible for asylum in these cases were family members of gang resisters, including resisters of the MS-13 gang. See generally *Crespin-Valladares*, 632 F.3d. Recently, the Department of Homeland Security (DHS) confirmed its position that an “immediate family” unit will qualify as a particular social group “in many, if not most, societies.” See Brief for Department of Homeland Security (DHS), *Matter of Luis Enrique Alba*, A200 553 090 (unpublished) (BIA March 22, 2016). As such, the

⁷⁴ United Nations High Commissioner for Refugees, *UNHCR Guidance on Refugee Claims Relating to Victims of Organized Crime* (March 2010) at Section III(a)(12), Resistance to Gang Activity (hereinafter “2010 UNHCR Guidance”), pp. 4-5 at Ex. 9).

particular social group of which [REDACTED] is a part is among the most universally recognized particular social groups in U.S. asylum law. Moreover, members of this particular social group possess a common immutable characteristic, are defined with particularity, and are socially distinct within their society, thereby meeting the BIA's particular social group requirements.

(a) Immutability

The Fourth Circuit recognized that “kinship ties” are an example of a paradigmatically immutable characteristic.” *Crespin-Valladares*, 632 F.3d at 125. In *Crespin*, the Fourth Circuit observed that “family bonds are innate and unchangeable,” and therefore meet the requirement of immutability. DHS recently stated its position that a particular social group based on family ties, particularly immediate family ties, will generally be immutable. In coming to this conclusion, DHS reasoned that “it is generally not possible to change the fact of who is one’s parent or child.” Brief for DHS, *Matter of Luis Enrique Alba*, A200 553 090 (unpublished) (BIA March 22, 2016), at p. 7.

Similar to the particular social groups in *Crespin-Valladares v. Holder* and *Hernandez-Avalos v. Lynch*, among others, members of this particular social group share a common immutable characteristic, immediate parent-child ties to Mr. [REDACTED] [REDACTED] [REDACTED] is powerless to change the family into which he was born, and should not be required to abandon his family relationship to his immediate family even if he were able or inclined to do so.

(b) Particularity

The particular social group to which [REDACTED] belongs is particular and well-defined, including within its confines only immediate family members of Mr. [REDACTED] [REDACTED]. The Fourth Circuit in *Crespin-Valladares* explained that “the family unit...possesses boundaries that are at least as particular and well-defined as other groups whose members have qualified for asylum.” See *Crespin-Valladares*, 632 F.3d at 125. DHS’ analysis on this point provides further helpful insight: “a defined family unit, such as an immediate family, ordinarily will satisfy the requirement of particularity insofar as it generally provides a clear benchmark for determining who falls into the group.” Brief for DHS, *Matter of Luis Enrique Alba*, A200 553 090 (unpublished) (BIA March 22, 2016), at p. 8.

Here, the boundaries between individuals who belong to the group of immediate family members of Mr. [REDACTED] [REDACTED] and those who do not are quite clear. All members of this particular social group can be identified easily and definitely through reviewing documentary evidence such as the attached birth certificates of [REDACTED] and [REDACTED] [REDACTED].

(c) Social Distinction

The Fourth Circuit has held that social groups based on family relationship meet the social distinction requirement, explaining that families are “generally easily recognizable and understood by others to constitute social groups.” *Crespin-Valladares*, 632 F.3d at 125, citing *In re C-A-*, 23 I&N Dec. 951, 959 (B.I.A. 2006). The *Crespin* court also observed that “we can conceive of few groups more readily identifiable than the family.” *Id.* DHS has recently reasoned that “immediate family relationship is a trait based upon which virtually all societies

draw significant distinctions such that it will generally meet the social distinction test.” *Matter of Luis Enrique Alba*, A200 553 090 (unpublished) (BIA March 22, 2016), at p. 9.

Here, as in *Crespin-Valladares*, the group of immediate family members of Mr. ██████ could easily be observed by anyone in the community where the family lived, including the family’s persecutors. ██████ and ██████ resided in the same home as their father and spent much of their free time with him. Moreover, the MS-13 gang members who targeted ██████ and his brother ██████ stated in the threats they made to ██████ and ██████ that they had identified the boys as children of their father. In addition to identifying this family relationship as the basis of their threats to both children outside their schools, the MS-13 members found out where Mr. ██████ and his children resided, and threatened everyone within the family home. These actions indicate that the MS-13 members intended to target ██████ and ██████ as immediate family members of their father.

As a member of the group of immediate family members of ██████ ██████ ██████ ██████ is a member in a particular social group that meets the requirements of U.S. asylum law.

D. ██████ possesses a political opinion against the MS-13 and other similar criminal organizations and has had such an opinion imputed to him by the MS-13.

1. ██████ possesses an anti-gang political opinion.

Per INA § 101(a)(42)(A), an applicant who is persecuted on account of his political opinion is eligible for asylum. An applicant who is persecuted for a political opinion imputed to him by a persecutor is eligible for asylum whether or not he actually holds the political opinion ascribed to him. *Matter of S-P-*, 21 I&N Dec. 486, 489 (B.I.A. 1996). Whether an asylum applicant was persecuted on account of his political opinion is a case-specific determination, made based on the record in a given case. *Id.* at 715.

The Fourth Circuit has explained that, for an opinion to be considered political, it must be “motivated by an ideal or conviction.” *Saldarriaga v. Gonzales*, 402 F.3d 461, 466 (4th Cir. 2005). UNHCR further elaborates, defining political opinion as “any opinion on any matter in which the machinery of State, government, society, or policy may be engaged.”⁷⁵ One can express a political opinion through both words and actions. *See Chang v. INS*, 119 F.3d 1055, 1063 (3d Cir. 1997). Opposition to violent gang membership can constitute a political opinion. *Martinez-Buendia v. Holder*, 616 F.3d 711 (7th Cir. 2010).

In this case, ██████ holds an anti-gang political opinion. ██████ grew up in a home where he learned strong moral values throughout his life in connection with his family’s Christian faith. He has adopted those values as his own. He uses them to guide his actions and plan his future. Because of his strong moral values, ██████ has never wanted to join a gang. Instead, his personal goals are to serve God, live an honest life, and get an education. As such, ██████ explains that he would never join the MS-13 because it is against who he is. ██████

⁷⁵ UNHCR, Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 7 May 2002, available at <http://www.unhcr.org/refworld/docid/3d36f1c64.html>.

ideals and convictions have always been fundamentally opposed to the MS-13 gang members' goals. As such, he has actively resisted MS-13 recruitment attempts and has avoided becoming involved in the MS-13 throughout his life.

██████ opposition based on these convictions is political in nature within the meaning of the INA. The applicant in *Martinez-Buendia* could not acquiesce to the FARC's demands because the FARC's actions went against her "beginnings." *Id.* Similarly, ██████ cannot align with the MS-13 because he fundamentally opposes their activities, due to the deeply held convictions he has espoused throughout his life. These convictions do not permit him to acquiesce to an authority that uses violent methods with which he deeply disagrees. As described above, the MS-13 acts as a quasi-governmental organization in the territory it controls, imposing its restrictions on citizens with the force of the rule of law. As described above, gangs control numerous aspects of life in the territories they govern, imposing taxes, curfews, rules regarding where people can go and with whom they can speak, stop and start public transportation at will, and influence elections. The gangs are able to exert this control effectively because Salvadorans know that the consequences for disobedience are swift and violent

Although the MS-13 acts as an authority in the area where ██████ resided, because of his anti-gang political opinion he resisted this authority, due to his convictions about the type of power that authorities can legitimately exercise. He wished not to be involved in the governance methods of the MS-13, and thus declined to get involved with their gang and avoided them. As a result, through his actions, ██████ expressed an opinion both to his persecutors and to his society about the machinery of governance in the society where he resides and thus, a political opinion.

E. The MS-13 has imputed to ██████ an anti-MS 13 political opinion.

The MS-13 imputes an anti-gang political opinion to those who personally and actively oppose it, as well as to family members of those who actively oppose them. As such, the MS-13 has imputed an anti-gang political opinion to ██████

As discussed in Section II, B, 4, *supra*, children who resist gangs' attempts to recruit them into their ranks are perceived by gangs are not seen as expressing a personal disagreement, but rather are perceived as refusing to obey orders and therefore dissenters. To maintain their control in the territories they govern, gang members swiftly and violently punish perceived dissent. ██████ has resisted MS-13 gang recruitment and as such the MS-13 has imputed an anti-gang political opinion imputed to him and he risks violent punishment as a result.

Moreover, MS-13 has imputed an anti-gang political opinion to ██████ as the son of a police employee. Salvadoran criminal gang members view cooperation or other involvement with the Salvadoran authorities to curb or reduce gang activity as actively opposing their system of regulation and therefore as political in nature. In particular, the MS-13 perceives individuals it knows to be employed by Salvadoran law enforcement as engaging in political opposition of the MS-13, given that the goals of Salvadoran law enforcement employees are inherently inconsistent with the MS-13's attempts at governance of the territories it controls. The MS-13 and other criminal gangs target police employees and their families because they are agents of the state, and therefore seen as inherently opposing the exclusive control of gang members in the

territories they control. Salvadoran police are not only being killed when in active conflict with gang members, but they and their families are being threatened and killed when going about their daily lives or relaxing at home, unarmed. When police act on behalf of the Salvadoran state to attempt to regulate the gang members' behavior, the gangs see these actions as active dissent by that officer. The MS-13 imputes the political opinion of police officers and employees to extend to their family members, and targets them for violent reprisals as a result.

In this case, [REDACTED] father not only cooperated with the authorities, but was himself directly employed by Salvadoran law enforcement. The MS-13 perceived [REDACTED] father to have actively attempted to control their activities by assisting the police in arresting their members and targeted him because of this perceived dissidence. The MS-13 then expressed to both [REDACTED] and his brother [REDACTED] that they knew of their family relationship to their father, indicating that they believed [REDACTED] and [REDACTED] to be deserving of punishment as a result of that relationship. The MS-13 gang members indicated to [REDACTED] both through the violence of their threats and the nature of their communications that they perceived him to hold a political opinion as a result of this family relationship.

F. [REDACTED] has suffered past persecution on account of his membership in this particular social group and on account of his political opinion and imputed political opinion.

1. Past persecution by MS-13 members

Persecution involves the infliction or threat of death, torture, or injury to one's person or freedom, on account of one of the grounds enumerated in INA § 101(a)(42)(A). *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (internal quotations omitted); *see also Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015) ("We have expressly held that the threat of death qualifies as persecution.") Persecution "punish[es] [the victim] for possessing a belief or characteristic a persecutor [seeks] to overcome." *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). In the case of imputed characteristics, persecution punishes the victim for a characteristic he is perceived to possess. *See Amanfi v. Ashcroft*, 328 F.3d 719, 739 (3d Cir. 2003); *Matter of S-P-*, 21 I&N Dec. 486, 489 (B.I.A. 1996).

The Immigration and Naturalization Service's Guidelines for Children's Asylum Claims, notes that the standard for persecution is refined in a child's case. Memorandum from Jeff Weiss, Acting Director, Office of Int'l. Affairs, Section 3(c) (Dec. 10, 1998) (hereinafter, "The Guidelines"). The INS Guidelines state that 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." The Guidelines also emphasize that harm to family members of the child can constitute persecution and that injuries to family members of a child constitute particularly traumatic persecution for children. This is consistent with the UNHCR's view that "Ill-treatment which may not rise to the level of persecution in the case of an adult may do so in the case of a child." UNHCR's Guidelines on International Protection: Child Asylum Claims Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees" at para 10.

██████ has suffered past persecution in the form of specific and targeted threats, including multiple death threats, which MS-13 members made towards both him and his family members. MS-13 members repeatedly targeted ██████ and his family with death threats at their home. MS-13 members also cornered ██████ individually, flashed a pistol, and threatened to kill him and his family. ██████ his brother, and his father, who is his primary caretaker, have all received verbal death threats against both ██████ personally and against the family as a whole. The threats against ██████ as an individual, the threats made to his family members including him as an identified target, and the threats to harm his family members all constitute persecution. The threats to harm ██████ father and caretaker, at a time when ██████ was sixteen years old, constituted particularly traumatic persecution to ██████ as a child with a close relationship to his father, who was his sole caregiver at that time. Therefore, ██████ has suffered past persecution.

2. Nexus

A protected ground must constitute at least “one central reason” for the persecution ██████ suffered and his well-founded fear of future persecution. *Hernandez-Avalos*, 784 F.3d at 944. “The protected ground need *not* be the central reason or even a dominant central reason for persecution, but it must be more than an incidental, tangential, superficial, or subordinate reason.” *Cordova*, 759 F.3d at 338. Here, ██████ particular social group membership and political opinion are central reasons for the MS-13’s persecution of him.

(a) Nexus between past persecution and ██████ particular social group membership

MS-13 threatened to kill ██████ and his family because of their relationship to Mr. ██████ who worked for the police in Colonia ██████. This nexus is demonstrated strongly by the MS-13 members’ statements to ██████ and his family, the circumstances of the threats the family received, and by the current country conditions indicating that targeting of police and their families by international criminal gangs is a growing epidemic throughout El Salvador.

██████ particular social group is closely analogous to that of the family member targeted by international criminal gangs in El Salvador in *Hernandez-Avalos*. The Fourth Circuit in *Hernandez-Avalos* reasoned that the applicant in that case, was targeted “on account of” her family relationship with her son, because “Hernandez’s relationship to her son is why she, and not another person, was threatened with death.” *Hernandez-Avalos*, 784 F.3d at 950. Similarly, here MS-13 members demonstrated that they recognize ██████ and ██████ kinship ties to their father when they targeted ██████ and his brother, ██████ after learning that Mr. ██████ worked for the police. The MS-13 members directly informed Mr. ██████ that not only he would be in danger due to his work for the police, but his family would suffer as well. When MS-13 threatened ██████ with a pistol after school, they specifically instructed him to tell his father that he and his brother would “pay the consequences.” The MS-13 members who targeted ██████ also stated that they knew his father was a police officer. In each of these instances, the MS-13 members indicated that they wanted to harm ██████ and ██████ on account of their relationship with their father. The circumstances of the threats are

also instructive. The MS-13 members came to their home and targeted their family precisely because their father lived there. Within a few days of one another, [REDACTED] and [REDACTED] were both singled out for death threats outside their schools among numerous other children, only after the MS-13 members saw their father at the police station. As such, each time that [REDACTED] and [REDACTED] were subjected to death threats, there was a direct connection between the threats and their relationship to their father.

The persecution [REDACTED] and his family have suffered is part of a larger and growing trend of the MS-13 and other international criminal gangs targeting police officers and their families, as detailed above. As such, [REDACTED] kinship ties to his father constitute at least one central reason that the MS-13 targeted him for persecution. If [REDACTED] were forced to return to El Salvador, MS-13 will continue to threaten, harass, and eventually kill [REDACTED] because of his immediate kinship ties to his father.

(c) Nexus between past persecution and political opinion imputed to [REDACTED]

As a resistor of gang recruitment and a child of a Salvadoran police administrator and perceived police officer, [REDACTED] will be perceived by MS-13 as a dissident whose failure to follow their rule of law constitutes active opposition to their methods of controlling the area of El Salvador where he resided. He will be labeled as a dissenter of their de facto government, and the punishment for this dissent is death.

In a powerfully reasoned opinion, the 7th Circuit recently explained that, in *INS v. Elias-Zacarias*, 502 U.S. 478 (1992), the Supreme Court instructs courts to carefully consider the factual record of each case when determining whether an applicant's resistance to recruitment attempts by criminal gangs constitutes persecution on account of political beliefs. *Martinez-Buendia*, 616 F.3d at 716. As discussed above, [REDACTED] is an individual who both holds an anti-gang political opinion and has an anti-gang political opinion imputed to him by members of the MS-13. The record evidence demonstrates that the MS-13 is consistently targeting children who resist gang recruitment, as well as police officers, police employees and their families on account of their perceived anti-gang political opinion. On account of the anti-gang political opinion the MS-13 has imputed to [REDACTED] will face certain death if forced to return to El Salvador.

G. [REDACTED] has a well-founded fear of future persecution on account of his membership in this particular social group.

1. The presumption of [REDACTED] future fear of persecution has not been rebutted.

The INA requires an asylum seeker to demonstrate that he has a "well-founded fear of future persecution" such that he cannot return to his country of origin. 8 U.S.C. § 1101(a)(42)(A). An asylum applicant who establishes past persecution is entitled to a rebuttable presumption that he has a well-founded fear of future persecution. 8 C.F.R. § 208.13(b)(1); *Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011). This presumption of future persecution is not rebutted in [REDACTED] case because there is no fundamental change in the circumstances [REDACTED] escaped from in El Salvador, and because [REDACTED] cannot reasonably relocate within El Salvador.¹⁴⁴

There is no indication that circumstances have changed such that the MS-13 is not interested in targeting police officers in [REDACTED] or that [REDACTED] and [REDACTED] father and his family are no longer targets. [REDACTED] father continues to live in fear and to stay away from his home and at the police station to the extent possible to avoid the MS-13. [REDACTED] and [REDACTED] would face constant danger if forced to return to live in a place where they were followed and threatened both at their school and in their home.

[REDACTED] is unable to relocate within El Salvador, first because MS-13 is a nationwide criminal organization that operates with impunity throughout the country.⁷⁶ Moreover, it is generally not reasonable to require a child to relocate alone. See USCIS Asylum Division, *Asylum Officer Basic Training Course: Guidelines for Children's Asylum Claims*, September 1, 2009 at p. 42. [REDACTED] has yet to complete high school and has no other skills he can use to support himself and no other home in El Salvador besides his father's home in [REDACTED]. Despite living in fear in the violent, MS-13 controlled area of [REDACTED], [REDACTED] father is unable to move elsewhere because his livelihood as a police administrator requires that he live near the police station.

2. [REDACTED] has a well-founded fear of persecution.

In addition to establishing this presumption of a well-founded fear of persecution based on past persecution, an asylum applicant may also establish a well-founded fear of future persecution independently. In order to do so, the applicant "must establish both a genuine subjective fear of persecution and that 'a reasonable person in like circumstances would fear persecution.'" *Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011); 8 C.F.R. § 208.13(b)(2)(i). To establish a "well-founded fear of future persecution" independently, asylum seekers do not need to show a clear probability of future persecution; rather an applicant need only show a reasonable possibility of future persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987); *INS v. Stevic*, 467 U.S. 407, 424-25 (1984). This reasonable possibility may be established by showing that there is even a 10 percent chance that the applicant will be tortured, beaten, threatened, harassed, or otherwise persecuted. *INS v. Cardoza-Fonseca*, 480 U.S. at 440.

[REDACTED] has a well-founded fear of persecution because his fear is both objectively reasonable and subjectively genuine. [REDACTED] fear is objectively reasonable because MS-13 members threatened to kill him and his family numerous times and in multiple places. Additionally, [REDACTED] knew very well that the MS-13 was highly capable of carrying out its members' threats. [REDACTED] knew that his half-brother [REDACTED] father and uncle were both killed by MS-13 operatives. He also knew of school friends who were killed after refusing to join the gangs. Moreover, in El Salvador as a whole, the MS-13 retaliates against individuals it perceives as opposing its social control and particularly against individuals connected to the police. In *Crespin-Valladares*, the Fourth Circuit found that the applicant had a well-founded fear of persecution by the MS-13 following three death threats, given the vengeance MS-13 typically exacts against testifying witnesses. *Crespin-Valladares*, 632 F.3d at 126. Similarly to that

⁷⁶ See generally Kennedy, *supra* note 8; see also Guaderman, *supra* note 13; U.N. High Commissioner for Refugees, *supra* note 3 at p. 7 (indicating that the homicide rate in El Salvador is relatively evenly distributed throughout the country, although [REDACTED] was one of the departments most severely affected); Department of State, *supra* note 33.

applicant, [REDACTED] suffered multiple death threats, has an anti-gang political opinion and is perceived to be the son of a police officer, whom the MS-13 believes has acted in defiance of it. Just as MS-13 exacts vengeance against testifying witnesses, it exacts vengeance against police officers it perceives as acting against it and their families. He is in danger both because of this relationship and because of the political opinion the MS-13 ascribes to him as a result.

Given the documented evidence cited above that MS-13 targets family members of police officers and employees and the experience of [REDACTED] and his immediate and extended family in El Salvador, [REDACTED] fear is objectively reasonable.

H. The Salvadoran government is unable or unwilling to control the MS-13.

Where a persecutor is a non-state actor, the asylum applicant must demonstrate that the government is unable or unwilling to control the persecutor.⁷⁷ Whether a government is unable or unwilling to control a persecutor is a fact question that must be resolved based on the record in each case. *Hernandez-Avalos*, 784 F.3d at 951. As the record evidence cited above indicates, the Salvadoran government is crippled by corruption, institutional weakness, and limited resources. Its resources and personnel are significantly outstripped by the resources available to the strongly networked, international criminal organizations of the MS 13 and the 18th Street Gang. These circumstances prevent the Salvadoran government from meaningfully controlling [REDACTED] persecutors.

Despite seeking protection from a police officer, [REDACTED] and his family continued to suffer repeated death threats from MS-13 members outside of their home. [REDACTED] father knew from decades of personal experience working with the police that the police would be unable to protect his family from retaliation if he sought the police's protection by making an official report. In addition to finding out where [REDACTED] and [REDACTED] and their father resided and threatening them there, MS-13 members were able to identify [REDACTED] and [REDACTED] as their father's sons, find out where they attended school and corner [REDACTED] and [REDACTED] outside of their schools. [REDACTED] father and his friend were powerless to stop these threats, and the family's personal experience indicated that a report would have led to further retaliation from the MS-13.

Both the experience of [REDACTED] family and the broader conditions within Salvadoran society indicate that the government is unable or unwilling to protect the children of police employees from persecution by the MS-13 based on the protected social group of which [REDACTED] is a member and based on his political opinion.

The Salvadoran government is unable to control or effectively respond to these international criminal organizations.

K. [REDACTED] is not subject to any bars to asylum and merits a grant of asylum in the exercise of discretion.

⁷⁷ *Matter of O-Z- and I-Z-*, 22 I. & N. Dec. 23 (B.I.A.1998).

Lastly, [REDACTED] is not subject to any mandatory bars to asylum. [REDACTED] has neither applied for nor received any legal status in a third country. He has neither committed nor been convicted of any particularly serious crime, serious non-political crime or indeed of any crime at all. He has never applied for asylum previously. He is not a danger to public safety or the national security of the United States, nor has he persecuted anyone. He is a dedicated student, focused on making the Honor Roll in high school and hoping to enroll in the police academy once he completes high school. *See Declaration of [REDACTED] ¶ 21; attached Honor Roll Certificates.* Given the above, he is eligible for asylum and deserving of a grant of asylum as a matter of discretion.

L. [REDACTED] request for withholding of removal should be granted.

[REDACTED] also qualifies for withholding of removal under section 241(b)(3) of the Immigration and Naturalization Act because there is a “clear probability” that, upon return to El Salvador, he would be persecuted on account of several statutory grounds. 8 U.S.C. §1231(b)(3)(A). *See I.N.S. v. Stevic*, 467 U.S. 407, 424 (1984). An applicant who has demonstrated past persecution is entitled to a regulatory presumption that his life or freedom would be threatened on return to his country, provided that country conditions have not changed such that persecution no longer is likely. 8 C.F.R. § 208.16(b). Given the numerous death threats against [REDACTED] his brother and his father, and the lack of any evidence of changed circumstances, it is more likely than not that [REDACTED] will face persecution based on his membership in the particular social group of family members of Mr. [REDACTED] [REDACTED] and based on his political opinion.

M. [REDACTED] is eligible for relief under the Convention Against Torture.

In the event that [REDACTED] application for asylum and withholding of removal is denied, [REDACTED] respectfully requests relief from removal under the United Nations’ Convention Against Torture. 8 C.F.R. § 208.16. Article 3 of the Convention Against Torture provides that no State party to the Convention shall “‘expel, return . . . or extradite’ a person to another country where there are substantial grounds for believing that [the individual] would be in danger of being subjected to torture.” *See Al-Saheer v. I.N.S.*, 268 F.3d 1143, 1146 (9th Cir. 2001), *amended by* 355 F.3d 1140 (2004).

As set out in Article 1 of the Convention Against Torture and incorporated in 8 C.F.R. § 208.18(a)(1)(a):

Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

An applicant is eligible for withholding of removal under Article 3 of the Convention Against Torture if he can show that it is more likely than not that he would be tortured if returned to his country. 8 C.F.R. § 208.16(c). In evaluating an applicant's eligibility for relief, evidence to be considered includes evidence of past torture inflicted upon the applicant, evidence that the applicant could not relocate internally, evidence of gross, flagrant or mass violations of human rights within the country, and other relevant country conditions information. *See* 8 C.F.R. § 208.16(c)(3). Provided that the statutory bars to withholding of removal do not apply to the applicant, the applicant is entitled to relief under Article 3.

Although [REDACTED] has not been tortured, he has been threatened with not only severe pain and suffering, but with death. As discussed above, police officers and their families are being killed in significant numbers in El Salvador. These murders are occurring not only when police are involved in altercations with gang members, but also when they are off duty and in their homes. As discussed above, MS-13 presence is pervasive in El Salvador and there is nowhere that [REDACTED] can go to protect himself from the MS-13's death threats. As such, country conditions indicate that [REDACTED] would more likely than not be tortured and ultimately killed if returned to his country. As discussed above and demonstrated in the attached record evidence, the Salvadoran government is plagued by widespread corruption at all levels and in many cases gangs have infiltrated government institutions. This corruption, among other factors described above, prevents the Salvadoran government from effectively responding to gang violence within the country. In many cases corrupt individuals and institutions within the government are not only acquiescing to gang tactics, but are themselves assisting the gangs in perpetrating violence. As such, [REDACTED] is more likely than not to suffer torture within the regulatory definition of that term if he is forced to return to El Salvador, and is eligible for withholding of removal under the Convention Against Torture in addition to asylum.

IV. CONCLUSION

In light of the inevitable harm he would face if forced to return to El Salvador, and because he meets the definition of a "refugee" under INA § 101(a)(42)(a), [REDACTED] requests to be granted asylum.

If you have any questions or need additional information, please do not hesitate to contact me at 443-491-8573 or agriffith@supportkind.org.

Thank you for providing this opportunity to my client.

Respectfully submitted,

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