

August 14, 2017

U.S. Citizenship and Immigration Services  
Asylum Office  
181 W Madison Street #3000  
Chicago, IL 60602

UNACCOMPANIED MINOR ASYLUM FILING

RE: **I-589, Application for Asylum, Withholding of Removal and Relief under the Convention for unaccompanied child** [REDACTED] [REDACTED]  
[REDACTED]

Dear Officer,

The Advocates for Human Rights represent Ms. [REDACTED], a [REDACTED] native and citizen of El Salvador who is eligible for and deserving of asylum under Section 208 of the Immigration and Nationality Act (INA).

**I. INTRODUCTION**

As supported by [REDACTED] I-589, the supplemental documentation submitted on [REDACTED] 2017 and [REDACTED] 2017, and [REDACTED]'s asylum interview which took place on [REDACTED] 2017, [REDACTED]'s application should be granted based on past persecution in the form of stalking and threats of harm to [REDACTED], on account of her membership in particular social groups, specifically, as a member of the group of Salvadoran women viewed as the forced property and girlfriends of the MS-13 transnational criminal gang, and as a member of the group of Salvadoran females lacking effective familial protection from gender-based violence.

On account of her membership in these particular social groups, [REDACTED] was subjected to repeated instances of persecution in El Salvador that the Salvadoran government was both unable and unwilling to control. Furthermore, [REDACTED] fears suffering the same violence if she is forced to return, because femicide, rape, and other violence against females continue to be tolerated and normalized both politically and socially in El Salvador, and [REDACTED] lacks any other viable places to live. [REDACTED] has no safe home within El Salvador to which she can return. Since [REDACTED] has fled to the United States, she has received reports from family members that gang members are still looking for her. After she left, the gang members of the MS-13 tortured and killed her cousin [REDACTED], with whom [REDACTED] had a close relationship. [REDACTED] is in real and serious danger if she returns to El Salvador of future persecution based on the same protected characteristics. The factual situation and legal basis for [REDACTED]'s asylum application are outlined below and in the supporting documents previously submitted.

Alternatively and additionally, as a young girl who has experienced horrific persecution based on her protected characteristics, including rape at the tender age of six, as well as subsequent stalking, sexual violence, death threats, and other serious harm, [REDACTED] should be granted humanitarian asylum. [REDACTED] merits a grant of humanitarian asylum because (1) she can

show compelling reasons for not being able to return to El Salvador as result of the severity of her past persecution she has suffered, and (2) because she suffered past persecution on account of protected characteristics she possesses and has demonstrated a reasonable possibility of facing other serious harm if removed to El Salvador.<sup>1</sup>

In addition to being legally eligible for asylum, [REDACTED] merits a favorable exercise of discretion based on the compelling factors of her young age, her family ties in the United States, and her mental, and emotional health conditions, which require that she remain in the U.S., where she can continue to access essential, ongoing treatment.<sup>2</sup>

## II. SUMMARY OF THE FACTS

Since she was 6 years old, [REDACTED] has endured a string of targeted, severe, and life-threatening harm from individuals who have victimized her because she lacks any protection from her family or others and thus has been exposed to several forms of gender-related harm.

### A. During her childhood, [REDACTED] was raped at a very young age and learned that men can do what they want to young Salvadoran women with impunity

[REDACTED] was born on [REDACTED] 2002 in San Salvador, El Salvador to her father, [REDACTED] and her mother, [REDACTED]. Paola's parents separated when she was very young, and she lived with her mother in [REDACTED].<sup>4</sup> [REDACTED] mother left for the [REDACTED] States when [REDACTED] was 5 years old.<sup>5</sup> After her mother left El Salvador, [REDACTED] lived with her father and paternal grandmother.<sup>6</sup> [REDACTED] father was rarely present or active in [REDACTED] life. [REDACTED] was neglected by her father and this neglect left her paternal grandmother as the primary caretaker [REDACTED]

When [REDACTED] was 6 years old, while under the care of her maternal grandmother [REDACTED] [REDACTED], [REDACTED] was left alone with and raped by her older cousin, [REDACTED].<sup>8</sup> [REDACTED] left [REDACTED] alone with her cousin [REDACTED] who was about 11 or 12 years old at the time.<sup>9</sup> After raping [REDACTED], [REDACTED] told [REDACTED] that if she told anyone that he raped her, he would rape her again.<sup>10</sup> She was tormented emotionally and mentally from this abuse.<sup>11</sup> Even now, many years later, [REDACTED] continues to have nightmares from the rape.<sup>12</sup> She has attempted suicide and been hospitalized twice due to suffering this traumatic events as well as subsequent

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<sup>1</sup> 8 C.F.R. § 1208.13(b)(1)(iii)(A) and (B).

<sup>2</sup> *Matter of H-*, 21 I&N Dec. 337, 347-58 (BIA 1996).

<sup>3</sup> [REDACTED] Affidavit, ¶ 1, 7, 8

<sup>4</sup> *Id.* ¶6

<sup>5</sup> *Id.* ¶6

<sup>6</sup> *Id.* ¶10

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* ¶13

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

sexual assaults by the MS-13 members.<sup>13</sup> She is receiving therapy to monitor her mental and emotional health.

At a young age, [REDACTED] learned both from this traumatic experience and later from observing men in her community abuse women, that men can do whatever they want to young girls in El Salvador.<sup>14</sup> She observed similar abuse that her cousin [REDACTED] experienced from her boyfriend.<sup>15</sup> [REDACTED] would often go to a family friends' home to hide, but would ultimately return to live with her boyfriend.<sup>16</sup> It was clear to [REDACTED] that [REDACTED] belonged to her boyfriend.<sup>17</sup> [REDACTED]'s experience also further emphasized to [REDACTED] that her family could and would do nothing to protect the girls in their family from harm<sup>18</sup>. Observing this abuse to her cousin, [REDACTED], it was confirmed to [REDACTED] that women don't always have a say in what happens to them or to their bodies when they are around men.<sup>19</sup> [REDACTED] also knew, from her experience and from [REDACTED]'s, that she could not trust her family to protect her from harm she faced as a female child.<sup>20</sup> It was her own family that left her unaccompanied with her rapist.<sup>21</sup> It was a family member who raped her.<sup>22</sup> [REDACTED]'s father knew about the violence [REDACTED] was facing, but neither he nor their other family members protected [REDACTED] from this ongoing abuse.<sup>23</sup>

When [REDACTED] was about 8 years old, her family moved her from her father's house in [REDACTED] to live with her maternal grandmother, [REDACTED], in the [REDACTED] neighborhood in [REDACTED].<sup>24</sup> When [REDACTED] was about ten years old, her cousin [REDACTED], whom she affectionately refers to as [REDACTED] moved in with [REDACTED] and [REDACTED].<sup>25</sup> [REDACTED] would see her father on the weekends.<sup>26</sup> His home was about a 30-minute walk from her home in [REDACTED], and [REDACTED] would often walk to his home alone on the weekends.<sup>27</sup> [REDACTED] already felt as if she wasn't protected, but the constant shifts in guardians and moving around, made [REDACTED] feel as though she did not have a home or that she wasn't wanted.<sup>28</sup>

[REDACTED] was often bullied at school because of her lack of familial protection and supervision.<sup>29</sup> The other students would take her lunch and hit her when teachers weren't around.<sup>30</sup> One girl in particular, who bullied [REDACTED] the most, would tease [REDACTED] and ask, "Where

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<sup>13</sup> *Id.* ¶ 54

<sup>14</sup> *Id.* ¶ 15

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* ¶ 5

<sup>21</sup> *Id.* ¶ 13

<sup>22</sup> *Id.* ¶ 16

<sup>23</sup> *Id.* ¶ 15

<sup>24</sup> *Id.* ¶ 17

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* ¶ 18

<sup>27</sup> *Id.* ¶ 17

<sup>28</sup> *Id.* ¶ 18

<sup>29</sup> *Id.* ¶ 19, 20

<sup>30</sup> *Id.* ¶ 19

are your parents? Where is your mother? What about your father?”<sup>31</sup> Her parents never came to her school, never met with teachers, and did not even come to her graduation.<sup>32</sup> They would call her “*huerfano*,” a Spanish word for orphan, because her family was clearly not an active part of Paola’s life.<sup>33</sup>

### **B. MS-13 Persecution**

When [REDACTED] was about 11 years old, gang members violently murdered [REDACTED]’s cousin, [REDACTED] in 2013.<sup>34</sup> [REDACTED] found out about her cousin’s death on Facebook.<sup>35</sup> Shortly after this attack, the MS-13 gang began to target [REDACTED] and her family.<sup>36</sup>

On [REDACTED], 2014, [REDACTED]’s maternal grandmother passed away from a respiratory attack.<sup>37</sup> After her grandmother’s death, [REDACTED] continued to live with her [REDACTED].<sup>38</sup> After her grandmother died, [REDACTED] started to walk to school with her friends or by herself.<sup>39</sup> Her friends all lived with their parents, and [REDACTED] was the only person in her social circle who didn’t live with either her mother or father.<sup>40</sup> The walk to school was about 20 minutes.<sup>41</sup> Because she was sad about her grandmother’s death, [REDACTED] would often walk to school by herself.<sup>42</sup> In [REDACTED] 2015, [REDACTED] was walking to school by herself when an MS-13 gang member approached her.<sup>43</sup> He was bigger than her and looked to be about 15 years old. He was affectionate and very nice at first.<sup>44</sup> He asked her to stay home from school and hang out with him instead.<sup>45</sup> [REDACTED] was frightened. She had overheard other people in her neighborhood say that the gang member was a leader in the neighborhood chapter of the MS-13.<sup>46</sup> She immediately thought about how the gangs had killed her cousin [REDACTED].<sup>47</sup> She decided to be brave and told him no.<sup>48</sup> He got angry but left her, that time.<sup>49</sup>

After the first encounter, the same gang member, accompanied by 3 other MS-13 gang members, began to follow [REDACTED] to and from school almost every day.<sup>50</sup> They were all in their

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<sup>31</sup> *Id.* ¶20

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See Supporting Documents Index, Tab B, [REDACTED]

<sup>35</sup> See Supporting Documents Index, Tab B, [REDACTED], El Salvador.com (March 3, 2013) at pp. 24-26

<sup>36</sup> Paola’s Affidavit, ¶28

<sup>37</sup> *Id.* ¶27

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* ¶28

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* ¶29

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* ¶32

late teens.<sup>51</sup> [REDACTED] knew they were MS-13 members because her neighborhood was their territory.<sup>52</sup> They painted “MS-13” or sometimes just “MS” on the walls.<sup>53</sup> They would also paint “503” which was the area code for the neighborhood.<sup>54</sup> This number also represented their chapter of the MS-13.<sup>55</sup> When [REDACTED] would see them waiting for her she became so nervous that she would shake.<sup>56</sup>

When the MS-13 gang members approached [REDACTED] on her way to school they hugged her and kissed her against her will.<sup>57</sup> They would tell her that she was belonged to them.<sup>58</sup> Scared and disgusted, she would try to push them away.<sup>59</sup> These repeated sexual assaults triggered memories of the rape by [REDACTED] as a young child.<sup>60</sup> The gang’s sexual assaults made her feel nasty and unprotected.<sup>61</sup> When she would say “No!” they would get angry and say, “You belong to us!”<sup>62</sup> They told [REDACTED] to join the gang and said that, if she reported them to the police, they would kill her and her [REDACTED].<sup>63</sup>

She eventually did decide to tell her [REDACTED] about the gang’s threats and sexual assaults.<sup>64</sup> When she told her [REDACTED] about the threats, [REDACTED] shared with her that the gang members had been making threatening phone calls to their home.<sup>65</sup> In [REDACTED] 2015, four gang members came to their house.<sup>66</sup> They demanded of [REDACTED]’s aunt that [REDACTED] become the gang’s girlfriend.<sup>67</sup> [REDACTED] told them no, and they left angrily.<sup>68</sup> The MS-13 continued to make threatening phone calls and to follow [REDACTED].<sup>69</sup> The gangs had decided that [REDACTED] was a gang girlfriend and therefore their property, regardless of what her [REDACTED] had told them.<sup>70</sup>

In [REDACTED] 2015, [REDACTED] fled to her father’s house in the [REDACTED] neighborhood, which was about a 30-minute walk from her [REDACTED]’s home.<sup>71</sup> [REDACTED] thought if she stayed at her father’s for good the gangs would leave her alone and stop threatening her.<sup>72</sup> She did not alert her family of her plan to avoid danger because she thought her family could do nothing to protect

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<sup>51</sup> *Id.* ¶30

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* ¶32

<sup>57</sup> *Id.* ¶31

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* ¶32

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* ¶33

<sup>67</sup> *Id.* ¶34

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* ¶37

<sup>71</sup> *Id.* ¶34

<sup>72</sup> *Id.*

her.<sup>73</sup> Instead, she told her family that she was going to stay with her father so that she could be closer to her [REDACTED].<sup>74</sup> Five days after her arrival, the MS-13 sent a messenger to her father's house.<sup>75</sup> The messenger boy waited until after [REDACTED]'s father had left for work and her stepmother had left to go grocery shopping.<sup>76</sup> [REDACTED] was watching her sister alone when the boy came to the door.<sup>77</sup> [REDACTED] discovered the boy was a part of the MS-13 because he had a tattoo on his upper shoulder that said "MS-13."<sup>78</sup> The boy told [REDACTED] that if she did not return to the [REDACTED] the neighborhood, the gang members would kill her half-sister, [REDACTED].<sup>79</sup> The gang members also told [REDACTED] that she cannot just leave the [REDACTED] neighborhood, because she belonged to the gang.<sup>80</sup> She only said, "Okay" but then closed the door and cried.<sup>81</sup> Faced with the impossible choices between danger to her sister or danger to her own self, [REDACTED] decided to keep her sister safe and to return to the [REDACTED] neighborhood.<sup>82</sup>

The next day, [REDACTED] returned to her aunt's house.<sup>83</sup> She did not tell anyone about her encounter with the gang member, because she did not think that her father or anyone else in her family could do or would do anything to protect her.<sup>84</sup> Because [REDACTED]'s father was not a consistent presence in [REDACTED]'s life and because he neglected [REDACTED] while she lived in El Salvador, [REDACTED] did not trust her father to protect her.<sup>85</sup> While her [REDACTED] had cared for [REDACTED], she saw that the gangs did not respect her aunt's authority in her own home.<sup>86</sup> When she returned the gang members approached her angrily and grabbed her arm.<sup>87</sup> They said that she belonged to them. Her aunt tried to get them to leave [REDACTED] alone, but they ignored her.<sup>88</sup> The MS-13 members emphasized that [REDACTED] needed their permission to leave or go somewhere.<sup>89</sup> [REDACTED] knew that neither her aunt nor any other adult could protect her from the MS-13, so she again agreed to their demands in order to survive.<sup>90</sup>

In [REDACTED] 2015, [REDACTED]'s aunt decided to report the MS-13 members to the police.<sup>91</sup> [REDACTED] and her [REDACTED] drove to San Salvador to report the calls and assault, in order to seek protection.<sup>92</sup> They returned home the same day.<sup>93</sup> The next morning, five male gang members

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<sup>73</sup> *Id.* ¶36

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* ¶35

<sup>76</sup> *Id.* ¶34

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* ¶36

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* ¶37

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> See Supporting Documents, Tab B, [REDACTED]

<sup>92</sup> [REDACTED] Affidavit, ¶38

<sup>93</sup> *Id.* ¶39

from the MS-13 came to [REDACTED]'s home.<sup>94</sup> They pushed past [REDACTED], who told the gangs that [REDACTED] wasn't home.<sup>95</sup> They found [REDACTED] in the bedroom and held [REDACTED] down.<sup>96</sup> They told her aunt that the police had told them about the report.<sup>97</sup> [REDACTED] denied making the report.<sup>98</sup> They began to search the house. [REDACTED] was so terrified; she knew that both she and her aunt were going to die.<sup>99</sup> Once they found the copy of the report, they began to beat [REDACTED].<sup>100</sup> They kicked her legs and slapped her in the face, while the others held [REDACTED] down.<sup>101</sup> The members said that if [REDACTED] or her aunt ever reported to the police again, they would return and kill them.<sup>102</sup> After this happened, [REDACTED]'s fear of torture and death at the hands of the MS-13 grew.<sup>103</sup> [REDACTED] stopped attending school and rarely left the house, out of fear regarding the gang's reprisals for the police report and of their escalating demands and methods of forcing her to comply with the gang girlfriend role they had ascribed to her.<sup>104</sup>

### C. [REDACTED] Flees El Salvador

[REDACTED] fled El Salvador later that month.<sup>105</sup> [REDACTED] denied the advances of the gang and looked to her guardian, [REDACTED], for protection when the gang demanded that [REDACTED] become the gang's girlfriend.<sup>106</sup> [REDACTED] attempted to protect [REDACTED] by telling the gang that [REDACTED] would not be the MS-13's girlfriend, but the gang continued to torment and threaten [REDACTED].<sup>107</sup> [REDACTED] attempted to move away from the gang by abruptly moving in with her Father, but the MS-13 gang followed her and threatened her family's life if she did not return to live with her [REDACTED] in their territory.<sup>108</sup> [REDACTED] sought the protection of the government by filing a police report, and that resulted in the MS-13 gang members breaking and entering her home, and physically assaulting her and [REDACTED], while issuing a death threat.<sup>109</sup> As such, [REDACTED] felt that her only option to save her life was to flee her country.

[REDACTED] was found by immigration officials in Veracruz, Mexico and was deported from Mexico to San Salvador.<sup>110</sup> The day after she arrived in El Salvador, she fled for the U.S. once again.<sup>111</sup> She entered the U.S. on [REDACTED], 2015.<sup>112</sup> [REDACTED]'s mother did not know she was traveling to the U.S. until she was in CBP detention.<sup>113</sup>

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<sup>94</sup> *Id.* ¶40

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* ¶40-41

<sup>104</sup> *Id.* ¶ 41

<sup>105</sup> *Id.* ¶42

<sup>106</sup> *Id.* ¶33

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* ¶34-35

<sup>109</sup> *Id.* ¶ 38, 40

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* ¶ 44

<sup>113</sup> *Id.*

**D. Continued Persecution of [REDACTED] by the MS-13**

In [REDACTED] 2015, [REDACTED]'s father told her that MS-13 gang members had come to his house on multiple occasions asking about [REDACTED]'s whereabouts.<sup>114</sup> [REDACTED] spoke with her father again in [REDACTED] 2016, and he shared with her they still ask about her and also that they say that they will find out where she is.<sup>115</sup>

In [REDACTED] 2015, [REDACTED]'s paternal cousin, [REDACTED], was murdered.<sup>116</sup> He was 18 years old, and was one of [REDACTED]'s closest relatives and cousins.<sup>117</sup> She spent a lot of time with [REDACTED], and the MS-13 gang knew this.<sup>118</sup> The gang members tortured [REDACTED] cut off his fingers, and then finally shot him.<sup>119</sup> [REDACTED]'s mother, [REDACTED], told [REDACTED] that the gang members asked [REDACTED] for information about [REDACTED]'s whereabouts, and [REDACTED] refused to tell them anything.<sup>120</sup> [REDACTED]'s grandmother [REDACTED], told [REDACTED] that at [REDACTED]'s funeral the MS-13 gang members came to the funeral.<sup>121</sup> They announced that if the family did not give information about [REDACTED] that they would continue do things like this.<sup>122</sup> No one in [REDACTED]'s family has filed any other police report after the one that [REDACTED] and [REDACTED] filed out of fear of being harmed or killed.<sup>123</sup>

**E. COUNTRY CONDITIONS**

**1. The Mara Salvatrucha is a transnational criminal organization that overwhelms the country of El Salvador.**

Several gangs exist in El Salvador and have effectively rendered the government and police irrelevant.<sup>124</sup> Gangs operating in El Salvador include the Mara 18 and the MS-13.<sup>125</sup> The Salvadoran government particularly lacks the ability to control the organized, powerful MS-13 transnational criminal organization.<sup>126</sup> Given its status as an "extremely violent and dangerous gang responsible for a multitude of crimes that directly threaten...countries throughout Central America," the U.S. Department of the Treasury, aided by information from the Department of

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<sup>114</sup> *Id.* ¶46; See also Supporting Documents Index, Tab A, [REDACTED] Applicant's father

<sup>115</sup> [REDACTED] Affidavit, ¶52

<sup>116</sup> See Supporting Documents Index, Tab B, [REDACTED]

<sup>117</sup> [REDACTED] Affidavit, ¶47

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* ¶48

<sup>120</sup> *Id.* ¶50

<sup>121</sup> *Id.* ¶51

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> See Supporting Documents Index, Tab C, Declaration of Dr. Roberto Rodriguez Melendez (2014), pp. 40, 42; See United Nations High Commissioner for Refugees, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador* (March 2016), pp. 82

<sup>125</sup> *Id.* p. 85

<sup>126</sup> Rodriguez, *supra* note 124 at pp. 42



Homeland Security, designated the MS-13 as a significant transnational criminal organization.<sup>127</sup> In 2015, the Department reiterated, as part of expanding its sanctions against the MS-13, that the “MS-13 ranks among the most dangerous and rapidly expanding criminal gangs worldwide.”<sup>128</sup> Citing the Mara Salvatrucha's "organized and systemic exercise of violence" and efforts to claim government powers as their own, the Supreme Court of El Salvador has labeled the MS-13 as a terrorist group.<sup>129</sup>

El Salvador, a country ten times smaller than Minnesota (8,124 mi<sup>2</sup> v. 86,943 mi<sup>2</sup>), suffers immensely from the gang violence that overwhelms it. Although El Salvador is the smallest country in Central America, it has a huge concentration of gang members who are about 50,000 and nearly one in 10 Salvadorans depend on the gang.<sup>130</sup>

**2. Mara Salvatrucha exercises such strong control over its territories that it has the power to effectively restrict the movement of individuals within its territories as its members wish.**

El Salvador is divided into gang neighborhoods, known as *cliques*.<sup>131</sup> The gangs fight over the neighborhoods, in an effort to gain control of as many neighborhoods as possible and claim them as their own territory.<sup>132</sup> Residents in areas controlled by transnational criminal gangs suffer restriction on their freedom of movement to enter or leave their neighborhood, for example, teachers and students who travel to a school in another neighborhood are often asked by gang members to provide information about the neighborhood where they live.<sup>133</sup> The control of the gang in some neighborhoods is so deep that they are able to impose rules and procedures that a person must follow when entering the neighborhood.<sup>134</sup> For a woman whom the gang wishes to control, it will be next to impossible to leave a neighborhood controlled by a transnational criminal gang and move to another area; the transnational criminal gangs can locate that person in less than 24 hours because they can access an efficient nationwide network of contacts.<sup>135</sup> Also, when a new person arrives in a community controlled by gangs, they tend to require that the person present his or her national identification document in order to identify where they come from.<sup>136</sup> If the territory belongs to the same gang, the gang members will know if that person has problems with the gang in the original neighborhood, but if the person comes

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<sup>127</sup> See Supporting Documents Index, Tac C. U.S. Department of the Treasury, *Treasury Sanctions Latin American Criminal Organization* (October 11, 2012), pp. 312

<sup>128</sup> *Id.*

<sup>129</sup> See Supporting Documents Index, Tab C. Marcos Aleman, *El Salvador's Supreme Court declares gangs terrorist groups*, The San Diego Union-Tribune (August 24, 2015), pp. 64-65.

<sup>130</sup> See Supporting Documents Index, Tab C, Jonathan Watts, *One Murder Every Hour: How El Salvador became the homicide capital of the World*, The Guardian (August 22, 2015), pp. 322

<sup>131</sup> United Nations High Commissioner for Refugees, *supra* note 124 at pp. 82

<sup>132</sup> *Id.*

<sup>133</sup> See Supporting Documents Index, Tab C, Canada: Immigration and Refugee Board of Canada, *El Salvador: Information Gathering Mission Report – Part 1. Gangs in El Salvador and the Situation of Witnesses of Crime and Corruption*, September, 2016, pp. 332

<sup>134</sup> *Id.* at 331

<sup>135</sup> See supporting Documents Index, Tab C, Immigration and Refugee Board of Canada, *El Salvador: Information Gathering Mission Report - Part 2. The Situation of Women Victims of Violence and of Sexual Minorities in El Salvador* (September, 2016) at pp. 358

<sup>136</sup> *Id.* at pp. 357.

from a territory controlled by a different gang, he may be perceived as an enemy and might be killed.<sup>137</sup> El Salvador is a very small country and it is only a matter of time before the gangs would find someone who tried to relocate.<sup>138</sup>

**3. The Salvadoran police are both unable and unwilling to protect [REDACTED] and similarly situated victims of gender-related gang violence from the Mara Salvatrucha.**

Corruption is a systemic problem among police and other authorities in El Salvador and many police departments and officers have ties to the gangs.<sup>139</sup> Salvadorans who report to the police about the criminal activities of the gangs put themselves in danger of increased persecution, rather than prosecution or justice.<sup>140</sup> Numerous sources report that the judicial system is inefficient and subject to corruption and impunity at every level.<sup>141</sup> As a result, many Salvadoran citizens are justifiably hesitant to seek assistance and do not believe that the police will take any action to pursue gang members.<sup>142</sup>

Law enforcement officers are specifically targeted by transnational criminal gangs such as the Mara Salvatrucha. The FBI reported that in 2015, “55 police officers were assassinated by the gangs, along with 18 military officers, six corrections officers, one prosecutor, and one judge” and also cited a statement by the Salvadoran Attorney General saying that the gangs are using military-grade weapons against the police, military and prosecutors.<sup>143</sup>

Many crimes, including homicide, forced disappearances, kidnappings, and widespread violence against women go largely unreported to the Salvadoran police by victims out of fear of retribution and due to a lack of confidence in authorities.<sup>144</sup> Expert Witness Roberto Melendez reports, in his attached statement:

“The high rate of violence far outpaces the limited resources of the Salvadoran justice system...The gang violence therefore is a major of cause of an exceedingly high impunity rate in the Salvadoran justice system, calculated to be 97% for

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<sup>137</sup> *Id.* at pp. 358.

<sup>138</sup> See Supporting Documents Index, Tab C, Declaration of Dr. Roberto Rodriguez Melendez (2017), pp. 432

<sup>139</sup> United Nations High Commissioner for Refugees, *supra* 124 at pp. 95

<sup>140</sup> Rodriguez, *supra* 138 at pp. 430

<sup>141</sup> United Nations High Commissioner for Refugees, *supra* note 124 at pp. 96; See Canada: Immigration and Refugee Board of Canada, *supra* 135 at pp. 356 (citing many sources and organizations comments, “ORMUSA (Salvadoran Women’s Organization for Peace) indicated that “impunity for gender-based violence remains a problem and the government does not take steps to improve the situation” ORMUSA also stated that “out of 978 cases of violence against women reported in 2014, only 4 resulted in convictions” and “[o]nly 5 to 7 percent of all complaints made before authorities result in conviction” as said the Salvadoran Office of the Ombudsperson for the Defense of Human Rights).

<sup>142</sup> United Nations High Commissioner for Refugees, *supra* note 124 at pp. 95; See Canada: Immigration and Refugee Board of Canada, *supra* note 135 at pp. 355 (“Several interlocutors noted that violence against women and domestic violence are underreported in El Salvador. Women do not report violence to the authorities because of lack of confidence and the widespread belief that the criminal justice system is ineffective and that perpetrators were unlikely to be prosecuted. Women and young girls who are subjected to physical and sexual abuse by gang members are reluctant to report it because of fear of reprisal, as they can be seen by gang members as police informants.”).

<sup>143</sup> See supporting Documents Index, Tab C, Federal Bureau of Investigations, *Transnational Gangs: Understanding the Threat*, 2016, pp. 368.

<sup>144</sup> *Id.*

homicides...Because the vast majority of crimes are never prosecuted, there is a general lack of trust that the justice system can effectively respond, or indeed respond at all, to the violence and other.”<sup>145</sup>

As a result of the subservient role of children within the patriarchal Salvadoran society, Melendez remarks that the rate of impunity for crimes committed against children is even higher than the rate of impunity for crimes committed against the general public.<sup>146</sup> Besides, the Salvadoran government does little to protect children because children claims depend on their caregivers;<sup>147</sup> children claims are dismissed by the police as an effect of the patriarchal norms and also because crimes against children from a poor neighborhood controlled by gangs are viewed as “inter-gang violence” by the police officers.<sup>148</sup>

The Salvadoran government drafted and enacted a statute known as LEPINA (the Law for the Integrated Protection of Children and Adolescents), but it failed to implement and enforce the statute. Roberto Rodriguez Melendez was one of the drafters of the LEPINA as member of a team composed by UNICEF experts. He concluded that the LEPINA lacked the reform needed to address the gang problem against children. Also, he explained that the lack of implementation is because “the LEPINA’s vision of children’s rights runs contrary to the established cultural norms, it confronted resistance beginning in the drafting process and through the law/s implementation, and this resistance continues today.”<sup>149</sup>

#### **4. The Mara Salvatrucha routinely targets young women in El Salvador for “gang girlfriend,” or sexually servient roles in which they are subject to repeated, gender-based violence.**

El Salvador is a patriarchal society, in which females are viewed by many within society as subordinate to men, or as property of men, and subject to various types of violent and abusive behavior from males.<sup>150</sup> Salvadoran women are frequently murdered, raped, and physically abused.<sup>151</sup> The Salvadoran police and judiciary system generally fail to respond to reports of violence against women, making such abuse and violence all the more rampant as perpetrators know they can act with impunity in perpetrating crimes against women.<sup>152</sup>

<sup>145</sup> Rodriguez, *supra* note 124, at pp. 42

<sup>146</sup> *Id.*

<sup>147</sup> See Rodriguez, *supra* 138 at pp. 431

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at pp. 434

<sup>150</sup> Rodriguez, *supra* note 124 at pp. 35-36, 38; Rodriguez, *supra* 138 at pp. 424, 426; See Canada: Immigration and Refugee Board of Canada, *supra* note 135 at pp. 355 (quoting Norma Virginia Guirola De Herrera Institute for Women’s Studies) (“societal attitudes toward women are “sexist and misogynist” and “patriarchal”, which foster the conditions that lead to violence against women”).

<sup>151</sup> See Supporting Documents Index, Tab C. Sarah Kinoshian et al., Latin American Working Group, *El Salvador’s violence: Not easy Way Out* (2016), pp. 60-61

<sup>152</sup> *Id.* at pp. 61-62; See Supporting Documents Index, Tab C. Latin American Working Group, *How Violence Affects Women in El Salvador* (February, 2016), pp. 128

The attached documentation documents the practice by Central American criminal organizations of targeting women and girls for “gang girlfriend” type roles in which they are forced to serve as the sexual property of the gang.<sup>153</sup> According to Urmila Bhoola, the UN Rapporteur for Contemporary Slavery, the manner in which these forced sexual relationships operate in practice can be categorized as modern day slavery, made possible by the “deeply patriarchal power structures that prevail in [Central America].”<sup>154</sup> Amnesty International in 2016 called on the Northern Triangle countries to invest resources in protecting the safety of the women and girls frequently subjected to these forced sexual relationships.<sup>155</sup>

Young women and girls targeted by the gangs are known as *jainas*.<sup>156</sup> The UN’s Special Rapporteur for Contemporary Slavery, Ms. Bhoola, has observed that gang culture replicates the Salvadoran *machismo*, or chauvinism, throughout their operations, claiming male “ownership” over female bodies and forcing females they target into subservient activities within the group, including “conjugal visits” to gang members in prison “as an extreme form of sexual exploitation and human degradation”.<sup>157</sup> The prevalence of gangs in El Salvador has implications for women and girls that relate directly to their gender, as gang members are particularly likely to victimize females by forcing them into abusive domestic relationships or otherwise physically and sexually abuse them.<sup>158</sup> The Salvadoran education ministry reported that 66,000 Salvadoran girls changed or quit school in 2014 and 2015.<sup>159</sup> Many reports from Salvadoran agencies reveal that female children experience twice the rate of sexual abuse as do adult female.<sup>160</sup> ORMUSA (Salvadoran Women’s Organization for Peace) indicates, “gang members control not only territories, but families living in those territories.” Women are considered to be the “property” and “trophies” of gang members. Women and girls are forced to become “girlfriends” of gang members; they know that, if they refuse a gang member’s advances, the likely result is death.”<sup>161</sup> Women targeted as property or girlfriend of gang are condemned to that status forever because of the gangs’ view of that status as permanent and ability to force them to remain in the territory of the gang that has selected them to perform this role. Other actors in Salvadoran society also identify these women as “gang girlfriends.” For example, death squads formed by police officers are targeting and killing persons perceived as gang girlfriends.<sup>162</sup>

## 5. MS-13 targets children in El Salvador who lack family protection

Dr. Roberto Melendez in his expert declaration on the situation of violence against children in El Salvador, highlights that because of the sophisticated network of transnational gangs in El Salvador, like the MS-13, once a child becomes a gang’s target for forced labor, violence, recruitment, or retaliation, it is difficult for the child to avoid danger or for the

<sup>153</sup> *It’s a Crime to be Young and Pretty*, The Guardian, November 23, 2016, attached here

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> Rodriguez, *supra* 138 at pp. 432

<sup>157</sup> Supporting Documents Index, Tab C, *It’s a crime to be young and pretty: girls flee predatory Central America* gangs, The Guardian, (November 23, 2016), pp. 314

<sup>158</sup> Latin American Working Group, *supra* 152 at pp. 126-127

<sup>159</sup> *It’s a crime to be young and pretty*, *supra* 154 at pp. 315

<sup>160</sup> Rodriguez, *supra* 138 at pp. 426

<sup>161</sup> See Canada: Immigration and Refugee Board of Canada, *supra* 135 at pp. 355.

<sup>162</sup> See Supporting Documents Index, Tab C, *What we have now is a civil war*, The Washington Post (October 28, 2016), pp. 381

government to offer effective protection.<sup>163</sup> Dr. Melendez also distinguishes what happens specifically to young women who are similarly targeted by gangs, as [REDACTED] was by the MS-13.

“Young women and girls are [also] targeted by the gangs, and in line with the broader social gender inequalities, these girls are often targeted to be sexually exploited. Girls are taken by the gangs to be trafficked for commercial sex acts, forced into prostitution rings that are ever present within jails, or kidnapped and raped by groups of gang members, sometimes ending in death. Other girls as young as 11 are forced to become sexual partners of the cell leader for extended periods.”<sup>164</sup>

Many accounts also confirm that the Mara Salvatrucha prefers to target young people lacking adult protection.<sup>165</sup> Disintegrated families, often because of parents who migrated to the United States as [REDACTED]’s mother did, make children more vulnerable to gang violence through sex trafficking, labor exploitation, and physical violence.<sup>166</sup> Moreover, children’s police reports generally need to be filed by their caregivers<sup>167</sup> to avoid dismissal.<sup>168</sup> Family protection is the main way of protecting children in El Salvador, for example, parents usually locked their children in home for preventing them of being targeted by the gangs.<sup>169</sup>

MS-13 gang violence has been pervasive in [REDACTED], El Salvador, [REDACTED]’s region of the country, for many years.<sup>170</sup> In fact, gang members violently murdered [REDACTED]’s cousin, [REDACTED] in 2013.<sup>171</sup> Shortly after this attack, the MS-13 began to target [REDACTED] and her family. One of the reasons why the MS-13 is so strong in [REDACTED] is because the gang leaders operate from the jails,<sup>172</sup> and [REDACTED] has one of the main jails for gang members.<sup>173</sup>

<sup>163</sup> See Rodriguez, *supra* note 124 at pp. 41

<sup>164</sup> *Id.* pp. 43

<sup>165</sup> See Rodriguez, *supra* 138 at pp. 428 (“the gangs also seek out certain groups of children for forced recruitment, retaliatory violence, and other harm”); See Supporting Documents Index, Tac C, Matt Chandler, *e.g.*, *Fear, uncertainty prevail on San Salvador’s increasingly violent streets*, Aljazeera America (May 7, 2015) at pp. 387 (Interviewing Ivonne Fuentes, mother of a murdered son by the gang) (“They see potential in certain young people”, she said. “They want the kids to want to be part of them. Usually they look for kids walking the streets, kids whose families aren’t interested, who aren’t loved. They take advantage and tell them they can give them what they’re missing.”); Kate Linthicum, *Why tens of thousand of kids from El Salvador continue to flee to the United States*, Los Angeles Times (February 16, 2017), pp. 413-414 (Showing how a child was targeted after his parents went to the United States); See Supporting Documents Index, Tac C, Kayli Plotner, *El Salvador’s Orphans: Broken Homes, Broken Country*, Pulitzer Center (March 11, 2016), pp. (Gangs often try to recruit and approach girls inside the orphanage), pp. 416

<sup>166</sup> Rodriguez, *supra* 138 at pp. 424, 426

<sup>167</sup> See Rodriguez, *supra* 138 at pp. 431

<sup>168</sup> *Id.*

<sup>169</sup> Rodriguez, *supra* 138 at pp. 426

<sup>170</sup> See Supporting Documents Index, Tac C, Steven Dudley, *El Salvador Prisons and the Battle for the MS13’s Soul*, InsightCrime (February 16, 2016) at pp. 396-397 ([REDACTED] became one of the main MS-13’s headquarters for their gang leaders’ operations).

<sup>171</sup> See Supporting Documents Index, Tab B, [REDACTED]

<sup>172</sup> InsightCrime, *supra* 168 at pp. 396-397

<sup>173</sup> *Id.*

■■■■■, a young woman without effective familial protection and without government protection, would be powerless to face the retaliation of the Mara Salvatrucha, also known as MS-13, transnational criminal gang alone.

## **II. ■■■■■ is Not Statutorily Barred From Asylum**

■■■■■ filed for asylum within one year of her entry to the United States and was not resettled in another country prior to entering the U.S., nor has she applied for asylum in Canada. She has never previously applied for asylum. She has never committed any crimes and has never persecuted others. She has never rendered material support to an individual or organization that uses violence. Therefore, no statutory bars apply to ■■■■■'s case. Moreover, she is deserving of asylum in the exercise of discretion, as is further detailed below.

## **III. ■■■■■ Qualifies for Asylum**

### **A. ■■■■■'s past harm constitutes persecution**

The rape at the tender age of six and subsequent pattern of relentless stalking, sexual harassment, death threats from the MS-13, and severe harm to ■■■■■'s family members to force her to comply with their demands that ■■■■■ has suffered throughout her childhood and adolescence more than meet the standard of past persecution. The Board of Immigration Appeals has defined "persecution" as "a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985) (also noting that persecution may include mental suffering). The Eighth Circuit has further defined persecution as "[t]he infliction of death, torture, or injury to one's person or freedom . . ." *Ngure v. Ashcroft*, 367 F.3d 975, 989–990 (8th Cir. 2013). The Board of Immigration Appeals has established that rape, sexual abuse, and domestic violence constitute evidence of past persecution for an asylum claim. *Matter of Kasinga*, 21 I&N Dec. 357, 362 (BIA 1996);

The Asylum Officer Basic Training Course also recognizes rape as persecution.<sup>174</sup> Moreover, the asylum office recognizes that persecution encompasses more than just physical harm and that the receipt of threats over time causing a constant state of fear can rise to persecution.<sup>175</sup> Persecution can also be established through escalating intimidation and threats of physical violence or death. *See Thomas v. Ashcroft*, 126 S. Ct. 1613 (2006); *Smolniakova v. Gonzalez* 422 F.3d 1037, 1048-49 (9th Cir. 2005).

The evaluation of past persecution is not limited to harm to the applicant, but should also take into account harm to third parties perpetrated with the intention of harming the applicant. For example, harm to an asylum applicant's family members may constitute persecution of the applicant. *See e.g. Navas v. INS*, 217 F.3d 646, 658 (9th Cir. 2000) (considering as evidence of persecution not only applicant's arrest and death threats, but also beating of applicant's mother

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<sup>174</sup> Asylum Officer Basic Training Course, *Lesson 26: Female Asylum Applications and Gender-Related Claims* 16 (2009)

<sup>175</sup> *See* Asylum Officer Basic Training Course, *Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; Eligibility Based on Past Persecution* 16 (Mar. 6, 2009)

and murders of family members). Additionally, evidence of persecution of an applicant's family members is probative of a threat to the applicant. *Ananeh-Firempong v. INS*, 766 F.2d 621, 626 (1st Cir. 1985). Also, persecution may include "the deprivation of liberty, food ... or other essentials of life." *Barillas-Mendez v. Lynch*, 790 F.3d 787, 789 (8th Cir. 2015).

A minor's claim of persecution should take into account the age and development of the minor, and the resulting higher impact that persecution may have on a minor than an adult. As the Seventh Circuit has reasoned, age can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted. *Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir. 2004). The Department of Homeland Security Guidelines for Adjudicating Children's Asylum Claims also recognizes that the harm a minor fears or has experienced may rise to the level of persecution even if the same harm would not be considered persecution if suffered by an adult.<sup>176</sup>

Further, in evaluating persecution of a minor, an officer should consider harmful acts cumulatively and from a minor's perspective. *See e.g. Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2<sup>nd</sup> Cir. 2006) (the court recognized that this case would be rejected if the applicant would be an adult, but the harm amounted to past persecution because the applicant was a children during the time of the persecution)<sup>177</sup>; *Barillas-Mendez v. Lynch*, 790 F.3d at 789 ("Whether harm amounts to persecution depends on the "cumulative significance" of all instances of abuse"). The need to view events cumulatively is emphasized in the Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugee (Geneva 1992). The Handbook provides that: "taking isolated incidents out of context may be misleading." To properly determine whether circumstances in [REDACTED] life amounted to past persecution, an adjudicator must consider all incidents presented for their cumulative effect rather than analyzing each incident individually. Reviewing her persecution cumulatively and from the viewpoint of a young woman for whom the persecution she suffered caused her life to become a series of terrifying traumas, the harm suffered by [REDACTED] clearly rises above the level of persecution. The cumulative effect of [REDACTED] experience must be taken into account.

Moreover, UNHCR Guidelines recommend that adjudicators consider that minors may express fear in different ways due to their maturity levels and limited knowledge on the conditions surrounding their family and country.<sup>178</sup> The U.S. has adopted these same considerations in the Asylum Officer Basic Training Course (AOBTC). The AOBTC recognizes that there may be inconsistencies and gaps in the testimony of a minor. Even older children may not have mastered concepts relating to conventional systems of measurement for telling time or giving a chronological account of their trauma. Imprecise time and date recollection may be a common problem for children.<sup>179</sup> While [REDACTED]'s testimony was detailed, internally consistent,

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<sup>176</sup> USCIS Asylum Division, *Guidelines For Children's Asylum Claims* (March 21, 2009) at pp. 11-12, [https://cliniclegal.org/sites/default/files/AOBTC\\_Lesson\\_29\\_Guidelines\\_for\\_Childrens\\_Asylum\\_Claims\\_0.pdf](https://cliniclegal.org/sites/default/files/AOBTC_Lesson_29_Guidelines_for_Childrens_Asylum_Claims_0.pdf)

<sup>177</sup> See also *id.*

<sup>178</sup> Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (1997) at 9.1-8.10, <http://www.unhcr.org/publ/PUBL/3d4f91cf4.pdf>

<sup>179</sup> USCIS Asylum Division, *supra* 174 at pp. 30-33.

and consistent with the documentation she submitted, it should not be subjected to the same standard used to evaluate the credibility of an adult's testimony.

█'s credible account of the events she suffered, at the hands of her own family and the gang members of the MS-13, can serve to establish her claim of persecution without further corroboration. C.F.R. § 208.13 (a); *Matter of Mogharrabi*, 19 I&N Dec. 439, 443 (BIA 1987). However, █ has provided corroborating documentation, including a statement by her father confirming the threats received, letters from her psychologist and caseworker, and death certificates of cousins who were murdered by the MS-13.

At the age of 5, █'s mother left █ in the care of █'s neglectful father. At the age of 6, █ was raped by her older, male cousin. This rape was followed by the threat that if she ever told anyone, or sought help, he would rape her again. Not only did █ experience physical violence and domestic abuse by way of rape, but she also received a specific, credible threat that she would be subjected to the same egregious violence if she sought protection. Here, the persecution included not only an extremely violent form of harm against a young child, from a relative, from whom she only should have expected kindness and guidance, but also a threat that impacted █ psychologically for years to come. Indeed, this experience exacerbated the trauma █ experienced when she was subsequently subjected to sexual violence at the hands of the MS-13. Based on these incidents alone, █ can establish that she suffered past persecution.

Moreover, █ subsequently suffered years of physical violence and threats of death from the MS-13 gang members. █ learned the extreme level of violence of which the MS-13 was capable against herself and other children when █ was 11 years old and MS-13 members murdered her cousin █. After █' death, gang members began to follow █ to and from school. They would make menacing comments to her, touch her, kiss her and hug her against her will. Having suffered a previous unwanted sexual attack, █ was disgusted and terrified by their advances and tried repeatedly to make them stop. Each time she denied them or tried to push them away, they would get angry, become more physically forceful, and say that she belonged to them. █ attempted to escape this stalking behavior by fleeing to her father's home in █, a █ from the home where she had lived with her █. She had hoped the gangs would stop stalking her and threatening her Aunt once she moved. After █ had stayed at her father's home for only 4 or 5 days, an MS-13 gang member showed up at her father's home in █. The MS-13 gang member explicitly told her to return to █, and that if she did not the gang would kill her sister.

When █ returned to her aunt's home in █, El Salvador, █ was held down by the MS-13 members and witnessed the MS-13 members beat, slap, and kick her █, in punishment for making a police report in order to protect herself from further threats, stalking, and menacing and controlling behavior.

The gang's repeated, imminent threats and assaults against █ and her family's life, repeated attempts to exert total control over █ and daily stalking behavior and sexual harassment of █ on her way to and from school, led █ to flee El Salvador to escape being subjected to sexual slavery by the MS-13 gang and, if she refused, to death.



In addition, harm to [REDACTED]'s [REDACTED], [REDACTED]'s cousin [REDACTED], and threats of death against her younger sister, [REDACTED], all constitute persecution of [REDACTED]. The beating that [REDACTED] suffered was because the MS-13 wanted to compel [REDACTED] and her family to acquiesce to a forced sexual relationship with the MS-13 gang members to which they wished to subject [REDACTED]. They also threatened [REDACTED] that they would murder her younger sister [REDACTED] to compel [REDACTED] to remain completely under the control of the gang. The death threats that were made against [REDACTED], [REDACTED]'s younger half-sister, were in motivation to have [REDACTED] return to [REDACTED], under the MS-13's close watch and territorial jurisdiction. The torture and murder of [REDACTED], [REDACTED]'s cousin and best friend, was conducted because [REDACTED] would not share information as to [REDACTED]'s whereabouts. MS-13 gang members attended [REDACTED]'s funeral and stated that if the family did not share information about [REDACTED], they would continue to hurt the family. [REDACTED]'s family experienced physical violence, threats, and death because the gangs wanted to instill fear in both [REDACTED] and her family in order to compel [REDACTED] to comply with the gang girlfriend role to which they wished to subject her.

In sum, [REDACTED] suffered from escalating, traumatic emotional, physical, and psychological abuse in the form of relentless stalking and repeated death threats from the MS-13. All of these factors independently qualify as persecution and cumulatively surpass the threshold of establishing that [REDACTED] suffered persecution in the past.

**B. [REDACTED] Was Persecuted Based Upon Her Membership in Two Particular Social Groups.**

[REDACTED] was persecuted due to her membership in the particular social groups of Salvadoran girls viewed as property of the MS-13 gang and Salvadoran female children lacking effective familial protection. These particular social groups are based on immutable characteristics, and are sufficiently particular and socially distinct.

In the precedential case, *Matter of Acosta*, the Board of Immigration Appeals [hereinafter, "BIA"] established that particular social group membership requires that members of the group share a "common, immutable" trait. 19 I&N Dec. 211, 233 (BIA 1995). The BIA further explained that an immutable characteristic is a characteristic, such as sex, color, kinship ties, or past experience, that a member either cannot change, or that is so fundamental to the identity or conscience of the member that he or she should not be required to change it. *Id.*

The BIA has more recently expanded *Acosta* to add two additional elements to the PSG definition: 1) that the group is defined with particularity and (2) that it is socially distinct. *See Matter of M-E-V-G*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R*, 26 I&N Dec. 208 (BIA 2014). Both of [REDACTED]'s proposed groups meet all three of these requirements.

**1. Paola is a member of the particular social group of Salvadoran women viewed as the forced property and girlfriends of the Mara Salvatrucha**

The group of Salvadoran women viewed as the forced property and girlfriend of the Mara Salvatrucha is a qualifying particular social group for the following reasons. First, the

characteristics of being Salvadoran, a woman, and viewed as the forced property, or girlfriend, of the Mara Salvatrucha, are all common, immutable characteristics. Second, the group also has clear boundaries defining who falls within the group and who does not, and is socially distinct within Salvadoran society.

The BIA has expressly concluded that gender is an immutable trait under asylum law and has moreover opined that sex, as a shared characteristic, can constitute the sole basis of a social group. *Matter of Acosta*, 19 I&N Dec. at 233; *See also, Matter of Kasinga*, 21 I&N Dec. 357, 365-366 (BIA 1996). Indeed, in *Acosta*, the Board listed sex as a prototypical example of an immutable characteristic. *Matter of Acosta*, 19 I&N Dec. at 233. Finally, in *Matter of A-R-C-G-*, the BIA reasoned that the PSG proposed in that case should succeed in part because “the group is composed of members who share the common immutable characteristic of gender.” 26 I&N Dec. 388, 392 (BIA 2014). Also, the BIA reasoned that an intimate relationship can be immutable if the applicant demonstrates that she was unable to leave the relationship. *Id.* at 392-393. Moreover, in *Matter of A-R-C-G-*, the BIA focused on the religious, cultural, and legal constraints in the applicant's society that made her marital relationship an immutable factor, rather than on the mere fact that she was married. *Id.* at 393; *See also Matter of Sandra*, at 19 (BIA Nov 8, 2006) (unpublished) (in which the BIA recognized a group formed by young women from Guatemala who refuse to be the victims of sexual predation of gang members, stating that “respondent and other in this particular social group should not be forced to decide between becoming victims of gang member’s sexual demands and the consequences for not complying.”)

In [REDACTED]'s case, both the individual facts of her claim and country conditions demonstrate that being considered property or girlfriend of the gang is an immutable characteristic. It is a very common practice of the MS-13 to select women who live in gang-dominated areas of El Salvador to claim them as property of the gang. Once the gang selects a woman to perform this role, she will never be able to escape from the gang. Disregarding whether she decides to move to attempt to escape this designation or all other efforts that she may employ in order to escape, she is effectively marked as the gang's property forever. The police's inability to protect women who are subjected to this type of forced relationship can be seen in the extremely low rate of prosecutions of crimes involving sexual violence against women, and the numerous reports from civil society and international monitoring organizations that the Salvadoran police suffer from pervasive corruption and, in many cases, even work in concert with the gangs. [REDACTED]'s experience is consistent with these norms-whenver she attempted to escape or to protect herself, either by refusing to accept the role the gang chose for her, moving to a different area, or making a police report, the MS-13 members made it clear that they would accept none of those escape strategies, and that [REDACTED] would escape the gang girlfriend role only in death. Therefore, just as in *Matter of A-R-C-G-* many societal, cultural and legal factors specific to the society in the applicant's country of origin contributed to the applicant's inability to leave her marriage, many societal, cultural and legal factors constrain [REDACTED]'s ability to escape from the gang girlfriend role that the MS-13 gang forced upon her.

Second, a group comprised of Salvadoran women viewed as the forced property or girlfriends of the MS-13 gang complies with the particularity requirement. A group is particular if it "has particular and well-defined boundaries" such that it constitutes a "discrete class of

persons." *Matter of S-E-G-*, 24 I&N Dec. 579, 582, 584 (BIA 2008); *See also Matter of M-E-V-G-*, 26 I&N at 239 (in which the BIA reasoned that a group is sufficiently particular where there is "a clear benchmark for determining who falls within the group"). These boundaries must be defined by "commonly accepted definitions in the society of which the group is a part". *Id.* In *Matter of A-R-C-G-*, the BIA stated that the characteristics of female gender and inability to leave a relationship had commonly accepted definition within the Guatemalan society because those categories were informed by societal expectations about gender and subordination. 26 I&N Dec. at 393 (The BIA also referred to the applicant's marriage in finding her proposed social group sufficiently particular; however, the language used clearly shows that the BIA found particularity in each of the elements, given the highly analogous country conditions described in that case).

It is typically a simple inquiry to determine an applicant's gender. An adjudicator can learn the gender with which an applicant identifies simply by viewing her birth certificate, other identity documents, or simply the box selected on the first page of her Form I-589. Within Salvadoran society, it is easy to distinguish whether a person has been labeled as a property or girlfriend of the MS-13 gang. As was shown in the country conditions section, a girlfriend of the gang is treated by the gang by which she is selected as property. As long as she remains in her neighborhood, she will be treated as property and required to obey all the gangs' requirements of services and sexual favors or pay extremely severe consequences. If she leaves her neighborhood, she will keep her gang girlfriend status because the gang can use their sophisticated communication network to find her wherever she goes and force her to return. The gang's open treatment of gang girlfriends as sexual slaves and subordinates makes clear who belongs to this group and who does not.

Third, the proposed group is also socially distinct in El Salvador. The BIA stated that, to be sufficiently socially distinct, a proposed group must be "perceived as a group by society," meaning that it must be "set apart, or distinct, from other persons within the society in some significant way." *Matter of S-E-G-*, 24 I&N Dec. 579, 586 (BIA 2008). The BIA has explained that "members of a particular social group will generally understand their own affiliation with the group". *Matter of M-E-V-G-*, 26 I&N Dec. at 238. The perception by society that an applicant's proposed group is distinct or set apart can be shown by, among other factors, evidence of higher incidence of crime than against the rest of the population, through the passage of legislation to protect the members of the group, or media reports. *See e.g. Gathungu v. Holder*, 725 F.3d 900, 908 (8th Cir. 2013) (in which the court recognized the social visibility of the particular social group mostly because of the higher incidence of crime than the rest of the population); *See Ngugi v. Lynch*, 826 F.3d 1132, 1138 (8th Cir. 2016) (which recognized the passage of legislation to protect the members of the proposed group as significant evidence to show that Salvadoran society recognized the distinction between witnesses against a cartel from the rest of the society).

In this case, Salvadoran society clearly views forced girlfriends of MS-13 members as set apart from others. The Salvadoran society recognizes women as a vulnerable group distinguishable from the rest of the society. El Salvador has been characterized for its high rates of gender violence and the undervalued place of women in society. Country conditions reports reveal that multiples NGOs and governmental organizations have distinguished this particular

social group in their efforts to protect it, including the Norma Virginia Guirola De Herrera Institute for Women's Studies, the Salvadoran Women's Organization for Peace, and the Salvadoran Institute for the Development of Women. While these efforts have not led to safety for individuals within this social group, they do demonstrate that members of Salvadoran society perceive this group as vulnerable and needing protection. Moreover, members within the group are easily recognized by the very fact of their forced relationship with an MS-13 member. Members of Salvadoran society can observe the response when they, or other women they know or are acquainted with, attempt to leave the relationship. They see that punishment for such attempts is swift and severe. They can observe by the sexual servitude and other gender-related violence to which they are subjected what role they are expected to play within the MS-13. Moreover, El Salvador's country conditions reveal that even death squads, sometimes formed by police officers, are identifying and killing persons perceived as gang girlfriends.

Salvadoran society recognizes that young women who live or lived in a gang-dominated area are often claimed as property forever. The huge disproportion of violence between women and men has been identified as a critical problem in El Salvador. While El Salvador has laws criminalizing sexual violence against women, these statutes are rarely enforced because of the culture of *machismo* and male dominance and also because of the overwhelming situation of gang violence within El Salvador. Therefore, the existence of laws seeking to protect these women demonstrates only that the group is viewed within El Salvador as needing protection, but not that the government has either the political will or resources to protect these vulnerable women.

The proposed particular social group is highly analogous to the PSG approved in *A-R-C-G-*. The only remarkable difference between "married women in Guatemala who are unable to leave their relationship" and Salvadoran women viewed as the forced property or "girlfriend" of the MS-13 gang is that the facts of this case are even more perverse than *Matter of A-R-C-G-*, because a group of males is claiming property over [REDACTED] rather than a single man. Moreover, [REDACTED] never at any point consented to the relationship between [REDACTED] and the MS-13 gang members. Therefore, [REDACTED] is a member of a group that is perhaps even more vulnerable than the woman highly deserving of protection in *A-R-C-G-*, and is clearly the type of individual that Congress intended to protect in enacting U.S. refugee law.

**2. Paola was persecuted on account of her membership in the particular social group of Salvadoran girls lacking effective familial protection**

Alternatively, the particular social group of Salvadoran female children lacking effective familial protection fulfills the three elements required by the BIA to be considered a viable particular social group.

First, female children who lack familial protection share common, immutable characteristics. Both family membership and "shared past experience" have been identified as common, immutable characteristics by the Board of Immigration Appeals. *Matter of Acosta*, 19 I&N Dec. at 233. [REDACTED] cannot change that she was born into a family that would not protect her from the gangs and she cannot change her history as a child lacking this protection. Moreover, [REDACTED] is powerless to change her status as a child. As a child who is still under 18 years of age,

and stands out as lacking the adequate protection or supervision of adults tasked with caring for her, [REDACTED] will remain exceptionally vulnerable to Mara 13 gang violence based on this characteristic.

[REDACTED] cannot change her lack of effective familial protection. As a child, [REDACTED] was and is powerless to change the facts of her family's decisions regarding her care and supervision: that her mother left her at age 6, that her father was not involved in her development or growth, that she was moved from home to home on multiple occasions, that she was left alone often, or that she was without adequate protection from gangs or other persecutors. Additionally, [REDACTED] cannot be forced to give up her family affiliation, nor would it be possible for her to do so even if coerced. The United Nations Declaration of the Rights of the Child states that children are entitled to love and understanding from their families because it is essential "for the full and harmonious development of [their] personalit[ies]." Although [REDACTED] was entitled to this treatment, she could not force her family to provide it to her.

Second, the group of members of a family without effective familial protection is sufficiently particular, because it has clear boundaries between those within and outside the group, taking into account the social perspective and expectations within [REDACTED]'s society. Her community could easily identify who are within this class or outside, because the role of parents in Latin America, and in El Salvador specifically, has an enormous impact on a child's life. The attached declarations from Roberto Melendez, among other record evidence, discuss the enormously powerful role of parents in El Salvador. Those whose parents or other authority figures do not play this powerful role are easily observed within a culture where the norms governing families are so strong. Moreover, the facts of [REDACTED]'s life demonstrate that those in [REDACTED]'s society recognized her as lacking familial protection. For instance, [REDACTED] was bullied during her childhood because she was recognizable by those around her as lacking a parental presence. As such, within the context of Salvadoran society, the characteristics of gender, nationality, and the lack of family protection combined draw discrete boundaries around the proposed group.

[REDACTED]'s lack of effective familial protection or adult supervision also makes her socially distinct within her society of origin. In analyzing social distinction, courts have reasoned that members within the group will generally understand their own affiliation and also take into account evidence showing a higher incidence of crime than the rest of the population through "the passage of legislation to protect them, media reports (...). *Gathungu v. Holder*, 725 F.3d 900, 908 (8th Cir. 2013). The government's failure to protect certain groups may also reflect a social distinction between members of society who will receive societal protection and members who will not. *See* DHS' Supplemental Brief in *Matter of L-R-*, at 18 (April 13, 2009); *Matter of A-M-E- & j-g-u-*, 24 I&N Dec. 69, 74 (BIA 2007) (in which proof that members of the particular social group had been targeted in the past was considered by the court as evidence to establish the group's social distinction).

Members of the group of Salvadoran girls lacking family protection have suffered higher rates of violence within Salvadoran society because the culture of *machismo* has led to the undervalued place of women and children in Salvadoran society and a resulting high rate of gender-related violence and child abuse. As such young women lacking a strong familial

protector are perceived by Salvadoran society as more easily preyed upon for this type of harm, and thus face greater risk of higher incidents of gender-based harm, both within their families and from transnational criminal gangs within the country. The higher risk faced by women in these circumstances is well known in El Salvador and documented in the attached and previously submitted country conditions, revealing that this society perceives a meaningful distinction between members of families who have a strong familial protector from those who lack this element.

█'s experience is consistent with this larger reality within El Salvador and also demonstrates that she was socially distinct within her society due to her lack of familial protection. Because of █'s lack of effective protection she was identified and mistreated as an "orphan" which is a painful insult in a culture where the role of family is so essential. Moreover, the MS-13 clearly recognized █ as possessing the trait of membership in a family in which she lacked protection. For instance, █ was often followed and stalked by gang members when she traveled from place to place without supervision. Additionally, █'s sister, aunt and cousin were threatened rather than either of her parents in order to force her to comply with the gangs' demands.

Therefore, the proposed group complies with the requirements to be considered as a viable particular social group within El Salvador.

**3. Paola was persecuted by the MS-13 on account of her membership in these groups.**

The persecution █ experienced is based on her membership in two social groups, namely the fact that she is a Salvadoran woman and girls viewed as the forced property and girlfriend of the Mara Salvatrucha, and also because she is a Salvadoran girl lacking effective familial protection. Every instance of the persecution against █ was "on account of" her membership in these protected groups, such that they constitute "at least one central reason" for the persecution. 8 U.S.C. § 1158(b)(1)(B)(i).

The MS-13 groomed █ as a gang girlfriend, first pursuing her in a friendly manner and then escalating their threats and acts of sexual aggression. Despite █'s continued resistance, they repeated their statements and behavior that indicated that she was marked as theirs, whether she consented or not, and therefore felt entitled to continue this sexual aggression, surveillance, and control over her movements. When █ sought to escape from this control, they responded quickly and viciously, threatening to murder her younger sister if she would not comply with their demands. The gang members' demands that she seek permission to leave their territory, as well as their continuous monitoring of her behavior and repeated statements that she belonged to them demonstrate that █ was marked as property of the gang. Their continued threats against and inquiries to █'s family after her flight from El Salvador regarding her whereabouts demonstrate the permanent nature of this designation, and that the MS-13 gang continues to view █ in this category and she can expect to be punished for her attempts to resist it accordingly.

Finally, the modus operandi of the gang members in the persecution against [REDACTED] reveals that they were aware that [REDACTED] lacked family protection. How the gang acted reveals that they did not expect any restraint or resistance from [REDACTED]'s family. This shows that the gang did not fear any consequence coming from [REDACTED]'s aunt, because in El Salvador and in the gang members' minds, a woman cannot provide any protection to her family members. This is consistent with Melendez's observations. Melendez shares that because of high migration rates, children are often left in the care of third parties, sometimes for months or years at a time.<sup>180</sup> This is consistent with [REDACTED]'s experience of being transferred from one home and one caregiver to another throughout her childhood, never knowing who would be a permanent figure in her life to whom she could turn for guidance and protection. Under these conditions and isolated from parental supervision, these children are especially vulnerable to the most serious forms of abuse and harm.<sup>181</sup> This structure places female children and female adolescents in an especially vulnerable position, leading to high incidences of sexual violence and abuse at home, school, and in society.<sup>182</sup>

Because [REDACTED] is a female minor, adjudicators should consider the status and experiences of female minors her home country when determining refugee eligibility. This is because there are broader societal norms in El Salvador that embolden gang members to act with impunity and fearlessness. These societal norms are compounded by the El Salvadoran government's inability or willingness to intervene to protect these young women, leading to their particular vulnerability to the type of harm [REDACTED] suffered.

#### **5. The Salvadoran Government is unable and unwilling to protect [REDACTED].**

[REDACTED] has been persecuted by a non-state actor, the Mara Salvatrucha, from which the Salvadoran government was unwilling or unable to protect her. The country conditions reports filed with this application show that violence against women remains as a serious, pervasive problem in El Salvador. The reports clearly show that the Salvadoran government is crippled by corruption, institutional weakness, and limited resources while the MS-13 develops every day a better organization and grow in ranks and resources. Therefore, the Salvadoran police office is outstripped by the resources available to the MS-13.

Additionally, these materials demonstrate that the transnational criminal gangs in El Salvador, and the MS-13 in particular, frequently use the type of gender related violence [REDACTED] faced to subject young women to forced sexual relationships with gang members. Young women lacking adults who can protect them and accompany them as they move through public places are particularly at risk of being subjected to this type of violence. Salvadoran law enforcement is underfunded, outgunned, and pervasively corrupted by criminal gangs who prevent the police from effectively prosecuting crimes perpetrated by gangs using a combination of violence and bribes. This combination of factors means in practice that the Salvadoran law enforcement officers are unwilling and unable to effectively investigate and prosecute claims of violence against women, or to control the gangs that have taken over El Salvador.

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<sup>180</sup> See Rodriguez, supra 124 at pp. 35

<sup>181</sup> Id.

<sup>182</sup> Id. pp. 35-36

Melendez also shares that because of the cultural norms in El Salvador, where children are placed at the bottom of the Salvadoran social structure, the impunity rate for crimes against children are much higher than that of the general population. In fact, reporting gang crimes is more likely to result in gang retaliation than to result in adequate and effective response from the justice system.

█████'s own experience has taught her that she cannot avail herself to the protection of her country's government. After █████ and her aunt filed a police report regarding the threats against them, the MS-13 gang members broke into █████'s home, physically restrained █████, and brutally attacked her aunt.<sup>183</sup> The MS-13 gang members told █████ and her aunt that the police had told them about the police report that █████'s aunt had filed in response to the gang members' stalking and threats.<sup>184</sup>

The subsequent murder of █████'s cousin █████ and the threats against █████'s family at █████'s funeral show that the MS-13 gang members are motivated to continue to stalk and menace █████ even after she fled to the U.S., and consider her to still be their property<sup>185</sup>. The Salvadoran police protected neither █████ nor her family from this continued persecution. To be safe from a forced, violent sexual relationship with the MS-13 gang or alternatively from murder of herself and her family members if she refuses such a relationship, █████ must be allowed to remain in the U.S., where █████ is protected from the MS-13 by the international border between her and her persecutors. Both the cultural attitudes in El Salvador toward women and the Salvadoran government's inability to control Salvadoran gangs also allows MS-13 gang members to act without fear of consequences.

**6. Under the totality of the circumstances, it is not reasonable to require █████ to relocate within El Salvador.**

Whether it is reasonable to require an asylum applicant to relocate internally to avoid persecution is evaluated by looking at the totality of circumstances. 8 C.F.R. § 1208.13(b)(1)(i)(B); *See also Matter of M-Z-M-R*, 26 I&N Dec. 28, 33 (BIA 2012). Factors as the size of the country are relevant to consider if the applicant can relocate safely. *Bhosale v. Mukasey*, 549 F.3d 732, 736 (8th Cir. 2008); *In re Kasinga*, 21 I&N Dec. 357 (BIA 1996) (In which the BIA found that Congo was a small country; therefore, persecution in the whole country was possible). In evaluating the reasonableness of requiring internal relocation, an adjudicator must consider the social and cultural constraints of the applicant's society, such as age, gender, health, and social and familial ties, as well as whether the applicant would face other serious harm in the place where she would be required to relocate. 8 C.F.R. § 208.13(b)(3). Moreover, it is generally not reasonable to require a child to relocate internally alone to avoid persecution.<sup>186</sup>

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<sup>183</sup> *Id.* ¶ 40

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* ¶ 47 - 51

<sup>186</sup> *See* UCIS Asylum Division, Asylum Officer Basic Training Course: Guidelines for Children's Asylum Claims, September 1, 2009 at pp.42.



First, the documentation provided with this application clearly demonstrates that the MS-13 can reach every area of El Salvador because the Mara Salvatrucha qualifies as a transnational organization “comprising approximately 30,000 members through Central America, including El Salvador, Guatemala, Honduras, and Mexico.”<sup>187</sup> In addition, El Salvador is a very small country where it would be extremely difficult to avoid [REDACTED]’s persecutors by moving. El Salvador is ten times smaller than Minnesota. [REDACTED] has attempted relocation by moving to another relatives’ home. Each home [REDACTED] lived in was stalked and monitored by the MS-13.<sup>188</sup> Relocation is not a possibility for [REDACTED] because the gangs have divided El Salvador in neighborhoods. Every time that someone such as [REDACTED] tries to leave or enter, the controlling gang of the neighborhood will know and communicate this information with other local subsidiaries of the gang. Moreover, [REDACTED] risks her life in every attempt to escape the part of El Salvador where she resided. As demonstrated by the threats [REDACTED] received when she moved to her father’s house, [REDACTED] may suffer retaliation if she tries to escape.

Second, many factors constrain her from moving beyond her fear of her Mara Salvatrucha persecutors. She barely has a support network which is concentrated in her old neighborhood, in an area controlled by the gang. Also, as a woman, [REDACTED] will face greater discrimination and fewer economic possibilities in the patriarchal society of El Salvador than a man, making it very difficult to relocate alone. Moreover, as a teenage child with no financial resources, supervision, high school education, or job skills, [REDACTED] will struggle to achieve a successful relocation. As such, under the totality of the circumstances, it is unreasonable to require [REDACTED] to relocate internally.

**D. [REDACTED] has a Well-Founded Fear of Future Persecution**

The presumption that [REDACTED] has a well-founded fear of persecution is not rebutted. In fact, since [REDACTED] has been persecuted in the past, a presumption arises that [REDACTED] has well-founded fear of future persecution on the basis of her original claims. 8 C.F.R. § 1208.13(b)(1).

A fear of future persecution is “well-founded” when there is a “reasonable possibility” that the respondent will suffer persecution if returned to his/her country of nationality. *See* 8 C.F.R. 1208.13 (b)(2)(i)(B). The U.S. Supreme Court has held that a reasonable possibility of persecution may be found even where there is only a 10 percent likelihood that persecution will occur in the future. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987). In addition, an applicant is not required to show that she would be singled out for persecution upon return to her country of nationality where there is a pattern or practice of persecution of a group of persons such that her fear of persecution upon return is reasonable. 8 C.F.R. § 1203.13(b)(2)(iii).

Whether an applicant has established a well-founded fear of future persecution entails both subjective and objective inquiry. *Lusingo v. Gonzales*, 420 F.3d 193, 199 (3d Cir. 2005). The subjective component is satisfied by evidence that the fear is genuine. The objective component is satisfied by proof that the applicant’s subjective fear is objectively reasonable in light of all the evidence. *Id.*

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<sup>187</sup> U.S. Department of the Treasury Press Center, *supra* 127 at 312

<sup>188</sup> [REDACTED] Affidavit ¶ 34-36

**1. [REDACTED]'s fear of being returned to El Salvador is objectively reasonable given the record evidence.**

As demonstrated by her written and oral testimony, [REDACTED] subjectively fears that if forced to return to El Salvador, she would have no safe home to which to return, and therefore would continue to suffer the stalking, sexual assault, torture, and ultimately death by the MS-13 gang.

Her fear of the preceding is objectively reasonable given the stalking and sexual assault she experienced almost daily in the past, and the lack of any change in circumstances in El Salvador. The MS-13's presence is similarly pervasive now, both in the area where [REDACTED] resided specifically and throughout El Salvador. The torture and murder of [REDACTED], death threats against her family at his funeral, and continued questioning of her father regarding her whereabouts all demonstrate that the MS-13 members continue to be motivated to persecute [REDACTED]. [REDACTED] is a minor, without any safe home to which to return. Any family home in which [REDACTED] has stayed has been and continues to be stalked by the MS-13. As such, [REDACTED]'s fear is well-founded.

In *Matter of Mogharrabi*, the Board of Immigration Appeals mandated that in order make a showing of well-founded fear, an alien need not show a "clear probability" of persecution, but rather a "reasonable possibility" of persecution. *Matter of Mogharrabi*, 19 I&N Dec. 439, 442 (BIA 1987). The BIA reasoned, based on its reading of Supreme Court decisions on the topic, that Congress must have intended for the "reasonable possibility" burden of proof to be "significantly different" than the "clear probability" burden imposed on withholding applicants, based on the wording of the INA. *Id.* The BIA therefore adopted the reasonable person standard in evaluating well-founded future fear. *Id.* at 445. Moreover, the BIA reasoned that "[w]here the country at issue in an asylum case has a history of persecuting people in circumstances similar to the asylum applicant's, careful consideration should be given to that fact in assessing the applicant's claims." *Id.* at 446.

Objectively, El Salvador's human rights record supports [REDACTED] fear of future persecution. "An alien may demonstrate that his/her belief is objectively reasonable by documentary or expert evidence about the conditions in a given country." *Lusingo*, 240 F.3d at 199. As previously discussed, the reasonableness of [REDACTED]'s fear in the context of rampant violence against women by criminal gangs in the form of forced sexual relationships is supported by the expert declaration of Dr. Roberto Rodriguez Melendez and the country condition materials.<sup>189</sup>

In his expert declaration on the situation of violence against children in El Salvador, Dr. Roberto Rodriguez Melendez provides that once children have become a target for gang violence, it is hard for a child to escape the wrath of the gang members. "The rise and spread of gangs in El Salvador has made it one of the most violent places in the world not at war. The manner in which the gangs rose to national prominence explains the current dominance these gangs exert throughout the country, and why, once a child becomes their target for violence, forced recruitment, or retaliation, it is difficult for the child to avoid harm or for the government to offer any effective safe harbor."<sup>190</sup> Melendez also shares that "young women and girls are

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<sup>189</sup> See Rodriguez, *supra* 124.

<sup>190</sup> See Rodriguez, *supra* 124.

[also] targeted by the gangs, and in the line with the broader social and gender inequalities, these girls are often targeted to be sexually exploited.”<sup>191</sup>

Objectively, if [REDACTED] returns to El Salvador, she is likely to be raped, tortured, and killed by the MS-13, with no one both willing and able to stop them.

Here, [REDACTED] has fear of persecution in El Salvador on account of her membership in the social groups of female child lacking effective familial protection and as a gang-girlfriend and property of the gang. [REDACTED] has established that she was pursued and threatened by members of the MS-13. In addition, [REDACTED] has established that she was hugged, kissed, and touched by the MS-13 against her will. They would tell her that she was theirs, and when she fled from them, they threatened her sister’s life as punishment for her failure to comply with their demands, physically assaulted [REDACTED], and told [REDACTED] that she needed their permission before leaving [REDACTED]. This persecution supports the conclusion that [REDACTED] has genuine fear for her life and of future persecution if she returns to El Salvador, satisfying the first requirement of a well-founded fear persecution. 8 C.F.R. § 208.13(b)(2)(i).

The second requirement of the well-founded fear test, requires an applicant’s showing that there is a reasonable probability of suffering such persecution if he or she were to return to that country. *Matter of Moqharrabi*, 19 I. & N. Dec. 439 (BIA 1987). Again, the U.S. Supreme Court has held that a reasonable possibility of persecution may be found even where there is only a 10 percent likelihood that persecution will occur in the future. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987). The MS-13 continues to actively search for and inquire about [REDACTED]. The MS-13 continues to ask [REDACTED]’s father about where she and even state that they will find her.<sup>192</sup> The MS-13 violently murdered [REDACTED]’s cousin for not sharing information about where [REDACTED] is.<sup>193</sup> The record evidence supports and demonstrates that there is a reasonable probability that [REDACTED] will suffer persecution if she were returned to El Salvador. She has therefore satisfied the second requirement.

The third requirement for the well-founded fear test requires a showing that the applicant is unable or unwilling to return to, or avail himself of the protection of, that country because of that fear.<sup>194</sup>

Regarding the third eligibility requirement, [REDACTED] is not willing to return to El Salvador for fear of her life. [REDACTED] has expressed that she is unwilling to return to El Salvador. She has been hospitalized twice, for attempted suicide. Even in her fight for her mental health [REDACTED] has decided that she would rather fight and stay alive in the U.S., because she knows that she would ultimately and surely be killed if returned to El Salvador. [REDACTED] unwillingness to return to El Salvador, satisfies the third requirement of the well-founded fear test.

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<sup>191</sup> *Id.*

<sup>192</sup> See Supporting Documents Index, Tab A, Statement of [REDACTED]

<sup>193</sup> See Supporting Documents Index, Tab B, Death Certificate of [REDACTED]

<sup>194</sup> *Id.*

Thus a reasonable person, specifically a young woman, in [REDACTED] circumstance would fear persecution. [REDACTED]'s fear for her life is also an objectively reasonable fear. [REDACTED] has satisfied the subjective test by her expressed fear.

#### IV. [REDACTED]'s Merits Humanitarian Asylum

Alternatively and additionally, as a young person who has suffered horrific past persecution, including rape and death threats, and who would face severe, potentially life-threatening harm to her mental health if returned to El Salvador, [REDACTED] should be granted humanitarian asylum. Due to her lack of familial protection, [REDACTED] experienced a harrowing incident of domestic abuse. At the age of 6, [REDACTED] was raped by her cousin, [REDACTED] after their adult family members left [REDACTED] and [REDACTED] home alone. This heinous incident haunted [REDACTED] throughout her childhood in El Salvador. She has experienced flashbacks, nightmares, and been diagnosed for Post-Traumatic Stress Disorder (PTSD) due to in part to this experience. This incident alone was sufficiently severe and merits a humanitarian asylum grant.

[REDACTED] merits a grant of humanitarian asylum because (1) she can show compelling reasons for not being able to return to El Salvador as result of the severity of her past persecution, and (2) because she demonstrates a reasonable possibility of facing other serious harm if removed to El Salvador. 8 C.F.R. § 1208.13(b)(1)(iii)(A) and (B). Furthermore, because she has suffered past persecution based on a protected ground, [REDACTED] seeks humanitarian asylum based on the compelling factors of her young age, multiple family ties in the U.S., and the significant, negative impacts on her physical, mental, and emotional health that would occur if she were returned to El Salvador. *Matter of H-*, 21 I&N Dec. 337, 347-58 (BIA 1996)(Discussing that in certain cases asylum should be granted in the exercise of discretion, and giving the severe persecution the applicant had suffered in *Matter of Chen* as one example of a situation where discretion was exercised to grant asylum. In this case, the BIA reasoned that, “our case law also recognizes that general humanitarian reasons, independent of the circumstances that led to the applicant’s refugee status, such as his or her age, health, or family ties, should also be considered in the exercise of discretion.”)

In *Matter of Chen*, 20 IN Dec. 16 (B.I.A. 1996), the Board of Immigration Appeals found that where the applicant was fearful of being returned, anxious, and suicidal at the thought of being forced to return to China due to the traumatic physical abuse he endured as a child, and because human rights in the country were still being abused, and because the basic government in China had not changed since he experienced persecution, the Board of Immigration Appeals granted the applicant’s claim of humanitarian asylum. *Matter of Chen*, 20 IN Dec. 16 (B.I.A. 1996).

First, [REDACTED] has compelling reasons for not being able to return to El Salvador as a result of the severe past persecution [REDACTED] suffered. [REDACTED] extreme fear of returning to El Salvador is warranted. [REDACTED] has lived through the trauma of being raped by her own cousin, being stalked and sexually assaulted by members of the MS-13 transnational criminal gang, received death threats from MS-13 gang members, and witnessed her family being beaten by members of the MS-13. Even now [REDACTED] fears that the MS-13 will someday kill her. Having the gangs stalk her almost daily on her way home from school was a terrifying experience. Having a gang member

threaten to kill her little sister if she did not return to her aunt's home in [REDACTED], after she tried to escape to her father's home in [REDACTED], was another terrifying experience that confirmed the gang would pursue her and hurt those she love in order to get her to comply with their demands. Much like the applicant in *Matter of Chen*, [REDACTED] was assaulted and confined by dominant powers. The MS-13 members beat, punch, and kick her Aunt after her Aunt filed a police report was yet another terrifying experience.<sup>195</sup>

Because [REDACTED] did not receive adequate protection and supervision from her family, she experienced this heinous assault on her bodily integrity and a loss of sense of safety as a young child. This incident, coupled with again suffering sexual violence and stalking as a young teenager created a nightmarish, permanent sense of danger to [REDACTED] that she could easily be victimized as a girl and young woman and the certainty that she could not be protected from that danger. [REDACTED] therapist, [REDACTED], MSQ, LICSW, shares that [REDACTED] depressive symptoms include: "depressed/low mood, trouble with sleep, changes in energy with fatigue, changes in eating habits, difficulty concentrating and passive suicidal thoughts. Her experience of traumatic events with reported recollection of events including past sexual and verbal abuse, memories and flashbacks that are involuntary and intrusive. Her avoidance of past traumatic events increases her symptoms of anxiety, isolation, and interferes with her emotional processing and cognitive restructuring."<sup>196</sup>

The severity of the string of these life-threatening incidents combine to constitute severe past persecution.

[REDACTED] also demonstrates a very real possibility of facing other serious harm to herself, if removed from the U.S. Due to her traumatic experiences in El Salvador, [REDACTED] has repeatedly cut herself as a coping mechanism for the pain she suffers, ultimately leading her to attempt suicide, and been hospitalized multiple times. As indicated by her case worker and therapists' letters, [REDACTED] has been diagnosed with PTSD, a Major Depressive Disorder, and a Parent-Child Relational Problem. [REDACTED] is receiving treatment and care here in the U.S. for these conditions.<sup>197</sup> Should [REDACTED] be returned to El Salvador, she would not receive the necessary care for her mental health. As demonstrated by the country conditions submitted with affidavit and other supporting documentation on March 30, 2017 at her asylum interview, there are scarce mental health resources for Salvadorans, and even fewer resources for suicide prevention.<sup>198</sup> On top of being more susceptible to gang violence, stalking, sexual abuse, or murder, [REDACTED] will also be made more susceptible to severe exacerbation of the PTSD she suffers as she will not receive the adequate medical attention to stay alive. As [REDACTED] therapist shares, [REDACTED] chronic mental health illness requires medical attention that she will not have access to in El Salvador. [REDACTED] can continue individual therapy services and medication management to reduce symptoms of her Depression, PTSD, and self-injurious behaviors."<sup>199</sup>

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<sup>195</sup> [REDACTED]'s Affidavit ¶ 40.

<sup>196</sup> See Letter from Eunoia Family Resource Center, [REDACTED] MSW, LICSW, Applicant's Therapist

<sup>197</sup> See Supporting Documents Index, Tab A, Letter of Support, [REDACTED], Applicant's Caseworker, pp. 13-15

<sup>198</sup> See Supporting Documents Index, Tab C, Heartland Alliance International, *Trauma of a Generation: The Urgent Need for Specialized Mental Health Solution in Central America's Northern Triange*, pp. 180-183

<sup>199</sup> See Letter from Eunoia Family Resource Center, [REDACTED] MSW, LICSW, Applicant's Therapist

Similar to Chen, [REDACTED] was severely abused at a young age, suffered persecution that resulted in being confined to her home, was not under the care and protection of her parents for the majority of her childhood, and was severely persecuted and repeatedly attacked by an organized force greater than her and her family's authority as a child.<sup>200</sup> [REDACTED] is thus deserving of a grant of humanitarian asylum.

Because [REDACTED] suffered past persecution in El Salvador, humanitarian considerations and the danger of future persecution outweigh any adverse discretionary factors, none of which are egregious. Here, the discretionary factors warrant a grant of asylum. The mental health evaluation of [REDACTED] indicates that she is suffering from a post-traumatic stress disorder and depression from her persecution in El Salvador.<sup>201</sup> Further, there is a strong likelihood that [REDACTED] would be subject to the same persecution that caused her to flee El Salvador, or worse, if forced to return to El Salvador, as evidenced by the MS-13's continued inquiries and targeting of [REDACTED] family.<sup>202</sup> It would be inhumane under these circumstances to remove [REDACTED] to El Salvador, and the Court should thus exercise its discretion favorably to grant [REDACTED] asylum application

## VII. Conclusion

For the foregoing reasons, [REDACTED] has established that she is a refugee eligible for and deserving of asylum. The accompanying declarations and exhibits establish that, if returned to El Salvador, [REDACTED] has suffered past persecution on account of the protected characteristics she possesses and will most certainly face grave harm or even death at the hands of her persecutors. Moreover, due to both the egregious nature of the persecution she suffered and the severe, debilitating impact a return to El Salvador would have on [REDACTED] mental health, [REDACTED] merits a grant of humanitarian asylum. As such, [REDACTED] is eligible for and deserving of asylum. Thank you for your careful consideration of her application.

Respectfully,

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<sup>200</sup> [REDACTED]'s Affidavit ¶¶ 4, 10, 13, 31-40

<sup>201</sup> See Letter from Eunoia Family Resource Center, [REDACTED] MSW, LICSW, Applicant's Therapist

<sup>202</sup> See Supporting Documents Index, Tab A, Statement of [REDACTED]

