

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
HARTFORD, CONNECTICUT

IN THE MATTER OF: )

R [REDACTED], G [REDACTED]  
[REDACTED]

) IN REMOVAL PROCEEDINGS  
)  
)  
)  
)

RESPONDENT

**CHARGE:**

INA § 212(a)(7)(A)(i)(I), as amended: an immigrant who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by the Immigration and Nationality Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

**APPLICATIONS:** Asylum, Withholding of Removal, and Convention Against Torture

**ON BEHALF OF RESPONDENT**

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**ON BEHALF OF DHS**

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**DECISION AND ORDER OF THE IMMIGRATION JUDGE**

**I. PROCEDURAL AND FACTUAL HISTORY**

[REDACTED] ("Respondent") is a native and citizen of El Salvador. Exh. 1. He entered the United States at or near Hidalgo, Texas, on or about July 28, 2015. *Id.* On September 24, 2015, the Department of Homeland Security ("DHS") personally served Respondent with a Notice to Appear ("NTA"), charging him with removability pursuant to INA § 212(a)(7)(A)(i)(I), as amended, an immigrant who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by the Immigration and Nationality Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. *Id.*

On October 5, 2015, Respondent acknowledged proper service of the NTA, admitted all factual allegations, and conceded the charge of removability. Exh. 1. On the basis of Respondent's pleadings, there being no other issues of law or fact relating to the charge, removability was established by clear and convincing evidence. See INA § 240(c)(3)(A); 8 C.F.R. §§ 1240.8(a); 1240.10(c).

On June 14, 2016, Respondent, by and through counsel, filed for relief in the form of asylum and withholding of removal under the Act. *Id.* He also requested relief under the Convention Against Torture ("CAT"). *Id.*

For the reasons stated in this decision, the Court will grant the requested relief of asylum.

## II. EVIDENCE

On May 23, 2017, Respondent testified in support of his application for relief. No other witnesses testified. The Court has considered all the evidence and the testimony in the record, even if not specifically discussed in this decision.

### A. Documentary Evidence

The Court carefully considered the following:

- Exhibit 1 Notice to Appear, dated September 18, 2015;
- Exhibit 2 Record of Determination/Credible Fear Worksheet, dated September 17, 2015;
- Exhibit 3 Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, dated August 5, 2015;
- Exhibit 4 Form I-589, Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture ("CAT"), filed June 14, 2016;
- Exhibit 5 Amendment to Previously Filed Form I-589, Application for Asylum, Withholding of Removal, and CAT, filed May 15, 2017;
- Exhibit 6 Documentary Evidence in Support of Application for Asylum, Withholding of Removal, and CAT, Tabs A-AE, filed May 16, 2016
  - Tab A: Respondent's Affidavit
  - Tab B: Affidavit of [REDACTED], Respondent's Father
  - Tab C: Affidavit of [REDACTED], Mother of Respondent's Murdered Fiancée
  - Tab D: Letter from [REDACTED], house owner that Respondent stayed with during trips to El Salvador

- Tab E:** Letter from the Church of [REDACTED],  
in [REDACTED], San Pedro Sula, Honduras
- Tab F:** Letter from the Church of [REDACTED],  
in [REDACTED], El Salvador
- Tab G:** Letter from the Church of [REDACTED],  
in San Pedro Sula, Honduras
- Tab H:** Letter from the "[REDACTED]" Church of  
[REDACTED], Connecticut
- Tab I:** [REDACTED]  
[REDACTED]
- Tab J:** Report of Psychological Evaluation by Diana Kolcz, M.A.,  
Doctoral Candidate in Clinical Psychology
- Tab K:** Affidavit and Curriculum Vitae of Thomas Boerman, Ph.D.
- Tab L:** New Reports on Killings of Evangelical Pastors in Honduras
- La Presna, *Evangelical Pastor Gets Murdered Right in Front of His Home*, dated February 22, 2011
  - La Prensa, *Evangelical Pastor Gets Murdered in San Pedro Sula*, dated October 5, 2014
  - Tiempo, *Evangelical Pastor Gets Murdered: Pastor was the Leader of a Church for 20 Years*, dated June 18, 2015
- Tab M:** Sabrineh Ardalan and Thomas Boerman, Immigration Briefings,  
Issue 16-07, *Dynamics Between Gangs and the Church: An Overlooked Dimension of Central American Asylum Claims*, dated July 2016
- Tab N:** United National High Commissioner for Refugees ("UNHCR"),  
*Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from El Salvador*, dated March 2016
- Tab O:** United States Department of State, *El Salvador 2016 Human Rights Report*, dated April 12, 2017
- Tab P:** Immigration and Refugee Board of Canada: Response to Information Request, *El Salvador: Crime and State Efforts to Combat Crime; State Protection for Victims and Witnesses, Including Requirements to Access Programs, Statistics on Granted and Refused Applications for Protection, Duration and Effectiveness of these Programs*, dated September 1, 2015
- Tab Q:** Clare Ribando Seelke, Congressional Research Service Insight Report, *Escalating Violence in El Salvador*, dated April 20, 2016
- Tab R:** Immigration and Refugee Board of Canada: Response to Information Request, *No. SLV 10560.E: Police Corruption and Abuse*, dated September 8, 2015
- Tab S:** InSight Crime for United States Agency for International Development, *Gangs in Honduras*, dated April 21, 2016
- Tab T:** UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs for Asylum Seekers from Honduras*, dated July 27, 2016
- Tab U:** United States Department of State, *Honduras 2015 International*

*Religious Freedom Report*

**Tab V:** Honduras Visa and Residence Information, *Getting Your Retirement Residency Card*

**Tab W:** Respondent's Birth Certificate

**Tab X:** Respondent's Passport

**Tab Y:** Respondent's Salvadoran Personal Identification Card

**Tab Z:** Respondent's Secondary Education Final Studies Degree Issued on November 30, 2010

**Tab AA:** Respondent's Personal Health Card Issued on January 1, 2011

**Tab AB:** Respondent's EAD Card Issued on February 17, 2017

**Tab AC:** Respondent's Social Security Card Issued on March 20, 2017

**Tab AD:** Respondent's Father's Passport

**Tab AE:** Respondent's Mother's Passport

**B. Respondent's Testimony**

Respondent testified to the following:

Respondent is a twenty-three-year-old native and citizen of El Salvador. He was born on [REDACTED] in San Rafael Cedros, El Salvador. In 2003, Respondent, his mother, [REDACTED], and his father, [REDACTED], moved to San Pedro de Sula, Honduras where his father worked as a pastor. Respondent and his family lived near the church and assisted Mr. [REDACTED] in running the church. Respondent and his family did not have permanent status in Honduras. Their status allowed them to reside in Honduras for ninety-days at a time. After this period they had to return to El Salvador to renew their status in Honduras.

In 2014, Respondent began preaching at his father's church. Respondent worked as a youth coordinator and his job entailed preaching the word of God to children and young adults, including gang members. He was afraid of preaching to gang members but he felt that he had a responsibility in the eyes of God to preach to them. He felt that gang members were lost. Respondent sought them out because they would not seek him out at his father's church.

Respondent recalled that initially it was difficult to convince gang members to convert but eventually he was successful in his efforts. After meeting with a particular member of the Olanchanos gang named Selbin many times, Respondent was able to get him to convert in June 2014. Before Selbin converted, Respondent would meet with him and encourage him to change his lifestyle and join the church. Respondent would also read passages from the Bible and try to convince Selbin that violence and crimes were not the answer. After Selbin converted he ceased participating in the gang activities conducted by the Olanchanos gang. A few weeks later, he moved away from the area where Respondent lived and did not inform anyone of where he was moving. Respondent assumes this is because Selbin was threatened by the gang.

Prior to converting Selbin, Respondent had lived happily in Honduras. After Respondent converted Selbin, his life in Honduras changed. Respondent testified that soon after he converted Selbin, his friend Franklin warned him that the Olanchanos gang wanted him "to pay a high price" for taking away a member of their gang. Franklin was not a member of the Olanchanos gang, but he was friends with several gang members. Franklin was with them when he overheard them threaten that they were going to hurt Respondent "where it would hurt the most" for encouraging a member to leave their gang.

After Respondent received the warning threats from Franklin, Respondent's fiancée, Jenifer [REDACTED], told him that she thought that she was being followed. She tried to stay in public areas where there were many people so that the gangs wouldn't harm her. On [REDACTED], 2014, she was kidnapped. That day, Respondent went to Jenifer's house at 6:00 p.m. to help prepare for a church group they were hosting. Jenifer's mother, Ms. [REDACTED], was home when Respondent arrived. She told Respondent that she was scared because Jenifer had not returned home from school. Respondent and Ms. [REDACTED] called Jenifer's girlfriends. They said that Jenifer had left school at 1:00 p.m. and they had not seen her since then. Ms. [REDACTED] then received a phone call and when she picked up the line she began to cry. She handed Respondent the phone and the caller stated that he had Jenifer and they needed to give him 30,000 lempiras to see her alive again. The caller immediately hung up the phone before Respondent could ask him where to give the money.

After receiving the phone call from the kidnappers, Respondent and Ms. [REDACTED] called Jenifer's father. Jenifer's father tried to contact the police but the police would not investigate the case because they said that it hadn't been a long enough time since her disappearance. Mr. [REDACTED] was also contacted by the kidnappers and they requested 30,000 lempiras from him. Mr. [REDACTED] said he didn't have the money but he would do anything to try and get it. He asked to hear Jenifer's voice but the kidnappers refused. They hung up on him before he could get more information on how to pay the ransom.

Later that day the police notified Jenifer's parents that they had found a body behind the Olympic stadium. At that time, Jenifer's father was not convinced that it was Jennifer because he thought she was still alive. The police told him that he should come and verify whether or not it was Jenifer's body. When Jenifer's father returned to the house he informed everyone that Jenifer was dead. The police also told Jenifer's father that Jenifer had been killed within two hours of being kidnapped. Respondent and Jenifer's family believe that Jenifer was already dead by the time that they realized that she was missing because the police told them she was dead within two hours of her disappearance and the phone calls from the kidnappers never gave instructions for the transfer of money.

At Jenifer's funeral, the police asked Respondent to come into the station to discuss Jenifer's murder. The police asked Respondent if he knew of any problems that Jenifer might have had with anyone in the community. Respondent told the police that he suspected a member of the Olanchanos gang named Duanis was involved in her murder. Duanis had previously lived with Jenifer and her family. While he had lived with them he threatened them, disrespected Jenifer and her mother, stolen from Jenifer's family's store, and told them that they did not know what he was capable of. In July 2014, Jenifer's family fired him from their store and Jenifer's brother evicted him from their home. After Respondent told the police about Duanis, the police arrested Duanis. They released him soon thereafter.

Following Jenifer's death, Respondent decided to stay at the church and continue to preach. On May 5, 2015, Respondent went to El Salvador to renew his permission for status in Honduras. While Respondent was in El Salvador, Respondent was attacked and beaten by five gang members of the 18 Revolutionaries<sup>1</sup>. The men who attacked him told him that the attack was for what he had done in Honduras. Respondent believes that somehow his attackers knew about Selbin's conversion or that he had supplied information about Duanis to the police in Honduras. Respondent stated that it is well known that the police are very corrupt and are often connected to the gangs. Additionally, the Olanchanos and the 18 Revolutionaries gangs are allied against the same rival, the MS-13<sup>2</sup>, and because of this alliance they work together.

During the attack, Respondent fell to the ground and the gang members repeatedly kicked his legs, arms, and abdomen. Then one of the gang members put a weapon to Respondent's head. One of the gang members said to kill Respondent and then go. At that moment, people started exiting the nearby church. People started screaming when they saw the gang members attacking Respondent. The gang members then fled the scene. Respondent had bruises from the attack but did not go to the hospital because he believed that the gang would find him there and kill him. Respondent also did not contact the police in El Salvador because he believes that they are corrupt and are often cooperating with the gangs.

The next day, Respondent returned to Honduras again. Respondent decided to try and focus on preaching at the church. He did not leave the church grounds often because he was afraid that if he left the church compound he would be harmed. In July 2015, a church parishioner asked Respondent if he could help her by bringing her daughters to school. He was afraid to leave the church but said that he would go. Respondent brought the girls to school but when he was headed

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<sup>1</sup> The 18 Revolutionaries are also referred to in news articles and country condition reports as the B-18, 18<sup>th</sup> Street Gang, Barrio 18, La 18, Pandilla 18, or Mara 18. For the purposes of this decision the gang will be referred to solely as the 18 Revolucionaries.

<sup>2</sup> The MS-13 are also referred to in news articles and country condition reports as MS, Mara Savatrucha, or Mara. For the purposes of this decision the gang will be referred to solely as the MS-13.

back to the church Duanis attempted to murder him. Respondent was biking back when he noticed Duanis biking towards him. Duanis withdrew his weapon and started shooting at Respondent. Respondent jumped off his bike and started running away. Respondent said that Duanis's hands were shaking and it seemed like he was not used to using a gun. Respondent was able to escape.

On July 3, 2015, Respondent left Honduras to travel to the United States. After he was released on bond he went to live with his brother in Connecticut. He now lives in [REDACTED], Connecticut where he volunteers as a youth coordinator and works in construction. He believes that if he goes back to El Salvador he will be murdered. During the summer of 2015, Ms. [REDACTED] told Respondent that her niece, [REDACTED], overheard Duanis say what that they killed Jenifer and they would kill him soon. Respondent does not believe that he can move to another part of El Salvador because the 18 Revolutionaries operate throughout El Salvador and are connected to other gangs.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### A. Asylum

The INA burdens Respondent with establishing his eligibility for relief from removal. INA § 240 (c)(4); 8 C.F.R. §§ 1208.13(a), 1208.16(b). To qualify for asylum, Respondent must demonstrate by a preponderance of relevant, credible evidence that he qualifies as a refugee; *id est* he is unable or unwilling to return to El Salvador "because of persecution or a well-founded fear of persecution on account of [her] race, religion, nationality, membership in a particular social group, or political opinion." INA § 101(a)(42)(A). If eligibility is established, asylum may be granted in the exercise of discretion. INA § 208(b)(1)(A); *see INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987).

A respondent found to have established past persecution is presumed to have a well-founded fear of future persecution on the basis of his original claim. 8 C.F.R. § 1208.13(b)(1). DHS may rebut the presumption if it establishes, by a preponderance of the evidence, that either: (1) there has been a fundamental change in circumstances in the country of nationality rendering the respondent's fear no longer well-founded; or (2) the respondent could avoid future persecution by relocating to another part of his country of nationality. 8 C.F.R. §1208.13(b)(1)(i)(ii).

Respondent, by and through counsel, submits in his written brief that he was persecuted in El Salvador on account of his membership in a particular social group consisting of "witnesses who cooperate with investigative authorities against gangs." He also submits that he was persecuted on account of his religion and imputed political opinion.

#### 1. Credibility and Corroboration

In all applications for relief, the Court must make a threshold determination of the applicant's credibility. *Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). The REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231 (2005), applies to Respondent's asylum claim. Thus, after considering "the totality of the evidence, and all relevant factors," the Court must assess Respondent's credibility based on his demeanor, candor, or responsiveness; the entire story's inherent plausibility; the consistency between oral and written statements; the internal consistency of such statements; the consistency of such statements with other evidence of record; and any inaccuracies or falsehoods in such statements, regardless of whether they go to the heart of Respondent's claim for relief. INA § 208(b)(1)(B)(iii); see *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 164 (2d Cir. 2008) ("[I]n evaluating an asylum applicant's credibility, an IJ may rely on omissions and inconsistencies that do not directly relate to the applicant's claim of persecution as long as the totality of the circumstances establish that the applicant is not credible."); *Matter of J-Y-C-*, 24 I&N Dec. 260, 266 (BIA 2007).

An applicant's testimony may be sufficient to meet his burden of proof without corroboration if the testimony is credible, persuasive, and "refers to specific facts sufficient to demonstrate that the applicant is a refugee." INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.13(a); see *Matter of J-Y-C-*, 24 I&N Dec. at 263. However, where the Court determines the applicant should "provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant cannot reasonably obtain the evidence." INA § 208(b)(1)(B)(ii). The REAL ID Act "thus codifies the rule that an IJ, weighing the evidence to determine if the alien has met his burden, may rely on the absence of corroborating evidence adduced by an otherwise credible applicant unless such evidence cannot be reasonably obtained." *Liu v. Holder*, 575 F.3d 193, 197 (2d Cir. 2009).

In closing argument, DHS pointed out several issues regarding the corroboration of Respondent's claim. DHS stated concerns that Respondent had not submitted his friend Franklin as a witness nor had he secured an affidavit from Franklin regarding the threat from the Olanchanos gang. DHS was also concerned that Respondent had not submitted any witnesses of the attack he experienced in El Salvador. While the Court acknowledges these concerns, the Court is satisfied that Respondent has adequately corroborated his claim in submitting testimony, affidavits, expert witness, news articles, and country condition reports. See Exh. 6, Tabs A-AE. The Court finds that the cumulative value of the documents alongside Respondent's testimony corroborates his claim.

In considering the totality of the evidence, the Court finds that Respondent testified credibly and that he sufficiently corroborated his testimony. In assessing Respondent's credibility, the Court considered Respondent's demeanor while testifying, as well as the rationality, internal consistency, and inherent persuasiveness of Respondent's account, and the consistency between Respondent's testimony and other evidence in the record. See *Matter of A-H-*, 23 I&N Dec. 774,



786-87 (A.G. 2005); *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989). Respondent was clear and detailed in his testimony. He was responsive to questions and his testimony was consistent with the facts found in his affidavit. He provided substantial corroboration of his testimony in the form of affidavits, expert reports, and country conditions reports.

After careful consideration of the totality of the circumstances, the Court finds that Respondent testified credibly and corroborated his claim. See INA § 208(b)(1)(B).

## 2. Past Persecution

To establish past persecution, the applicant must demonstrate that he suffered persecution in his country of nationality and that he is unable or unwilling to return to, or avail himself of the protection of, that country because of such persecution. 8 C.F.R. § 1208.13(b)(1). "Persecution" has generally been interpreted to include threats to life or freedom, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom. *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985); see also *Chen v. INS*, 359 F.3d 121, 128 (2d Cir. 2004) (concluding non-life-threatening violence and physical abuse may constitute persecution); accord *Beskovic v. Gonzales*, 467 F.3d 223, 225-26 (2d Cir. 2006) (distinguishing persecution from mere harassment). To constitute persecution, threats typically must be "imminent," "concrete," or "so menacing as to cause significant actual suffering or harm." *Ci Pan v. U.S. Att'y Gen.*, 449 F.3d 408, 412 (2d Cir. 2006); see also *Guan Shan Liao v. U.S. Dep't of Justice*, 293 F.3d 61, 70 (2d Cir. 2002). When evaluating whether persecution has occurred, the Court must consider events cumulatively. See *Poradisova v. Gonzales*, 420 F.3d 70, 79-80 (2d Cir. 2005). The determination of whether mistreatment rises to the level of persecution must be made on a case-by-case basis. See *Matter of C-Y-Z-*, 21 I&N Dec. 915, 924 (BIA 1997).

In the present case, the Court finds that the threats, attack in El Salvador, and attempted murder of Respondent constitutes past persecution. Respondent testified that, after he converted Selbin, Selbin left the Olanchanos gang. Soon thereafter, Respondent's friend told him that the Olanchanos would "hurt him where it hurts the most." A couple weeks later, Respondent's fiancée was murdered. Respondent went to the police and cooperated with their investigation, naming a suspect gang member in the murder. When Respondent returned to El Salvador to renew his residence permit, he was beaten and threatened at gun point and told this is "for what you did in Honduras." Later in Honduras, the member of the gang he named as a suspect in the murder of his fiancée fired a gun at Respondent several times. The Court finds that these experiences constitute past persecution.

Further, the record demonstrates that the government of El Salvador is unwilling or unable to control violence perpetrated by gangs against individuals who cooperate with the authorities. *Acosta*, 19 I&N Dec. at 222; see also *Pavlova v. INS*, 441 F.3d 82, 91 (2d Cir. 2006). Respondent testified that he did not report the attack by members of the 18 Revolutionaries in El Salvador to the police because he believed that the police were corrupt and would not be able to help him. His

testimony is corroborated by numerous country condition reports and articles that the government of El Salvador is unwilling or unable to assist informants, witnesses, or victims of crimes. See Exh. 6, Tab K, M, N, O, P, Q.

The U.S. Department of State 2016 Country Report for El Salvador (“2016 Country Report”) states that the main human rights problems in the country included “widespread corruption; weak rule of law, which contributed to high levels of impunity and government abuse, including unlawful killings by security forces, discrimination, and delay and lack of compliance with court rulings...” Exh. 6, Tab O. The effectiveness of El Salvador’s National Civilian Police (PNC) was limited by, “[i]nadequate training, lack of enforcement of the administrative police career law, arbitrary promotions, insufficient government funding, failure to enforce evidentiary rules effectively, and instances of corruption and criminality.” *Id.* Additionally, “substantial corruption in the judicial system contributed to a high level of impunity, undermining the rule of law and the public’s respect of the judiciary.” *Id.* Given this evidence, Respondent has established that he suffered past persecution at the hands of an actor the government of El Salvador is unable or unwilling to control.

a. On Account of a Protected Ground

Respondents must also establish that the persecution was or will be “on account of” a protected ground. In post-REAL ID Act cases, the applicant must demonstrate that a protected ground was or will be “at least one central reason for persecuting the applicant.” INA § 208(b)(1)(B)(i); see also *Matter of N-M-*, 25 I&N Dec. 526, 531 (BIA 2011); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-12 (BIA 2007). “Asylum may be granted where there is more than one motive for mistreatment, as long as at least one central reason for the mistreatment is on account of a protected ground.” *Acharya v. Holder*, 761 F.3d 289, 297 (2d Cir. 2014) (internal quotation marks omitted).

i. Imputed Political Opinion

Respondent claims asylum based on persecution due to his imputed political opinion of holding anti-gang beliefs. Respondent believes that gang members perceive him to have anti-gang beliefs because he converted a gang member and cooperated with the police following the murder of his fiancée.

In assessing whether the nexus requirement has been met to qualify an alien for asylum, the Court considers the phrase “persecution on account of . . . political opinion” in section 101(a)(42) of the Act to mean “persecution on account of the *victim*’s political opinion, not the persecutor’s.” See *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992). In addition, pursuant to the REAL ID Act, an applicant for asylum must demonstrate “not just that the alleged persecutor was motivated in some measure by [the respondent’s] actual or imputed political belief, but that

the protected trait was 'one central reason' for the persecution." *See Matter of N-M-*, 25 I&N Dec. at 526; *see also* INA § 208(b)(1)(B)(i).

The Second Circuit has held that an, "imputed political opinion, whether correctly or incorrectly attributed, can constitute a ground for political persecution." *Chun Gao v. Gonzales*, 424 F.3d 122, 129 (2d Cir. 2005). Political opinion is not strictly limited to formal political ideologies, rather, political opinion can take a variety of different forms. *See Ruqiang Yu v. Holder*, 693 F.3d 294, 298-300 (2d Cir. 2012) (considering political opinion of opposing corruption at a state run enterprise); *Castro v. Holder*, 597 F.3d 93, 102-06 (2d Cir. 2010) (considering political opinion of police officer who reported police corruption). The Court must consider the claim of political opinion within the specific political context of the country. *See Ruqiang Yu*, 693 F.3d at 298-300 (holding that the IJ must consider the political opinion claim within the specific context of the country); *Castro*, 597 F.3d at 102-06 (same).

→ In *Delgado v. Mukasey*, the Second Circuit held that an individual's refusal to provide assistance to Columbian criminal organization FARC could constitute an imputed political opinion of opposition to FARC. *See* 508 F.3d 702, 706-07 (2d Cir. 2007). The Court found that because the petitioner viewed her escape as a refusal to assist FARC and because she believed that FARC would consider her escape opposition to them, it was reasonable to believe that FARC might reach the same conclusion. *See id.* Considering the country conditions of Columbia at that time, FARC exerted control over significant regions of the country and functioned as a *de facto* government. *See id.* at 709. The government of Columbia recognized FARC's significance as they had engaged in peace talks and negotiations with the criminal organization. *See id.* For these reasons, the Second Circuit found that the petitioner may have an imputed political opinion of opposition to FARC. *See id.*

Similarly, in Respondent's case, his actions have conferred onto him the imputed political opinion of opposition to gangs. Considering the specific context of gangs in El Salvador, the country condition reports support that large gangs, such as the MS-13 and 18 Revolutionaries, function as de facto governments throughout the region. Exh. 6, Tab K, N, S, T. Respondent's expert witness, Dr. Thomas Boerman states that, "There is no meaningful police presence in many gang affected neighborhoods and that when contacted, police either did not respond or they failed to take action or engage in any investigative activities." Exh. 6, Tab K. Though the Salvadoran government has continued to introduce policies geared towards curbing gang violence, overall such policies have been largely ineffective. Exh. 6, Tab K, O, N, P, Q. The government of El Salvador has attempted to negotiate with the gangs and set truce agreements numerous times, however, such discussions have been unsuccessful. Exh. 6, Tab K, N, P, Q.

Country condition reports from Honduras and El Salvador demonstrate the high amount of corruption in the police forces. Exh. 6, Tab K, N, O, P, Q. The gangs have infiltrated the police, government, and judiciary in both countries and they are able to exert both direct and indirect influence over these segments of society. Exh. 6, Tab K, O, R, T. The reports show that the 18 Revolutionaries are a transnational gang and are known for having alliances with smaller gangs

such as the Olanchanos in Honduras. Exh. 6, Tab K, N, S, T, U. Sometimes gangs that have these alliances will carry out tasks for one another such as assassinations, extortion, and other criminal activity. Exh. 6, Tab N.

Additionally, Dr. Boerman, stated in his report that, “[a]ctivities such as reporting gang crime to the police...[or] participating in investigations...are perceived as expressions of anti-gang political opinion...This is a central element in organized criminal groups strategy of terror.” Exh. 6, Tab K. Dr. Boerman also reported that many individuals choose not to be involved in religious activities because preaching of anti-violence to gang members could be perceived as interfering with gang recruitment. *Id.* Individuals are seriously threatened, tortured, and sometimes killed by the gangs for their efforts cooperating with authorities. Exh. 6, Tab K, N, O, P, T. The U.S. Department of State Report for El Salvador in 2016 states, “the government could not provide freedom of movement for any persons, due to the strength of criminal gang activity.” Exh. 6, Tab O.

In the instant case, Respondent was threatened (albeit indirectly) and told that the Olanchanos gang was going to “hurt him where it hurts the most” because he converted a member of the Olanchanos gang and that member subsequently left the gang. *See* Exh. 6, Tab A, B. Just a few weeks later, Respondent’s fiancée was murdered. *See* Exh. 6, Tab A, B, C, I. While the gang called Respondent and his fiancée’s mother to extort them, the police believed that Jenifer was dead before they placed the call. *See* Exh. 6, Tab A, I. Due to this, Respondent believes that the extortion was fake and the real purpose was to hurt Respondent for his actions of converting a gang member. *See* Exh. 6, Tab A, I. Upon request, Respondent spoke with the police following his fiancée’s death and named a suspect gang member in her case. *See* Exh. 6, Tab A, C. Later when Respondent travelled to El Salvador to renew his residency permit, gang members attacked him, beat him, and threatened him at gun point. *See* Exh. 6, Tab A, B. Significantly they did this because “of what [he] did in Honduras.” *See* Exh. 6, Tab A, B. When he returned to Honduras Respondent retreated to his church out of fear of reprisal and left only when necessary. *See* Exh. 6, Tab A. On one of the select times he left the church grounds, he was shot at several times by a member of the Olanchanos gang again. *Id.* From this, the Court finds that the attack he experienced in El Salvador was based on his suspected anti-gang beliefs from his actions in Honduras. Based on Respondent’s testimony and submitted evidence, the Court finds that Respondent’s actions of converting a gang member and cooperating with the police caused him to have the imputed political opinion of holding anti-gang beliefs.

ii. Religion and Particular Social Group

As Respondent has demonstrated his eligibility for asylum, the Court need not and will not reach Respondent’s eligibility for his other proposed protected grounds for asylum of religion and membership in a particular social group. *See Matter of Mogharrabi*, 19 I&N Dec. 439, 449 (BIA 1987); *see also INS v. Bagamasbad*, 429 U.S. 24 (1976) (government agencies are not required to make findings on issues which are unnecessary to the result).

### 3. Discretion

An applicant who establishes statutory eligibility for asylum still bears the burden of demonstrating that she merits a grant of asylum as a matter of discretion. See INA § 208(b)(1)(A); *Cardoza-Fonseca*, 480 U.S. at 428. In determining whether a favorable exercise of discretion is warranted, both favorable and adverse factors should be considered, and the danger of persecution should outweigh all but the most egregious adverse factors. *Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987). General humanitarian factors, such as age, health, or family ties, should also be considered in the exercise of discretion. *Matter of H-*, 21 I&N Dec. 337, 347-48 (BIA 1996); *Pula*, 19 I&N Dec. at 474.

In the present matter, Respondent has no criminal convictions, and no adverse factors were entered into evidence. Respondent demonstrated true concern about his safety, and his fear is corroborated with documentary evidence. Accordingly, the Court finds that Respondent merits a favorable exercise of discretion.

#### B. Withholding of Removal and CAT Protection

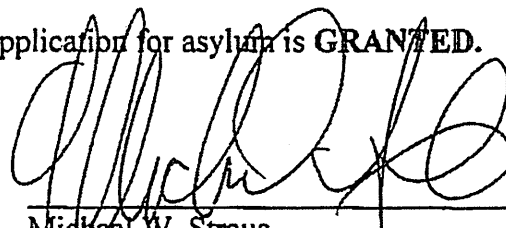
As Respondent has demonstrated his eligibility for asylum, the Court need not and will not reach Respondent's eligibility for withholding of removal and relief under the Convention Against Torture. See *Matter of Mogharrabi*, 19 I&N Dec. at 449; see also *Bagamasbad*, 429 U.S. 24 (government agencies are not required to make findings on issues which are unnecessary to the result).

Accordingly, after careful review of the record, the following Order will be entered:

#### ORDER

**IT IS HEREBY ORDERED** that Respondent's application for asylum is **GRANTED**.

Date: November 14, 2017

  
\_\_\_\_\_  
Michael W. Straus  
Immigration Judge

*Both parties have the right to appeal the Court's decision. The Notice to Appeal is due at the BIA within thirty (30) days of the mailing of this decision.*