

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1901 S. BELL STREET, SUITE 200
ARLINGTON, VA 22202

Zeman and Petterson, PLLC
Petterson, Rachael Elizabeth
105 E. Annandale Road, Suite 212
Falls Church, VA 22046

In the matter of

File

DATE: Nov 4, 2020

___ Unable to forward - No address provided.
___ Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to:

Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

___ Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:

IMMIGRATION COURT
1901 S. BELL STREET, SUITE 200
ARLINGTON, VA 22202

___ Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.

___ Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

✓ Other: order Re: Motion for a written Decision



COURT CLERK
IMMIGRATION COURT

FF

cc: OFFICE OF CHIEF COUNSEL
1901 SOUTH BELL STREET, 9TH FL
ARLINGTON, VA, 22202

United States Department of Justice
Executive Office for Immigration Review
Immigration Court
Arlington, Virginia

In the Matters of:



A Numbers:



ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Respondents' Motion for a Written Decision, it is HEREBY ORDERED that the motion be GRANTED DENIED because:

- DHS does not oppose the motion.
- The respondents do not oppose the motion.
- A response to the motion has not been filed with the court.
- Good cause has been established for the motion.
- The court agrees with the reasons stated in the opposition to the motion.
- The motion is untimely per _____.
- Other:

Deadlines:

- The application(s) for relief must be filed by _____.
- The respondents must comply with DHS biometrics instructions by _____.

November 2, 2020
Date

Hon. Emmett D. Soper
Immigration Judge

Certificate of Service

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**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Arlington, Virginia**

IN THE MATTERS OF:

[REDACTED]

Respondents

IN REMOVAL PROCEEDINGS

[REDACTED]

APPLICATIONS: Asylum, withholding of removal under the Immigration and Nationality Act, and withholding of removal under the Convention Against Torture

ON BEHALF OF THE RESPONDENTS:

Rachael Petterson
Zeman and Petterson, PLLC
105 East Annandale Road, Suite 212
Falls Church, VA 22046

ON BEHALF OF DHS:

[REDACTED], Assistant Chief Counsel
Department of Homeland Security
1901 South Bell Street, Suite 900
Arlington, VA 22202

DECISION OF THE IMMIGRATION JUDGE

I. Introduction

This is a decision in the matters of [REDACTED] and [REDACTED]. The respondents are natives and citizens of El Salvador. *See* Exhs. 1, 1A. The lead respondent, [REDACTED], is the mother of the rider respondent. The rider respondent is fifteen years old. The respondents entered the United States on December 13, 2015 at or near Hidalgo, Texas. *See id.* The Department of Homeland Security (DHS) subsequently filed Notices to Appear (NTAs) pertaining to the respondents. They are charged as inadmissible under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act). *See id.* Through counsel, the respondents have admitted the factual allegations in their NTAs and conceded that they are inadmissible as charged. El Salvador is the country of removal. On October 25, 2016, the lead respondent filed a Form I-589, *Application for Asylum and for Withholding of Removal*. *See* Exh. 2. The rider respondent is included as a derivative asylum applicant on that application. On March 20, 2017, the rider respondent filed his own Form I-589. *See* Exh. 2A.

An individual calendar hearing was held in the respondents' case on August 14, 2019. At that hearing, I heard testimony from the lead respondent and closing statements from both counsels. Following counsels' closing statements, I announced that I planned to grant the lead

[REDACTED]

respondent's asylum application. As I was granting the lead respondent's asylum application, the rider respondent would receive asylum as well, as a derivative applicant on the lead respondent's application. However, I could not issue an oral decision on August 14, 2019; the rider respondent had not been fingerprinted by United States Citizenship and Immigration Services (USCIS) as required, and his mandatory background check had therefore not been completed.¹ Accordingly, I continued the respondents' case. DHS counsel has recently informed the court that the rider respondent has been fingerprinted, and that background checks for both respondents have revealed no derogatory information. Accordingly, I am now issuing my decision.² As explained below, I am granting the lead respondent's asylum application. The rider respondent is receiving asylum as well, as a derivative applicant on the lead respondent's application.

II. Statement and Testimony

On August 14, 2019, I heard testimony from the lead respondent. The respondent also submitted a very detailed written statement in support of her applications. *See* Exh. 3, Tab D. Given that the lead respondent had submitted a very detailed written statement, her counsel simply conducted a brief direct examination of the lead respondent, mostly focusing on what happened after she arrived in the United States. DHS counsel then conducted a complete cross-examination of the lead respondent. The following is a partial summary of the lead respondent's written statement and her testimony. I have elaborated on particular aspects of her statement and testimony, and of the documentary evidence she submitted, in section III, below.

In her statement, the lead respondent writes that she grew up in El Salvador. In 2001, she met a man named [REDACTED]. They became romantically involved; in 2004, they began living together. In January 2005, the lead respondent married Mr. [REDACTED]. In June 2005, the lead respondent gave birth to their son, [REDACTED], the rider respondent. However, Mr. [REDACTED] would verbally and physically abuse the rider respondent, beginning when the rider respondent was roughly four years old. Beginning around the same time, Mr. [REDACTED] would verbally abuse the lead respondent as well. The lead respondent consequently left Mr. [REDACTED]; she and the rider respondent moved in with her parents. Roughly a year later, the lead respondent and Mr. [REDACTED] reconciled, and

¹ More specifically, the rider respondent had turned fourteen years old relatively soon before the individual calendar hearing. He had been fingerprinted by USCIS before he turned fourteen years old, but, having turned fourteen years old, he needed to be fingerprinted again for DHS to conduct the required background check.

² At the respondents' August 14, 2019 hearing, I reset their case for another individual calendar hearing, to take place on December 20, 2019. I intended to issue an oral decision on that date. However, the respondents filed a motion to continue that hearing. In that motion, the respondents' counsel stated that, despite her diligent efforts, USCIS had not scheduled an appointment for the rider respondent to be fingerprinted. Accordingly, I reset the respondent's case for another individual calendar hearing, to take place on May 8, 2020. However, that hearing was cancelled by the court due to the COVID-19 pandemic. On August 11, 2020, DHS counsel filed a notice with the court stating that the rider respondent had been fingerprinted, that background checks had been run for both respondents, and that no derogatory information had been found. On August 21, 2020, the respondents filed a motion requesting that, in light of the background checks having been completed, I issue a written decision in their case. In the motion, the respondents' counsel states that DHS counsel had assisted in getting USCIS to schedule a fingerprint appointment for the rider respondent. I thank DHS counsel for her efforts.

[REDACTED]

the respondents moved back in with him. However, he resumed acting abusively toward her and their son. The respondent never reported the abuse to the police, as “[t]he police would not do anything,” and as reporting the abuse “would only create a scandal.” In early 2015, Mr. [REDACTED] moved out. The respondents subsequently lived alone. *See* Exh. 3, Tab D at 18-24.

The lead respondent writes that she and the rider respondent lived in the municipality of Soyapango, in a neighborhood known as Colonia Prados de Venecia. *See id.* at 18. She testified that her parents lived in this neighborhood as well, five to ten minutes away by foot. The lead respondent writes that MS-13 gang members “controlled everything” in her neighborhood. Residents “had to ask the gang members for permission to do things, like have family events or parties.” For example, when the lead respondent threw a birthday party for the rider respondent, she “had to ask the gang members permission for people from other neighborhoods to come celebrate.” *Id.* at 24. Armed MS-13 members would typically stand at entries to the neighborhood, and “[t]hey would question anyone they did not recognize.” MS-13 members would also collect “rent” from “vendors who distributed products to stores and businesses” in the neighborhood.” *Id.* at 29. Police officers, rather than trying to control MS-13, would often work with gang members. One time, the lead respondent saw a police officer tell a gang member to “give him what was his.” The gang member then gave the officer money. The lead respondent believes that, in return for these payments, the police would let the gang members “do what they want[ed] in the [neighborhood].” *Id.* at 31.

The lead respondent writes that, in late September or early October of 2015, she “witnessed a horrendous gang killing” in her neighborhood. She and the rider respondent were out walking in the evening when a motorcycle drove by them. Two people were riding on the motorcycle; the person in the back shot and killed a boy who lived in the neighborhood. Immediately after the shooting, the motorcycle turned in front of the respondents, and the lead respondent made eye contact with the shooter. She recognized him as a man named T [REDACTED]; he was “the leader of the gang” in the neighborhood. *Id.* at 25-26. The lead respondent elaborates that T [REDACTED] “was the person who collected money” paid to MS-13, and who “gave orders” to MS-13 members. She notes that MS-13 members in her neighborhood “did not call T [REDACTED] by his nickname, but ‘Señor.’” *Id.* at 29. At some point after the shooting, the lead respondent heard from neighbors that the boy had been killed “because his parents had complained to the police about the gang members.” *Id.* at 26.

The lead respondent writes that, roughly one week after the murder, her father told her that Trece had come to him and said that he – T [REDACTED] – needed to speak to the lead respondent. The lead respondent and her father went to speak to T [REDACTED]. T [REDACTED] told the lead respondent that he had been in the gang since he was eleven years old, that he “control[led] all” of the neighborhood, that “[t]hey do as I say,” and that “[t]he police do me favors.” He told her that he knew she had seen “something” and that she had called the police. The lead respondent replied to him that she had called the police in the past, but only because the rider respondent was sick and she needed help taking him to the hospital. T [REDACTED] held a gun to the lead respondent’s temple and told her: “You should not say anything to anyone because the same thing that happened to this boy will happen to you.” He also told her: “You probably don’t want your son to die.” T [REDACTED] then told the lead respondent that she “could not leave” the neighborhood. He elaborated

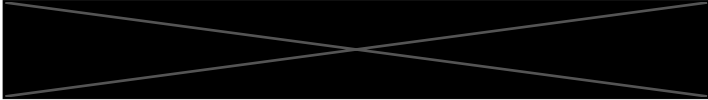
[REDACTED]

that, if she “went to another place that MS-13 controlled, he would always know.” He also told her that she “could not go to a contrary zone.” He said that “wherever [she] went . . . he would know,” including if she left El Salvador. He told her that “he knew everything and that no one messed with him,” and in fact that “he knew many detectives, police, and lawyers who do favors.” *Id.* at 27-28. The lead respondent testified that her father is the godfather of T [REDACTED]’s wife. The lead respondent writes that, having threatened her, T [REDACTED] told her father that, “if I haven’t done anything, it’s because you are ‘*padrino de mi mujer*’ (godfather to my woman).” She comments that “I guess he had some kind of respect for my father,” and that, “if he had not respected my father, he would have just killed me then.” *Id.* at 28.

The lead respondent writes that MS-13 members subsequently monitored her “constantly.” They would watch her when she came and went to and from her home; they would “smok[e] marijuana right in front of [her] home every day”; and they would drink alcohol, and sleep, on her roof. The lead respondent comments that MS-13 members had never done these things before; she believes the members’ purpose was to “intimidat[e] [her] and let[] [her] know that they could harm [her and her son] at any time.” *Id.* at 29-30. The lead respondent writes that she never reported to the police either the murder or the subsequent threats and harassment. She comments that, had she contacted the police, “I knew that T [REDACTED] would find out, just as he had known that I had called the police about taking [the rider respondent] to the hospital.” She also comments that “[t]he police would not protect [the rider respondent] or me because they were working with T [REDACTED].” *Id.* at 31.

The lead respondent writes that, out of fear of MS-13, she eventually left El Salvador with the rider respondent. The respondents left their neighborhood on November 15, 2015. *See id.* at 31-32. The lead respondent testified that she and her son left the neighborhood with her mother. Her mother was carrying a basket; hidden at the bottom of the basket, under a layer of vegetables, were the respondents’ clothes. The lead respondent explained that, to safely leave her neighborhood, she had to make it appear to MS-13 members that she and her son were simply going on a brief errand. The lead respondent testified that she and her son went to her half-sister’s home in San Miguel. Her half-sister lived in a neighborhood controlled by the 18th Street Gang. The respondents entered this neighborhood in a car driven by her half-sister’s husband, and they then stayed hidden in her half-sister’s home. MS-13 members could not enter this neighborhood because it was controlled by the 18th Street Gang. Three days after they arrived, the respondents left this neighborhood with a guide. They had been in hiding the entire time they spent at the lead respondent’s half-sister’s home.

The lead respondent writes that she and her son initially traveled to Guatemala. She spoke with her mother by telephone from Guatemala, and her mother told her that the MS-13 members in her neighborhood suspected she had left El Salvador. The lead respondent told her mother to tell them that she was on a church retreat. *See id.* at 32. The respondents then traveled through Mexico. In Mexico, their group was threatened by armed men apparently associated with the Zetas cartel. The lead respondent telephoned her father and told him she wanted to return to El Salvador. He replied that she needed to keep going; MS-13 members “had taken over [her] house and had given it to one of their girlfriends.” *Id.* at 33-34.



The respondents arrived in the United States on December 13, 2015. *See* Exhs. 1, 1A. The lead respondent testified that she now has three children: the rider respondent and two younger children, born in the United States. If she had to return to El Salvador, she would be returning with her children. The lead respondent writes that, should she and her children have to return, “T [redacted] and the other MS-13 members will kill me and [the rider respondent].” The lead respondent does not believe she could escape harm by settling in an area of El Salvador other than where she lived before. This is because, “[i]f you are new to an area, the gang will find out information about you.” If she goes to an area controlled by MS-13, she believes that T [redacted] could therefore “easily” locate her. Exh 3, Tab D at 37-38. The lead respondent testified that, if she settles in an area controlled by the rival 18th Street Gang, that gang would find out she was from an area controlled by MS-13, and she would be in danger.

Regarding why T [redacted], or MS-13 members acting on his orders, would kill her, the lead respondent comments as follows:

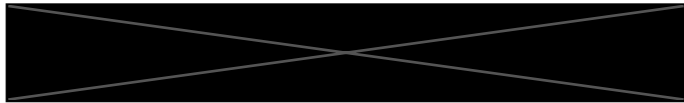
T [redacted] wanted me to stay in the neighborhood because he believed that if I stayed in the neighborhood, they would be able to control me because I was afraid they would kill me and my son. Then the gang would be able to make sure that I stayed quite and to use their power to get me to do whatever they wanted. This is why people are saying that if I come back, I will have to pay – I defied T [redacted] and the gang when [the rider respondent] and I fled.

Id. at 38. The lead respondent testified that, at one point after she left, her father saw T [redacted] and some MS-13 members in a grocery store. T [redacted] and the MS-13 members started to talk among themselves. The lead respondent’s father heard one say “she’s going to come back and she’s going to pay for it.” The lead respondent’s father interpreted this remark as meaning that, if the lead respondent returned, she would be killed for having left El Salvador.

III. Law, Analysis, and Findings

A. Credibility

The lead respondent testified credibly, under the standards in sections 208(b)(1)(B)(iii) and 240(c)(4)(C) of the Act. As noted above, the lead respondent submitted a very detailed written statement in support of her applications. *See* Exh. 3, Tab D. Her testimony was generally consistent with her written statement. Both the rider respondent and the lead respondent’s father have submitted written statements as well, and the lead respondent’s testimony was generally consistent with these statements. *See* Exh. 3, Tab D at 40, Tab E. A brother and sister of the lead respondent have written letters on her behalf. Though the lead respondent’s brother and sister do not describe in depth what happened to the lead respondent in El Salvador, they write that, as the lead respondent testified, she left due to problems with MS-13. *See* Exh. 3, Tab E at 53-68. As will be discussed in more detail below, MS-13 is a tremendously powerful organization in El Salvador, and its members routinely engage in violent crimes. *See generally* Exh. 3, Tab H. The lead respondent’s testimony – that she witnessed an MS-13 leader kill someone, and that she was thereafter threatened by this MS-13 leader – was



therefore plausible. The lead respondent's demeanor suggested that she was testifying openly and honestly, and that she was not being in any way evasive. DHS counsel did not express any concerns about the lead respondent's credibility. Taking these considerations into account, I will find the lead respondent to have testified credibly. *See* sections 208(b)(1)(B)(iii) and 240(c)(4)(C) of the Act.


B. Asylum

1. One Year Filing Deadline

The lead respondent's asylum application is not barred by the filing deadline at section 208(a)(2)(B) of the Act. Under that provision, an asylum applicant must "demonstrate[] by clear and convincing evidence that the application has been filed within 1 year after the date of [his or her] arrival in the United States." The lead respondent entered the United States on December 13, 2015, meaning that her asylum application was due on December 13, 2016. *See* Exh. 1. The lead respondent filed her asylum application on October 25, 2016, before the deadline. *See* Exh. 2.

2. Persecution on Account of a Protected Ground

To qualify for asylum, an applicant must show that he or she is a "refugee," meaning that he or she has suffered "persecution," or has a "well-founded fear of persecution," "on account of race, religion, nationality, membership in a particular social group, or political opinion." Sections 101(a)(42), 208(b)(1)(A) of the Act. If an applicant establishes that he or she has been persecuted on account of a protected ground, then there is a rebuttable presumption that he or she has "a well-founded fear of persecution on the basis of the original claim." 8 CFR § 1208.13(b)(1). If DHS rebuts the presumption, then the application must be denied, unless the applicant independently establishes a well-founded fear of persecution on account of a protected ground. *See* 8 CFR § 1208.13(b)(1)(i), (b)(2).

The lead respondent argues that she was persecuted, and that she fears future persecution, on account of her membership in three alternative particular social groups. They are comprised of: (1) witnesses to gang homicides; (2) Salvadoran women viewed as property of the gang; (3) and single Salvadoran mothers living under gang control. The lead respondent further argues that she was persecuted, and that she fears future persecution, on account of her imputed anti-gang political opinion. Before the lead respondent left El Salvador,  pointed a gun at her and threatened to kill her, and MS-13 gang members then continually monitored and harassed her. This harm arguably qualifies as persecution. However, it is not obvious to me that this harm was inflicted on account of a protected ground.³ In my view, the lead respondent's

³ More specifically, it is not obvious to me that any of the lead respondent's three proposed groups qualifies as a cognizable particular social group. *See, e.g., Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014) (holding that, generally speaking, a particular social group is made up of people who share an immutable characteristic, is defined with particularity, and is socially distinct). Accordingly, even if the harm the lead respondent suffered was on account of her membership in one of these groups, it does not necessarily follow that the harm was on account of a protected ground. Regarding the lead respondent's claim based on her imputed anti-gang political opinion, a central element of this claim, as will be discussed below, is that MS-13 imputed this opinion to her because she left El

strongest argument is that, leaving aside whether she was persecuted on account of a protected ground in the past, she has a well-founded fear of future persecution on account her imputed anti-gang political opinion should she return to El Salvador. Accordingly, rather than analyze whether the lead respondent was persecuted on account of a protected ground before she left El Salvador, I will focus on whether she has a well-founded fear of future persecution, on account of her imputed anti-gang political opinion, should she return. There are two inquiries: first, whether the lead respondent has established that she has a well-founded fear that she will be persecuted should she return to El Salvador; and second, whether she has established that this persecution would be on account of her imputed anti-gang political opinion. I will address each issue in turn.

a. Well-Founded Fear

The lead respondent has established that she has a well-founded fear that MS-13 members will persecute her should she return to El Salvador. *See* sections 101(a)(42), 208(b)(1)(A) of the Act. In El Salvador, the respondents lived in a neighborhood controlled by MS-13. The gang's leader in the neighborhood was a man named T [REDACTED]. The lead respondent witnessed T [REDACTED] committing a murder, and he subsequently summoned her and her father to speak with him. During the conversation, he told her he knew she had seen "something," implying that he knew she had witnessed the murder. He told her not to "say anything" to authorities, and he told her that she "could not leave" the neighborhood. Instead of obeying T [REDACTED]'s order and staying put in their neighborhood, however, the lead respondent defied him, coming to the United States with her son. She fears that, should she return to El Salvador, T [REDACTED] or MS-13 members acting on his orders, will punish her for her defiance by killing her. The Fourth Circuit has stated that "persecution includes actions less severe than threats to life or freedom," but that "actions must rise above the level of mere harassment to constitute persecution." *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (quotation omitted). Clearly, the harm the lead respondent fears – death – would rise to the level of persecution. In order to show that her fear of such harm is well-founded, the lead respondent must show that there is a "reasonable possibility" she will suffer the harm if he returns. 8 CFR § 1208.13(b)(2)(i)(B). In evaluating whether the lead respondent has established such a reasonable possibility, several considerations are relevant.

First, T [REDACTED], the primary person the lead respondent fears, is an MS-13 leader, and not simply an MS-13 member. According to the lead respondent, he gave orders to MS-13 members in the neighborhood, and they addressed him not by his nickname but as "Señor." He told the lead respondent that he "control[led] all" of the neighborhood, and that "[t]hey do as I say." Given that T [REDACTED] is an MS-13 leader, it is reasonable to assume that he would have the authority to order MS-13 members to kill the lead respondent should she return. Second, T [REDACTED] is a violent person. There is direct evidence that he is violent: the lead respondent witnessed him killing someone. It is also very likely that T [REDACTED] has routinely acted violently in the past. That is, T [REDACTED] joined MS-13 when he was eleven years old. MS-13 members are expected to regularly commit

Salvador without the gang's permission. It is not obvious that MS-13 had imputed an anti-gang political opinion to the lead respondent before she left El Salvador. Accordingly, it is not obvious that the harm the lead respondent suffered before she left El Salvador could be deemed to be on account of her imputed political opinion.

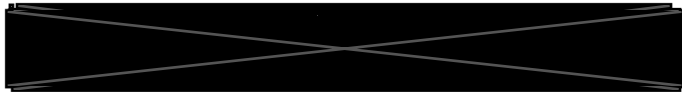
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violent crimes on the gang's behalf. The State Department, in its 2019 Crime and Safety Report for El Salvador, describes MS-13 as "violent" and "well-armed." Exh. 3, Tab H at 127. According to a 2018 report by InSight Crime, "[v]iolence . . . is central to [MS-13's] ethos, its modus operandi, and its evaluation and discipline of its own members." Exh. 3, Tab K at 490. Given that T [REDACTED] joined MS-13 as a child, and then rose through its ranks to eventually become a leader, it is reasonable to assume that he has acted violently on a routine basis. Given that T [REDACTED] has shown himself to be capable of violence in the past, it is reasonable to assume he would be capable of violence toward the lead respondent should she return to El Salvador.

Third, T [REDACTED] clearly intended for the lead respondent to take seriously his orders that she neither report the murder to authorities nor leave the neighborhood. During part of his conversation with the lead respondent, he held a gun to her temple. He also implied during this conversation that the only reason he had not already harmed the lead respondent was that her father was his – T [REDACTED]'s – wife's godfather. Subsequent actions by MS-13 members in the respondents' neighborhood indicate that T [REDACTED] intended for his orders to be taken seriously. After T [REDACTED]'s conversation with the lead respondent, MS-13 members started constantly monitoring her. They would smoke marijuana in front of her house, and they would drink alcohol, and even sleep, on her roof. They had never done any of these things before, and the lead respondent reasonably believed they were trying to intimidate her. Fourth, after the lead respondent left El Salvador, MS-13 members in her neighborhood have shown animosity toward her and her family. MS-13 members did not permit the lead respondent's family to occupy her vacated house; instead, the gang took over the house, giving it to one of the gang member's girlfriends. Also, T [REDACTED] and some MS-13 members remarked in front of the lead respondent's father that "she's going to come back and she's going to pay for it." The lead respondent's father reasonably interpreted this remark as a warning that the lead respondent would be harmed if she returned.

Fifth, the lead respondent likely faces danger no matter where she goes in El Salvador. See 8 CFR § 1208.13(b)(2)(ii) (stating that "[a]n applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country . . . if under all the circumstances it would be reasonable to expect the applicant to do so"). MS-13 controls the neighborhood – Colonia Prados de Venecia, in Soyapango – where the lead respondent lived and where her parents still live. Armed gang members monitor who enters and leaves the neighborhood and they question people they do not recognize. T [REDACTED] is the leader of MS-13 in this neighborhood. If the lead respondent returns to this neighborhood, T [REDACTED] will, in all likelihood, find out very quickly that she is back; the lead respondent would then be in danger.

The lead respondent would also likely face danger if she tries to settle somewhere else in El Salvador. The major gangs in El Salvador – MS-13 and its rival, the 18th Street Gang – effectively control much of the country's territory. The State Department, in its 2018 Human Rights Report for El Salvador, states that "[t]he major gangs [in El Salvador] controlled their own territory." Exh. 3, Tab H at 143. According to a 2018 report by the United Nations Human Rights Council, there is a gang "presence" in "247 out of 262 municipalities" in El Salvador. Exh. 3, Tab H at 168. Similarly, the International Crisis Group states in a 2018 report that gangs



“are active in 94 per cent of El Salvador’s 262 municipalities.” Exh. 3, Tab K at 400. Regardless of where the lead respondent tries to settle in El Salvador, she would therefore very likely be trying to settle in an area with a gang presence. The lead respondent believes that, should she return from the United States to an area of El Salvador controlled by MS-13, T [REDACTED] will likely learn from the MS-13 members in her new neighborhood that she is back. The lead respondent is likely correct. According to a 2016 report by the Immigration and Refugee Board of Canada, “when a person moves from one community to another [in El Salvador], he or she is investigated by the gang in the new location.” Exh. 3, Tab K at 458. Moreover, “[w]hen a person moves from a community dominated by one gang into a community dominated by the same gang, the clique in the new place will collect information about that person to cross-reference it with the clique that operates in the place of origin.” *Id.* If the lead respondent tries to settle in an area of El Salvador controlled by MS-13, T [REDACTED], as an MS-13 leader, will therefore likely learn that she is back; she would then be in danger.

The lead respondent also believes that, if she settles in an area controlled by the 18th Street Gang, that gang will find out she is from an area controlled by MS-13, and she will consequently be in danger. Again, she is likely correct. According to the State Department’s 2018 Human Rights Report for El Salvador, “[g]ang members did not allow persons living in another gang’s controlled area to enter their territory.” Exh. 3, Tab H at 143-44. Further, “[i]f gang members discovered that a person lived in a rival gang’s territory, that person risked being killed, beaten, or not allowed to enter the territory.” *Id.* at 144. Similarly, the Immigration and Refugee Board of Canada states in its 2016 report that, “when [a person who has lived in a territory controlled by one gang] moves to a territory controlled by another gang, he or she could be killed.” Exh. 3, Tab K at 458. Therefore, the lead respondent would likely be in danger should she try to settle in an area of El Salvador controlled by the 18th Street Gang. It is true that, immediately before the respondents came to the United States, they stayed unharmed at the lead respondent’s half-sister’s home in San Miguel. The lead respondent’s half-sister lived in territory controlled by the 18th Street Gang. However, the respondents were only there for three days. They were also essentially in hiding; they never left the lead respondent’s half-sister’s home. The fact that the respondents successfully hid in this neighborhood for three days does not support a conclusion that the lead respondent could openly live there indefinitely should she return to El Salvador.

Sixth, authorities in El Salvador would likely be unable or unwilling to prevent T [REDACTED] and MS-13 members from harming the lead respondent should she return. According to the respondent, police have largely ceded control of her neighborhood to MS-13. That is, police officers accept payments from MS-13 members; in return, police officers let MS-13 members commit crimes with apparent impunity. T [REDACTED] told the lead respondent that “he knew many detectives, police, and lawyers who do favors.” Generally speaking, authorities in El Salvador have been ineffective at controlling gangs. This conclusion is evidenced by the fact that gangs are active in virtually the entire country. *See* Exh. 3, Tab H at 168, Tab K at 400. The State Department, in its 2019 Crime and Safety Report for El Salvador, allows that police in El Salvador have had some recent successes but states that “routine street level patrol techniques, anti-gang work, and crime suppression efforts remain a constant, difficult challenge.” Exh. 3, Tab H at 129. The United Nations High Commissioner for Refugees, in a 2016 report, states that

“weaknesses and corruption in the Salvadoran security forces and the judiciary reportedly contribute to creating a high level of impunity for crimes in El Salvador.” Exh. 3, Tab I at 294. Further, “[v]ictims [of crimes by gangs] are particularly averse to reporting crimes perpetrated by gangs for fear of reprisals.” *Id.* at 295. According to the 2016 report by the Immigration and Refugee Board of Canada, “sources stated that if someone files a complaint [with the police] against a gang or gang member, the person will likely face reprisals as gangs have infiltrated many state institutions, including the [National Civil Police].” Exh. 3, Tab K at 455.

Given Salvadoran authorities’ broad struggles to control MS-13 and other gangs, the lead respondent’s contentions about police in her neighborhood – that they have largely ceded control to MS-13 in return for payments from MS-13 members – are believable. Given that police have largely ceded control of the lead respondent’s neighborhood to MS-13, authorities would likely be unable or unwilling to prevent T [REDACTED] or MS-13 members acting on his orders, from harming the lead respondent should she return to El Salvador and settle there. Considering Salvadoran authorities’ general ineffectiveness at controlling gangs, those authorities would likewise likely be unable or unwilling to protect the lead respondent from the harm she fears should she settle elsewhere in El Salvador. Accordingly, no matter where she tries to settle upon her return to El Salvador, the lead respondent would be unlikely to receive meaningful protection from authorities.

The Fourth Circuit has defined a “reasonable possibility” that harm will occur as a ten percent chance that the harm will occur. *See Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011) (stating that an asylum applicant “need only show that his removal would create a reasonable possibility – as low as a ten percent chance – of persecution” (quotation omitted)). Given the above considerations, the lead respondent has established that there is at least a ten percent chance that, should she return to El Salvador, T [REDACTED] or MS-13 members acting on his orders, will kill her. Therefore, she has established that there is a reasonable possibility she will be killed. *See id.* As the harm the lead respondent fears – death – would rise to the level of persecution, and as there is a reasonable possibility she would suffer this harm should she return, the lead respondent has established that she has a well-founded fear of persecution in El Salvador. *See* 8 CFR § 1208.13(b)(2)(i)(B).⁴

⁴ The lead respondent fears harm by MS-13 members, and not by the government of El Salvador. Harm by a person, or people, outside the government is only deemed to be persecution if the government is “unable or unwilling to control” the person or people carrying out the harm. *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). Under this standard, to show that past harm inflicted by a person, or people, outside the government was persecution, an asylum applicant generally must show that he or she reported the harm to authorities and that the authorities, without any justification, failed to follow up, or, if he or she failed to report the harm, that authorities would not have responded to such a report. *See, e.g., Hernandez-Avalos v. Lynch*, 784 F.3d 944, 952-53 (4th Cir. 2015). However, the question I am analyzing here is not whether the lead respondent has been persecuted in the past. Rather, I am analyzing whether there is a ten percent chance she would be persecuted in the future were she to return to El Salvador. I cannot analyze the authorities’ response, or lack thereof, to the future harm the lead respondent fears, as that harm has not yet occurred. Accordingly, I have folded my analysis of Salvadoran authorities’ ability and willingness to control MS-13 into my analysis of the likelihood the lead respondent will be harmed.


b. *On Account of a Protected Ground*

The lead respondent has established that, should she be persecuted by T [REDACTED] or by MS-13 members acting on his orders, after she returns to El Salvador, the persecution would occur on account of her imputed anti-gang political opinion. In order to do this, she must show that her imputed anti-gang political opinion would be “at least one central reason” for the persecution. Section 208(b)(1)(B)(i) of the Act.

MS-13 is, in many ways, a quasi-governmental institution in El Salvador. Academics who study gangs in Central America and elsewhere have come up with a three-tiered system for classifying gangs based on the gangs’ sophistication. As explained by John P. Sullivan and Robert J. Bunker, two American researchers, “first generation” gangs “are traditional street gangs with a turf orientation.” “Second generation” gangs “are engaged in business”; “[t]hey protect their markets and use violence to control their competition.” The most sophisticated gangs are “third generation” gangs. These gangs possess “evolved political aims.” Such gangs “are the most complex gangs and they operate – or aspire to operate – at the global end of the spectrum, using their sophistication to garner power, aid financial acquisition and engage in mercenary-type activities.” Exh. 3, Tab J at 330. Lieutenant Colonel Howard L. Gray, an officer in the United States Army who has studied Central American gangs, writes in a 2009 academic report that “MS-13 . . . display[s] the characteristics of [a] third generation gang[.]” Exh. 3, Tab J at 351. As a third generation gang, he states, “MS-13 is already acting like a government surrogate in some areas of Guatemala and El Salvador.” *Id.* at 354.

As discussed above, MS-13 controls large areas of El Salvador. Lieutenant Colonel Gray writes that MS-13 members in these areas “collect taxes on individuals and businesses,” and that “[t]hose who choose not to pay are eliminated.” *Id.* The International Crisis Group, in its 2018 report, states that MS-13 and other gangs are “a de facto authority” in many areas of El Salvador, “exert[ing] tremendous control over residents’ daily lives.” Exh. 3, Tab K at 400. According to a 2018 article published by the Heritage Foundation, MS-13 has “undermined the Salvadoran government’s authority” by, among other things, “providing much-needed social services” in some areas. Exh. 3, Tab K at 412. According to a 2016 article published by InSight Crime, MS-13 and other gangs in El Salvador “have gone a long way toward creating a parallel state in El Salvador.” Exh. 3, Tab K at 413. The Immigration and Refugee Board of Canada, in its 2016 report, details numerous ways in which MS-13 and other gangs control the lives of people in the territories they control. In particular, they “routinely impose curfews,” they “detain[] people and ask[] for their identification documents,” they “post closed circuit TV cameras outside neighbourhoods to monitor and control the movement of people,” and they “intervene to settle conflicts among residents.” Exh. 3, Tab K at 447.

MS-13 is broadly seen in El Salvador as a political actor. The Immigration and Refugee Board of Canada, in its 2016 report, states that MS-13 and other gangs in El Salvador have come “to understand the political importance of possessing territory, and they continue to use their territorial influence to negotiate with political candidates wishing to canvas for support inside territories controlled by the gangs.” *Id.* at 445. According to InSight Crime’s 2018 report, MS-13’s “size and reach have . . . made it an important social player” in El Salvador. In fact, MS-13




leaders “regularly interact with local community and religious leaders”; the community and religious leaders must negotiate with the gang leaders “so that people can cross invisible boundaries to go to school, travel to work or visit with friends and relatives.” Exh. 3, Tab K at 536. MS-13 “has become an important constituent [of politicians in El Salvador], capable of shifting the balance of power on the municipal and possibly even the national level.” *Id.* at 533. The International Crisis Group, in its 2018 report, states that “every major political party in El Salvador . . . has at some point paid gangs during elections.” Exh. 3, Tab K at 406. The Heritage Foundation, in the 2018 article referenced above, reports that residents of El Salvador had been asked in a recent poll who ran the country. According to the article, “[f]orty-two percent reported gangs, while only 12 percent said the government.” Exh. 3, Tab K at 411.

According to the lead respondent, MS-13 functions as a quasi-governmental entity in her neighborhood, Colonia Prados de Venecia, in Soyapango. That is, MS-13 carries out many of the functions one would expect a government to carry out. For example, MS-13 controls entry into the neighborhood; armed MS-13 members stand at entries to the neighborhood and question anyone they do not recognize. MS-13 levies taxes, in that the gang demands “rent” from people who do business in the neighborhood. Residents must obtain MS-13’s permission to hold special events. For example, when the lead respondent wanted to throw a birthday party for her son, she had to ask the gang’s permission to do so.

T█’s motivation for persecuting the lead respondent can be understood in political terms. In her written statement, the lead respondent is clear that, should T█ decide to persecute her upon her return to El Salvador, he would be motivated by her having fled from El Salvador after he had explicitly ordered her to stay. As she puts it, “I will have to pay” because “I defied T█ and the gang when [the rider respondent] and I fled.” T█ believed that he had the authority, as MS-13’s leader in the neighborhood, to control the actions of neighborhood residents. The lead respondent, by fleeing El Salvador with her son, was challenging the authority of T█ and the gang. That is, she was making clear that she believed she was not bound by the orders that T█, as the gang’s leader, had issued. T█ would, in all likelihood, have imputed an anti-gang opinion to the lead respondent as a result of her having challenged his and the gang’s authority. Should he persecute her upon her return, he would be doing so because of this imputed anti-gang opinion. As discussed above, MS-13 is a quasi-governmental entity, both in the lead respondent’s neighborhood and in El Salvador more broadly. T█ as an MS-13 leader, is therefore in some ways a political figure. For these reasons, the anti-gang opinion that T█ would, in all likelihood, have imputed to the lead respondent can be described as political in nature. It follows that, if the lead respondent returns to El Salvador and T█ persecutes her, he would be motivated by her imputed anti-gang political opinion.

T█’s motivation to persecute the lead respondent can be understood in political terms even though the lead respondent has never been involved in formal political activities. The Fourth Circuit’s decision in *Alvarez Lagos v. Barr*, 927 F.3d 236 (4th Cir. 2019), is critical. That case involved a citizen of Honduras who defied gang members in various ways and then fled, fearing harm by the gang. In the United States, she applied for asylum. In doing so, she presented evidence that gangs in Honduras are, in some important ways, political actors, and that gangs deem defiance of the gang to be “a form of political disobedience.” *Alvarez Lagos*, 927



F.3d at 245. She argued in part that she had been persecuted, and that she feared future persecution, on account of her imputed anti-gang political opinion. The Fourth Circuit held that, when an asylum applicant argues that she was or would be persecuted on account of her imputed political opinion, the inquiry is not whether she “in fact held a particular political opinion,” but rather whether “her persecutors believed that she held that opinion.” *Id.* at 254. It is true that the lead respondent has never been involved in formal political activities. She has never, for example, run for public office or given a speech at a political rally. However, under *Alvarez Lagos*, I cannot simply focus on whether the lead respondent has been involved in formal political activities; I have to engage with whether T [REDACTED] would have interpreted the lead respondent’s actions as an expression of a political opinion. As discussed above, MS-13 is a quasi-governmental entity in El Salvador, and T [REDACTED] is in some ways a political figure. Therefore, to T [REDACTED], the lead respondent’s defiance would have been a political act. Accordingly, applying *Alvarez Lagos*, even though the lead respondent was not involved in formal political activities, T [REDACTED]’s motivation to persecute her would center on her imputed political opinion. *See id.*

It may be that the lead respondent has submitted little direct evidence of why she would be persecuted. But none is required; circumstantial evidence can suffice. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (stating that “the [asylum] statute makes motive critical,” and that an applicant “must [therefore] provide *some* evidence of it, direct or circumstantial”). Given the factors discussed above, the lead respondent has made an adequate circumstantial case that, if she returns to El Salvador and is persecuted, her imputed anti-gang political opinion would be one central reason for the persecution. Therefore, the lead respondent has established that, if the persecution occurs, it would occur on account of a protected ground. *See* section 208(b)(1)(B)(i) of the Act.

3. *Discretion*

Asylum is ultimately discretionary relief: if an applicant establishes eligibility for asylum, then the application may be granted or denied in the exercise of discretion. *See* section 208(b)(1)(A) of the Act (stating that an immigration judge “may grant asylum” to a qualified applicant). The Fourth Circuit has stated that discretionary denials of asylum applications “are exceedingly rare . . . and are generally based on egregious conduct by the applicant.” *Zuh v. Mukasey*, 547 F.3d 504, 507 (4th Cir. 2008) (quotation omitted). All the discretionary factors in the lead respondent’s case are positive; I am aware of no negative such factors. I have no trouble concluding that the lead respondent has established that she merits asylum in the exercise of discretion. *See* section 208(b)(1)(A) of the Act; *Zuh*, 547 F.3d at 507.

IV. *Conclusion*

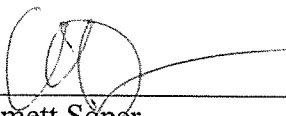
As discussed above, the lead respondent has testified credibly. She has established that her asylum application is not time-barred. She has further established that she has a well-founded fear of future persecution on account of a protected ground. Therefore, the lead respondent has established that she qualifies for asylum. In addition, she has established that she merits a discretionary grant of asylum. For these reasons, I am granting the lead respondent’s

asylum application. *See* sections 101(a)(42), 208 of the Act; 8 CFR § 1208.13. As I am granting the lead respondent's asylum application, the rider respondent receives asylum as well.⁵ I am granting the lead respondent's asylum application based on her imputed political opinion. I am not ruling on whether she qualifies for asylum based on membership in any of her proposed particular social groups. I am also not ruling on whether she qualifies for withholding of removal, whether under the Act or the Convention Against Torture.

ORDER

IT IS ORDERED THAT: The respondent's application for asylum under section 208 of the Act be **granted**.

November 2, 2020
Date



Emmett Soper
Immigration Judge

APPEALS

Both parties have the right to appeal this decision. Any appeal is due at the Board of Immigration Appeals thirty calendar days from the date of service of this decision.

⁵ The discretionary factors in the rider respondent's case are solely positive. Accordingly, the rider respondent has established that he merits asylum in the exercise of discretion. *See Zuh*, 547 F.3d at 507.