

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
BALTIMORE, MARYLAND**

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**IN THE MATTER OF:**

**IN REMOVAL PROCEEDINGS**

**A# :**

**A#**

**A#**

**RESPONDENT**

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**CHARGE:**

Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), as amended, in that the Respondent is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

**APPLICATIONS:**

INA § 208, Asylum; INA § 241(b)(3), Withholding of Removal; Relief under Article 3 of the Convention Against Torture ("CAT").

**DECISION AND ORDER**

**APPEARANCES**

**ON BEHALF OF RESPONDENT:**

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**ON BEHALF OF THE DHS:**

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- **Exhibit 4**, Addendum to Lead Respondent's Form I-589, Application for Asylum and for Withholding of Removal.

## **B. Testimonial Evidence**

### **i. Lead Respondent's Written Statement**

The Lead Respondent (hereinafter "Respondent") stated that she was born on October 3, 1979, in El Salvador. She has a daughter named \_\_\_\_\_ and two sons, the Rider Respondents.

Before traveling to the United States, the Respondent lived in a small community where everyone knew one another. Around 2006, MS-13 gang members began to arrive in her town.

Gang members began recruiting the Respondent's son \_\_\_\_\_ in May 2018. One day at school, a classmate told him that he had to join the MS-13 gang. On that same day, another gang member asked him to join the gang as he was returning home from school. Following these incidents, \_\_\_\_\_ did not attend school for a week, but returned after the Respondent assured him everything would likely be fine.

\_\_\_\_\_ next encountered the gang in June 2018. While at school, a classmate punched him in the eye after he refused to join the gang, giving him a black eye. The Respondent kept \_\_\_\_\_ home from school for more than two weeks following the incident. \_\_\_\_\_'s teacher came to their house to ask about \_\_\_\_\_ and the Respondent told the teacher what had happened. She asked the teacher not to expel the student who punched \_\_\_\_\_ because she was worried that the gang would seek revenge against their family. \_\_\_\_\_ began attending school again, but the Respondent walked with him to and from school most days.

Gang members intensified their recruitment efforts on August 29, 2018. On that date, a gang member approached \_\_\_\_\_ as he was walking home from school and told him that he had three days to join the MS-13 gang. The gang member told him that if he refused, the gang would kill his brother and his mother. The Respondent did not pick \_\_\_\_\_ up from school that day because she had a doctor's appointment. This threat terrified the Respondent, but it did not surprise her because the gang often threatens family members of people who defy their demands to join them. She believed that the gang would kill them if they remained in El Salvador, so she decided to flee with her sons.

The Respondent called her spouse, her mother, and her stepfather to obtain money to travel to the United States. On August 31, 2018, the Respondent and her sons went to San Salvador before traveling through Guatemala to Mexico. Mexican authorities deported them to El Salvador. When they arrived in El Salvador, they stayed at a hotel in San Salvador before leaving the country again on October 4, 2018. That time, they traveled to the United States, and U.S. authorities detained them at the border on October 17, 2018.

The Respondent stated that she and her sons could not have moved safely to another part of El Salvador. She explained that if they moved to MS-13 territory, they could easily be identified by their last name and “would be killed for disobeying them.” They could not move to territory controlled by the 18th Street gang, because they came from MS-13 territory. They could not go to the town where her daughter lives because drug traffickers operate in that area. Her daughter does not have problems with the drug traffickers because they know and respect her spouse.

The Respondent did not report the gang recruitment effort or threats to the police because she believed doing so would have made their problems worse. She has heard about gang members killing other individuals in her town because they reported gang activity to the police.

In March 2019, the Respondent’s mother told her that her mother now must pay “rent” to the MS-13 gang. When her mother asked gang members why she had to pay rent, they responded “you know why.” The Respondent’s mother understood that statement to mean that she must pay because the Respondent and her children fled to the United States. The Respondent said that her family is well-known in their community because of her mother. She explained that her mother was active in her church and provided food and support for people in need.

The Respondent fears returning to El Salvador because she believes that the MS-13 gang will kill her.

## **ii. Lead Respondent’s Oral Testimony**

The Respondent also provided brief additional oral testimony at her individual hearing on November 1, 2019. On cross-examination, the Respondent testified that she had contact with a

gang member in 2017 when he came to her house to ask for water. The Respondent's daughter returned from school while he was there, and the gang member asked "who is that beautiful girl?" The Respondent did not have direct contact with a gang member following that interaction.

The Respondent stated that gang members never threatened her directly and never threatened her with a weapon. A gang member harmed her son by beating him up and giving him a black eye. did not experience other physical harm and his eye is now fine. The Respondent did not express a political opinion about gangs in El Salvador and never told anyone what she thinks about the gangs in El Salvador. She reiterated that she did not report her family's problems with the gangs to the police because she was afraid. Gang members killed the principal of the school attended because he called the police. They also killed a girl who lived in their town because she went to the police.

When asked about her daughter, the Respondent said that her daughter lives about an hour by car away from the town where the Respondent and her sons lived. The Respondent's daughter has lived with her spouse and mother-in-law since 2017. Her daughter does not have problems with gangs.

When asked why a date on her asylum application differed from a date on her written statement, the Respondent speculated that she was tired or her attorney made an error. She said that her spouse lives in the United States and has temporary protected status ("TPS"). The Respondent has previously been to the United States, but had not been to the United States in the past ten years before her entrance.

The Respondent stated that the MS-13 gang controlled her neighborhood in El Salvador. Gang members often broke into houses, collected rent payments, and extorted individuals. She said that if people do not pay the rent, gang members kill them. The Respondent knows of two children in her community who disappeared because they refused to join the gang. The Respondent reiterated that she could not move to another part of El Salvador because the gang has a lot of connections throughout the country, including with the police. She could not live with her daughter because

people in that area investigate individuals who come to the town. She does not know if those people are gang members.

The Respondent believes that the gang is aware that she and her sons might return to El Salvador because she asked for letters from witnesses to support her asylum application. She fears that the gang is upset because they left and would hurt her because she took [redacted] away and did not allow him to join the gang.

On re-direct examination, the Respondent said that [redacted] was given three days to join the gang or she and her son [redacted] would be killed. She felt concerned about this threat because she knew that gang members did not joke around. If she had remained in El Salvador, she believes that the gang members would have [redacted] her.

### **iii. Dr. Ellen Moodie**

Dr. Ellen Moodie testified that she has a Ph.D. in anthropology from the University of Michigan and her area of expertise is violence in El Salvador. Dr. Moodie noted that the concept of family is broad in El Salvador. Familial bonds that extend to grandparents, aunts, and uncles are very strong, particularly in small communities. People associate other individuals with their families, and family is the pillar of Salvadoran society. Gangs view family in this same way -- family members are associated with one another. With respect to the Respondent's family, Dr. Moodie stated that everyone in the Respondent's small community likely knew the Respondent's family, particularly because her mother was active in the church.

On cross-examination, Dr. Moodie said that she has testified in immigration proceedings about 15 times, each time for the respondent in a case. She stated that she was compensated by the Respondent in this case for her appearance.

Dr. Moodie said that she was aware that the Respondent's daughter lived in another part of the country. She cautioned that she was not familiar with that particular area, but stated that drug trafficking networks that are not gangs sometimes control particular areas and do not allow most

unfamiliar people to enter the area. The Respondent's daughter, as the spouse of someone from that area, would be allowed to enter.

When asked how the gang would interpret the Respondent and her sons fleeing, Dr. Moodie explained that the gang is a "state-like power" that values loyalty. Because [redacted] refused to join the gang, gang members would consider him a "traitor to the gang." She added that the family's flight to the United States is an additional betrayal to the gang which demonstrates their lack of loyalty. A person who does not comply with gang demands, whether by refusing to pay an extortion, become a girlfriend to a gang member, carry a package, or report on a neighbor, is viewed as disrespecting the gang, she explained. Fleeing the gang is also an example of disrespect.

When asked how she came to her conclusions, Dr. Moodie explained that she has conducted research in El Salvador for twenty-five years. She explained that she interviews individuals in the country, including former gang members. She reviews reports from entities such as non-governmental organizations, the U.S. State Department, and the United Nations. She also reviews literature on gangs. She noted that her assertion that gang members view a person who flees as a traitor is a basic proposition, and the consequence for fleeing can be murder.

### **III. Statement of the Law**

#### **A. Asylum**

An applicant for asylum bears the burden of establishing that he or she meets the definition of a refugee under INA § 101(a)(42)(A), which defines a refugee in part as an alien who is unable or unwilling to return to her home country because of persecution, or a well-founded fear of persecution, on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.13(a); INA § 208(b)(1)(B). The applicant's fear of persecution must be country-wide. *Matter of Acosta*, 19 I&N Dec. at 211, 235 (BIA 1985). Additionally, applicants must establish that they are unable or unwilling to avail themselves of the protection of their country of nationality or last habitual residence. INA § 101(a)(42)(A); *Mulyani v. Holder*, 771 F.3d 190, 199-200 (4th Cir. 2014). When the alleged persecutor is a private actor, the applicant also bears the burden of showing that his or her "home government was 'unable or unwilling to control'" the persecutors. *Matter of A-B-*, 27 I&N Dec. 316, 330 (A.G. 2018) (quoting *Matter of*

*W-G-R-*, 26 I&N Dec. 208, 224 & n.8 (BIA 2014)); *Orellana v. Barr*, 925 F.3d 145, 151 (4th Cir. 2019). An applicant who establishes statutory eligibility for asylum still bears the burden of demonstrating that a grant of asylum as a matter of discretion is warranted. INA § 208(b)(1).

**i. Credibility and Corroboration**

An applicant bears the evidentiary burden of proof and persuasion in connection with any asylum application pursuant to INA § 208. 8 C.F.R. § 1208.13(a). The Board of Immigration Appeals (“BIA”) has recognized the difficulties an asylum applicant may face in obtaining documentary or other corroborative evidence to support a claim of persecution. *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989). As a result, uncorroborated testimony that is credible, persuasive, and specific may be sufficient to sustain the burden of proof to establish a claim for asylum. INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.13(a); *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987).

**ii. Past Persecution**

In order to establish a claim for either asylum or withholding of removal, an applicant must demonstrate that the feared harm constitutes persecution under the INA. The BIA interpreted “persecution” to include serious threats to an individual’s life or freedom, or the infliction of significant harm on the applicant, as a means of punishing that person for holding a characteristic that the persecutor seeks to overcome. *Matter of Acosta*, 19 I&N Dec. at 222. To establish past persecution, applicants must demonstrate that they suffered persecution in their country of nationality or, if stateless, in the country of last habitual residence, on account of an actual or imputed protected ground, and that they are unable or unwilling to return to, or avail themselves of the protection of, that country because of such persecution. 8 C.F.R. § 1208.13(b)(1).

Not every act of discrimination or harassment rises to the level of persecution, as persecution is “an extreme concept that does not include every sort of treatment that our society regards as offensive.” *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (internal quotation marks omitted). However, considering the aggregate effect of all the incidents to which a respondent has been subjected, the cumulative treatment may rise to the level of persecution. *Baharon v. Holder*, 588 F.3d 228, 232-33 (4th Cir. 2009); *Matter of O-Z- and I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998). An



applicant who fails to present a credible basis for a claim of past persecution may nevertheless prevail on a theory of future persecution.

### iii. Well-founded Fear of Future Persecution

If an applicant demonstrates past persecution on account of a protected ground, he or she will benefit from a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). The DHS can rebut the presumption by showing that the applicant's fear is no longer well-founded due to a fundamental change in circumstances or that the applicant could avoid future persecution by relocating to another part of the country and that, under all the circumstances, it would be reasonable to require him or her to do so. 8 C.F.R. § 1208.13(b)(1)(i)-(ii). If an applicant has not met the burden of demonstrating past persecution, the applicant bears the burden to show a well-founded fear of future persecution by a preponderance of the evidence. *Lopez-Soto v. Ashcroft*, 383 F.3d 228, 234 (4th Cir. 2004). A well-founded fear of persecution must be both subjectively genuine and objectively reasonable. *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 430-31 (1987). To meet this standard, an applicant must possess a subjective fear and must also demonstrate that "a reasonable person in similar circumstances would fear persecution on account of" one or more of the protected grounds. *Blanco de Belbruno v. Ashcroft*, 362 F.3d 272, 284 (4th Cir. 2004) (citing *Cruz-Diaz v. INS*, 86 F.3d 330, 331 (4th Cir. 1996)); 8 C.F.R. §1208.13(b)(1)-(2).

### iv. Nexus

Applicants for asylum must also demonstrate that the persecution they fear would be inflicted "on account of" their race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.13(b)(2)(i)(A). Even treatment that is regarded as "morally reprehensible" is not "persecution" within the meaning of the INA unless it occurs "on account of" one of the five enumerated grounds. *Matter of T-M-B-*, 21 I&N Dec. 775, 777 (BIA 1997). In essence, applicants must demonstrate that their race, religion, nationality, particular social group, or political opinion would be "at least one central reason" for the persecutor's actions. INA § 208(b)(1)(B)(i); *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

v. **Protected Ground— Membership in a Particular Social Group**

An applicant who attempts to establish persecution on account of a particular social group “must demonstrate membership in a group, which is composed of members who share a common immutable characteristic, is defined with particularity, and is socially distinct within the society in question.” *Matter of A-B-*, 27 I&N Dec. at 317 (citing *Matter of M-E-V-G-*, 26 I&N Dec. 227, 238 (BIA 2014)). The group must exist independently of any underlying harm. *Id.*

In *Matter of Acosta*, the BIA noted that particular social groups are comprised of people who “share a common, immutable characteristic.” 19 I&N Dec. at 233; *Crespin-Valladares v. Holder*, 632 F.3d 117, 124 (4th Cir. 2011) (giving *Chevron* deference to the BIA’s definition in *Matter of Acosta*). Immutable characteristics are those that are “beyond the power of an individual to change” or are “so fundamental to individual identity or conscience that it ought not be required to be changed.” *Matter of Acosta*, 19 I&N Dec. at 233.

Particular social groups must also be socially distinct. *Matter of M-E-V-G-*, 26 I&N Dec. 227, 238 (BIA 2014) (“social distinction exists where the relevant society perceives, considers, or recognizes the group as a distinct social group”).

Additionally, a particular social group must be defined with “particularity.” *Id.* This requirement emphasizes “the need to put outer limits on the definition of a particular social group.” *Id.*; *Matter of W-G-R-*, 26 I&N Dec. 208, 214 (BIA 2014). The BIA noted that a “particular social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group,” and “be discrete and have definable boundaries.” *Matter of M-E-V-G-*, 26 I&N Dec. at 239; *Matter of W-G-R-*, 26 I&N Dec. at 214. It “must not be amorphous, overbroad, diffuse, or subjective.” *Matter of M-E-V-G-*, 26 I&N Dec. at 239. The particularity requirement “clarifies the point . . . that not every ‘immutable characteristic’ is sufficiently precise enough to define a particular social group.” *Id.* Group size may be a factor in this analysis, but the “key question is whether the proposed definition is sufficiently particular or is too amorphous... to create a benchmark for determining group membership.” *Matter of S-E-G-*, 24 I&N Dec. 579, 585 (BIA 2008); *Alvarez Lagos v. Barr*, 927 F.3d 236, 253 (4th Cir. 2019) (“Size is relevant... but it is not dispositive.”).

The U.S. Court of Appeals for the Fourth Circuit described the requirement by noting that a “group must have identifiable boundaries to meet the [BIA’s] particularity element.” *Temu v. Holder*, 740 F.3d 887, 895 (4th Cir. 2014); *Zelaya v. Holder*, 668 F.3d 159, 165 (4th Cir. 2012) (stating that a particular social group must “be defined with sufficient particularity to avoid indeterminacy”).

**vi. Protected Ground— Political Opinion**

To demonstrate persecution on account of political opinion, applicants must show that their persecutors have targeted them because of their political beliefs or activities. *Matter of Acosta*, 19 I&N Dec. at 235. Applicants can prove their political opinion with “evidence of verbal or openly expressive behavior . . . in furtherance of a protected cause.” *Saldarriaga v. Gonzales*, 402 F.3d 461, 466 (4th Cir. 2005). Alternatively, “persecution for ‘imputed’ grounds (e.g., where one is erroneously thought to hold particular political opinions or mistakenly believed to be a member of a religious sect) can satisfy the ‘refugee’ definition.” *Matter of S-P-*, 21 I&N Dec. 486, 489 (BIA 1996) (citing *Matter of A-G-*, 19 I&N Dec. 502, 507 (BIA 1987)). Even if a respondent did not actually hold a political opinion, “in determining whether persecution existed on account of political opinion, we focus on whether the persecutor has attributed a political view to the victim and acted on that attribution.” *Singh v. Gonzales*, 406 F.3d 191, 196 (3d Cir. 2005) (citing *Sangha v. INS*, 103 F.3d 1482, 1489 (9th Cir. 1997)).

**B. Withholding of Removal Pursuant to INA § 241(b)(3)**

To establish eligibility for withholding of removal under the INA, an applicant must demonstrate that his or her “life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.” INA § 241(b)(3). Specifically, applicants must establish that it is more likely than not that they will be subject to persecution if returned to the country from which they claim protection. 8 C.F.R. § 1208.16(b)(1)(i); *INS v. Stevic*, 467 U.S. 407, 429-30 (1984); *Cardoza-Fonseca*, 480 U.S. at 423. An applicant who fails to demonstrate the well-founded fear of persecution required for asylum will necessarily fail to meet the higher burden of proof required for withholding of removal. *Mirisawo v. Holder*, 599 F.3d 391, 396 (4th Cir. 2010); *Camara v. Ashcroft*, 378 F.3d 361, 367 (4th Cir. 2004).

### **C. Convention Against Torture**

To be extended protection under the CAT, an applicant must establish that it is “more likely than not that he or she would be tortured if removed to the proposed country of removal.” 8 C.F.R. §§ 1208.16(c)(2), 1208.17(a); *Matter of M-B-A-*, 23 I&N Dec. 474, 477-78 (BIA 2002). “Torture” is defined in part as the intentional infliction of severe physical or mental pain or suffering by, or at the instigation of, or with the consent or acquiescence of a public official. 8 C.F.R. § 1208.18(a)(1). Acquiescence of a public official requires that the official has awareness of or remains willfully blind to the activity constituting torture, prior to its commission, and thereafter breach his or her legal responsibility to intervene to prevent such activity. 8 C.F.R. § 1208.18(a)(7); *Suarez-Valenzuela v. Holder*, 714 F.3d 241, 245-46 (4th Cir. 2013). The BIA has specified that only “extreme form[s] of cruel and inhuman treatment” rise to the level of torture. *Matter of J-E-*, 23 I&N Dec. 291, 297-99 (BIA 2002).

In assessing a claim under the CAT, the Court must consider “all evidence relevant to the possibility of future torture” and cannot rely solely on an adverse credibility determination to deny relief. *Camara*, 378 F.3d at 361. A claim under the CAT is analytically distinct from an asylum claim. Findings concerning the likelihood of a future occurrence and the future conditions a respondent is likely to face are factual findings, and whether future events and conditions satisfy the legal definition of torture is a legal question. *Turkson v. Holder*, 667 F.3d 523, 529-30 (4th Cir. 2012).

### **IV. Findings of the Court**

All evidence has been reviewed, even if not specifically referenced in this decision. The Respondent bears the burden of demonstrating that her membership in a particular social group or political opinion was or would be at least one central reason for the persecution she suffered or fears, or that it is more likely than not that she would be tortured if removed to El Salvador. INA § 208(b)(1)(B)(i); 8 C.F.R. § 1208.18(a)(7).

## A. Asylum

### a. Credibility

Based on the totality of the circumstances, the Respondent is credible. INA § 208(b)(1)(B)(iii). Her testimony was candid, internally consistent, and consistent with her asylum application. It was also consistent with the written statement of her son as well as letters from other family members and neighbors in El Salvador. Although the DHS noted an inconsistency between her asylum application and written statement about a date that received threats, the Respondent provided a reasonable explanation that the mistake could have been clerical error or because she was tired. Her candid demeanor throughout her testimony also supports a finding that she is credible. She did not embellish her account and was honest about the extent to which she sought help from the Salvadoran government. Further, she supplied documentary and country conditions evidence which corroborate her account.

### b. Past Persecution

The Respondent experienced harm that rises to the level of persecution. According to a written statement from the Respondent's son, a gang member told him on August 29, 2018, that he had three days to decide whether or not to join the MS-13 gang. Exh. 3, Tab B at 17. The gang member threatened that if did not join the gang, he, the Respondent, and his brother would all die. *Id.* This credible death threat alone qualifies as harm sufficiently severe to constitute past persecution. *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) (death threats alone can qualify as harm severe enough to constitute persecution); *Tairou v. Whitaker*, 909 F.3d 702, 708 (4th Cir. 2018).

### c. On Account of Imputed Political Opinion

The Respondent argues that the death threat she experienced occurred on account of her imputed political opinion. The Fourth Circuit recently recognized that an individual's resistance to gang demands may constitute an imputed political opinion that would serve as a cognizable basis for relief. *Alvarez Lagos*, 927 F.3d at 251 (remanding for the BIA to determine if the gang imputed a political opinion to the respondent). Although the BIA in *Matter of S-E-G-* noted that resisting gang recruitment does not generally constitute a political opinion, it did not analyze political opinions that gang members may impute to those who resist recruitment. 24 I&N Dec. at 589

(noting only that the respondents in that case “provided no evidence, direct or circumstantial, that the MS-13 gang in El Salvador imputed, or would impute to them, an anti-gang political opinion”). The U.S. Supreme Court in *Elias-Zacarias* also did not bar imputed political opinion cases arising out of gang recruitment, noting simply there was no indication in that case “that the guerrillas erroneously believed that Elias-Zacarias’ refusal was politically based.” 502 U.S. at 482. Notably, the Fourth Circuit reiterated that an applicant’s eligibility for asylum is “a fact-intensive inquiry” that requires substantial engagement with the record. *Alvarez Lagos*, 927 F.3d at 255 n.4. The Court must examine carefully this particular record to determine if gang members imputed a political opinion to the Respondent when they threatened her with death.

Country conditions evidence shows that gangs have become a “substitute government” in El Salvador which rival or replace legitimate political entities in the country. Exh. 3, Tab C at 20. According to the U.S. State Department’s 2018 Human Rights Report for El Salvador, major gangs in the country exercise control over their own territories. Exh. 3, Tab D at 71. One gang researcher notes that, in these territories, “the state is the gang.” Exh. 3, Tab C at 35. Gangs often do not allow people living in the territory of a rival gang to enter their territories. Exh. 3, Tab D at 71-72. Other reports indicate that, like legitimate law enforcement agencies, gangs have “systems of surveillance and security” that help them “gather intelligence on residents and those transiting [their] areas.” Exh. 3, Tab D at 103; Exh. 3, Tab E at 113. Gangs also raise revenue through extortion and seek to control schools and public transit, just like the legitimate government. Exh. 3, Tab F at 137-38. Gangs use violence to maintain their political power. *Id.* at 138. Specifically, they often kill anyone whom they consider to be an enemy. Exh. 3, Tab C at 43. This includes young people who refuse to join gangs as well as members of their families. *Id.*

In the Respondent’s case, she has established that gang members threatened to kill her because they believed that she opposed their ability to exercise absolute control, including over the recruitment of her son, in the territory they dominate. She testified that she fears MS-13 will harm her because she refused to let her son join the gang. For that reason, the Respondent “is part of a group of people widely recognized as enemies” of the MS-13 gang, according to Dr. Ellen Moodie, a professor at the University of Illinois at Urbana-Champaign and an expert on violence in El Salvador. *Id.* at 20. Gang members targeted the Respondent’s son for recruitment as a “show of

power designed to demonstrate and sustain [the MS-13] gang's reputation and domination." *Id.* at 47. According to Dr. Moodie, the gang viewed [redacted] as an enemy because of his refusal to join. *Id.* at 20. The gang's assessment of [redacted] extended to the Respondent because she was part of a family that defied the gang. *Id.* at 21. Although the Respondent never openly expressed a political opinion about gangs, members of the MS-13 gang believed that she did not support their control over the area they dominate because of [redacted]'s refusal to join the gang. Accordingly, the Respondent has established that she experienced past persecution account of a political opinion that MS-13 gang members imputed to her.

**d. On Account of Membership in a Particular Social Group**

The Respondent also argues that she experienced past persecution on account of her membership in the particular social group of "immediate family members of [redacted], her son. The proposed group is based on the immutable characteristic of familial ties. *Crespin-Valladares*, 632 F.3d at 124-25. The Respondent's family unit is sufficiently particular as it has well-defined boundaries and is "self-limiting" in nature. *Zelaya v. Holder*, 668 F.3d 159, 166 (4th Cir. 2012). Those who are not immediate relatives of her son are not members of the proposed group, thus creating a clear line as to who falls within the group.

Additionally, although the Attorney General noted that "most nuclear families are not inherently socially distinct," the evidence and testimony in this particular case sufficiently establishes that the proposed group is socially distinct within the Respondent's community. *Matter of L-E-A-*, 27 I&N Dec. 581, 589 (2019). According to the Respondent, her particular family was well-known throughout their community because her mother was very active in their church, providing support to people in need. Exh. 3, Tab B at 14. Dr. Moodie testified that family is the pillar of Salvadoran society. People, including gang members, associate other individuals with their families. One Salvadoran anthropologist noted that family "is the most recognizable social group in El Salvador." Exh. 3, Tab C at 39. Dr. Moodie stated that familial bonds are particularly strong in smaller communities. Given that the Respondent's mother was active within her church in a small town, Dr. Moodie said that she believes everyone in the Respondent's community likely knew her family.

The Respondent also established that the harm she experienced occurred on account of her membership in this particular social group. Gang members threatened to kill her because her son refused to join the MS-13 gang. The Respondent's situation is not unique. A report in the New York Times notes that "when a family keeps its children out of the gangs, the gangs have a way of still getting to the family." Exh. 3, Tab E at 115. According to one Salvadoran anthropologist, "gang members retaliate against entire families." Exh. 3, Tab C at 39. Dr. Moodie's written statement documents several reports of gang members killing members of the same family. *Id.* at 39-40. This evidence demonstrates that the Respondent's familial relationship with her son was "one central reason" for the harm she experienced. *Alvarez Lagos*, 927 F.3d at 250. Accordingly, she has established that she experienced past persecution on account of her membership in the particular social group of "immediate family members of"

**e. Government Unwilling or Unable to Protect**

Because the gang members who threatened the Respondent were private actors, the Respondent must show that the government would be "unwilling or unable to control her persecutor." *Orellana*, 925 F.3d at 151. The government of El Salvador has shown itself to be woefully inadequate at controlling gang extortion or violence. Exh. 3, Tabs D-H. The record indicates that "security forces have been largely ineffective in protecting the population from gang violence." Exh. 3, Tab D at 99. Impunity remains a major problem throughout the country. Exh. 3, Tab E at 135. The U.S. Department of State's Bureau of Diplomatic Security reports that "the police are often hampered by inadequate funding and limited resources." Exh. 3, Tab D at 94.

The fact that the Respondent never reported the harm to the police is not dispositive on the issue. *Hernandez-Avalos*, 784 F.3d at 952. She testified credibly that she feared going to the police because gang members killed others in her community who went to the police. According to Dr. Moodie, "many Salvadoran police officers are complicit or actively engaged with gangs." Exh. 3, Tab C at 21. As a result, "the Salvadoran state does not have the will or capacity to protect its citizens at risk." *Id.* Given this evidence, the Respondent has demonstrated that the government would be "unwilling or unable to control her persecutor." *Orellana*, 925 F.3d at 151-52.



**f. Internal Relocation**

Having shown that she experienced past persecution on account of a protected ground, the Respondent benefits from a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). The DHS has not rebutted that presumption. Although the DHS argues that the Respondent could have relocated within El Salvador, the Respondent's testimony, the testimony of Dr. Moodie, and country conditions evidence in the record demonstrate that it would not be reasonable to require her to do so. 8 C.F.R. § 1208.13(b)(3).

The Respondent explained that she and her family could not have moved to an area controlled by MS-13 because they would be killed for disobeying the gang. Exh. 3, Tab B at 13. Additionally, they could not have moved to a rival gang's territory because they came from MS-13 territory. *Id.* Country conditions evidence demonstrates that the Respondent's assertion is correct. Gangs operate in 247 of the country's 262 municipalities. Exh. 3, Tab D at 103; Exh. 3, Tab F at 137. The U.S. State Department notes that "gang members did not allow persons living in another gang's controlled area to enter their territory." Exh. 3, Tab D at 60. Those who do risk being beaten or killed. *Id.* Another report similarly notes that "navigating gang territory as a displaced family can be a double-edged sword," as "gangs often grill newcomers, especially families with youth about where they hail from." Exh. 3, Tab F at 150. Thus, relocating internally is "a risky move." *Id.*

Although the Respondent's daughter was able to safely relocate to another part of the country, Dr. Moodie stated that Respondent would likely be unable to do the same. She explained that a drug-trafficking group seems to control the area where the Respondent's daughter lives. Because the organization knows the spouse of the Respondent's daughter, she was allowed to enter the territory. In Dr. Moodie's opinion, however, it would likely not be safe for someone, like the Respondent, who is not a partner of someone the organization knows to enter the territory.

As the DHS has not established that it would have been reasonable for the Respondent to relocate within El Salvador, the DHS has not rebutted the Respondent's presumption of a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1). Accordingly, the Respondent's application for asylum is granted.

**B. Withholding of Removal and Protection Under the CAT**

Since the Respondent will be granted asylum under INA § 208, the Court will not reach the merits of her claims for withholding under INA § 241(b)(3) or for relief pursuant to the CAT, as asylum is a greater benefit. *INS v. Bagamasbad*, 429 U.S. 24 (2006) (noting that “courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”).

**V. Conclusion**

The Respondent demonstrated that she suffered past persecution on account of her imputed political opinion and her membership in the particular social group “immediate family members of \_\_\_\_\_ she has also demonstrated that Salvadoran authorities are unwilling or unable to protect her. The DHS has not rebutted the presumption of a well-founded fear of persecution. Thus, the Respondent’s application for asylum is granted, and the Rider Respondents are granted asylum as derivatives.

**ORDER**

It is hereby ordered that:

- I. the Respondent’s application for asylum pursuant to INA § 208 is **GRANTED**.
- II. The Rider Respondents are also **GRANTED** asylum as derivatives.

12/04/2019  
Date

\_\_\_\_\_  
Immigration Judge