

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, ILLINOIS

In the Matter of

CLIENT

In removal proceedings

Hon. JUDGE

No. A

Individual Hearing:
DATE at TIME

**PRE-HEARING STATEMENT IN SUPPORT OF RESPONDENT'S APPLICATION FOR
ASYLUM, WITHHOLDING OF REMOVAL, AND PROTECTION UNDER THE
CONVENTION AGAINST TORTURE**

Respondent, CLIENT ("CLIENT"), through counsel, submits this brief in support of his application for asylum, *see* INA § 208, or in the alternative withholding of removal, *see* INA § 241(b)(3), or protection under the Convention Against Torture (CAT), *see* 8 C.F.R. §§ 208.16(c)(3); 208.17.

SUMMARY OF THE ARGUMENT

CLIENT is eligible to seek asylum, withholding of removal and relief under the Convention Against Torture. He filed an asylum application within one-year of his entry into the United States and qualifies for asylum on the basis of past persecution and a well-

founded fear of future persecution on account of his membership in the particular social group as a member of the FAMILY/ FAMILY.

Moreover, there is a reasonable possibility that he will suffer persecution in the future on this basis if he is returned to El Salvador. The physical attacks, threats, and continuous harassment that Respondent endured at the hands of the international 18th Street Gang not only amount to past persecution, these actions further give rise to a presumption that Respondent will be subject to persecution in the future if he is returned to El Salvador and that relocation is not a viable option for him.

There is also significant evidence that Respondent suffered persecution at the hands of gang members and that the Salvadoran government is unwilling and unable to control any persecution that will be directed at Respondent. Independent of Respondent's past persecution, however, Respondent also possess a well-founded fear of future persecution and it is more likely than not that he will be harmed or tortured if he is returned to El Salvador. Finally, the mere fact of Respondent's unlawful entry to the United States is not a sufficient negative factor to militate against a grant of asylum in the exercise of discretion.

Respondent also qualifies for withholding of removal under INA § 241(b)(3) because he can also meet the heightened showing that he is "more likely than not" to face persecution upon return to El Salvador, as is required to merit protection under this

provision. Further, Respondent's past persecution on account of a protected ground triggers a presumption of future persecution, and also, a presumption that he cannot reasonably relocate within El Salvador. Given current country condition reports on El Salvador, it is not likely that the government can rebut these presumptions.

Finally, Respondent merits withholding or deferral of removal under the Convention Against Torture. This Court should also find that the physical and emotional trauma explained below qualify as torture under the regulations. If the court does not find that the gang actions can be considered as torture, Respondent argues that the court find that it is more likely than not that he will be caught, tortured, and/or killed if returned to El Salvador. Because Respondent is not subject to any bars under the withholding statute, Respondent is thus eligible to be granted withholding of removal or protection under the Convention Against Torture.

STATEMENT OF FACTS

I. CLIENT'S PERSONAL HISTORY¹

CLIENT, born, is a 23-year old citizen of El Salvador. He attempted to enter the United States without inspection but was caught at the border in approximately January, 2016 and placed in custody of the Department of Homeland Security ("DHS"). At the time of his immigration arrest, CLIENT expressed to DHS officers that he is afraid to return to El

¹ Unless otherwise noted, the Statement of Facts is taken largely from Respondent's Affidavit, attached as Ex. A.

Salvador. He has never before travelled to, or been removed from, the United States. He filed a timely application for asylum, withholding of removal, and protection under the Convention Against Torture at his last Master Calendar Hearing on May 19, 2016, well before having been present in the United States for more than one year. *See* Record of Proceedings (hereinafter referred to as "ROP).

CLIENT grew up in a small farming community called Caserio El Pichiche where he and his family lived in a secluded part of the community. CLIENT was raised by his mother, MOTHER, and his step-father, STEP-FATHER. CLIENT does not know, or have a relationship with, his biological father. His step father works as a field-hand to support the family. CLIENT has one older sister and six younger half-siblings from the union between his mother and his step-father.

CLIENT attended school until the age of 16, but then decided to help the family financially by working as a farm laborer. CLIENT describes his youth as peaceful, simple, and modest. When he became a teenager, however, his community of El Pichiche began to change as gang members that were new to the community were attracted to the town center. The community recognized the newcomers as gang members because of the tattoos they displayed, such as the number "18" or the Roman numeral version "XVIII."

The tattooed men were known to be members of the 18th Street Gang because, although the community is small, the news reports of extreme gang violence and crime had

spread throughout the small country of El Salvador. CLIENT states that he read about the violence and power that the gangs wield and wanted nothing to do with them, despite the fact that they attracted more and more young men voluntarily or involuntarily into the gang.

Salvadoran soldiers also arrived in the community a little after the gangs began to exercise control of the community. CLIENT thought that the government had sent the soldiers as protection, but states that he did not feel safe; rather he felt that he was in a “war zone.” After a short time, the gangs began using intimidation and violence to extort local businesses and families. CLIENT and his family, however, believed that they were safe from these tactics because they were poor farmers and unlikely to become targets for extortion.

CLIENT states that he remembers the first time the gang kidnapped members of the community. The gang took two young people from their families and they were never seen again. The violence and crime seemed senseless and frightening to CLIENT, who felt for the first time that the gang could take control over the community.

The violence and crime finally directly affected the family in approximately March, 2015 when CLIENT’s 17-year-old brother, BROTHER, went missing. CLIENT searched for BROTHER but no one in the community had information or would not talk to him out of fear of what violence. CLIENT describes the community fear as a refusal to become

involved in anything that could potentially be related to the gangs. CLIENT and his family were aware that the 18th Street Gang often forcefully recruits young men that poor and about BROTHER' age because they are seen either as impressionable or powerless. Other members of the family, including CLIENT had avoided contact with the gang in the past and had managed some apparent anonymity.

CLIENT and his family seriously considered reporting BROTHER' disappearance to the police, but had little faith that anything could, or would, be done. CLIENT understood from the past experiences of other families that going to the police can end with the deaths of those that make the reports. He recalls a father and son that were robbed by gang members and were subsequently disappeared after reporting the robbery to the police. CLIENT and his family felt hopeless based on the experiences of the community and decided that going to the police about BROTHER be too dangerous; it would not lead to anything but more violence against the family.

Approximately one week after BROTHER went missing, he called CLIENT at the family home. BROTHER was crying and told CLIENT that he had been taken to an unknown location, that he was scared, and that he could not say more. The call was abruptly cut short. CLIENT told his parents that BROTHER had called and was alive, but he was nervous to say more because he felt that it would harm his mother in particular. CLIENT does not know the specific diagnosis, but the family knows that she is easily

affected emotionally and physically by stress and worry, at the illness causes her to faint suddenly. She has been to the hospital on several occasions and was given some medication. For that reason, CLIENT told his mother only that he was alive.

A few months passed and CLIENT was then told that BROTHER had been arrested and imprisoned. It was then that the family found that BROTHER had been tattooed by the 18th Street Gang, thereby branding him as one of their own. CLIENT believes that this was an effort to control BROTHER, since once marked, forcefully-recruited teens are owned by the gang.

After BROTHER' arrest and subsequent release from jail in approximately November 2015, he refused to come back to El Pichiche with the family because he was scared that the 18th Street Gang would kill him because he did not want to be involved with the 18th Street Gang. Instead, BROTHER fled to a border town near Guatemala where his grandparents lived. BROTHER called CLIENT after he arrived at his grandparents' home and reiterated that he could not come back home because it was too dangerous since he wanted nothing to do with the gang. That was the last time that CLIENT spoke to his brother.

In approximately November 2015, Mr. BROTHER answered a call from an unidentified caller who stated that CLIENT needed to be careful because they were looking for him. Then, on November 20, 2015, four unidentified men came to CLIENT's home

while he was in the back resting after work. Other than some of his younger siblings who were inside the house, CLIENT was alone in the yard. The men approached CLIENT and asked the whereabouts of BROTHER. CLIENT stated that he did not know, but that BROTHER was not there. The men did not believe him and one man put a gun against CLIENT's head and stated that they would find BROTHER and that if CLIENT did not cooperate, they would kill him. CLIENT states that:

My mind went blank. I have seen a lot in the news about gang violence and knew that they often killed people in brutal ways. I thought that this would be the day I died. I think that I looked pale and scared because they started laughing at me. Then they told me that I had four days to bring my brother to them. And if I did not bring him to them, they would kill me.

Ex. A, ¶ 26.

CLIENT is unsure about the entire motive of the gang visit, but contextually believes that the main motive was to locate BROTHER who had fled from gang-membership. CLIENT does not doubt that the gang would follow through on their death-threat. It was unclear to him whether the gang was trying to forcefully recruit him as well. He again thought of going to the police but feared for his family's safety due to the completely ineffective protection or outright corruption of the police. CLIENT related the fact that some members of the gang had come to the house, but did not state to his family that they had held a gun to his head because he knew that it would upset them terribly if they knew the extent of the threats made against CLIENT.

The family evaluated CLIENT's options and came to the conclusion that El Salvador had become too dangerous for him since he was directly threatened. CLIENT and his family believe that there is no limit to the retribution the gangs will exert to ensure that consequences are met out for noncompliance of their wishes. The family believed that the only safe option would be for CLIENT to leave El Salvador entirely because gang violence and power encompasses the whole of the small country. CLIENT, therefore, began his flight from El Salvador two days before the expiration of the deadline the gang members had given him.

CLIENT stayed for about one week with relatives at their home about three to four hours from El Pichiche. He then began his flight to the United States where he now seeks protection as a directly threatened family member of a forcefully-recruited ex-gang member.

II. COUNTRY CONDITIONS IN EL SALVADOR²

With a homicide rate of 103 murders per 100,000 inhabitants, El Salvador has now surpassed Honduras and is today known as the murder capital of the world. Ex. B, J. El Salvador is the smallest Central American country, approximately the same size as Massachusetts, but it is densely populated with just over 6.3 million people. Ex. O, W, CC. After an established peace truce between the state and El Salvador's violent gangs, the

² Respondent highlights only pertinent points in this section. For the Court's convenience, Respondent has attached full reports with relevant excerpts of country conditions materials on El Salvador and included them in Respondent's Index of Supporting Exhibits.

country experienced all-time lows in murder rates. Ex. I. The truce, however, was broken in 2014 and violence spiked to levels that surpass Civil War homicide rates, El Salvador's bloodiest period in history. *Id.* An estimated 5,755 Salvadorians were murdered during the months of January to November 2015. Ex. N. To put El Salvador's murder rate in perspective, Chicago, a city with a population of just half that of El Salvador's, recorded 48 murders in May 2015, whereas El Salvador recorded more than 600. Ex. O.

A. History of Violence in El Salvador

El Salvador is a country with a long history of political instability, economic inequality, and violence. It is difficult to pinpoint the source of violence because of the many actors at play including the Salvadoran state, the police force, and the multiple, powerful gangs throughout the country. Ex. R. After a failed peasant uprising in 1932 that resulted in 25,000 deaths, the country transitioned into military rule that lasted 45 years. *Id.* In an effort to resist the military, the *guerilla* political group, Farabundo Marti National Liberation Front (FMLN) was founded. *Id.* In 1980, war broke out between the newly formed FMLN and the military. *Id.*

75,000 Salvadorans were killed in their 12-year long Civil War (1980-1992). Ex. F. Salvadoran civilians were caught in the middle of violence and poverty; causing many to flee to the United States in hopes of better and safer futures. Ex. R. By the early 1990's, there were about 500,000 Salvadorians living in the United States. *Id.* Many Salvadorans

had established lives centered around gang life in the United States, particularly in the Los Angeles region. *Id.* Because of changing American immigration policies during that time, many Salvadorans with criminal histories were deported in the 1990's. *Id.* When they returned to El Salvador, they brought gang culture and violence back with them. *Id.* El Salvador was at a very weak and vulnerable point of its history, recovering from a bloody and long Civil War. When gang culture was brought back to this political climate, it flourished and evolved into the powerful gangs that exist today. Ex. R.

B. Gang Violence in El Salvador

The Mara Salvatrucha 13 gang ("MS" or "MS-13") and the 18th Street gang ("Barrio 18" or "Calle 18") are two of El Salvador's most powerful gangs. Ex. G. Since their founding, the 18th Street Gang has split into two separate factions: the *Revolucionarios* and the *Sureños*. *Id.* Gang presence is so prevalent in El Salvador that 1 in 10 Salvadorians depend on gangs in one way or another. *Id.* There are approximately 50,000 gang members aged 12 to 55 in El Salvador, and more than 10,000 gang members serving time in jail or prison. *Id.* However, about 95% of crimes in El Salvador go unpunished. *Id.* Mostly poor and lower middle class Salvadorans suffer the greatest consequences of gang violence. *Id.* Civilians in Salvadoran communities are subject to extortion, intimidation and threats, and forced recruitment by *pandilleros* (gang members). Ex. D, W.

In 2003, the state attempted to intervene by implementing a policy called *Mano Dura* (Iron Fist), in which state officials cracked down on gang activity. Ex. N. Police officers began arresting suspected gang members, often because of visible gang-affiliated tattoos. *Id.* However, the implementation of *Mano Dura* had an inverse effect. Reports show that “Given the failure of previous crackdowns, some question whether increased repression will bring the gangs to their knees. Some say it will fuel the violence.” Ex. N. Policies such as *Mano Dura* normalize violence further and put thousands of gang members in prisons, allowing gang networks to develop and grow within the Salvadoran prison system. *Id.*

In 2012, the gangs worked with the state to agree upon a truce. The country experienced a record-low in homicide rates. Ex. I. However, after 15 months the truce was broken and the country saw a spike in violence and homicide rates once again. El Salvador experienced a 70% spike in deaths in the year 2015 as a result of the broken truce. Ex. G. This was El Salvador’s most violent period in history since their Civil War. *Id.*

Presently, gang organizations go unchecked by the Salvadoran government, and public officials engage in corrupt practices with impunity. Ex. C. DOS reports cite inadequate training, insufficient funding, failure to effectively enforce evidentiary rules, and corruption and criminality within the National Civilian Police as some of the major reasons for government failure to protect citizens. *Id.* “Impunity persist[s] despite government steps to dismiss and prosecute some officials who committed abuses within

security forces and the justice system.” *Id.* Furthermore, the DOS reports that judges denied anonymity to witnesses at trial, thereby reinforcing the intimidation methods of gangs and making it all but impossible for witnesses to safely cooperate in any criminal prosecution that might occur. *Id.*

Even discounting corruption within the government, DOS reports that most serious crimes are never solved because “The Government of El Salvador lacks sufficient resources to properly investigate and prosecute cases and to deter violent crime.” Ex. B. Gang membership continues to rise and there are gang “cliques” in all 14 Salvadoran states. Ex. DD. Gangs now control entire districts and the violence between competing gangs has led to critically high levels of violence. Ex. II.

Pandilleros (gang-members) are often recognized in communities because of visible tattoos. Tattoos are a method of branding, control, and punishment within gang culture in El Salvador. Ex. K. Young men that are forcefully-recruited into gangs do not have a choice once they are approached to join. Ex. U. Many are then forcefully tattooed once they are recruited. Ex. K. These young men, who are thought to have no future, are natural targets. Ex. K. Threats, kidnappings, and murder are common consequences for young people that refuse to join the gang. Ex. D. Many say that staying at home does not keep you safe from threats or death. Ex. G. “If a gang threatens someone, that person doesn’t

have a place to turn and will likely have to leave” says an immigration specialist in an article published by Latin America Working Group. Ex. U.

C. Gang Violence in Poor, Rural Communities

Gangs intentionally target poor and rural communities in El Salvador as another method of gaining power. Ex. D. The Latin America Working Group (LAWG) reports that “gangs have become an integral aspect of poor, vulnerable areas.” Ex. U. This is partially due to the perception of rural, poor communities as being powerless. LAWG continues, “In some areas they [civilians] think they can get better security from gangs if they follow the gangs’ rules.” Ex. U.

In previous years, gang activity has had the greatest effects in the Department of San Salvador. Ex. D. However, due to growth in membership and power, gang violence has seeped into rural areas of the country as well. Even the most remote and rural areas of El Salvador are suffering the consequences. *Id.* A report published in 2015 declared that San Salvador was no longer El Salvador’s most dangerous department. *Id.* Homicide rates in rural departments, such as La Paz, have surpassed San Salvador’s. *Id.* Homicide rates in these areas have increased particularly after the breaking of the truce. Ex. H. For example, Zacatecoluca, La Paz’ capital city, became a “battle zone” in early 2014 and there were 52 murders in the first half of 2014. *Id.* In comparison, 58 people were killed in La Paz in 2010. *Id.* A program officer for Christian Aid in El Salvador writes, “While cities have become

notorious for gang warfare, what is worrying is that more and more murders are being committed in rural areas, as the violence spreads like an oil slick across the country.” Ex. V.

D. Targeting Families of Former Gang Members

Young men are considered at the highest risk for death in El Salvador. Ex. D. A UN report declares the homicide rate for women in El Salvador at 11 per 100,000 and for men at 42 per 100,000. *Id.* Homicide is the leading cause of death among adolescent boys in El Salvador. *Id.* The majority of homicide victims are males between the ages of 15 and 34. *Id.* Both the Mara-18 and the MS-13 target young men. Experts on the violence in El Salvador state that, “kids have two choices: join or flee.” Ex. I.

Because of the state’s crackdown on gang activity, young men are often arrested and imprisoned at very young ages. Ex. I. Upon their release, they are expected to check in with gang-member “clique-bosses.” If they do not, they immediately become a target of threats and death, along with their entire family. *Id.* Contacting the police is not a viable option for victims and their families. A report from LAWP states, “The gangs control entire communities, leveraging so much power that even police are afraid to enter some areas.” Ex. U. As one woman explained to reporters, gang members attempted to kill her husband because “they thought they saw him talking to the police.” Ex. W. Reports indicate that threats directed toward young men are often transferred over to their family members. *Id.* Once one member has been threatened, “Then the whole family has to leave.” *Id.*

E. Resisting the *Pandilleros*

Those who resist gang members put themselves at danger as well. A UN report states:

Persons who resist the authority of the local gang or who even just inadvertently cross it, or who collaborate with the security forces or with rival gangs, are reportedly subjected to swift and brutal retaliation from the gang. Not only are such persons killed by the gangs but their family members are often targeted as well.

Ex. D. The same report states that resisters or family members of resisters to the gangs are often threatened before they are killed and can be murdered with no prior warning. *Id.*

Similarly, the U.S. Department of States issued a travel warning for El Salvador stating that gang members are quick to use force or murder if resisted. Ex. B.

There is, unfortunately, little hope for migrants returning from the United States to El Salvador. A returning migrant is likely to be a target simply because they fled in the first place. Ex. D. Reports state that there is no end in sight to the extreme levels of violent conditions in El Salvador. Ex. U. Moreover, moving to another location within El Salvador is not an option for persecuted individuals. As stated above, El Salvador is roughly the size of Massachusetts and there is little hope of distancing oneself from retribution. Ex. CC. Additionally, gang influence and control extend to all parts of the small Salvadoran geography. Ex. DD.

ARGUMENT

CLIENT qualifies for, and merits, asylum in the exercise of discretion, and this court should grant asylum based both on the past persecution CLIENT suffered, as well the well-founded fear of future persecution if he is returned to El Salvador. Should the court conclude that CLIENT is ineligible for asylum, he is nonetheless eligible for the non-discretionary protection provided by withholding of removal or for relief under the Convention Against Torture and should be awarded one of those remedies.

I. CLIENT Meets the Definition of Refugee, and he Qualifies for, and Merits, Asylum Due to Past Persecution and Well-Founded Fear of Future Persecution Based on his Membership in a Particular Social Group.

The Immigration and Nationality Act (“INA”) sets forth the legal test for asylum eligibility. To be granted asylum in the United States, applicants must show that: (i) they meet the statutory definition of “refugee” under the INA; (ii) they are not procedurally barred from invoking “refugee” status; and (iii) their case merits a grant of asylum in Court's discretion. *See* INA §101 (a)(42); *see also* 8 C.F.R §1208.13 (a) (2016).

If an asylum applicant meets the definition of a refugee, the application may be granted. A refugee is defined as:

Any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that 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.

INA §101(a)(42)(A).

A. CLIENT Qualifies for Asylum due to his Membership in a Particular Social Group as a Member of the Family/ FAMILY Family

In order to qualify for asylum, an applicant must show that the persecution she has or would face is on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.13(b)(1). In *Matter of Acosta*, the BIA defined "particular social group" as referring to persons who "share a common immutable characteristic," either "an innate one such as sex, color, or kinship ties, or in some circumstances . . . a shared past experience" which the members of the group "either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." 19 I&N Dec. 211 (BIA 1985), *overruled in part on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987)³. The characteristic can include "a shared

³ In February 2014, the BIA issued two precedential decisions regarding the particular social group definition, which reaffirmed the BIA's addition of "social distinction/visibility" and "particularity" to the particular social group definition. *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 20 (BIA 2014). However, the Seventh Circuit has rejected these additions to the particular social group definitions. See *Gatimi v. Holder*, 578 F.3d 611 (7th Cir. 2009) (rejecting the BIA's social visibility test); *Cece*, 733 F.3d at 674-75 (rejecting breath (particularity) as a bar to a particular social group). Since the BIA did not purport to overrule Seventh Circuit precedent when it issued *M-E-V-G-* and *W-G-R-*, the Seventh Circuit's rejection of social distinction and particularity remains binding here. The fact that the Seventh Circuit did not even reference *M-E-V-G-* or *W-G-R-* in three decisions regarding the social group definition published after *M-E-V-G-* and *W-G-R-* (*R.R.D. v. Holder*, 746 F.3d 807 (7th Cir. 2014); and *NL.A. v. Holder*, 744 F.3d 425 (7th Cir. 2014); and *Sibanda v. Holder*, 778 F.3d 676 (7th Cir. 2015)), but instead reaffirmed the *Acosta* definition, makes clear that the BIA decisions are not binding in the Seventh Circuit. (Significantly, *Sibanda* was both argued and decided after the publication of *M-E-V-G-* and *W-G-R-*, demonstrating that the Seventh Circuit was aware of these decisions at the time it reaffirmed its adherences to the *Acosta* standard for determining particular social group membership.)

past experience or status that has imparted some knowledge or labeling that cannot be undone." *Cece v. Holder*, 733 F.3d 662, 670 (7th Cir. 2013) (en banc).

The family-member particular social group is well-established under BIA and Seventh Circuit case law. In *Acosta*, the BIA lists kinships ties as the type of immutable characteristic that can form the basis of a particular social group. 19 I&N Dec. at 233-34. The Seventh Circuit has similarly made it clear that family is a cognizable particular social group. *Ayele v. Holder*, 564 F.3d 862, 869 (7th Cir. 2009); see *Cece*, 733 F.3d at 669 (acknowledging that "membership in an extended family" is an immutable or fundamental characteristic).

It is well-established that family members of gang-members suffer severe persecution solely based on their familial relationship. Experts state that, "When you count gang members . . . you should add mothers, fathers, brothers, sisters and cousins. Rival gangs think the same way: When one joins, the whole family joins. And so they are marked, and marked forever, according to gang mentality." Ex. S. Similarly, if the primary target cannot be found, the gangs turn immediately to the target's family members. See e.g., U (confirming that "The threat directed at the child then is directed at the family in El Salvador when the gangs find the child has left. Then the whole family has to leave"). CLIENT, therefore has established his membership in a cognizable particular social group.

B. CLIENT's Particular Social Group Membership was at least One Central Reason for the Persecution He Suffered.

1. CLIENT Suffered Past Persecution

Neither the INA nor accompanying regulations define persecution. Guidance concerning persecution is thus found exclusively in case law. The Seventh Circuit has stated that persecution is behavior that “threatens death, imprisonment, or the infliction of substantial harm or suffering.” *Sayaxing v. INS*, 179 F.3d 515, 519 (7th Cir. 1999). Most recently, the Seventh Circuit has suggested that persecution involves “the use of significant force against a person’s body, or the infliction of comparable physical harm without direct application of force . . . or nonphysical harm of equal gravity.” *Stanojkova v. Holder*, 645 F.3d 943, 948 (7th Cir. 2011). The suffering or harm experienced must amount to more than mere harassment. *Balazoski v. INS*, 932 F.2d 638, 642 (7th Cir. 1991). However, the Seventh Circuit has noted that the “line between harassment and persecution is the line . . . between wishing you were living in another country and being so desperate that you flee without any assurance of being given refuge in another country.” *Stanojkova*, 645 F.3d at 948.

When determining whether an individual suffered past persecution, the adjudicator must consider the cumulative significance of the record as a whole, rather than each event in isolation. *Nzeve v. Holder*, 582 F.3d 678 (7th Cir. 2009). As a result, various types of harm that do not amount to persecution in isolation may be considered persecution when taken in the aggregate. Such harms might include: 1) arbitrary interference with a person’s

privacy, family, home or correspondence; 2) enforced social or civil inactivity; 3) passport denial; and/or 4) constant surveillance. *Id.*

If an applicant establishes that he experienced past persecution on account of a protected ground by the government or an entity the government cannot or will not control, discussed *infra*, he is presumed to possess a well-founded fear of future persecution. 8 C.F.R. §208.13(b)(1); *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989). At that point, the burden shifts to the government to establish by a preponderance of the evidence that conditions in the country of origin have changed such that the applicant no longer has a well-founded fear, or that it would be reasonable for the applicant to move to another part of the country to avoid persecution. 8 C.F.R. §208.13(b)(1)(i).

In determining whether the respondent could relocate, the adjudicator must first examine whether safe relocation is possible, and if so, whether it would be reasonable to expect the applicant to relocate. *Oryakhil v. Mukasey*, 528 F.3d 993, 998 (7th Cir. 2008). The reasonability of internal relocation should be examined in light of ongoing civil strife; government infrastructures; geographical limits; and social or cultural constraints. 8 C.F.R. §208.13(b)(3).

In this case, CLIENT suffered persecution in the form of behavior that “threatens death . . . or the infliction of substantial harm or suffering.” *Sayaxing*, 179 F.S3d at 519. Multiple members of the 18th Street Gang entered onto the property where CLIENT lived

with his family, traumatically demanded information from him about the whereabouts of a loved one, specifically a younger brother who had previously been taken from the family. *See* Ex. A, ¶¶ 13, 16-18. One of the men held a gun to his head and threatened to murder him if he did not meet a dictated deadline. *Id.* at ¶ 26.

These actions are more than mere harassment. The gang members knew exactly where the family lived and personally invaded the property with the sole purpose of interrogating CLIENT. *Id.* The men then held a weapon directly to CLIENT's head and made threats that were both subjectively and objectively credible. *Id.* CLIENT states that he knew and understood the impunity under which the gangs operated and that he could not hope for adequate and lasting protection. *Id.* at ¶ 27. Furthermore, CLIENT had read, heard, and seen that the gang members did not hesitate to enforce their threats through murder. *Id.* at ¶¶ 11-12.

The threats are also objectively credible as the substantial supplementary country conditions demonstrate. DOS publications state clearly and unequivocally that "Gang members are quick to engage in violence or use deadly force if resisted." Ex. B. News reports about severed heads and other grotesque murders abound and the overwhelming evidence demonstrates that these murders are done in order to maintain the gang's credibility in future interrogations or threats. *See e.g.*, Ex. F-H.

In considering the gang's actions that may not amount to persecution in isolation, this court should consider the arbitrary interference with a CLIENT's privacy, family, home, and correspondence into account. *See Nzeve*, 582 F.3d 678. As stated above, CLIENT's teenage brother was kidnapped and held by the gang at an unknown location, where he was forcibly conscripted into the ranks of the gang. Ex. A at ¶¶ 13-24. The gang later made threatening phone calls directly to CLIENT's home. *Id.* at ¶ 25. Four gang members then came to the family home and entered the property and made further threats directly to CLIENT. *Id.* at ¶ 26. All objective indications show that the gang would not have hesitated in returning to make good on their threats had CLIENT not fled the country. *See e.g.*, Ex B, C (stating that "Armed groups and gangs targeted certain persons and interfered with privacy, family, and home like, and created a climate of fear that the authorities were not capable of restoring to normal").

Taking into consideration the direct death threats made to CLIENT, as well as the past violations of his privacy at home, interference with his family, and emotional strain, this court should find that CLIENT suffered past persecution. Therefore, the burden must shift to DHS to show, by a preponderance of the evidence, that there has been a fundamental change in circumstances in El Salvador or that internal relocation is a viable option for CLIENT. Country conditions demonstrate, however, that no such change in circumstance has occurred. Furthermore, El Salvador is approximately the size of

Massachusetts and gang power and influence can be found throughout the country. *See e.g.*, Ex. BB.

Therefore, as there has not been a fundamental change in circumstances in El Salvador and as internal relocation is not viable, this court must find that CLIENT has established a reasonable possibility, if not a probability, of future persecution.

2. Even if the Government Can Rebut the Presumption of Future Persecution Through a Fundamental Change in Circumstances or Through Possible Internal Relocation, CLIENT has Independently Established a Likelihood of Persecution if Returned to El Salvador

A respondent need not show that he would be individually targeted if he can establish that there is a pattern or practice of persecution of a group of persons similarly situated to him. 8 C.F.R. § 1208.13(b)(2)(iii). *See Banks v. Gonzales*, 453 F.3d 449, at 452 (7th Cir. 2006); *see also Matter of A--*, 23 I&N Dec. 737, 741 (BIA 2005) (quoting *Lie v. Ashcroft*, 396 F.3d 530, 537 (3d Cir. 2005) as stating that “pattern or practice” means persecution of a group that is ‘systematic, pervasive, or organized’”).

In the instant case, the country conditions in El Salvador currently demonstrate that there is a pattern and practice of persecution against family members of forced-recruits or ex-gang members. *See Ex. U, S; see also Statement of Facts supra*. Because overwhelming evidence exists of continuous persecution of group family members (persons similarly situated to CLIENT) by individuals or groups that the Salvadoran government is unable or

unwilling to protect, CLIENT has established a strong likelihood of persecution if returned to El Salvador.

3. CLIENT Has a Well-Founded Fear of Future Persecution.

Even if this Court finds that CLIENT has not suffered past persecution, CLIENT qualifies for asylum because he has a well-founded fear that if he is forced to return to El Salvador, he will be threatened, hurt and likely killed by gang members who act with impunity.

To establish a well-founded fear of future persecution, an applicant must: (i) display a subjective fear of future persecution on account of one or more of the enumerated grounds; and (ii) substantiate an objectively reasonable possibility of actually suffering such persecution. *See* 8 C.F.R. § 1208.13(b)(2)(i); *Giday v. Gonzales*, 434 F.3d 543,553-54 (7th Cir. 2004). Well-founded fear is shown by establishing there is a "reasonable possibility" of persecution if applicant is forced to return to her home country. *INS v. Cardoza-Fonseca*, 480 U.S. 421,440 (1987). A "reasonably possibility" of harm can exist when there is just a ten percent chance the applicant will suffer persecution if returned to her home country. *Tahemkov v. Gonzalez*, 495 F.3d 785, 793 (7th Cir. 2007).

Through his affidavit, evidence, and the credible testimony he will present in court, CLIENT has established a subjective fear of persecution. *See* Ex. A at ¶¶ 28-34. CLIENT believes that he will be threatened, killed, kidnapped, or tortured at the hands of the 18th

Street Gang if he is returned to El Salvador. *Id.* Furthermore, evidence provided by CLIENT demonstrates more than a reasonable possibility that he will be persecuted if returned. New reports and analyses provided by experts show that the gangs' reach extends across the whole of El Salvador, including cities and rural areas alike. *See e.g.*, Ex. C, N, Q, S, CC. In particular, evidence demonstrates that the memory of the gangs is long and consequences for noncompliance are undiminished with the passage of time. *See e.g.*, Ex. S.

4. CLIENT Suffered Persecution on Account of his Membership in a Particular Social Group.

To obtain asylum, a protected ground must be at least one central reason for the persecution the applicant suffered or fears. INA § 208(b)(1)(B)(i). However, a persecutor may still have mixed motives for targeting the applicant; the protected ground must only have played a central role in motivating the persecutor. *Shaikh v. Holder*, 702 F.3d 897, 902 (7th Cir. 2012). Moreover, the applicant can meet this standard through either direct or circumstantial evidence. *Martinez-Buendia v. Holder*, 616 F.3d 711, 715 (7th Cir. 2010). The applicant's credible testimony, without more, can also be sufficient to sustain his burden of proof INA § 208(b)(1)(B)(ii).

In this case, direct and circumstantial evidence demonstrate that gang members harassed and directly threatened CLIENT with death because of his familial status with his brother BROTHER. *See* Ex. A at ¶¶ 25-26. The first called the family home and stated that

they were looking for CLIENT and then said that he should “be careful.” *Id.* at ¶ 25. They then made good on their promise and showed up at CLIENT’s home and, again, directly threatened CLIENT with death if he did not give up information about his brother’s whereabouts. *Id.* at ¶ 26. The persecutors’ motive, therefore, for targeting CLIENT because he is a family member is unequivocally a central role in his past and future persecution.

CLIENT was legitimately afraid of the consequences that would follow if he went to the police for protection due to the vast evidence and common experiences of exacerbated problems and dangers with the gangs if so reported. The DOS has stated outright that:

Substantial corruption in the judicial system contributed to a high level of impunity, undermining the rule of law and the public’s respect for the judiciary...An ineffective public security strategy, inadequate government funding and training of the PNC, and witnesses created a climate of fear, complicating investigations of violent crimes and other alleged human rights abuses.

Ex. C. The all-too-common problem of extreme harm following any efforts by victims to record the persecution suffered at the hands of the gangs is further documented by CLIENT’s supplementary documents. *See e.g.*, Ex B, L, P, T, V, CC. Although it was unsafe or impossible for CLIENT to present direct recordings or other evidence substantiating the events due to his immediate flight to the United States and subsequent detention by DHS, CLIENT can present credible circumstantial evidence and direct testimony to sustain his burden of proof.

C. The Salvadoran Government is Unable or Unwilling to Protect CLIENT.

Substantial evidence shows that the Salvadoran government has failed in any protection policy that it has attempted to put in place and individuals such as CLIENT have no recourse for harm suffered at the hands of gangs. As stated above, the DOS country conditions reports and travel advisories clearly indicate that corruption in the judiciary and the police force, as well as inadequate training and resources remain “critically high.” Ex. B. Those members of the police force that are not involved in corruption are themselves heavily targeted by gang members. *See* Ex. D, F. The reality, experts state, is that gangs act as a “parallel government” in which they control entire districts, “hold ad hoc tribunals and decide where residents can live and businesses can operate.” Ex. N.

The initial massive movement to incarcerate as many gang members as possible proved counter-productive in that prisons act as a criminal education system for young members that may have been partially or involuntarily involved in the gangs; instead prison reinforces and exacerbates gang mentality. *See* Ex. AA. Additionally, evidence shows that even if gang leaders are arrested, gang business simply operates out of the prison with no repercussions. *See* Ex. M.

Even during the truce brokered between the government and the competing gangs, experts “question whether violence truly ebbed as much as suggested, noting that homicides may have declined but disappearances increased.” Ex. L. The evidence clearly

suggests, at a minimum, that the Salvadoran government is unable to control CLIENT's persecutors.

D. CLIENT Should Be Granted Asylum in the Court's Discretion.

Once an applicant demonstrates that he is a refugee and that he is not subject to any statutory bars, an immigration judge has the discretion to grant asylum. *See* 8 C.F.R. § 1208.14(a) (2016). The BIA has advised courts to examine the totality of the circumstances when considering an asylum application, and noted that asylum should generally be granted to eligible applicants unless adverse factors counsel against it. Although the applicant bears the burden of establishing that a favorable exercise of discretion is warranted, the danger of persecution should outweigh all but the most egregious adverse discretionary factors. *See Matter of Pula*, 19 I&N Dec. 467 (BIA 1987); *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996).

The foregoing paragraphs and accompanying evidence establishes CLIENT's eligibility for asylum based on his past persecution and his well-founded fear of future persecution if returned to El Salvador. There are no factors weighing against a grant of asylum for CLIENT. CLIENT, therefore, respectfully requests the Court exercise its discretion to grant asylum in the United States.

II. CLIENT is Eligible for Withholding of Removal Under INA § 241(b)(3).

Subject to certain exceptions not applicable here, CLIENT may not be removed or returned to any country where his "life or freedom would be threatened ... because of [his] race, religion, nationality, membership in a particular social group, or political opinion." INA § 241(b)(3)(A). In order to qualify for withholding of removal, CLIENT must establish that "it is more likely than not that [they] would be subject to persecution." *INS v. Stevie*, 467 U.S. 407, 424 (1984); *see also* 8 C.F.R. § 1208.16(b)(2) (2009).

As discussed *supra*, CLIENT has established his past persecution on account of a protected ground, which makes it more likely than not that he will be persecuted in the future, and has also shown an independent, clear probability of future persecution. He must, therefore, be granted withholding of removal. *Stevie*, 467 U.S. 407, 430 (1984); *Sarhan v. Holder*, 658 F.3d 649, 653 (7th Cir. 2011).

III. CLIENT is Entitled to Relief Under the Convention Against Torture.

CLIENT also respectfully requests relief pursuant to Article 3 of the Convention Against Torture, which provides that "[n]o State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, *available at* <http://www.unhcr.org/refworld/docid/3ae6b3a94.html> accessed 15 September 2013.

An applicant is eligible for withholding of removal under Article 3 of the Convention Against Torture if she can show that it is more likely than not that she would be tortured if returned to her country. *See* 8 C.F.R. § 1208.16(c)(2). In evaluating an applicant's eligibility for relief, the Court should consider: (i) evidence of an applicant's past experiences of torture; (ii) evidence that the applicant would not suffer torture in other parts of the country of removal; (iii) "[e]vidence of gross, flagrant or mass violations of human rights within the country of removal"; and (iv) "[o]ther relevant information regarding conditions" in his country. *Id.* § 1208.16(c)(3). Provided that the statutory bars to withholding of removal do not apply to the applicant, the applicant would then be entitled to relief under the Convention Against Torture. The Seventh Circuit has emphasized that the "more likely than not" standard used to evaluate claims under the Convention Against Torture does not require the applicant to show a 50 percent likelihood of torture, and rather asks whether "there is, or is not, a substantial risk that a given alien would be tortured if removed from the United States." *Rodriguez-Molinero v. Lynch*, 808 F.3d 1134, 1136 (7th Cir. 2015) (reversing Board of Immigration Appeals finding that applicant had not established that he was more likely than not to be tortured where applicant owed money to a powerful Mexican gang and gang members had made threatening phone calls to applicant's great-aunt and killed applicant's great-uncle).

CLIENT has shown that were he to return to El Salvador, it is more likely than not that they would be tortured or killed with the acquiescence of the government. Country conditions evidence is clear that corruption within the government is pervasive, including with the police force and the judiciary. *See* Ex. C (stating that “Substantial corruption in the judicial system contributed to a high level of impunity, undermining the rule of law and the public’s respect for the judiciary”). For these reasons, CLIENT’s request for relief pursuant to Article 3 of the Convention Against Torture should be granted.

CONCLUSION

WHEREFORE, CLIENT respectfully requests that this court grant him asylum, *see* INA § 208, or in the alternative withholding of removal, *see* INA § 241(b)(3), or protection under the Convention Against Torture (CAT), *see* 8 C.F.R. §§ 208.16(c)(3); 208.17.

Dated: DATE

Respectfully Submitted,

NAME
FIRM
CONTACT INFO