

IMMIGRATION COURT
525 W. VAN BUREN, SUITE 500
CHICAGO, IL 60607

In the Matter of

Case No.: [REDACTED]

[REDACTED]
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on May 29, 2018
This memorandum is solely for the convenience of the parties. If the
proceedings should be appealed or reopened, the oral decision will become
the official opinion in the case.

- ☐ The respondent was ordered removed from the United States to
or in the alternative to .
- ☐ Respondent's application for voluntary departure was denied and
respondent was ordered removed to or in the
alternative to .
- ☐ Respondent's application for voluntary departure was granted until
upon posting a bond in the amount of \$ _____
with an alternate order of removal to .

Respondent's application for:

- ☒ Asylum was (☒ granted () denied () withdrawn.
- ☒ Withholding of removal was () granted () denied (☒ withdrawn.
- ☐ A Waiver under Section _____ was () granted () denied () withdrawn.
- ☐ Cancellation of removal under section 240A(a) was () granted () denied
() withdrawn.

Respondent's application for:

- ☐ Cancellation under section 240A(b)(1) was () granted () denied
() withdrawn. If granted, it is ordered that the respondent be issued
all appropriate documents necessary to give effect to this order.
- ☐ Cancellation under section 240A(b)(2) was () granted () denied
() withdrawn. If granted it is ordered that the respondent be issued
all appropriated documents necessary to give effect to this order.
- ☐ Adjustment of Status under Section _____ was () granted () denied
() withdrawn. If granted it is ordered that the respondent be issued
all appropriated documents necessary to give effect to this order.
- ☒ Respondent's application of (☒ withholding of removal () deferral of
removal under Article III of the Convention Against Torture was
() granted () denied (☒ withdrawn.
- ☐ Respondent's status was rescinded under section 246.
- ☐ Respondent is admitted to the United States as a _____ until _____.
- ☐ As a condition of admission, respondent is to post a \$ _____ bond.
- ☐ Respondent knowingly filed a frivolous asylum application after proper
notice.
- ☐ Respondent was advised of the limitation on discretionary relief for
failure to appear as ordered in the Immigration Judge's oral decision.
- ☐ Proceedings were terminated.
- ☐ Other:

Date: May 29, 2018

Elizabeth G. Lang
ELIZABETH G. LANG
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

by
beth

Derv.

IMMIGRATION COURT
525 W. VAN BUREN, SUITE 500
CHICAGO, IL 60607

In the Matter of

Case No.: [REDACTED]

[REDACTED]
Respondent

IN REMOVAL PROCEEDINGS

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- [] Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to .
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Respondent's application for:

- [X] Asylum was (X) granted () denied () withdrawn.
- [X] Withholding of removal was () granted (X) denied (X) withdrawn.
- [] A Waiver under Section _____ was () granted (X) denied () withdrawn.
- [] Cancellation of removal under section 240A(a) was () granted () denied () withdrawn.

Respondent's application for:

- [] Cancellation under section 240A(b)(1) was () granted () denied () withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- [] Cancellation under section 240A(b)(2) was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
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- [X] Respondent's application of (X) withholding of removal () deferral of removal under Article III of the Convention Against Torture was () granted () denied (X) withdrawn.
- [] Respondent's status was rescinded under section 246.
- [] Respondent is admitted to the United States as a _____ until _____.
- [] As a condition of admission, respondent is to post a \$ _____ bond.
- [] Respondent knowingly filed a frivolous asylum application after proper notice.
- [] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
- [] Proceedings were terminated.
- [] Other: _____

Date: May 29, 2018

Elizabeth G. Lang
ELIZABETH G. LANG
Immigration Judge

Appeal: Waived/Reserved Appeal Due By: by [signature]

Jeffrey Middleworth, Esq.
Zuma Law, LLC
PO Box 7841
Gurnee, IL 60031
(847) 596-3030 Ext. 701

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

In the Matter of:

~~XXXXXXXXXXXX~~
~~Kenneth A. GANNALES GRADIS~~

In Removal Proceedings

Honorable Judge Elizabeth Lang

Next Individual Hearing:
May 29, 2018 at 9:00 AM

RESPONDENTS' PRE-HEARING STATEMENT, WITNESS LIST, ANNOTATED
TABLE OF CONTENTS AND PROPOSED EXHIBITS

In Removal Proceedings

D. ESTIMATED TIME REQUIRED TO PRESENT THE CASE: 2 hours. Spanish interpreter needed.

E. STATEMENT OF UNRESOLVED ISSUES

1. Whether Respondents can demonstrate a well-founded fear of persecution
2. Whether Respondents can establish such fear of persecution is on account of their membership in a particular social group or their imputed political opinion
3. Whether the Honduran government is unable or unwilling to protect Respondents
4. Whether the Respondent falls into an exception to the one-year deadline.
5. Whether Respondents merit favorable discretion
6. In the alternative, whether Respondents are entitled to Humanitarian Asylum
7. In the alternative, whether Respondents meet the higher threshold of future harm to establish a claim for withholding of removal
8. In the alternative, whether Respondents will be subject to torture if returned to Honduras

F. BIOMETRICS COMPLIANCE

Biometrics are current. Respondents were fingerprinted on March 28, 2017

Respectfully submitted this ____ day of May 9, 2018

Jeffrey Middlesworth (EOIR # SS657890)
Zuma Law LLC
PO Box 7841
Gurnee, IL 60031

F Sworn Declaration from Pedro Canale (Respondent [REDACTED] 27-30
estranged husband and father of her son) attesting to the murder of his

sister-in-law [REDACTED] by [REDACTED] (with certified English Translation)

G	Statement from [REDACTED] (Respondent [REDACTED] grandmother) attesting to the death of [REDACTED] and Los Chirizos (with Certified English Translation)	31-35
H	Notarized Statement from [REDACTED] (Acquaintance of Respondent [REDACTED]) attesting to [REDACTED] market, extortion by Los Chirizos and corruption by Honduran police (with Certified English Translation)	36-40
I	Notarized Statement from [REDACTED] (Brother-In-Law of Respondent [REDACTED]) attesting to [REDACTED] market and extortion by [REDACTED] (with Certified English Translation)	41-45
K	Additional Statement from [REDACTED] (Respondent [REDACTED] grandmother) attesting to ongoing family feud (with Certified English Translation)	54-58
L	Flyer related to death of [REDACTED] and asking for justice in her death	59-61
M	Additional social media flyer on death of [REDACTED]	62-64
N	Court document for [REDACTED] for charges on the murder of [REDACTED]	65-67
O	Photograph of Respondent [REDACTED] in her store Carniceria Canales	68-70
P	Supreme Court of Justice record of death for Respondent [REDACTED] 2010's aunts husband Santos Abundio Matute	71-74
Q	Supreme Court of Justice record of Death for [REDACTED] (Respondent [REDACTED] grandfather)	75-78
R	Death certificate for [REDACTED] (Respondent [REDACTED] mother)	79-82
S	Death certificate for [REDACTED] (Respondent [REDACTED] grandfather)	83-86
T	Death certificate for [REDACTED] (Respondent [REDACTED] husband)	87- 90

EXPERT DECLARATIONS IN SUPPORT OF ASYLUM APPLICATION

V Mental Health Evaluation From [REDACTED] LCSW 95-106

[REDACTED] is a Licensed Clinical Social Worker and Qualified Mental Health Provider who met with Respondent [REDACTED] to in face-to-face interviews. This evaluation presents her findings, which as discussed below, includes a finding of **Chronic Posttraumatic Stress Disorder (PTSD)**.

[REDACTED] in her report explains that as a result of [REDACTED] persecution [REDACTED] has difficulty sleeping, struggles being social and is scared to talk to her family for their safety.

[REDACTED] also explains that like many trauma survivors, [REDACTED] struggles talking about the trauma she went through.

When summarizing [REDACTED] PTSD diagnosis and recommendations, [REDACTED] explains "in order to recover from her trauma, [REDACTED] needs to remain in a safe and non-threatening environment with a supportive social network that understands the trauma she has survived. Returning to Honduras would thrust her back into a hostile environment with multiple triggers that would place her at an extremely high risk for further decompensation of severe psychological symptoms and would expose her to violence from la [REDACTED]"

W Declaration of Honduran Child Rights Expert [REDACTED] 107-184

Provided by the University of California Hastings College of Law's Center for Gender & Refugee Studies
Dated; October 27, 2017

In relevant part (highlighted by attorney for Respondent) this declaration goes into great detail on gang-based violence in Honduras. It discusses how most gang violence goes unreported. It also discusses how gangs control territory in Honduras. As to extortion it provides extortion...has reached epidemic proportions ...and "gangs perceive non-payment as an affront or a subversive political act intended to undermine their power."

X Declaration of Stuart L. Lustig, M.D., M.P.H., Expert on Trauma and Asylum Seekers 185-205

Expert declaration submitted to the Center for Gender and Refugee Studies on the psychological impact of prior trauma on trauma survivors' abilities to subsequently disclose various aspects of that trauma, such as the harms

they have experienced in the past and the harms they fear experiencing in the future, in setting such as border screenings and credible fear interviews upon arrival to the United States. In fact, several factors can prevent the immediate recall, disclosure and cohesive description of traumatic events, even when directly asked about those events.

██████████, M.D. M.P.H found “[s]ome victims can tolerate...conversations about their trauma to a limited extent, but most victims require significant psychotherapy to overcome their fear of activating these painful memories. Even with a trusted attorney, these memories take significant time to elicit and organize into a coherent narrative. Thus, many victims of trauma with symptoms of avoidance or dissociation...may be unable or unwilling to disclose to border agents the nature of the traumas they have suffered.” Furthermore, ██████████ provides “...[I]t is often extremely difficult for traumatized asylum seekers to trust others enough to share the painful details of their victimhood, particularly strangers who speak a strange language even for purposes of expressing their need and desire for protection from the violence..”

COUNTRY CONDITION REPORTS ON GANG VIOLENCE IN HONDURAS AND LACK OF GOVERNMENT PROTECTION

- | | | |
|-----------|--|---------|
| Y | Highlighted Abstract of United Nations High Commissioner for Refugees Guidance Note on Refugee Claims Relating To Victims Of Organized Gangs. Full copy can be found at: | 206-213 |
| | http://www.refworld.org/docid/4bb21fa02.html | |
| Z | Highlighted Abstract of United Nations High Commissioner Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras. Full copy can be found at: | 214-241 |
| | http://www.refworld.org/docid/579767434.html | |
| AA | Highlighted Abstract of Honduras 2018 Crime and Safety Report. Full copy can be found at | 242-246 |
| | https://www.osac.gov/pages/ContentReportDetails.aspx?cid=23798 | |
| BB | Highlighted Abstract of InSight Crimes <i>Gangs in Honduras</i> . Full copy can be found at | 247-251 |
| | https://www.insightcrime.org/images/PDFs/2015/HondurasGangs.pdf | |

- CC Highlighted Abstract of Jesuit Conference of the United States *Considerations for Hondurans in the American Asylum Process: Relevant Law and Country of Origin Information*. Full copy can be found at 252-257
- https://jesuits.org/Assets/Publications/File/Hondurans_asylum_report_FINAL.pdf
- DD Highlighted Abstract of Congressional Research Service *Honduran-U.S. Relations*. Available at: 258-262
- http://www.w.cedoh.org/Biblioteca_CEDOH/archivos/00418%20Congressional%20Research%20Service%20Honduran-US%20Relations%20Peter%20J%20Meyer%20July%202012.pdf
- EE Immigration and Refugee Board of Canada *Honduras: Areas of operation of Mara Salvatrucha (MS-13) and Mara 18 (MS-18)(also known as the 18th Street gang) in Honduras*; Available at: 263-269
- <http://www.refworld.org/docid/4f4f301c2.html>
- FF Crime, Violence, and Community-Based Prevention in Honduras. Available at: 270-272
- <http://documents.worldbank.org/curated/en/930411467996981525/pdf/97642-REPLACEMENT-FILE-Honduras-Research-Report-Online.pdf>
- GG Honduran Extortion Laws Article 222: Chapter II Extortion and Chantage; Article 335-A; and Article 335-B 273-282
- HH Dialogo News Article “*Honduras Toughens Penalties for Extortion*” 283-286
- II News Article: *The Sun daily, Honduran gangs choke small businesses with “war tax”* 287-289
- JJ Abstract of International Crisis Group: *Mafia of the Poor: Gang Violence and Extortion in Central American*. Available at: 290-297
- <https://www.crisisgroup.org/latin-america-caribbean/central-america/62-mafia-poor-gang-violence-and-extortion-central-america>
- KK News Article: *Captured alleged extortionist in the Villa Nueva Neighborhood of the Capital of Honduras*. Article is on ~~Los Chinos~~ 298-300
- LL News Article: *By extortionist falls “El Chino” of “~~Los Chinos~~”* 301-303

MM	News Article: <i>They capture leader of Los Chirizos accused of terrorism</i>	304-306
NN	News Article: <i>This is how gangs and gangs operate in Honduran capital with interactive Map of Gang Territory including Los Chirizos.</i> Available at: https://www.thinglink.com/scene/557753996610109442?buttonSource=viewLimits	307-311
OO	Global Witness Report: <i>What's Driving the Attacks? Corruption, A Lack of Consultation, and a Failure to Protect Activists</i> https://www.globalwitness.org/.../Defenders_Honduras_whats_driving_attacks.pdf	312-316
PP	Online Article: <i>Dynamics of Honduran Police Corruption Narrow Chance for Reform</i>	317-324
QQ	Abstract of Human Rights Watch: "You Don't Have Rights Here." Available at: https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk	325-328
RR	Abstract of Scholarly Journal Gangs, Violence, and Victims in El Salvador, Guatemala, and Honduras Full copy available for purchase at http://heinonline.org/HOL/LandingPage?handle=hein.journals/sdintl12&div=18&id=&page= Respondent will bring full copy to individual hearing for inspection	329-333
SS	Abstract of Report of the Special Rapporteur on the human rights of internally displaced persons on mission to Honduras. Full copy available at: https://reliefweb.int/sites/reliefweb.int/files/resources/G1606868.pdf	334-340
TT	Abstract of US Department of State 2015 Report on Human Rights Practices Honduras. Full copy available at: https://www.state.gov/documents/organization/253235.pdf	341-343
UU	Freedom House Report on Honduras	344-348
VV	Immigration and Refugee Board of Canada HND104993.E	349-352

~~XXXXXXXXXXXX~~
~~XXXXXXXXXXXX~~

~~XXXXXXXXXXXX~~
~~XXXXXXXXXXXX~~

**Immigration Court
Chicago, Illinois**

Certificate of Service

I _____ do hereby certify that I mailed or hand-delivered a true and correct copy of the attached Respondent's Respondents' Pre-Hearing Statement, Witness List, Annotated Table of Contents and Proposed Exhibits in Support of Their Applications for Asylum, Withholding of Removal, and Protection Under the Convention Against Torture and attached documents to:

Please check one:

_____ Executive Office for Immigration Review
Immigration Court
525 W. Van Buren, Suite 500
Chicago, IL 60605

_____ Immigration and Customs Enforcement
Office of the Chief Counsel
525 W. Van Buren, Suite 701
Chicago, IL 60603

_____ Other

Please check one:

_____ The document(s) were mailed on _____.
(date)

_____ The document(s) were hand-delivered on _____.
(date)

_____ (your signature) _____ (date)

Jeffrey Middleworth, Esq.
Zuma Law, LLC
PO Box 7841
Gurnee, IL 60031
(847) 596-3030 Ext. 701

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

In the Matter of:

~~HONG DING GRADIS BOY~~

~~HONG DING GRADIS BOY~~

In Removal Proceedings

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~~PRO Number 200-116-140~~

~~FILE Number 200-116-162~~

Honorable Judge ~~Shabazz~~

Next Individual Hearing:
May 29, 2018 at 9:00 AM

RESPONDENTS' BRIEF IN SUPPORT OF APPLICATIONS FOR ASYLUM,
WITHHOLDING OF REMOVAL AND THE CONVENTION AGAINST
TORTURE

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

In the Matter of:

~~_____~~
~~_____~~ CANALES CRABES

In Removal Proceedings

RESPONDENTS' BRIEF IN SUPPORT OF APPLICATION FOR
ASYLUM, WITHHOLDING OF REMOVAL AND PROTECTION
UNDER THE CONVENTION AGAINST TORTURE

Respondents, ~~_____~~ and ~~_____~~ by and through their attorney, Jeffrey Middlesworth of Zuma Law, LLC, respectfully submit this brief in support of their applications for Asylum under the Immigration and Nationality Act (the "Act" or "INA") §208(a), or in the alternative Withholding of Removal pursuant to §241(b)(3) of the Act, or in the alternative protection under the Convention Against Torture.

I. INTRODUCTION

Respondent ~~_____~~ merits a grant of asylum as she has suffered past persecution in the form of harassment, death threats and attempted assassination by the ~~_____~~. Furthermore, evidence submitted herewith demonstrates that ~~_____~~ will suffer future physical harm and most likely death at the hands of ~~_____~~ if returned to Honduras. ~~_____~~'s unrelenting torment against Kessy, was on account of ~~_____~~ membership in either of the following particular social

groups "Honduran business owners who have refused to pay war tax" or "Hondurans taking concrete steps to oppose [REDACTED] gang members and gang authority." Alternatively, the court may conclude that Kessy was persecuted based on her imputed anti-gang political opinion.

In addition, Respondent, [REDACTED], also qualifies for asylum due to the well-founded fear of future persecution of possible physical harm or death based upon an ongoing interfamily feud. Her uncle's family is systematically attempting to eliminate all of the family members of [REDACTED]. This well-founded fear of persecution is on account of [REDACTED]'s membership in the particular social group "family members of [REDACTED]."

Derivative Respondent [REDACTED] also independently qualifies for asylum or withholding of removal due to the realistic fear of future persecution from Los Chirizos on account of his membership in the particular social group "family members of [REDACTED]."

Los Chirizos Summary:

After moving to Tegucigalpa and opening a small mini mart in 2014, [REDACTED] began being targeted by the Los Chirizos gang for "war tax." At first, [REDACTED] resisted paying the gang by ignoring their calls and changing her number, telling "collectors" that they had the wrong address and making excuses for not paying. After receiving death threats, [REDACTED] succumbed to the gang's will and started paying. Eventually, the payments proved to be too much for the business to handle and [REDACTED] could no longer pay. When she started falling behind on her payments Los Chirizos began stalking her and threatening to

kill her. She was told that if she did not pay the gang what was owed, then she would be burned alive with her young son.

After a nearby business owner and his family were burned alive by the gang, and Los Chirizos gang members showed up at ██████'s home in the middle of the night threatening to kill her; ██████ had no other choice but to abandon her market and flee to the United States. Despite abandoning her market, the gang sought revenge for ██████'s defiance and began looking for her. More than a year after her arrival in the United States, Los Chirizos murdered ██████'s sister-in-law nearly 40 miles away from where ██████'s business was located. The sister-in-law was murdered because the gang mistakenly believed that the sister-in-law was ██████ in hiding.

In Honduras, entire communities are dominated by one particular gang and subject to the gang's control. Gangs rule their territory as the surrogate government. As para state actors/local government, gang's levy taxes on individuals in the territory, control entry and exits to certain neighborhoods and "police" the locality. Gangs do this with almost complete impunity and non-action by the state. In some cases, this is done even with police acknowledgment and assistance. To dare to defy the gang through refusal to comply with specific demands, is rare and sharply noted, both by Honduran society and by the Gang's themselves.

Los Chirizos follows this *modus operandi*. As the "largest homemade gang" in Honduras, Los Chirizos maintains control over the inhabitants of the territories they dominate by terrorizing the local population into submission. According to the United Nations High Commissioner for Refugees ("UNHCR), Los Chirizos imposes a large range of rules over the population living within the territories they govern including the

strict rule of silence, enforced curfews and payment of "war taxes" from businesses. They also control who can enter and exit their territory through checkpoints. (Tab Y, Pg. 226-228). They react aggressively to state actors, killing police officers and their families who live in the zones under their control and are extremely violent against anyone who challenges their authority. (*Id.*).

To not comply with any of the gang's demands is to defy the gang's control and their *de facto* governing authority. Such defiance is seen as a "crime" by the gang which must be responded to with swift violence. Persecution in this context transforms from the gang's original motivation to earn money, grow, recruit and transforms into something at odds with the original motive—i.e to punish by death for refusal to acquiesce to the gang's demands.

In the case of [REDACTED], the Los Chirizos' motive in persecuting [REDACTED] is no longer the desire to earn money from her but rather to kill her for defiance and the challenging of their authority.

Family Feud Summary

The record reflects that multiple family members of [REDACTED] have been murdered by her great uncle's family and the persecutors will not stop until she and her whole family are dead. This feud began after both [REDACTED] grandfather and her uncle's son were killed in a shootout between the two families. Since then the families have been killing one another and [REDACTED] is a target.

1. Facts of Case:

[REDACTED] ("[REDACTED]"), is a Honduran citizen and national, born on December 31, 1981 in Juticalpa, Olancho, Honduras. (See; [REDACTED] at Tab B, Pg.

18) [redacted]'s mother died during child birth when [redacted] was just seven years old and her father abandoned her. (Respondent's Affidavit at Tab A, Pg. 2). After her mother's death, [redacted] was raised by her maternal grandmother Gusta Ines Murillo Hernandez (Id.)

Family Feud:

In November 1990, When [redacted] was nine years old her maternal grandfather [redacted] was murdered by his nephew Arturo Murillo (Id. at Pg. 3). Arturo Jr. (Murillo Hernandez brother's son) and his family were part of a local gang that was involved in strong arm robbery, stealing of cattle and petty offences. (Id.) Immediately after the murder, a gun fight occurred between [redacted]'s grandmother's family and Arturo Jr.'s family. (Id.). During the gun battle [redacted] was killed by one of [redacted]'s uncles (Id.). Arturo Jr.'s father Arturo Murillo and his family declared war on [redacted] mother and her family for his son's death. (Id.). [redacted] grandmother decided to sell her property and move her family to another town for their safety. (Id. at Pg. 4)

Around 1992, two years after the murder of [redacted]'s grandfather and the death of Arturo Jr., Arturo Jr.'s brother Juan Murillo attempted to assassinate one of [redacted]'s uncles Juan Jesus Soto during a family wedding. (Id.). A shootout occurred and Juan Murillo was killed. (Id.). This only escalated the family feud and in 1993 [redacted]'s aunt's husband Abandio Mateo was murdered by Arturo Jr.'s brother Francisco Murillo on his way home from work. (Id.).

For a while, the violence stopped and [redacted]'s family thought the situation was over. (Id.). However, in 1995, Arturo Jr.'s family were able to locate [redacted]'s grandmother's family and attacked. (Id.). This time Francisco Murillo gunned down [redacted]'s grandmother's youngest son, Douglas Soto as he left the family home. (Id.) A

note was left beside the body which stated "this isn't over family." (*Id.* at 5). [REDACTED]'s family made it known throughout the town that they were planning to kill [REDACTED] and her entire family. (*Id.*). The war between [REDACTED] grandmother's family and Arturo Sr has never stopped and [REDACTED] still greatly fears them finding her. (*Id.*).

After Douglas's murder, [REDACTED] grandmother moved the family to Salama, Honduras. (*Id.*). Shortly thereafter, [REDACTED] grandmother sent her to live with her aunt. (*Id.*). While living with her aunt, [REDACTED] was able to attend school and graduated with a degree in accounting. (*Id.*). After graduation, she started a relationship with a man [REDACTED]. (*Id.*). [REDACTED] and [REDACTED] had a son together named [REDACTED] on October 24th, 2012 and the couple married. (*Id.*) Despite being an excellent father, [REDACTED] started becoming emotionally abusive towards [REDACTED] and their relationship failed. (*Id.*). After things did not workout with [REDACTED], [REDACTED] decided to move to the city of Tegucigalpa with her son to start a small business owning a mini mart. (*Id.* at 6).

Targeting by Los Chirizos

Around October 2014, [REDACTED] opened her mini mart "[REDACTED]" in Colonia Reparto Por Bajo, Tegucigalpa, Honduras. (*Id.*). A few days after opening the market, [REDACTED] began hearing from other business owners that it was only a matter of time before the local gang "Los Chirizos" would begin demanding "taxes" from her. (*Id.*). A few weeks later, [REDACTED] was contacted by Los Chirizos gang members via phone. (*Id.*). They demanded that she start paying "taxes." (*Id.*). They would send random people to Kessy's store asking for the rent, but Kessy would tell them that they had the wrong place. (*Id.*). She also changed her phone number. (*Id.*). Despite changing her number, the

gang was somehow able to get her updated cell phone number. (*Id.*). She attempted to change her phone number several more times, but the gang would always call her within a few days on her new number. (*Id.*).

Around November 2014, Los Chirizos was finished with [REDACTED]'s defiance. (*Id.* at 7). She was told that a person would be stopping by to pick up the money and that if she did not comply they would kill her. (*Id.*). Frightened for her and her son's safety [REDACTED] complied. (*Id.*). The gang charged her 1,500 lempiras a week. (*Id.*). This amount was nearly impossible for [REDACTED] to pay. (*Id.*). With the weekly payments of "war tax" to the gang, [REDACTED] was unable to pay her bills, rent or pay back the money she had borrowed to start the business. (*Id.*). By February 2015, she could no longer pay Los Chirizos and had exhausted all of her funds trying to keep the store stocked. (*Id.*).

[REDACTED] could not pay Los Chirizos for the whole month of February 2015. (*Id.*). The first week of March 2015, the gang called [REDACTED] and demanded payment of what she owed. (*Id.* at 8). She told them that she could not pay because she did not have any money. (*Id.*). Los Chirizos told [REDACTED] they did not care and she had two weeks to pay or they were going to kill her and her son. (*Id.*). Later that month, Los Chirizos called again and told [REDACTED] that she had one week to pay what she owed or they were going to burn her and her son alive. (*Id.*). During this same time, Los Chirizos murdered another business owner and the business owner's family by burning them alive. (*Id.*). [REDACTED] was terrified and knew that she needed to leave as she could not pay. (*Id.*).

The third week of March 2015, Los Chirizos members showed up at [REDACTED]'s home in the middle of the night and started banging on the door. (*Id.*). They slid a small note under the door saying "pay or die." (*Id.*). She could hear them saying "you are going

to die... burned along with your son." (*Id.*) The next day, [REDACTED] fled. (*Id.*) She did not tell anyone or grab any of the merchandise in the store. (*Id.*) She abandoned everything. (*Id.*)

[REDACTED] and her son were able to stay with a friend named [REDACTED] in hiding in Tocoa Colon, Honduras. (*Id.* at 9). [REDACTED] stayed there for about two months until the friend told her that she could not keep her there because Los Chirizos owned the area and the friend was scared for her own safety. (*Id.*) [REDACTED] could not go to the police because she knew they were complicit or at a minimum acquiesced to the extortion and violence of the Los Chirizos in the area. (*Id.*) [REDACTED] also did not want to go to her family because she did not want to put them in danger. (*Id.*) She knew coming to the United States was the only safe option. (*Id.*)

The journey to the United States was grueling. At times she thought she and her son may not survive. (*Id.*) When she got to the border she was apprehensive of telling border patrol of her story, because she was afraid it would get back to Los Chirizos and that they would find her. (*Id.*) She eventually opened up to the authorities after they explained to her that their conversation was confidential and Los Chirizos would not find out about it. (*Id.*)

After arriving to the United States, [REDACTED] and her son were put into a family detention facility in Dilly, Texas. (*See*; NTA). At the facility other detainees told her that when she got out she needed to file for asylum because the application had a one-year deadline from the time of release. (*Id.* at 10). She was never told of the one-year deadline by any government officials or DHS officers. (*Id.*) It was always her understanding that the one-year deadline ran from the time of release from the detention facility. (*Id.*) She did not find out that the deadline ran from the time of entry until subsequently retaining

counsel. (*Id.*). By that time, the one-year deadline had passed by a few weeks. (*Id.*). She filed her asylum application shortly thereafter. (*See*; Asylum Application).

On October, 12, 2016, over a year after fleeing, [REDACTED] found out that Los Chirizos had paid a man to go to her husband [REDACTED]'s house and murder her sister-in-law [REDACTED] who lived with him, believing that she was [REDACTED]. (*Id.* at 10-11). When identifying the shooter [REDACTED] (no relation to [REDACTED] to the police, [REDACTED] asked [REDACTED] why he had killed [REDACTED]. (*Id.* at 11). [REDACTED] said because she did not do what she was told and pay the money. (*Id.*). [REDACTED] asked [REDACTED] why the Los Chirizos did not ask him for money before killing [REDACTED]. (*Id.*). [REDACTED] responded "it's not about the money anymore." (*Id.*). [REDACTED] then threatened [REDACTED] stating he was now dead too for identifying him. (*Id.*). [REDACTED] subsequently went into hiding. *Id.*

II. LEGAL STANDARDS

A. Standard for a Grant of Asylum

8 U.S.C. § 1101(a)(42)

An asylum applicant bears the burden of proof and persuasion of showing that he or she is a refugee within the meaning of section 101(a)(42)(A) of the Immigration and Nationality Act, and that he or she is eligible for asylum under Section 208(a) of the act.

8 U.S.C. § 101(a)(42)(A). The definition of a "refugee" as defined in INA § 101(a)(42)(A) is:

"[A]ny 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.”

Therefore, to qualify for a grant of asylum, an applicant must demonstrate that they have a well-founded fear of persecution on account of their race, religion, nationality, membership in a particular social group or political opinion. (*See* 8 U.S.C. § 1101(a)(42), *Matter of E-P-*, 21 I&N Dec. 860, 860 (BIA 1997). The asylum applicant bears the burden of providing evidence, either direct or circumstantial, from which it is reasonable to conclude that her persecutor harmed her at least in part because of a protected ground. *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992). Additionally, the test for refugee status includes both a subjective component and an objective component: the subjective component is satisfied if the fear is well-founded; the objective component requires a showing by credible, direct, and specific evidence in the record that persecution is a reasonable possibility. *Demirovski v. I.N.S.*, 39 F.3d 177 (7th Cir. 1994); *Kotas v. I.N.S.*, 31 F.3d 847 (9th Cir. 1994). This standard is met if a reasonable person in the applicant's situation would fear persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

B. Standard for a Grant of Withholding of Removal

An applicant seeking withholding of removal is eligible if he can demonstrate a clear probability of persecution on account of his race, religion, nationality, membership in a particular social group, or political opinion. *INS v. Stevic*, 467 U.S. 407, 413 (1984). Relief under withholding of removal is **not discretionary**, and if an alien meets the statutory criteria under 8 C.F.R. §1208.16(b) the Attorney General **must** withhold removal. *INS v. Aguirre-Aguirre*, 526 U.S. 415 (1999). Additionally, a request for withholding of removal is country specific, and is not subject to the one-year filing

deadline upon arrival like applications for asylum. *Al-Bareh v. Chertoff*, 552 F.Supp.2d 794 (N.D. Ill. 2008).

C. Eligibility for Convention Against Torture Relief

In order to show prima facie eligibility for Torture Convention relief, an applicant must show 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. § 208.16(c)(2). The pain or suffering must be inflicted by or at the instigation or with the consent or acquiescence of a public official or person acting in an official capacity and while the person is in the offender's custody or physical control. 8 C.F.R. § 208.18(a)(1) and (6).

Unlike asylum and withholding of removal under the Act, an applicant for Torture Convention relief need not prove a nexus to a statutory protected ground. An applicant need only show he would be subjected to torture with the consent or acquiescence of a public official or person acting in an official capacity in order to qualify for relief.

II. ARGUMENT

The testimony and evidence submitted in this case establishes that [REDACTED] is eligible for relief via asylum; withholding of removal and the convention against torture. Each ground for relief is considered in greater detail as follows.

A. Asylum

- i. [REDACTED] is Eligible for Asylum due to a Well-Founded Fear of Persecution from Los Chirizos, on account of her membership in the particular social group "Honduran business owners who have refused to pay war tax"

[REDACTED] is eligible for and should be granted asylum due to her past persecution and well-founded fear of future persecution perpetrated by Los Chirizos on account of her membership in a particular social group "Honduran business owners who have refused to

pay war tax.” The Honduran government is unable or unwilling to protect [REDACTED] from Los Chirizos. The absence of any changed circumstances to rebut a presumption of a well-founded fear of future persecution, coupled with [REDACTED]’s inability to relocate within Honduras makes her eligible for a grant of Asylum.

1. [REDACTED] Suffered Past Persecution

The Board of Immigration Appeals (hereafter “BIA”) has defined “persecution” for the purposes of the Act as a “threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way that is regarded as offensive.” *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985).

In this case, [REDACTED] was subject to persistent extortion, stalking, harassment and threats of death from Los Chirizos. Los Chirizos also threatened to kill [REDACTED]’s son by burning them both alive. The gang showed up at her house in the middle of the night and threatened to kill her. The gang has shown their perplexity to commit violence by burning to death a nearby business owner and the owner’s family as well as mistakenly killing [REDACTED]’s sister-in-law believing she was [REDACTED]. As a result of her persecution, [REDACTED] continues to have deep emotional scars. According to [REDACTED] LCSW, [REDACTED] still exhibits signs and symptoms of Post-Traumatic Stress Disorder as a result of the gang’s persecution. (Tab V, Pgs. 95-106).

The 7th Circuit has found that threats of grave harm or imminent death can rise to the level of persecution, even standing alone. *N. L. A. v Holder*, 744 F. 3d 425, 431 (7th Cir. 2004)(citing *Stanojkova v. Holder*, 645 F.3d 943, 948 (7th Cir.2011); *Bathula v. Holder*, 723 F.3d 889, 900 (7th Cir. 2013); *Boykov v. INS*, 109 F.3d 413, 416 (7th Cir. 1997)). Courts of Appeals decisions from other jurisdictions have also found that

economic extortion can constitute persecution when accompanied by threats of violence or severe harm. *See; e.g. Ayala v. Sessions*, 855 F.3d 1012, 1021 (9th Cir. 2017).

In determining whether the actions taken against an individual constitute persecution, the courts should evaluate them “cumulatively,” and determine whether the combination of those actions rises to the level of persecution. *See; Ahmed v. Keisler*, 504 F.3d 1194 (9th Cir. 2007); *Khol-yavskiy v. Mukasey*, 540 F.3d 555, 570-571 (7th Cir. 2008).

Here, both individually and cumulatively, the extortion, persistent harassment and numerous death threats amount to the level of persecution necessary under INA § 101(a)(42)(A).

2. Kessy Possesses a Well-Founded Fear of Future Persecution

█████ demonstrated past persecution on account of a protected ground. As such, she is entitled to a presumption of a well-founded fear of future persecution. *See* 8 C.F.R. §1208.13(b)(1). The Department of Homeland Security (DHS) bears the burden of rebutting this presumption by establishing, by a preponderance of the evidence, that there has been a fundamental change in circumstances in Honduras wherein ██████ no longer has a well-founded fear of persecution or where ██████ could avoid persecution by relocating to another part of Honduras. *Id.* at §1208.13(b)(1)(ii).

The record contains credible, direct, and specific evidence that future persecution is a reasonable possibility. *See; Perkovic v. I.N.S.*, 33 F.3d 615 (6th Cir. 1994); *Demirovski v. I.N.S.*, 39 F.3d 177 (7th Cir. 1994); *Kotas v. I.N.S.*, 31 F.3d 847 (9th Cir. 1994). Specifically, the record demonstrates that Los Chirizos is an extremely large and dominant gang in Honduras and has been actively seeking to find ██████ to kill her. The

recent country conditions documentation provided by █████ demonstrates the enormous power that gangs like Los Chirizos hold in Honduras as well as their inclination and ability to track down those who defied them. (Tabs W, Z & QQ, Pgs. 130-131, 224-225, 327). Country conditions also demonstrate that large scale government corruption and ineffectiveness allow these gangs to operate with almost complete impunity. *Id.*

DHS cannot prove any relevant change in circumstances. DHS also cannot establish that █████ can be reasonably expected to internally relocate given █████ lack of resources and Los Chirizos ability to track her down with ease within the country.

Based on all the foregoing, █████ possesses a well-founded fear of future persecution and is eligible for and deserving of asylum relief.

3. █████ is a member of a cognizable Particular Social Group “Honduran business owners who have refused to pay war tax”

The phrase “membership in a particular social group” is not defined under the Act. Therefore, the BIA has established a three-part test¹ for evaluating whether a group meets the definition of a particular social group. First, the group must be comprised of individuals who share a common, immutable characteristic that members cannot change, or a characteristic so fundamental to the member’s identity or conscience that he or she should not be required to change it. *Matter of Acosta*, 19 I&N Dec. at 233-34. Second,

¹The Seventh Circuit does not find itself bound by the second and third requirements set forth by the BIA.¹ As such we do not believe that the Respondent must satisfy these conditions before this Court. However, we brief and argue these additional requirements in case this Court believes the opposite. Since the BIA issued the decisions of *M-E-V-G* and *W-G-R*, the Seventh Circuit has published three decisions that have discussed the particular social group definition. See; *Sibanda v. Holder*, 778 F.3d 676 (7th Cir. 2015); *R.R. v. Holder*, 746 F.3d 807 (7th Cir. 2014) and *N.L.A. v. Holder*, 774 F.3d 425 (7th Cir. 2014). None of these decisions have referenced *M-E-V-G* or *W-G-R* and all have reaffirmed the *Acosta* definition of particular social group as established in *Cece*.

the group must be defined by characteristics that provide a clear benchmark for determining who falls within the group. *Matter of A-M-E- & J—U-*, 24 I&N Dec. 69, 76 (BIA 2007); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 239 (BIA 2014). Third, the group must be recognizable and distinct in society. *Id.* at 240-241.

The analysis of whether a particular social group is cognizable demands a case-by-case contextual analysis. *Id.* at 251. Accordingly, the BIA's holdings in *Matter of S-E-G* and, 24 I&N Dec. 579 (BIA 2009) and *Matter of E-A-G*, 24 I & N Dec. 591 (B.I.A. 2008) are not meant to "be read as a blanket rejection of all factual scenarios involving gangs." *Matter of M-E-V-G*, 26 I & N Dec. 227, 251 (BIA 2014).

a. Immutability

Nationality has been found on several occasions by the U.S. Court of Appeals and the BIA to be an immutable characteristic that may define a social group. *See, e.g., Cece v. Holder*, 773 F.3d 662 (7th Cir. 2013); *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985). Shared past experiences can also be an immutable characteristic. *Benitez Ramos v. Holder*, 589 F.3d 426, 430-31 (7th Cir. 2009).

Here members of the group "Honduran business owners who have refused to pay war tax" are united by the innate characteristics of nationality and the shared past experience of having refused to pay extortion fees to gang members.

b. Particularity

With respect to particularity, the group must be defined by characteristics that provide a clear benchmark for determining who falls within the group. *See; Matter of A-M-E & J-G-U-*, 24 I&N Dec. at 76.; *Matter of M-E-V-G*, 26 I&N Dec. at 239. Particularity requires proof that the social group is not amorphous and diffuse, but that it

is “sufficiently distinct” to be recognized “in the society in question, as a discrete class of persons.” *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008).

The particularity requirement asserted by the BIA in *M-E-V-G* and *W-G-R* is the same definition that existed in 2009 when the Seventh Circuit held that “tattooed, former Salvador gang members” were a particular social group, *Benitez-Ramos*, 548 F.3d at 431 and in 2013, when the *en banc* Seventh Circuit found that “young Albanian women who lived alone” were a particular social group. *Cece v. Holder*, 733 F.3d 662 at 67.

In this case, the group is sufficiently particular, as the term has been interpreted by the Seventh Circuit. It is not defined by unspecific or amorphous terms, any more than the groups accepted in *Benitez Ramos*, 589 F.3d 426 and *Cece v. Holder*, 733 F.3 662. It also is possible to determine whether or not an individual belongs to the social group with sufficient particularity. The social group “Honduran business owners who have refused to pay war tax” has clear and precise boundaries. Only Honduran business owners who have refused to pay war taxes are members of this group.

Thus, there is a clear benchmark for determining who falls within this particular social group.

C. Social Distinction

To evaluate the issue of social distinction, the group must be “socially distinct within the society in question.” *Matter of M-E-V-G-*, 26 I&N Dec. at 237. To demonstrate social distinction, an applicant must provide evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. *Matter of W-G-R*, 26 I&N Dec. 2017, 2015 (BIA 2014). The Board has described a range of evidence that can be considered when evaluating distinction, including high

rates of violence against group members, the enactment of laws designed to protect victims or punish perpetrators, and lack of effective enforcement of those laws. *See; Matter of A-R-C-G*, 26 I&N Dec. 388, 394 (BIA 2014). Distinction can also be shown by proof of differential or worse treatment of group members. *See; e.g., M-E-V-G*, 26 I&N Dec. at 243.

The particular social group, “Honduran business owners who have refused to pay “war tax,” is socially distinct by the larger Honduran society. Country condition show that extortion by gangs against small businesses in the country of Honduras is an epidemic. “So extreme is extortion in Honduras that the Chamber of Commerce no longer publishes a registry of its members.” (Tab JJ, Pgs. 290-297). Not only does extortion have economic implications for the country, but it also leads to massive amounts of violence as people who don’t pay must die. (Tabs Y, CC and II). Central to gang mentality is the notion of respect and response to perceived acts of disrespect. Refusals to succumb to a gang’s demands and/or any action that challenges the gang’s authority such as failing to pay “war tax” triggers a violent or punitive response. (Tab Y & Z, Pg. 210-211, 228). To defy the gang by failing to pay war taxes is also sharply noted by Honduran society. (Tab JJ, Pg. 297).

To combat its detrimental impact, Honduras has recently enacted laws to combat extortion. (*See; Tab GG-HH, Pgs. 273-286*). However, such laws and national anti-extortion policing efforts² have not made an effective impact in the overall violence

² To combat extortion and the accompanying violence, the Honduran government created a special National Anti-Extortion Task Force in 2013, comprising of vetted personnel from the Public Ministry, the National Police, the Armed Forces, and the National Office of Investigations and Intelligence. (Tab FF, Pg. 272). However, these efforts have also done little to stop extortion and gangs extort with almost complete immunity.

arising from gang extortion in Honduras and fail to provide sufficient protections against victims of extortion such as business owners. (See; Tab W, Y, BB, CC, Pgs. 131, 210, 249, 255).

The country conditions also objectively demonstrate that business owners are “preferred victims” of the gangs for extortion³ and that extraordinarily high rates of violence are committed against those who have refused to pay “war tax” to gang members. According to Dr. Ubaldo Herrera Coello:

“Gangs ... will kill residence who refuse to pay [taxes], seeking to make an example of those who resist. Those who refuse to pay have no option but to leave their homes, fearing for their lives.”. (Tab W, Pg. 131)

The UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras, found:

“The population of Honduras reportedly pays an estimated US\$200 million per year in extortion money, which is often called a ‘war tax’ (‘impuesto de guerra’) by the gangs. Those who do not pay are reportedly murdered or see their businesses burned down as a reprisal (Tab Z, Pg. 222).

The Report of the Special Rapporteur on the Human Rights of internally displaced persons on his Mission to Honduras, provides:

“Extortion has reached epidemic proportions in many localities, in what is referred to by the gangs as a “war tax” imposed on small-business owners.... In some cases, multiple demands for payment come from different gangs. Marketplaces in Tegucigalpa have been affected, as store owners have left to avoid the threats and extortion of the gangs. For many small businesses around the country, payment to the gangs has become the only way to continue to operate. Non-payment often results in death, as the gangs seek to make an example of any who defy them.” (Tab SS, Pg. 339).

³ See; *Tapiero De Orejuela v. Gonzales*, 423 F. 3d 666, 675 (7th Cir. 2005) where the 7th Circuit found that “educated, landowning class of cattlemen targeted by the FARC” to be a cognizable social grouping sharply noting in analysis that the class was not defined by wealth but rather that the “cattlemen are among the guerrillas ‘preferred victims’.”

The unilateral observations in governmental and humanitarian reports as well as ineffective laws to protect business owners from extortion show that “Honduran business owners who have refused to pay war tax” are a socially distinct group within Honduran society.

4. A Nexus Exists Between ██████ Persecution and a Qualifying Ground for Asylum

The statutory phrase “on account of” requires an applicant to demonstrate a nexus between the persecution and the protected ground asserted. *See; Elias-Zacarias*, 502 U.S. at 483-84. While the protected ground does not have to be the sole reason the abuser persecuted the applicant, it must be “at least one central reason” for the persecution. *Shakh v. Holder*, 702 F.3d 897, 902 (7th Cir. 2012).

██████ is eligible for asylum because she possesses a nexus to one of the enumerated grounds of persecution. Specifically, one central reason why ██████ suffered persecution from Los Chirizos was on account of her membership in the particular social group “Honduran business owners who have refused to pay war tax.”

An integral part of why Los Chirizos targeted ██████ hinges on the gangs need to eliminate those who defy the control over their territory. Remarks made by Los Chirizos to ██████ during the time of the abuse, and the attempted murder of ██████ by the gang more than a year after her business closing, provides direct and circumstantial evidence of this nexus.

Although the original motive of the gang may have been to make a profit, once ██████ openly defied the gang by not paying, the motive switched to one at odds with the original motive, in that now they had to kill ██████ as a result of her defiance instead of making money from her.

Tapiero De Orejuela v. Gonzales, 423 F. 3d 666 (7th Cir. 2005) is illustrative of this motive shifting ideology and instructive to the case at bar. In *Tapiero De Orejuela*, the Court reversed the immigration judges finding that the motive of the FARC to extort wealthy cattleranchers in Colombia was that of financial gain. In its finding the Court of Appeals found “while we are sure that FARC would be happy to take the opportunity to rob any Colombian (or foreigner for that matter) of his money, it is those who can be identified and targeted as the wealthy landowners that are at continued risk once they have been approached and refused to cooperate with FARC's demands.” *Id* at 677.

Here similar to the FARC in *Tapiero De Orejuela*, Los Chirizos originally identified and targeted [REDACTED] because she was a small business owner and her continued risk is due to her past refusal to cooperate with the gang. This is specifically confirmed when [REDACTED] sister-in-law was mistakenly murdered with the belief the sister-in-law was [REDACTED]. First, the shooter specifically confirmed the motive of the gang was not financial but rather punitive for defiance when he told [REDACTED]’s husband “it’s not about the money anymore.” Second, at the time of the murder the gang knew that [REDACTED] no longer had her business and would not be able to pay. In addition, they did not ask the sister-in-law for money before shooting her. The shooting was not a demand for money but rather an assassination.

Country condition evidence also presents strong circumstantial evidence of Los Chirizos motive. As the report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on his mission to Honduras, explains

“Extortion has reached epidemic proportions in many localities, in what is referred by the gangs as a “war tax” imposed on small-business owners.. Non-payment often results in death, as the gangs seek to make an example of any who defy them.” (Tab SS. Pg. 339).

As the UNHCR Eligibility Guidelines for Assessing the International Protections Needs of Asylum-Seekers from Honduras, provides in its report specifically as to Los Chirizos:

"The modus operandi of [Los Chirizos]... is reported to be similar to that of larger gang structures of Barrio 18 an MS... The Chirizos, in particular, are reportedly known for brutally torturing and killing those who defy them and leaving their bodies in public spaces." (Tab ZZ, Pgs. 226-228).

Based on the evidence submitted, it is clear Los Chirizos continued persecution of ██████ is an account of her membership in the particular social group "Honduran business owners who have refused to pay war tax" and not for economic reasons.

5. Alternative Social Group Formulations

Alternatively, if the court were to conclude that "Honduran business owners who have refused to pay war tax" is not a cognizable social group, the Court can find that ██████ was persecuted based on account of her membership in the particular social group "Hondurans who have took steps to oppose Los Chirizos' gang's authority."⁴

6. Government Inability or Unwillingness to Protect

When harm is inflicted by private actors, an applicant must show that the government was "unwilling" to protect them. *Afriyie v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010).

Honduras is one of the most violent countries in the world. (Tab Z, Pg. 216-217). Most murders in the country are linked to organized crime. (*Id.*). The country condition reports indicate that the government of Honduras is unable or unwilling to protect

⁴ Similar to the previously argued social grouping, "Hondurans who have took steps to oppose Los Chirizos's gang authority" is a *cognizable social group*." It shares the immutable characteristics of nationality and past experience i.e. a status that cannot be changed. It is defined with sufficient particularity so that it is possible to determine who falls within the group. They are #1) Hondurans (2) who have opposed the Los Chirizos authority and (3) lack government protection. Last, for the *same reasons* as listed in the prior social group, the grouping is socially distinct within Honduran society.

individuals like █████ from the gangs that want to harm them. Highlights of some country conditions evidence include:

- The US Department of State OSAC report found “[t]he government lacks resources to investigate and prosecute cases, and police often lack vehicles/fuel to respond to calls for assistance. This means police may take hours to arrive at the scene of a violent crime or may not respond at all. As a result, criminals operate with a high degree of impunity. (Tab AA, Pg. 246). This same report also found that “[t]he majority of serious crimes...are never solved.
- Dr. Ubaldo Herrera Coello found in his expert opinion that in Honduras “corruption and collusion between police and gangs is so widespread that presenting a complaint to the police often constitutes a death sentence.” (Tab W, Pg. 130)
- An International Law Journal Report “Gangs Violence and Victims in El Salvador, Guatemala, and Honduras reported that: “gang members refer to police officers as ‘uniformed gang members’ and that 77% of former gang members indicate that they have paid bribes to the police. There are also reports that accuse the police of extortion of the gangs. In this manner the police encourage gang members to extort more businesses and individuals. (Tab QQ, Pg. 331).
- Freedom house in its 2015 report on Honduras found: “According to the government, approximately 80 percent of crimes committed in Honduras are never reported, and police investigate only 4 percent of reported crimes.” (Tab UU, pg. 247).
- According to UNHCR as to Honduras, “[T]he police reportedly do not have a permanent presence in all the urban zones where gangs operate and, where they are present, they are reportedly not unusually seen as offering a sufficient form of protection for residents who are threatened by the gangs...Moreover, the reported persistent failure of prosecutors to produce sufficient evidence to lay charges has reportedly resulted in many repeat offenders – including gang members—being repeatedly arrested for alleged crimes but never prosecuted, even in straightforward cases such as those involving extortion.” (Tab Z, Pg. 231).

It is clear from the evidence submitted that the Honduran government would not protect █████ from Los Chirizos if returned.

7. Relocation is Unreasonable

For individuals persecuted by non-government actors, such as █████, relocation alternatives must be both safe and reasonable in light of all circumstances. 8 C.F.R. § 1208.13(b)(3); *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 34-36 (BIA 2012). Internal relocation for Kessy would neither be safe or reasonable. The record makes clear that █████ would not be safe from Los Chirizos if she were to relocate in Honduras.

Gangs like Los Chirizos have significant sophisticated communication structures to find people in hiding. (Tab Z, Pg. 227-228). As Central American gang expert Thomas Boerman puts it, “if you go to a new community everyone recognizes you as a stranger including the police officers and the gang members. It takes only a little bit of time for anyone looking for you to find you.” (Tab W, Pg.327).

In addition, for ██████ to have to relocate far away from where she was targeted from Los Chirizos would be unreasonable in light of the factors set forth in the controlling regulation and caselaw. *See*; 8 C.F.R. § 1208.13(b)(3); *Knezevic v. Ashcroft*, 367 F.3d 1206, 1214 (9th Cir. 2004)(finding it “exceptionally harsh” to expect asylum applicants to start their lives over in a new town with no property, family, or home).

In sum, internal relocation for ██████ in Honduras is neither possible nor reasonable. Nothing has changed to neutralize ██████'s fear since her departure from Honduras.

ii. ██████ is Eligible for Asylum due to a Well-Founded Fear of Persecution of Los Chirizos, on Account of her imputed political opinion

Persecution based on political opinion may be established where the political opinion is “imputed” to the individual by his persecutors, regardless of whether the individual actually holds such opinions. *Elias-Zacarias*, 502 U.S. 478 (1992). Determining whether statements or actions are “political” requires a fact specific context specific analysis. *Martinez-Buendia v. Holder*, 676 F.3d 711, 716 (7th Cir. 2010).

As record evidence demonstrates, gangs such as Los Chirizos are in many parts of Honduras surrogate government, or actively competing with the state/local government for territorial control. A 2016 United Nations Human Rights Commissioner’s report notes that Honduran gangs “pursue a strategy of exclusive control over their home territories

using violence to repel other gangs or challengers” including the government. (Tab Z, Pg. 224). As para-state/local government entities, gangs have been known to “install[] gates at the entrance to neighborhoods where they review the documents of passers-by to control who is to enter” or in their zones place restrictions over the population including “when people must be in their homes, where they can walk, even the color of their hair.” (Id. Pgs. 227-228). As de facto governing bodies, the gangs hold so much influence, that during the 2013 national elections, presidential candidates reported that they had to ask permission from the gangs to carry out political activities or hold political gatherings in the neighborhoods controlled by the gangs and pay extortion money for the privilege. (Id. at 225).

Los Chirizos the largest “home grown gang” in Honduras follows this structure and are the de facto government in their territory. Residents within their territory are subject to and must follow the gang’s local political rules or be subject to severe penalties. As set forth in UNHCR guidelines for Honduras on Los Chirizos:

The modus operandi of [Los Chirizos] is similar to that of the larger gang structures of Barrio 18 and MS. In Particular, [Los Chirizos] are reported to have a well-founded reputation for extreme violence as the means for maintaining control over the inhabitants of the territories that they dominate, terrorizing the local populations into submission. Like Barrio 18 and MS, the Chirizos...reportedly impose a range of rules on the population living in these territories including the rule of silence, enforce by curfews and checkpoints where inhabitants must pay to enter or leave. These gangs are reported to also have forced families out of their homes and sometimes taken over the house, using them as command and torture centers....The Chirizos in particular are reportedly known for brutally torturing and killing those who defy them and leaving bodies on display in public spaces... [Los Chirizos] are also reported to react aggressively to the security services, killing police officers and their families who live in the zones under their control or forcing them to leave their homes. (Id. at 227).

In Honduras, to dare to defy a gang such as Los Chirizos through refusal to comply with specific demands, not pay taxes, or not comply to the rules imposed by the

gangs is rare and sharply noted, both by Honduran society and by the gangs themselves. To engage in such activities is considered an act of *political defiance* to the gang's de facto governing authority and therefore can be the basis of an imputed political opinion.⁵

The 7th Circuit has found that persistent refusal in face of increasingly violent persecution can be an expression of an imputed political opinion. *Martinez-Buendia v. Holder*, 676 F.3d 711, 716 (7th Cir. 2010). In *Martinez-Buendia*, Ms. Martinez had refused demands given by the Revolutionary Armed Forces of Colombia (commonly known as the "FARC") to give them public credit for the humanitarian work she was doing in rural community's. At first, the FARC began their demands by making calls and leaving notes. However, as time passed, the FARC began threatening physical harm to Ms. Martinez Buendia. They kidnapped her sister-in-law and at one point threatened Ms. Martinez Buendia by putting a gun to her head. In finding an anti-FARC imputed political opinion, the court put great deference in the fact that even after Ms. Martinez Buendia had suffered violent persecution, she continued to defy the FARC.

Here, ██████ similar to Ms. Martinez Buedia, repeatedly defied Los Chirizos by not paying her taxes and not following their agenda—despite facing increasingly violent persecution. When they sent people to collect money from her, she told them they had the wrong place. When the gang harassed ██████ by the phone, she changed her number repeatedly. After multiple death

⁵ According to UNHCR's legal assessment of potential risk profiles for Honduran asylum seekers in need of international protection under Article 1A of the 1951 Convention, "it would frequently be appropriate for.... Applicants who flee gang-related forms of persecution to be analyzed in relation to the group of (imputed) political opinion....(Tab Z, Pg. 234). Indeed, UNHCR notes, In Honduras, expressing objections to the activities of gangs may be considered as amounting to an opinion that is critical of the methods and policies of those in control and, thus, constitute a "political opinion" within the meaning of the refugee definition. (*Id.*) For example, individuals who resist being recruited by a gang, or who refuse to comply with demands made by the gangs, such as demands to pay extortion money, may be perceived to hold a political opinion. (*Id.*)

threats she temporarily succumb to their demands, but eventually stopped paying them. [REDACTED] refusal to pay after multiple death threats from the gang marked her as antithetical with the gang's desire to enforce total compliance and authority with their "law" and a political enemy to be eliminated. Thus, leading the gang to attempt to murder her but killing her sister-in-law instead.

While the original intent of the gang at first was motivated by a non-persecutory desire to gain wealth, the gangs desire shifted to something at odds with financial gain i.e. punishment by death due to her imputed political opposition of the gangs control of the land.

iii. [REDACTED] is Eligible for Asylum due to a Well-Founded Fear of Persecution on Account of her membership in the particular social group "family members of [REDACTED]"

[REDACTED] can also establish an independent claim for asylum based upon a well-founded fear of persecution on account of her being a member of the particular social group "Family members of [REDACTED]"

1. Fear of Future Persecution

Under the definition of refugee at INA § 101(a)(42) an applicant can establish eligibility as a refugee even if he or she had not actually suffered persecution in the past. Rather, an applicant can establish eligibility based on a "well-founded" fear of future persecution.

To establish reasonable fear, the BIA elucidates a four-part test: 1) whether the applicant is in possession of a protected characteristic, 2) whether the persecutor is aware that the applicant possesses the characteristic, 3) whether the persecutor has the capability of punishing the applicant and 4) whether the persecutor has the inclination to punish the applicant. *See; Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987).

[REDACTED] can establish the four prongs of the modified *Mogharrabi* test. Through credible testimony and evidence submitted, Kessy has established that she is the

granddaughter of Casta Ines Murrillo Hernandez and that she had lived with her grandmother during the majority of her childhood. As set forth in [REDACTED] affidavit, her great uncle [REDACTED] Sr. and his family (perpetrators) were aware of [REDACTED]'s relationship to her grandmother. (Tab A, Pgs. 1-14). The applicant's feared persecutors, members of the [REDACTED] family, have the intention and capability of harming [REDACTED] as indicated by the past harm they have inflicted on her other family members including the murder of two of her uncles. Furthermore, by vowing to kill [REDACTED] [REDACTED] and all of her family, the persecutors have established an inclination to target [REDACTED]. Last, [REDACTED]'s own credible testimony and country conditions evidence that police are ineffective and corrupt in Honduras and would not protect her. Specifically, country conditions for Honduras show.

Among the most serious human rights problems were corruption, intimidation, and institutional weakness of the justice system leading to spread impunity. Corruption and impunity continue to be serious problems within the security forces. (Tab TT, Pg. 341).

The government lacks resources to investigate and prosecute cases, and police often lack vehicles/fuel to respond to calls for assistance. This means police may take hours to arrive at the scene of a violent crime or may not respond at all. As a result, criminals operate with a high degree of impunity. (Tab AA, Pg. 245). This same report also found that "[t]he majority of serious crimes...are never solved.

2. The Persecution is on account of the Particular Social Group "Family members of [REDACTED]"

"Family members of [REDACTED]" is a cognizable social group. In applying the three-part BIA test, the applicant is the blood relative of [REDACTED] [REDACTED]. This is an immutable characteristic that she cannot change. Second, it is possible to determine who falls within the group defined as "family members of [REDACTED]" Family membership is clearly definable. It requires

either a blood or marriage relationship. Families are also limited in size and form the nucleus of other social organizations and are guarded by social taboos and legal recognition. Third, "family members of [REDACTED]," is socially distinct from the Honduran population at large. In virtually every society, a family consisting of spouses, children, parents, grandparents, cousins, aunts and uncles is viewed by society as socially distinct.

Thus, courts have determined that family membership is a cognizable social group when the family relationship is at least one central reason for the claimed harm. *See; Ayele v. Holder*, 564 F.3d 862, 869 (7th Cir. 2009); *Matter of L-E-A-*, 27 I&N Dec. 40 (BIA 2017).

Moreover, [REDACTED]'s family motive to target [REDACTED] can be ascertained by the evidence submitted. In the past [REDACTED]'s family has attacked similarly situated family members of [REDACTED]. The perpetrators also made it known throughout town that they would not stop until they killed [REDACTED] Hernandez and her entire family. Thus, a nexus for [REDACTED]'s family's motive can be readily established. Moreover, Los Chirizos motive is not that of financial reasoning but is rather to harm the Applicant because of her relationship to her grandmother. Thus, making this case factually distinct from *Matter of L-E-A*, 27 I&N Dec. 40 (BIA 2017).

iv. Alternatively, Kessy is entitled to Humanitarian Asylum

Should this Court find that the DHS has met its burden of rebutting the presumption of a well-founded fear of persecution, or reasonable location alternatives, Kessy asserts that she is eligible for humanitarian asylum. A grant of humanitarian

asylum is appropriate if the respondent can demonstrate compelling reasons for being unwilling or unable to return to her home country, and these circumstances arise out of the severity of the past persecution. *See* 8 C.F.R. §1208.13(b)(1)(iii)(A); *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989).

█████ suffered prolonged and constant harassment and death threats from Los Chirizos. The Chirizos have shown their willingness to commit violence by burning to death a nearby business owner and his family as well as attempting to assassinate █████ but killing her sister-in-law instead. As a result of this constant risk of torture and death, █████ continues to suffer from post-traumatic stress disorder. (Tab V, Pg. 101). As such, █████ has suffered atrocious harm and she qualifies for a grant of humanitarian asylum.

v. Derivative Respondent Kenneth A. Canales-Gradis is eligible for asylum due to a Well-Founded Fear of Persecution on Account of her membership in the particular social group "Family Members of Kessy Gradis-Zoto"

█████ son Kenneth can also establish an independent claim for asylum based upon a well-founded fear of future persecution on account of his being a member of the particular social group "Family members of ██████████"

1. Fear of Future Persecution based upon protected ground

█████ can establish the four prongs of the modified *Mogharrabi* test. Evidence shows that █████ is the son of █████ and that Los Chirizos is aware of this. Evidence also shows that Los Chirizos has the ability and willingness to attack █████. As set forth in █████'s affidavit, Los Chirizos has on multiple occasions threatened █████ that they will burn █████ alive with her. (Tab A, Pg. 8). Country conditions support that Honduras is a lawless land with high murder rates that are often unsolved. (Tab AA & Pg. 244, 246). Country conditions also support that murder for hire is not uncommon. (*Id.*

at 245). Last, the evidence shows that one central motive of Los Chirizos is targeting [REDACTED] due to his family relationship to [REDACTED]

vi. Respondent Should Not Be Statutorily Barred From Asylum and Merits Favorable Exercise of Discretion

Although [REDACTED] filed her application after one year of her last entry, she was never informed of the one-year deadline from the Department of Homeland Security and is therefore a class member under *Mendez Rojas v. Johnson*, 2018 WL 1532715 (W.D. Wash. March 29 2018).⁶ Therefore, this Court should accept [REDACTED] I-589 as timely filed.

In *Mendez*, the court found that the government's failure to provide adequate notice of the one-year deadline for asylum applicants constitutes a violation of the immigration statute, the Administrative Procedure Act (APA), and class members' due process rights under the Fifth Amendment. Under the Judge's order DHS has until July 27, 2018, to adopt, publicize, and immediately implement uniform procedural mechanisms that will ensure class members are able to file their asylum applications in a timely manner. Moreover, per the Court's order, the government must accept timely filed an asylum application that is filed by a class member within one year of the government's adoption of the new notice of their one-year deadline, including those applications by class members filed before the court's order but after more than a year after their arrival in the United States.

A favorable exercise of discretion is also warranted in this case. In determining whether an application merits a favorable exercise of discretion, an Immigration Judge

⁶⁶ Kessy is a Class A.II. class member under *Mendez Rojas*. Class A.II. members are all individuals who are in removal proceedings and who either (a) have not yet applied for asylum or (b) applied for asylum after one year of their last arrival.

must consider the totality of the circumstances, balancing the fact the applicant qualifies as a refugee, along with other factors against any negative factors. *See; Matter of Pula*, 19 I&N Dec. 467 (BIA 1987). Here, the positive factors clearly outweigh that of the negative and discretion is warranted.

B. ██████ is Eligible for Withholding of Removal Due to a Clear Probability of Persecution in Honduras.

Withholding is mandatory when an alien's life or freedom would be threatened in the country of removal on account of race, religion, nationality, political opinion, or membership in a particular social group. INA §241(b)(3). As with asylum, discussed *supra* in Part A, ██████ is entitled to the presumption that she is eligible for withholding of removal because she suffered past persecution on account of her membership in the particular social group "Honduran business owners who have refused to pay war tax" "Hondurans taking concrete steps to oppose Los Chirizos gang members and gang authority" or in the alternative "Family members of Casta Ines Murrillo Hernandez" which the government cannot rebut by a preponderance of the evidence. 8 C.F.R. § 1208.16(b)(1)(i). The testimony of ██████ along with the extensive and credible country conditions evidence, meets the higher threshold for the likelihood of future harm that will befall ██████ if returned. Moreover, ██████ is not disqualified from a grant of withholding of removal under any statutory ground. Accordingly, Kessy is entitled to withholding of removal.

In addition, her son ██████ can also establish an independent claim for withholding based on a well-founded fear of future persecution on account of his membership in the particular social group "Family members of ██████" The

record reflects that [REDACTED] will most likely be killed if returned to Honduras by Los Chirizos.

C. Respondents are entitled to relief under the Convention Against Torture

Under the Convention Against Torture, applicants like [REDACTED] and [REDACTED] are entitled to CAT relief if they show that they are more likely than not to be tortured upon removal. 8 C.F.R. § 1208.16(c)(2), (4). If the agent inflicting the torture is a private, actor, the applicant must prove government consent or acquiescence to torture. 8 C.F.R. § 1208.18(a)(1).

First, the harm [REDACTED] and [REDACTED] fear if returned to Honduras, death or grave bodily injury, meets the definition of torture.⁷ The mental suffering component of the C.F.R. definition of torture also includes the threat of imminent death or the threat that another person will imminently be subject to death. *See*; 8 CFR § 208.18(a)(4). In addition, the record shows that Los Chirizos motive to inflict said torture is to punish [REDACTED] for her perceived defiance of the gang which also falls within the definition of torture. *Id.*

Finally, like other members of society who have challenged gangs *de facto* authority, Los Chirizos targeting [REDACTED] for torture operates with the consent or acquiescence of the Honduran government. (*See* 8 C.F.R. § 208.18(a)(1) and (6)). Corruption is a serious and pervasive problem in Honduras and it enables gangs to act with complete impunity. (Tab DD, Pg 260-261). In addition, country condition evidence

⁷ "Torture" is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person or a third person for the purpose of (1) obtaining information or a confession, (2) punishing him for an act committed or suspected of having been committed by him or a third person (3) intimidating or coercing him or a third person, or (4) for any reason based on discrimination of any kind. 8 C.F.R. § 208.18(1)

shows the type of violence [REDACTED] has and will experience is often directed by or with the direct acknowledgment of government officials.

Excerpts from a few of the multiple scholarly reports included as evidence on this issue provide:

- As one leader of a major bus company in Tegucigalpa --as related to extortion-- puts it: "it is clear to [him] that police only go after independent groups, avoiding capture and prosecution of the big three: MS13, Barrio 18 and Chirizos. [He] theorize[s] that the police commanders and these officials take their cut of the extortion pie. (Tab BB, Pg. 249)
- In Honduras gang members refer to police officers as "uniformed gang members." 77% of former gang members indicate that they paid bribes to the police. Also, multiple reports accuse the police of extortion of the gangs. In this manner the police encourage gang members to extort more businesses and individuals. (Tab RR, Pg. 331).
- "The Honduran police cannot be considered a reliable institution to which citizens who are threatened or who have become victims of violence and crime could turn to. Rather, many parts of the police must be considered criminal organizations themselves." (Tab VV, Pg. 253)
- "Many Hondurans fear to seek protection of the police, because they - in many cases rightly - believe that the police are colluding with the criminal organizations or other individual aggressors who are threatening them." (*Id.*)
- "[c]orruption and impunity continued to be serious problems within the security forces. Some members of the police participated in crimes with local and international criminal organizations." (Tab WW, Pg 253)
- "[E]xtortion rackets are conducted in coordination with government officials or the Police" (Tab CC, Pg. 255)

Accordingly, the respondents [REDACTED] and [REDACTED]

[REDACTED] merit protection under the Convention Against Torture.

IV. CONCLUSION

Respondents are eligible for and should be granted their applications for asylum, withholding of removal, and relief under the Convention Against Torture. As established herein, the Respondents, [REDACTED] and [REDACTED] have demonstrated a well-founded fear of

persecution on account of their membership in a particular social group or on account of their imputed political opinion.

WHEREFORE, the Respondents, through Counsel, respectfully requests that the Court exercise its discretion and grant their applications for asylum. In the alternative, they are entitled to withholding of removal or Convention Against Torture protection, and for any other relief this Court deems just and necessary.

Respectfully submitted this ____ day of May, 2018.

Jeffrey Middlesworth Esq.
(EOIR # SS657890)
Attorney for Respondents

Zuma Law LLC.
PO Box 7841
Gurnee, IL 60031
Tel: 847-596-3030

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**Immigration Court
Chicago, Illinois
Certificate of Service**

I _____ do hereby certify that I mailed or hand-delivered a true and correct copy of the attached Respondent's Brief in Support of Applications for Asylum, Withholding of Removal and the Convention Against Torture to:

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_____ Department of Homeland Security
Office of the Chief Counsel
525 W. Van Buren, Suite 701
Chicago, IL 60607

_____ U.S. Department of Justice
Immigration Court
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