UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
31 HOPKINS PLAZA, ROOM 440
BALTIMORE, MD 21201

Yacub Law Offices
Messer, Benjamin G.
12761 Darby Brook Court
Suite 102
Woodbridge, VA 22192

In the matter of [redacted] File A [redacted] DATE: Feb 19, 2020

__ Unable to forward - No address provided.

X Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to:

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

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

IMMIGRATION COURT
31 HOPKINS PLAZA, ROOM 440
BALTIMORE, MD 21201

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

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

__ Other: _____

SC
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cc:DHS
31 HOPKINS PLAZA, STE 1600
BALTIMORE, MD 21201

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

IN THE MATTER OF:	:	**IN REMOVAL PROCEEDINGS**
[redacted]	:	**A#** [redacted]
RESPONDENT	:	

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

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

DECISION AND ORDER

APPEARANCES

ON BEHALF OF RESPONDENT:
Benjamin G. Messer
Yacub Law Office
12761 Darby Brook Court, Suite 102
Woodbridge, VA 22192

ON BEHALF OF THE DHS:
Brian J. Sandberg
Assistant Chief Counsel
U.S. Department of Homeland Security
31 Hopkins Plaza, Suite 1600
Baltimore, MD 21201

MEMORANDUM OF DECISION AND ORDER

I. Procedural History

The Respondent is a native and citizen of El Salvador. On August 8, 2016, the Department of Homeland Security ("DHS") issued a Notice to Appear ("NTA"), which alleged that: (1) the Respondent is not a citizen or national of the United States; (2) he is a native and citizen of El Salvador; (3) he arrived at or near the Roma, Texas, port of entry on or about June 5, 2016; (4) he did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document; and (5) he was not then admitted or paroled after inspection by an immigration officer. Based on the foregoing allegations, the NTA charged the Respondent with removability pursuant to INA § 212(a)(7)(A)(i)(I). The Court found the Respondent's removability to be established by clear and convincing evidence.

The Respondent submitted a Form I-589, Application for Asylum, Withholding of Removal, and Relief under Article 3 of the Convention Against Torture ("CAT"). He testified in support of his application at an individual hearing on January 3, 2020. The Respondent, through counsel, argues that he is eligible for relief because he experienced past persecution on account of his actual or imputed political opinion when he resisted the demands of MS-13 gang members.

II. Evidence Presented

A. Documentary Evidence

- **Exhibit 1,** Respondent's Notice to Appear.
- **Exhibit 2,** Respondent's Form I-870, Record of Determination/Credible Fear Worksheet.
- **Exhibit 3,** Respondent's Form I-589, Application for Asylum and for Withholding of Removal.
- **Exhibit 4, Tabbed A-G,** Respondent's Supporting Documentation.

B. Testimonial Evidence

The Respondent testified that he came to the United States from El Salvador because members of the MS-13 gang threatened him. He explained that, on October 13, 2015, gang members first demanded that he pay a "rent." He then began paying $100 to the gang members on the thirteenth and twenty-eighth day of every month.

On April 28, 2016, gang members threatened the Respondent for the first time. The Respondent

was on a bus when three gang members approached him. They told him that they wanted him to cooperate with them by providing information about everyone in his community. He responded that he needed some time to think it over. The gang members gave him seven days to give them an answer, but told him that if he did not collaborate with them, they would harm his child or his child's mother. The Respondent never gave the gang members a response. Following the incident, he told a friend what had happened and went to a police station in Sonsonate, a town about two hours away from where he lived, to file a police report. He said that there is a police station in his town, but the gang members who threatened him told him that they had informants in that station. In Sonsonate, the police officer who took the Respondent's report admitted that there were gang members within police ranks and advised the Respondent to leave the country.

Several days later, the Respondent had another encounter with the gang members. The Respondent was walking near his home at about 5:00 or 6:00 p.m. when six gang members gathered around him. One put a gun to the Respondent's head and forced him to the ground. They asked why he was not taking them seriously and told him that he had to collaborate or they would kill him, his child, and his child's mother. They then beat him on his stomach. After the beating, one of the members told him that he should be thankful to God that he was still alive and that he was going to be given a second chance. He told the Respondent that he had until May 7, 2016, to provide all the requested information. The Respondent replied that he would do what they asked. The gang members told him that he had to wait one or two minutes to get up or else they would shoot him. They then left as the Respondent was lying face down.

The Respondent said that he left El Salvador on May 6, 2016, one day before the deadline. He believes that there is nowhere in El Salvador where he could safely live because the country is small and gang members could easily locate him. He noted that young people would likely report him to the gang for a small amount of money. No one can protect him, not even the police because a lot of them are also gang members.

On cross-examination, the Respondent was asked why his asylum application stated that he had been paying extortion for around three years when he testified that he had only paid it for about six months. The Respondent replied that he did not know why his application said that and

reiterated that he began paying rent on October 13, 2015. He explained that he was due to make a rent payment on April 28, 2016, but the gang members told him that they no longer needed it. Instead, they said that they needed him to collaborate with them. The gang members wanted the Respondent to give them information about his neighbors, such as when they left for work, where they worked, and their means of living. The Respondent said that they planned to use this information to charge his neighbors rent. The Respondent knew this information, but never gave it to the gang members.

When asked if the gang members only wanted the information one time, the Respondent explained that they wanted him to collaborate with them. They told him that they might want him to collect the rent. They also wanted to use the Respondent's home for their own purposes. The Respondent understood their demand to mean that they wanted him to become a member of the gang.

The Respondent stated that the gang has not harmed anyone in his family. His son and his son's mother are in the United States. The Respondent's siblings and parents are in El Salvador, but they have not experienced serious problems in the country. They do not live in the town where the Respondent lived.

III. Statement of the Law

A. Asylum

An applicant for asylum bears the burden of establishing that he or she meets the definition of a refugee under INA § 101(a)(42)(A), which defines a refugee in part as an alien who is unable or unwilling to return to her home country because of persecution, or a well-founded fear of persecution, on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.13(a); INA § 208(b)(1)(B). The applicant's fear of persecution must be country-wide. *Matter of Acosta*, 19 I&N Dec. at 211, 235 (BIA 1985). Additionally, applicants must establish that they are unable or unwilling to avail themselves of the protection of their country of nationality or last habitual residence. INA § 101(a)(42)(A); *Mulyani v. Holder*, 771 F.3d 190, 199-200 (4th Cir. 2014). When the alleged persecutor is a private actor, the applicant also bears the burden of showing that his or her government was "unable or unwilling to control" the persecutor. *Orellana v. Barr*, 925 F.3d 145, 151 (4th Cir. 2019). An applicant who establishes

statutory eligibility for asylum still bears the burden of demonstrating that a grant of asylum as a matter of discretion is warranted. INA § 208(b)(1).

i. One-Year Filing Deadline

As a preliminary matter, an applicant for asylum must demonstrate by clear and convincing evidence that he filed his application within one year after the date of his arrival in the United States or by April 1, 1997, whichever is later. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2). This deadline may be excused if the applicant demonstrates either "changed circumstances which materially affect the applicant's eligibility" for relief or "extraordinary circumstances relating to the delay in filing . . . ." INA § 208(a)(2)(D). In either instance, the applicant must apply within a reasonable period given the changed or extraordinary circumstances. 8 C.F.R. § 1208.4(a)(4)-(5). The applicant has the burden of proving that he did not intentionally create these circumstances, that exceptional circumstances were "directly related" to his failure to apply within one year, and "that the delay was reasonable under the circumstances." 8 C.F.R. § 1208.4(a)(5). Applying within six months after the occurrence of changed or extraordinary circumstances is presumptively reasonable, but a delay over six months may be unreasonable. 65 FR 76121, 76123-24 (Dec. 6, 2000).

"Changed circumstances" include, but are not limited to: (1) changes in the applicant's country of nationality or, if the applicant is stateless, country of last habitual residence; (2) changes in the applicant's eligibility for asylum, including changes in applicable U.S. law and activities the applicant becomes involved in outside the country of feared persecution that place an applicant at risk; or (3) the termination of a relationship that qualified an applicant as a dependent on another's pending asylum application, including attainment of age 21 by the dependent. 8 C.F.R. § 1208.4(a)(4)(i)(A)-(C).

"Extraordinary circumstances" include, but are not limited to: (1) serious illness or mental or physical disability; (2) legal disability; (3) ineffective assistance of counsel; (4) maintenance of temporary protected status, lawful immigrant or non-immigrant status, or having received parole, until a reasonable period before the filing of the application; (5) filing an asylum application before the one-year deadline which was rejected as not properly filed and was re-filed within a reasonable

period thereafter; or (6) the death or serious illness or incapacity of the applicant's legal representative or a member of the applicant's immediate family. 8 C.F.R. § 1208.4(a)(5)(i)-(vi).

Following a decision in *Mendez Rojas v. Johnson*, in a joint stay agreement, the Government has agreed to treat pending asylum applications by applicants in four classes as though they were filed within the one-year deadline. 305 F. Supp. 3d 1176 (W.D. Wash., Mar. 29, 2018). Class A.II includes individuals who have been released from the DHS's custody after having been found to have a credible fear of persecution, did not receive notice from the DHS of the one-year deadline, filed an asylum application after one year, and are in removal proceedings. *Id.* at 1179.

ii. Credibility and Corroboration

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

iii. Past Persecution

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

Not every act of discrimination or harassment rises to the level of persecution, as persecution is

"an extreme concept that does not include every sort of treatment that our society regards as offensive." *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (internal quotation marks omitted). However, considering the aggregate effect of all the incidents to which a respondent has been subjected, the cumulative treatment may rise to the level of persecution. *Baharon v. Holder*, 588 F.3d 228, 232-33 (4th Cir. 2009); *Matter of O-Z- and I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998). An applicant who fails to present a credible basis for a claim of past persecution may nevertheless prevail on a theory of future persecution.

iv. Well-founded Fear of Future Persecution

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

v. Nexus

Applicants for asylum must also demonstrate that the persecution they fear would be inflicted "on account of" their race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.13(b)(2)(i)(A). Even treatment that is regarded as "morally reprehensible" is not "persecution" within the meaning of the INA unless it occurs "on account of" one of the five enumerated grounds. *Matter of T-M-B-*, 21 I&N Dec. 775, 777 (BIA 1997). In

essence, applicants must demonstrate that their race, religion, nationality, particular social group, or political opinion would be "at least one central reason" for the persecutor's actions. INA § 208(b)(1)(B)(i); *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

vi. Protected Ground— Political Opinion

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

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

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

C. Convention Against Torture

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

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

IV. Findings of the Court

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

A. Asylum

i. Timeliness

As a preliminary matter, the Respondent did not file his application within one year of entering the United States. He entered the United States on June 5, 2016, but did not file his asylum application until August 6, 2018. The parties, however, agree that the Respondent is a class

member under the *Mendez-Rojas* joint stay agreement. 305 F. Supp. 3d 1176 (W.D. Wash., Mar. 29, 2018). Accordingly, his application will be treated as though it were timely filed.

ii. Credibility

Based on the totality of the circumstances, the Respondent is credible. INA § 208(b)(1)(B)(iii). His testimony was internally consistent and consistent with his asylum application and written statement. It was also consistent with what he told an asylum officer during his credible fear interview. The Respondent's candid demeanor throughout his testimony also supports a finding that he is credible. Further, he supplied letters from friends and family members, in addition to country conditions evidence, which corroborate his account.

iii. Past Persecution

The Respondent experienced harm that rises to the level of persecution. The Respondent testified that gang members pointed a gun to his head and beat him after he did not "collaborate" with the gang. Following the beating, the gang members gave the Respondent one more chance to collaborate with them, and they threatened to kill him, his child, and his child's mother if he did not do so. This credible death threat alone qualifies as harm sufficiently severe to constitute past persecution. *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) (death threats alone can qualify as harm severe enough to constitute persecution); *Tairou v. Whitaker*, 909 F.3d 702, 707-08 (4th Cir. 2018). In the aggregate, the physical abuse that the Respondent suffered and the death threat he received rise to the level of persecution. *Baharon*, 588 F.3d at 232-33.

iv. On Account of Political Opinion

The Respondent argues that the harm and death threats he experienced occurred on account of his actual or imputed political opinion. The Fourth Circuit recently recognized that an individual's resistance to gang demands may constitute an imputed political opinion that would serve as a cognizable basis for relief. *Alvarez Lagos*, 927 F.3d at 251 (remanding for the BIA to determine if the gang imputed a political opinion to the respondent). Although the BIA in *Matter of S-E-G-* noted that resisting gang recruitment does not generally constitute a political opinion, it did not analyze political opinions that gang members may impute to those who resist recruitment. 24 I&N Dec. 579, 589 (BIA 2008) (noting only that the respondents in that case "provided no evidence,

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

Country conditions evidence shows that gangs have become "de facto government[s]" in El Salvador, which rival or replace legitimate political entities in the country. Exh. 4, Tab F at 161, 260. According to the U.S. State Department's 2018 Human Rights Report for El Salvador, major gangs in the country exercise control over their own territories. Exh. 4, Tab D at 57. Within these territories, gangs take on some of the functions of legitimate government. For example, gangs have reportedly created checkpoints at the border of their territory to control who may enter. Exh. 4, Tab E at 85. They detain individuals and ask them for identification documentation. Exh. 4, Tab F at 162. Gangs enforce curfews and have ordered stoppages to bus transit. *Id.* Gang members also believe that they, rather than legitimate law enforcement, take on the role of protecting individuals in their territory, and they charge fees for that protection. *Id.* at 163, 208-213. El Salvador's president recently acknowledged this reality, telling a reporter that gangs "have a de facto power, a real one." Exh. 4, Tab G at 332. He added that gangs "charge taxes" and "have a quasi-security force." *Id.*

Gangs view a wide range of conduct as "resistance" to their claimed political authority over a territory. Exh. 4, Tab E at 102, 126. This includes refusing to participate in their activities, refusing to join the gang, and reporting gang activity to the police. *Id.* People who resist a gang's "authority" are "subjected to swift and brutal retaliation from the gang." *Id.* at 85-86. Punishment for their resistance can range from threats to death. Exh. 4, Tab E at 103; Tab F at 183, 208.

This evidence mirrors the Respondent's experience in El Salvador. MS-13 gang members ordered

the Respondent to "collaborate" with them by providing information about his neighbors. When he did not respond to their demand, the gang members responded swiftly by beating him and threatening to kill him, his child, and his child's mother. As the evidence above indicates, the gang members viewed the Respondent's reluctance to collaborate as resistance to their claimed authority. The United Nations High Commissioner for Refugees ("UNHCR") notes that individuals in such a situation "may be in need of international refugee protection on the grounds of their (imputed) political opinion." Exh. 4, Tab E at 103. While the Respondent did not openly express a political opinion, gang members believed that he held an opinion in opposition to their political authority because he did not comply with their demands. In essence, gang members in this case imputed a political opinion to the Respondent and harmed him because of that opinion. Accordingly, the Respondent has established that he experienced past persecution on account of an imputed political opinion.

Having shown that he experienced past persecution on account of a protected ground, the Respondent benefits from a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). The DHS has not rebutted that presumption.

v. Government Unwilling or Unable to Protect

Because the gang members who threatened the Respondent were private actors, the Respondent must show that the government would be "unwilling or unable to control [his] persecutor." *Orellana*, 925 F.3d at 151. In this case, the Respondent attempted to report the threats he received from gang members to the police. Exh. 4, Tab B at 28. When he went to the police station, however, an officer admitted that there were gang members within the police ranks and suggested that the Respondent leave the country. The Respondent's experience is consistent with country conditions evidence in the record, which suggests that the government of El Salvador is woefully inadequate at controlling gang threats or violence. Exh. 4. The UNHCR notes that in certain parts of El Salvador, "the Government has lost effective control to gangs or other organized criminal groups and is unable to provide protection to civilians." Exh. 4, Tab E at 116. Another report indicates that "Salvadoran state authorities consistently fail to aid families or individuals in preventing displacement, show indifference to the plight of victims of violence, and turn their backs on their citizens." Exh. 4, Tab F at 240. In fact, 68 percent of individuals who reported

being victims of extortion in one survey said that authorities "had done nothing to investigate the crime." *Id.* Additionally, the record shows that weakness and corruption within law enforcement has led to high levels of impunity in the country. Exh. 4, Tab E at 96. Gangs also "have their own infiltrators in the police and the military." Exh. 4, Tab E at 96; Tab F at 183. Given this evidence, the Respondent has demonstrated that the government would be "unwilling or unable to control [his] persecutor." *Orellana*, 925 F.3d at 151-52.

B. Withholding of Removal and Protection Under the CAT

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

V. Conclusion

The Respondent demonstrated that he suffered past persecution on account of his imputed political opinion and has demonstrated that Salvadoran authorities are unwilling or unable to protect him. The DHS has not rebutted the presumption of a well-founded fear of persecution. Thus, the Respondent's application for asylum is granted.

ORDER

It is hereby ordered that:

I. the Respondent's application for asylum pursuant to INA § 208 is **GRANTED**.

02/12/2020
Date

David C. Koelsch
Immigration Judge

APPEAL RIGHTS: A notice of appeal must be filed with the Board of Immigration Appeals within thirty calendar days of the issuance date of this decision. See 8 C.F.R. § 1003.38(b). If the final date for filing the notice of appeal occurs on a Saturday, Sunday, or legal holiday, the time period for filing will be extended to the next business day. See id. If the time period expires and no appeal has been filed, this decision becomes final. See C.F.R. § 1003.38(d).

Appeal Date:

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: Mail (M) Personal Service (P)
To: ( ) Alien ( ) Alien C/O Custodial Officer (M) Alien's Att/Rep (M) DHS

Date: 2/19/2020 By: Court Staff: _____