

IMMIGRATION BRIEFINGS[®]

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DYNAMICS BETWEEN GANGS AND THE CHURCH: AN OVERLOOKED DIMENSION OF CENTRAL AMERICAN ASYLUM CLAIMS

by Sabrineh Ardalan and Thomas Boerman***

I. INTRODUCTION

With the escalation of gang violence in Central America, women and children from Honduras, El Salvador, and Guatemala are increasingly fleeing to the United States to seek protection. The facts and figures are, at this point, well-known: A record 69,000 children and 68,000 families arrived at the U.S.-Mexico border in fiscal year 2014.¹ After a brief decline due to stricter border control strategies, the numbers of children and families arriving at the U.S. border are again on the rise.² Termed a “humanitarian crisis” by President

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**Sabi Ardalan is Assistant Director of the Harvard Immigration and Refugee Clinic and Lecturer on Law at Harvard Law School. She is the author of the September 2013 Immigration Briefing, “Country Condition Evidence, Human Rights Experts, and Asylum-Seekers: Educating U.S. Adjudicators on Country Conditions in Asylum Cases,” 13-09 Immigration Briefings 1 (Sept. 2013); coauthor of the September 2014 and September 2012 Immigration Briefings, “The Importance of Nonphysical Harm: Psychological Harm and Violations of Economic, Social, and Cultural Rights in U.S. Asylum Law,” 14-09 Immigration Briefings 1 (Sept. 2014), and “Mejilla-Romero: A New Era for Child Asylum,” 12-09 Immigration Briefings 1 (Sept. 2012); and a past contributor to Law of Asylum in the United States. Ms. Ardalan extends special thanks to Deborah Anker and the Harvard Immigration and Refugee Clinical Program for inspiration, advice, and comments.*

***Thomas Boerman, Ph.D., has studied and worked with gangs in the U.S. and Latin America as a researcher, prevention-intervention specialist, and/or a parole and probation officer since 1995. He has served as a consultant to numerous governmental and nongovernmental organizations addressing the gang phenomenon in El Salvador, Honduras, Guatemala, Panama, and Mexico, including the United Nations High Commissioner for Refugees, the U.S. Agency for International Development, The World Bank, Save the Children—United Kingdom, and over a dozen private U.S.-based development organizations. In addition to a number of non-publicly available documents, he has authored or contributed to numerous reports and articles on gangs in general and in Latin America in particular. Since 2006, he has been credentialed as an expert witness and provided testimony in over 500 Central American and Mexican gang, organized crime, and gender-based and/or sexual orientation immigration matters in U.S. and Canadian immigration courts and provided numerous trainings to a broad range of immigration professionals. Dr. Boerman is solely the author of Part II of the Briefing, which is intended to provide context for the other sections of the Briefing. As a country expert, he does not take a position with respect to the Briefing as a whole or to the conclusions contained herein. Dr. Boerman may be reached at boermanthomas@gmail.com.*



Barack Obama, policy makers, advocates, and adjudicators are grappling with how to address these claims.³ Yet, within the larger story of gang warfare in Central America, one aspect is too often overlooked: the targeting of individuals on the basis of religion.⁴

The persecution of lay church members and church leadership alike by gang members in Central America deserves greater attention as more and more individuals from the region apply for asylum in the United States. In order to establish eligibility for asylum, individuals must show a connection between the harm suffered or feared and one of the five protected grounds under the 1951 Refugee Convention and the 1967 Protocol: race, religion, nationality, membership in a particular social group, and/or political opinion.⁵ Although advocates and adjudicators have generally analyzed cases involving gang violence in terms of membership in a particular social group, other protected grounds, including religion, are equally relevant.⁶ Indeed, given the jurisprudential confusion surrounding membership in a particular social group in gang-based asylum claims, the ground of religion may provide a useful framework for developing, presenting, and evaluating these cases.⁷

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This *Briefing* addresses the ground of religion in asylum cases involving gang violence in Honduras, El Salvador, and Guatemala, a region known as the Northern Triangle. It first describes country condition evidence critical to a nuanced understanding of these claims.⁸ The *Briefing* then presents an overview of U.S. asylum law with a focus on religion-based claims and gang violence. Next, the *Briefing* provides examples of cases in which adjudicators have granted asylum to women and youths who suffered or feared persecution by gangs for reasons of religion, among other grounds. The *Briefing* concludes with practical guidance regarding how to develop and present asylum cases involving gangs, religion, and the church.

II. SOCIO-POLITICAL CONTEXT OF THIRD-GENERATION GANGS AND THE CHURCH⁹

The dynamics between gangs and the church are an integral part of a larger strategy of terror through which gangs establish and maintain control over physical territory, criminal markets, the population, and, to an extent, the process of governance itself. As illustrated through the examples provided infra, these dynamics often give rise to risks of egregious physical harm and death to individuals due to their religion, or the religious beliefs attributed to them, in El Salvador, Honduras, and Guatemala.

Community life in El Salvador, Honduras, and Guatemala is defined by a number of variables, including overlapping family-social networks and a hypervigilance around knowing who is in the social environment, who is connected to whom, where people are from, and what they do during the course of their daily lives. As such, those who are active in their practice of faith are commonly recognized by the local population in general, and by gang members in particular, who are obsessive about knowing who lives and moves within areas under their control. Given the dynamics between gangs and the church, such individuals may be at high risk for psychological, physical, and sexual violence, or even death, as a direct result of their faith or the religious beliefs attributed to them.

Gangs typically subject members of the church to

violence for a combination of symbolic and strategic reasons. In terms of the symbolic, the church is one of the most visible “anti-gang” institutions in society, and gangs often view the church as their nemesis. Attacks against the church and its members are intended to undermine the position of the church in society by demonstrating gangs’ ability to exercise authority over it by defining and limiting its role. Stated differently, attacks against the church are intended to convey a message that gangs—not the church—define and dictate the terms under which daily life is conducted.

One manifestation of gangs’ efforts to demonstrate power over the church involves targeting members of the clergy, church leadership, and laity involved in activities perceived as “anti-gang” in nature, which may include sermons promoting a moral, nonviolent lifestyle; *campañas* (revival type meetings) or street preaching; outreach to vulnerable and at-risk youth; or even Bible studies. Gang members view activities of this nature as direct challenges to their hegemony in areas under their control and respond by subjecting members of the clergy, church leadership, and laity to threats or actual experiences of physical harm and death. It is critical to understand that gangs subject members of the clergy, church leadership, and laity to reprisals not only to “punish” the individuals involved but also to convey a message to the larger community that challenges to their power of this nature will result in reprisals that are as brutal as they are predictable; this is a fundamental element of gangs’ strategy of terror.

The risks to clergy and laity are so extreme that many choose not to involve themselves in activities that could be construed as “anti-gang” in nature, and many of those who do engage in pro-youth church and community-based activities do so only after negotiating with gangs to determine the “acceptable” parameters of activity. If they violate those parameters, they are likely to be at high risk for harm and even death.

Youth who are recognized for their involvement with the church may also be at high risk of serious harm and even death, and gangs frequently attempt to coerce them into service to the gang. This occurs for two reasons: one symbolic, the other strategic. First, if

able to coerce religious young people into service, gangs have achieved a symbolic victory over the church by drawing young people away from their faith into gang activity. Second, on a strategic level, because young people known for their religiosity are perceived as “good kids,” gang members believe that they can be used for criminal purposes, such as transporting drugs and weapons, delivering extortion demand letters, and/or collecting and delivering extortion monies without arousing suspicion among police, teachers, rival gang members, or local residents.

In some cases, gang members advise youth that they are being targeted specifically because of their religion whereas, in other instances, they do not state their motivations directly, but an analysis of the situation makes it clear that the young person’s faith represents a central factor in the gang’s decision to target him or her. Young people raised in a religious home environment and/or active in their practice of faith are not generally attracted to a lifestyle that includes criminality, drug and alcohol use, sexual violence, and murder. As a result, it is implausible that gangs believe that these youths would be “good” gang members. Rather, gangs target them for the symbolic and strategic reasons cited previously. In the process of coercing young people involved in the practice of faith, gang members frequently demand that they cease attending church and other religious activities, oftentimes under threat of death.

It is critical to recognize that, once coerced into service, such youth are not considered “members” of the gang nor are they typically promised any of the benefits associated with membership, such as camaraderie, money protection, or shelter. Rather, they are simply forced into servitude and viewed as “disposable” once they become a liability to the gang because they learn of its structure, leadership, and activities. Further, because gang members feel no loyalty toward these young people, they are offered no support if they are arrested as a result of their coerced activity on behalf of the gang or subjected to police abuses.

Among those not intimately familiar with the basic tenets of gang culture and mentality there exist two overly simplistic misperceptions regarding the dynam-

ics between gangs and the church. First is the notion that gangs “respect” the church. It is often the case that gang members were raised in or around the church and had relationships with local pastors, ministers, and priests long before they became involved with gangs. As such, some gang members and even gang leaders may have a degree of “respect” for the church, but it is imperative to understand that gangs operate largely with an institutional mentality and the beliefs and values of any given member may not shape the culture and mentality of the gang as a whole.

Another common misconception is that gang members are necessarily free to leave gangs for religious reasons. It is true that, in some instances, gang members are granted permission to leave based on a religious conversion, but this is not automatic, and several variables may come into play in any particular case. For instance, what are gang leaders’ attitudes toward religion and requests to leave the gang based on religious conversion? Second, how do leaders assess the effect of a member being granted authorization to leave in terms of the internal dynamics within the gang? Third, are there concerns among the gang’s leaders that, having undergone a religious conversion, the individual may begin to engage in anti-gang religious activities or potentially cooperate with law enforcement as an expression of his or her newfound commitment to the church and corresponding anti-gang values? If so, gang leaders may prohibit the person’s departure and order that he or she be subjected to harm or death for attempting to extricate himself or herself from the gang.

In cases in which a gang member is granted permission to leave based on a claim of religious conversion, gang leaders typically let the individual know that they will be monitoring the individual to ensure that he or she is indeed living in accordance with these newfound values. If the person’s dedication to the church later wanes, he or she will likely be at high and predictable risk of reprisal.

The ability of police and other agents of government in El Salvador, Honduras, and Guatemala to protect individuals at risk from gangs as a result of their religion is undermined almost entirely by systemic

obstacles arising from the combination of resource scarcity, the paralyzing effect of gangs’ intimidation and terrorization of public officials, burn-out and indifference on the part of many public officials, and the corrosive effect of pandemic corruption. The end result is that individuals at risk of harm from gangs because of their religion, or the religious beliefs attributed to them, are defenseless and largely abandoned by the states charged with protecting them.

III. THE U.S. REFUGEE DEFINITION AND ASYLUM CLAIMS INVOLVING RELIGION AND GANGS

Overview of U.S. Asylum Law

Under U.S. law, a refugee is defined as:

any person who is outside any country of such person’s nationality . . . 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.¹⁰

This definition was incorporated into U.S. law with the Refugee Act of 1980, which adopted the definition of refugee and the non-refoulement obligation, providing protection against return, from the 1951 Refugee Convention and the 1967 Protocol on the Status of Refugees.¹¹

In order to qualify for refugee protection, an asylum seeker in the United States thus bears the burden of establishing that:¹²

- (1) he or she is “unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of the country of nationality . . .”;
- (2) “[b]ecause of past persecution or . . . a well-founded fear of persecution”;
- (3) “[o]n account of”;
- (4) “race, religion, nationality, membership in a particular social group, or political opinion.”

The U.S. Supreme Court has recognized that a

“well-founded fear” means that an asylum seeker must show a “reasonable possibility” or a 1-in-10 chance of persecution.¹³ The agent of harm can be either a state or a nonstate actor, including a gang member, against whom the state is either unable or unwilling to provide protection.¹⁴

When assessing the ability or willingness of a government to protect an asylum seeker, adjudicators can consider a variety of factors, including “whether there were reasonably sufficient governmental controls and restraints on the action[s] that harmed the applicant” and “whether the government had the ability and will to enforce those controls and restraints with respect to the entity that harmed the applicant.”¹⁵ Adjudicators may look at whether the asylum seeker could have accessed those controls and restraints, whether he or she sought protection from the government or not, and how the government responded, if at all.¹⁶ It is not, however, necessary that an applicant seek government protection where doing so would be futile or dangerous.¹⁷ As U.S. Citizenship and Immigration Services (USCIS) has made clear, “[e]vidence that the government does not respond to requests for protection is a strong indication that state protection is unavailable.”¹⁸

In order to demonstrate the nexus or linkage between the harm suffered or feared and a protected ground, an asylum seeker may provide either direct or circumstantial evidence.¹⁹ Such evidence can include, for example, country condition information corroborating the reason(s) for the harm suffered or feared and documenting the experiences of those similarly situated, thereby demonstrating that “sooner or later [the asylum seeker] also will become a victim of persecution.”²⁰

Given the challenges that many asylum seekers face in “obtaining documentary or other corroborative evidence,”²¹ adjudicators have recognized that testimony alone “may be sufficient to sustain the applicant’s burden” if the testimony is credible, persuasive, and specific.²² However, where an adjudicator “determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have

the evidence and cannot reasonably obtain the evidence.”²³

Asylum applicants need not demonstrate that a protected ground, i.e., religion, is the sole or dominant reason for the harm suffered or feared; rather, they must show that a protected ground constitutes “at least one central reason” for the harm.²⁴ Courts have recognized that gangs can have “mixed motives” for inflicting harm.²⁵ As the USCIS Asylum Officer training materials instruct, “The persecutor may be motivated by several reasons, some unrelated to a protected ground. There is no requirement that the persecutor be motivated *only* by a desire to target the protected characteristic of the applicant.”²⁶ In addition, persecution on account of religion is often intertwined with persecution on account of other grounds, including political opinion,²⁷ particularly in claims involving gang violence in Central America discussed further below.

Under the regulations, a finding of past persecution gives rise to a presumption of a well-founded fear of future persecution.²⁸ This presumption can only be rebutted if “[t]here has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear” or if “[t]he applicant could avoid future persecution by relocating to another part of the applicant’s country of nationality . . . and under all the circumstances, it would be reasonable to expect the applicant to do so.”²⁹ Where an asylum seeker suffered past persecution but no longer has a well-founded fear, he or she may still be eligible for asylum if he or she “has demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution” or if “[he or] she may suffer other serious harm upon removal to that country.”³⁰

Asylum Claims Involving Religion and Gangs

U.S. adjudicators have focused their analysis of religion-based persecution not on the content of the asylum seeker’s religious beliefs but, rather, on how the persecutor perceives the asylum seeker and whether his or her beliefs conflict with those of the persecutor.³¹ In its guidelines on religion-based refugee claims, the United Nations High Commissioner for Refugees

(UNHCR) notes that “[i]n many cases, persecutors are likely to target religious groups that are different from their own because they see that religious identity as part of a threat to their own identity or legitimacy.”³² As the UNHCR has observed, religion can be “less a matter of theological beliefs than membership of a community that observes or is bound together by common beliefs, rituals, traditions, ethnicity, nationality, or ancestry.”³³ The ground of religion thus encompasses status, identity, or way of life as well as actual or imputed beliefs or nonbeliefs.³⁴

In *Matter of S-A-*, for example, a Moroccan woman sought and was granted asylum in the United States where the beatings and burns that her father inflicted “arose primarily out of religious differences between her and her father, i.e., the father’s orthodox Muslim beliefs, particularly pertaining to women, and her liberal Muslim views.”³⁵ The Board of Immigration Appeals (Board or BIA) in *Matter of S-A-* found “that the persecution suffered by the respondent was on account of her religious beliefs, as they differed from those of her father concerning the proper role of women in Moroccan society.”³⁶ The Board explained that “[t]he record clearly establishes that, because of his orthodox Muslim beliefs regarding women and his daughter’s refusal to share or submit to his religion-inspired restrictions and demands, the respondent’s father treated her differently from her brothers.”³⁷

Both the UNHCR and the USCIS Asylum Office have emphasized that “[p]ersecution for reasons of religion may . . . take various forms.”³⁸ It can, for example, “include prohibition of membership of a religious community, of worship in community with others in public or in private, of religious instruction, or serious measures of discrimination imposed on individuals because they practise their religion, belong to or are identified with a particular religious community, or have changed their faith.”³⁹ As the UNHCR has made clear, “the Convention would give no protection from persecution for reasons of religion if it was a condition that the person affected must take steps—reasonable or otherwise—to avoid offending the wishes of the persecutors.”⁴⁰

With respect to claims involving gang violence, the

UNHCR has noted that “[t]he 1951 Convention ground of religion may be relevant for the analysis of a claim where the applicant’s religious beliefs are incompatible with gang life style” and where “intolerance and violence against people of other religions or beliefs in a particular society is promoted by gangs.”⁴¹ Specifically, in its Guidance Note on Refugee Claims Relating to Victims of Organized Gangs, the UNHCR recognizes that individuals involved in church groups that oppose gangs may become “the targets of intimidation tactics and violence.”⁴² According to the guidance note, “[g]angs may direct harm at individuals who in various ways have resisted gang activity or who oppose, or are perceived to oppose, the practices of gangs.”⁴³

The guidance note observes that “a person expressing opposition to gangs will often stand out from the rest of the community” where inter alia “law enforcement is incapable of protecting people from gang violence.”⁴⁴ The guidance note provides as examples the case of an asylum seeker who “refuses to join a gang because of his/her religious belief or conscience” as well as the case of “a gang member who experiences religious conversion [and] wants to exit the gang.”⁴⁵ In these cases, the UNHCR underscores the need “to consider whether the applicant’s religious conviction has been or could be brought to the attention of gang members.”⁴⁶

Similarly, the March 2016 Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador issued by the UNHCR indicate that “[a]cts commonly construed as challenging a gang’s authority reportedly include [inter alia] . . . participating in civil, religious or other organizations viewed as undermining the gang’s authority.”⁴⁷ The 2016 Guidelines explain that “individuals whom the gang members suspect of resisting their authority are reported often to be killed without prior warning.”⁴⁸ Such individuals may include church members or leaders “who represent an alternative source of authority to the gangs and who oppose them, or are perceived by the gangs as doing so” and are thus “equally at risk of violent retaliation.”⁴⁹

IV. CASE EXAMPLES: ASYLUM GRANTS IN IMMIGRATION COURT AND BY THE ASYLUM OFFICE

U.S. adjudicators have, depending on the circumstances, granted asylum and withholding of removal to asylum seekers from Honduras, El Salvador, and Guatemala on account of religion.⁵⁰ In such cases, described further infra, detailed country condition information has often proven integral to demonstrating the connection between the ground of religion and the violence suffered and/or feared.⁵¹

There is, however, a dearth of published, precedential decisions recognizing religion as a protected ground in cases involving asylum seekers from the Northern Triangle. Indeed, in some cases, federal courts have imposed unreasonable evidentiary standards and disregarded relevant direct and circumstantial evidence.⁵² In other cases, the factual record has been underdeveloped, and claims have focused on membership in a particular social group, abandoning religion as a ground for asylum and thereby leaving limited avenues for appeal.⁵³

Some examples of successful claims presented in immigration court include the following:

- *Matter of —* (Arlington, VA, March 20, 2008): Granting asylum to a 17-year-old Honduran boy who was a devoted member of the Pentecostal church and refused to join the gang.⁵⁴ The gang threatened him with death, shot at him, and killed his uncle who had tried to protect him. His friend was also threatened with death and killed. The court found that he had suffered past persecution and had a well-founded fear of future persecution on account of his religious beliefs since he had repeatedly told the MS that joining a gang was “wrong” and against the values of his church, in response to which the MS told him the church was “worthless” and “trash.”⁵⁵
- *Matter of —* (Newark, NJ, May 13, 2008): Granting asylum to a Salvadoran woman who was “deeply involved in her church” and who “preache[d] to other youngsters the importance not only of religion, but also the importance of

living a clean and law-abiding life.”⁵⁶ The woman had witnessed another church member “being attacked and raped by gang members,” and “local gangs members kn[e]w of Respondent’s evangelical activities not only because they saw her go in and out of the church, but also because her aunt . . . [was] an Evangelical Christian who approached gang members herself to try to convince them to join the church (without success).”⁵⁷ The court concluded that “all of the other motives that the gang members might have for harming the Respondent, though undeniable, pale against the obvious motive that they oppose her religion, her Evangelical principles and her public display of her loyalty to her religion through her Church attendance and membership in her Church youth group.”⁵⁸ The court determined that, “[b]ased on her testimony and evidence [including expert witness testimony], Respondent convinces this court that she has a reasonable and well-founded fear of future persecution against her by gangs on account of her Evangelical Christianity.”⁵⁹

- *Matter of —* (Arlington, VA, July 16, 2010): Granting withholding of removal to Salvadoran man, a born-again Christian who evangelized and who was threatened with death and beaten for refusing to join the 18th Street gang. The court explained that, “[w]hile it does appear that the Respondent was targeted for extortion, the Respondent’s credible testimony, along with his corroborating documents, demonstrates that the Respondent’s religion was a central reason for his persecution.”⁶⁰ The court pointed, inter alia, to the Respondent’s testimony that gang members would “mock him . . . saying, ‘Here comes the preacher man! Hooray, we’re all saved!’ ”⁶¹
- *Matter of —* (Arlington, VA, August 10, 2012): Granting asylum to Salvadoran man, finding that “the Respondent has demonstrated that he has a well-founded fear of persecution on account of a protected ground, his religion.”⁶² The court noted that, “as part of his faith, he feels a responsibility to proselytize within the community and that if

he were removed to El Salvador, his religious beliefs would compel him to continue proselytizing.”⁶³ The court explained in its decision that “the Respondent’s credible testimony, when combined with the credible testimony of Respondent’s pastor regarding his religious convictions, the testimony of [the country expert] regarding the targeting of religious individuals by the MS-13, and the independent objective evidence [including State Department, human rights, and news reports] indicating that religious individuals who speak out against gangs are persecuted in El Salvador is sufficient to find that Respondent faces at least a ten percent chance of persecution in El Salvador on account of his religion.”⁶⁴

In other cases, immigration judges have granted asylum to church-goers and evangelical Christians targeted by gangs but without issuing written decisions. In one case, for example, gang members raped, stabbed, and carved gang marks into a woman at her church, which provided “clear links between the persecution and the respondent’s religion, establishing nexus.”⁶⁵ In another case involving a Salvadoran evangelical Christian, the immigration judge “was persuaded both by the applicant’s testimony regarding the ways in which he was targeted because of his religious opposition to gangs and by the testimony of an expert witness that gangs routinely persecute religious individuals who speak out against them.”⁶⁶

Immigration judges have also granted asylum where the persecution suffered and/or feared is linked to multiple protected grounds, including religion, as well as family membership, gender, and political opinion. These include, for example, asylum grants in Boston Immigration Court in 2015 to a young Salvadoran Jehovah’s Witness who was repeatedly taunted, then kidnapped, and raped by members of the MS, who tried to recruit her brother and who told her that her God did not exist and would not protect her,⁶⁷ and in 2016, to a Honduran mother and her son who belonged to and engaged in outreach with an evangelical Christian church that was attacked by gang members. She and her teenage son successfully sought asylum after

repeated threats to their lives, including by her abusive ex-partner and by members of the M-18 who killed her brother.⁶⁸

V. RECOMMENDATIONS AND CONCLUSIONS

In cases involving gang violence, it is critical that attorneys develop the record as fully as possible to demonstrate nexus, i.e., that gang members targeted a client because of his or her religion (and/or other protected grounds), not solely because of the gang’s desire to recruit more members or to extort money.⁶⁹ It may take multiple meetings to elicit information connecting the circumstances leading to the client’s flight from his or her home country to a protected ground.

In order to effectively present claims based on religious persecution by gangs, attorneys need to inquire into their clients’ religious beliefs, the strength of those beliefs, and the ways in which those beliefs have already or could in the future come into conflict with gang members, their way of life, and their values.⁷⁰ Where clients are targeted or fear persecution on account of multiple grounds, it is important to discuss and develop each ground.

The case of the young Salvadoran Jehovah’s Witness described above, for example, was ultimately framed in terms of family membership, anti-gang political opinion, and gender, as well as religion, to provide the adjudicator with different avenues for analysis and decision making. Yet the lawyers who had initially filed her case did not ask her about her religion, and, as a result, she did not think it was important to talk about or include her outreach efforts as a Jehovah’s Witness in her original asylum application. She had purposefully blocked out the threats that she received denouncing her faith, and she had avoided thinking about the reasons that she was kidnapped and raped. A psychological evaluation submitted to the court helped explain why certain information was omitted when her application was originally filed and why her claim had been developed more fully over time.

Attorneys should present either direct or circumstantial evidence of nexus, linking the harm suffered or

feared to religion and/or another protected ground.⁷¹ Direct evidence of nexus can include oral or written statements by gang members, indicating that they were aware of the client's religious beliefs and/or church outreach efforts and targeted the client because of them (i.e., statements like, "Your God does not exist." "Your God won't protect you." "You must do as I say." "If you don't stop what you have been doing, you will pay the price.").

Yet, clients may be hesitant to repeat slurs or taunts that they find offensive or may have difficulty remembering the content of threats and insults. It is important to explain to clients that the words used by gang members to threaten or insult clients can prove critical in establishing nexus and should, as a result, be discussed where possible. Supporting affidavits from friends, neighbors, other congregants, family members, pastors, or lay clergy describing the asylum seeker's religion and church involvement and any threats and/or attacks suffered or feared can also provide further corroboration.

Circumstantial evidence can include country condition documentation, such as news articles, human rights reports, and governmental reports, demonstrating that gangs target individuals who are similarly situated because of their religion or church attendance and outreach. It can be helpful, for example, to include articles documenting the murder of evangelical church members and missionaries in El Salvador in recent years⁷² as well as the death threats received by and murders of pastors in Honduras.⁷³

News reports like these can corroborate that individuals involved in church outreach and activities come under attack for a variety of reasons, described in Part II above, including their opposition to gang activities and the gang lifestyle and their capacity to draw other community members away from gangs and into the church, thereby threatening gang power and control.⁷⁴ As the UNHCR has emphasized, such claims should be viewed in light of "specific country and societal contexts," described above.⁷⁵

In addition, evidence regarding where attacks on or threats to the client occurred, whether they occurred

on the way to or from church, or even at church, may assist in establishing a linkage between the persecution suffered and/or feared and the protected ground of religion.⁷⁶ Country condition information regarding gang members' attitudes and treatment of other members of the church, as well as clergy, may also help elucidate the connection between the harm and the protected ground.⁷⁷

It is important to note that forced repression of religious beliefs constitutes serious harm that rises to the level persecution.⁷⁸ As such, asylum seekers cannot be forced to change or hide their beliefs or practice their religion in private in order to avoid persecution. As other commentators have emphasized, "Facing gang violence for living in accordance with one's faith in a situation where one's country is unable or unwilling to protect should form a cognizable claim."⁷⁹ Any evidence that state protection was sought should be included in the documentation submitted to court. Where a client did not seek state protection, attorneys should present country condition information explaining why doing so would have been futile or dangerous.

Attorneys should also present country condition evidence demonstrating the power and control that the gangs exercise in the country and the impunity with which they operate throughout the country in order to show that internal relocation would not be possible or reasonable. Even if internal relocation would be possible, adjudicators must consider such factors as ongoing civil strife, a lack of administrative, judicial, or economic infrastructure in other parts of the country, as well as "age, gender, health, and social and family ties" to evaluate whether internal relocation would be reasonable.⁸⁰ Country condition evidence can help demonstrate the obstacles to relocating internally and the reasons why the client would not be safe somewhere else.

As adjudicators and advocates alike learn more about the dynamics between the church and gangs in the Northern Triangle, religion-based claims may gain greater traction in U.S. asylum proceedings. Each case should therefore be developed and presented as thoroughly as possible to establish and preserve a comprehensive record for appeal.

ENDNOTES:

¹Chishti and Hipsman, “Increased Central American Migration to the United States May Prove an Enduring Phenomenon,” Policy Beat, Migration Policy Institute, Feb. 18, 2016, available at <http://www.migrationpolicy.org/article/increased-central-american-migration-united-states-may-prove-enduring-phenomenon>. For an overview of Central American migration flows, see Rosenblum and Brick, “US Immigration Policy and Mexican/Central American Migration Flows: Then and Now,” Migration Policy Institute and Woodrow Wilson Center for International Scholars, Aug. 2011, available at <http://www.migrationpolicy.org/research/RMSG-us-immigration-policy-mexican-central-american-migration-flows>.

²Between October 2015 and January 2016, U.S. Border Patrol apprehended 20,455 unaccompanied children and 24,616 family units (a parent, typically a mother, traveling with children), primarily from Guatemala, El Salvador, Honduras, and Mexico. Chishti and Hipsman, “Increased Central American Migration to the United States May Prove an Enduring Phenomenon,” Policy Beat, Migration Policy Institute, Feb. 18, 2016, available at <http://www.migrationpolicy.org/article/increased-central-american-migration-united-states-may-prove-enduring-phenomenon>. This quarterly total amounts to half the unaccompanied children and family units apprehended in all of the 2015 fiscal year. If this trend continues, projected yearly totals would be significantly higher than the record surge of 2014. Id.

³White House, Office of the Press Secretary, “Letter from the President — Efforts to Address the Humanitarian Situation in the Rio Grande Valley Areas of Our Nation’s Southwest Border,” June 30, 2014, available at <https://www.whitehouse.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle>.

⁴It is important to note that individuals can be targeted for their actual or imputed religious beliefs or values. Religion can also overlap with other grounds, including race. See generally Anker, Law of Asylum in the United States §§ 5:68, 5:80 to 5:83. For a description of the effect of religion on the development of U.S. asylum law and the ways in which religion-based claims were “neglected” prior to the International Religious Freedom Act, see Mousin, Standing with the Persecuted: Adjudicating Religious Asylum Claims After the Enactment of the International Religious Freedom Act of 1998, 2003 B.Y.U. L. Rev. 541, 549, 560-61 (2003) (noting that “[p]ersons flee-

ing religious persecution, although not constituting a large percentage of asylum cases, nonetheless have dramatically influenced the development of the law” and arguing that “IRFA was a wake-up call . . . to take claims of persecution on account of religion more seriously”).

⁵United Nations Convention relating to the Status of Refugees, opened for signature July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137; United Nations Protocol relating to the Status of Refugees, opened for signature Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (hereinafter Refugee Convention).

⁶The United Nations High Commissioner for Refugees (UNHCR) emphasizes that, under the 1951 Refugee Convention, “grounds are not mutually exclusive and may overlap.” UNHCR, Guidance Note on Refugee Claims Relating to Victims of Organized Gangs ¶ 31 (Mar. 2010), available at <http://www.unhcr.org/refworld/docid/4bb21fa02.html> (“Jurisprudential developments suggest that gang-related asylum claims have most frequently been analysed within the 1951 Convention ground of ‘membership of a particular social group’ and/or ‘political opinion.’”) (hereinafter UNHCR Guidance Note).

⁷For an extensive discussion of membership in a particular social group in asylum claims based on persecution by gangs, see Frydman and Desai, “Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs,” 12-10 Immigration Briefings 1 (Oct. 2012). For a discussion of the political opinion ground in these types of asylum claims, see Anker and Lawrence, “‘Third Generation’ Gangs, Warfare in Central America, and Refugee Law’s Political Opinion Ground,” 14-10 Immigration Briefings 1 (Oct. 2014).

⁸As discussed *infra*, the relationship between Central American gangs, religion and the church is complex. Dudley, “Religion and Violence in Latin America, The El Salvador Gang Truce and the Church: What was the Role of the Catholic Church?” CLALS White Paper Series No 1, May 5, 2013, http://www.american.edu/clals/upload/CLALS-Working-Paper__Gang-Truce.pdf (noting that gang members may have been raised in religious families and may thus have “conflicted ideas about religion”). Some have suggested that religion and the church may in fact provide an exit strategy for youths who wish to leave gangs, offering some measure of protection from targeting and recruitment. MacHarg, “Honduras: Christians Experience Threat, Danger in One of the World’s Most Violent Cities,” Assist News Service, Apr. 18, 2013,

<http://www.christiansincrisis.net/latest-news/1385-honduras-christians-experience-threat-danger-in-one-of-the-world-s-most-violent-cities.html> (As one Honduran working with a mission explained: “ ‘Members of churches have died because they go to church and gangs stop people from attending church.’ . . . ‘[I]f a member is allowed to leave and join an evangelical congregation he had better not ever leave the church. If he does, he will be killed.’ ”). The recent UNHCR guidelines explain, however, that “[p]ermission to leave the gangs, e.g. on religious grounds, is given much less frequently than in the past and those few who are able to leave peacefully and become ‘calmado’ are considered merely ‘inactive’ members who still have ties and duties to the gang in certain circumstances.” See, e.g., UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador, U.N. Refugee Agency, U.N. Doc. HCR/EG/SLV/16/01, at 29, 31-32 (2016). See also Pedraza-Farina, Miller, and Cavallo, No Place to Hide: Gang, State, and Clandestine Violence in El Salvador 79-80 (2007) (“[F]or those who remain in El Salvador, joining an evangelical sect may not suffice to allow them to leave gang life: one ex-gang member reported, ‘right now the only way to leave a gang is to die. They tell you that if you find God you can leave, but even then they still kill you.’ ”).

⁹Part II, which was solely written by Dr. Boerman, reflects his extensive research as a country expert into the dynamics between gangs and the church, including over 100 interviews with members of the clergy and laity, police and other government officials, human rights advocates, and youth involved in the church. It is intended to provide context for the other sections of the *Briefing* which were written by Ms. Ardalan.

¹⁰INA § 101(a)(42)(A) [8 U.S.C.A. § 1101(a)(42)]. For an in-depth analysis of U.S. asylum law, see Anker, *Law of Asylum in the United States*.

¹¹For an overview of this history, see generally Anker and Posner, *The Forty Year Crisis: A Legislative History of the Refugee Act of 1980*, 19 San Diego L. Rev. 9 (1981).

¹²Asylum Officer Basic Training Course, Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; Eligibility Based on Past Persecution 8 (Mar. 6, 2009), available at <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Definition-Refugee-Persecution-Eligibility-31aug10.pdf> (hereinafter USCIS Asylum Officer Basic

Training Course, Asylum Eligibility Part I); INA §§ 208(a)(2), (b)(1)(B)(i), (b)(2)(A) [8 U.S.C.A. §§ 1158(a)(2), (b)(1)(B)(i), (b)(2)(A)]; 8 C.F.R. § 208.13(a).

¹³See *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 438-41, 107 S. Ct. 1207, 94 L. Ed. 2d 434 (1987) (“In interpreting the Protocol’s definition of ‘refugee’ we are further guided by the analysis set forth in the Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status. The Handbook explains that ‘[i]n general, the applicant’s fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.’ ”) (internal citations omitted); *Matter of Mogharrabi*, 19 I. & N. Dec. 439, 445, 1987 WL 108943 (B.I.A. 1987) (noting that an asylum seeker must show that “a reasonable person in [her] circumstances would fear persecution”). As the UNHCR Handbook explains, “To the element of fear – a state of mind and a subjective condition – is added the qualification ‘well-founded’. This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The term ‘well-founded fear’ therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration.” Office of the United Nations High Commissioner for Refugees, *The Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* ¶ 38 (1979, rev. 1992).

¹⁴USCIS Asylum Officer Basic Training Course, Asylum Eligibility Part I, *supra* note 12, at 46-47. For a discussion of nonstate actors in the context of asylum claims brought by individuals fleeing gang violence on account of their political opinion ground, see Anker, *Law of Asylum in the United States* § 5:25 (noting that “many resist gangs by opposing their extortionist, ‘taxation,’ and related demands; they also refuse recruitment, participate in church or athletic groups that specifically embrace or promote anti-gang ideals, and testify against gang members in open courts”). See, e.g., *Crespin-Valladares v. Holder*, 632 F.3d 117, 128-29 (4th Cir. 2011) (collecting cases and noting that “persecution under the INA encompasses harm inflicted by either a government or an entity that the government cannot or will not control” and explaining

that “[w]hether a government is unable or unwilling to control private actors . . . is a factual question that must be resolved based on the record in each case” (internal quotation marks omitted).

¹⁵USCIS Asylum Officer Basic Training Course, Asylum Eligibility Part I, *supra* note 12, at 44.

¹⁶*Id.*

¹⁷*Matter of S-A-*, 22 I. & N. Dec. 1328, 2000 WL 827754 (B.I.A. 2000) (finding a failure of state protection where a young Moroccan woman presented testimony and country condition evidence demonstrating that contacting government authorities about her father’s abuse would have been ineffective and potentially dangerous).

¹⁸USCIS Asylum Officer Basic Training Course, Female Asylum Applicants and Gender-Related Claims 24-25 (Mar. 12, 2009), available at <http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Female-Asylum-Applicants-Gender-Related-Claims-31aug10.pdf>.

¹⁹*I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 483, 112 S. Ct. 812, 117 L. Ed. 2d 38 (1992).

²⁰UNHCR, Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees ¶ 14 (Apr. 28, 2004), available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4090f9794> (hereinafter UNHCR Religious Claims Guidelines).

²¹*Matter of Mogharrabi*, 19 I. & N. Dec. 439, 445, 1987 WL 108943 (B.I.A. 1987).

²²INA § 208(b)(1)(B)(ii) [8 U.S.C.A. § 1158(b)(1)(B)(ii)], as amended by § 101(a)(3) of the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 19 Stat. 231 (May 11, 2005).

²³*Id.* See also *In re S-M-J-*, 21 I. & N. Dec. 722, 1997 WL 80984 (B.I.A. 1997) (“Because the burden of proof is on the alien, an applicant should provide supporting evidence, both of general country conditions and of the specific facts sought to be relied on by the applicant, where such evidence is available. If such evidence is unavailable, the applicant must explain its unavailability, . . .”).

²⁴REAL ID Act of 2005, Div. B of Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005), INA § 208(b)(1)(B)(i) [8 U.S.C.A. § 1158(b)(1)(B)(i)]; see *Parussimova v. Mukasey*, 555 F.3d 734, 740 (9th Cir. 2009) (“The Act states that a protected ground must

constitute ‘at least one’ of the central reasons for the persecutory conduct; it does not require that such reason account for 51% of the persecutors’ motivation.”). See also *Matter of S-P-*, 21 I. & N. Dec. 486, 495, 1996 WL 422990 (B.I.A. 1996) (explaining that “[i]n some fact situations, the evidence may reasonably suggest mixed motives, at least one or more of which is related to a protected ground”).

²⁵See, e.g., *Madrigal v. Holder*, 716 F.3d 499, 506 (9th Cir. 2013) (“Although mistreatment motivated purely by personal retribution will not give rise to a valid asylum claim, . . . if a retributory motive exists alongside a protected motive, an applicant need show only that a protected ground is ‘one central reason’ for his persecution.”) (internal citation omitted). In *Madrigal*, the Ninth Circuit pointed to the case of *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013) (en banc), explaining that “we held that Salvadorans who testified in open court against drug cartels could constitute a particular social group, and we faulted the BIA for ‘fail[ing] to consider significant evidence that Salvadoran society recognizes the unique vulnerability of people who testify against gang members in criminal proceedings, because gang members are likely to target these individuals as a group.’ Gang persecution of adverse witnesses would certainly have revenge as one motive, but group-based intimidation would be another.” *Madrigal v. Holder*, 716 F.3d 499, 506 (9th Cir. 2013) (internal citation omitted). See also USCIS Asylum Officer Basic Training Course, Asylum Eligibility Part III: Nexus and the Five Protected Characteristics 7-8 (Mar. 12, 2009), available at <http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Nexus-the-Five-Protected-Characteristics-31aug10.pdf> (hereinafter USCIS Asylum Officer Basic Training Course, Asylum Eligibility Part III); RAIO Combined Training Course, Nexus and the Protected Grounds 12 (Apr. 30, 2013), available at <http://www.uscis.gov/sites/default/files/USCIS/About%20Us/Directorates%20and%20Program%20Offices/RAIO/nexus-protected-grounds.pdf> (instructing “the applicant does not ‘bear the unreasonable burden of establishing the [persecutor’s] exact motivation’”).

²⁶USCIS Asylum Officer Basic Training Course, Asylum Eligibility Part III, *supra* note 25, at 7-8 (emphasis in original).

²⁷See Anker, Law of Asylum in the United States § 5:80 (“Persecution on account of religion is often linked to other grounds, particularly political opinion. Religious movements frequently advocate for social and political change, and . . . persons associated with

such religious-based political movements may suffer persecution.”). See also Frydman and Desai, “Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs,” 12-10 Immigration Briefings 1 (Oct. 2012) (noting that in cases involving gang violence, a “claim involving religious persecution may be argued as both a social group and religion claim and possibly a political opinion claim depending on the facts”).

²⁸ C.F.R. § 208.13(b)(1)(i). It is important to note that past persecution is not a requirement; rather, an asylum seeker must establish *either* past persecution *or* a well-founded fear to demonstrate eligibility for asylum. USCIS Asylum Officer Basic Training Course, Asylum Eligibility Part II: Well-Founded Fear 31 (Mar. 13, 2009), available at <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Well-Founded-Fear-31aug10.pdf> (“There is no requirement that the applicant have suffered harm in the past to establish a well-founded fear of future persecution.”).

²⁹ C.F.R. § 208.13(b)(1)(i).

³⁰ C.F.R. § 208.13(b)(1)(iii).

³¹ Anker, *Law of Asylum in the United States* §§ 5:75 to 5:76 (“Courts generally have rejected the proposition that an applicant must demonstrate a certain level of doctrinal knowledge in order to be eligible for asylum on grounds of religious persecution.”).

³² UNHCR Religious Claims Guidelines, *supra* note 20, at ¶¶ 5-7.

³³ *Id.*

³⁴ *Id.*

³⁵ *Matter of S-A-*, 22 I. & N. Dec. 1328, 1329, 2000 WL 827754 (B.I.A. 2000). Interference with an asylum seeker’s ability to practice his or her religion is just one, among many, forms of religious-based persecution. *Matter of L-K-*, 23 I. & N. Dec. 677, 683, 2004 WL 2211892 (B.I.A. 2004) (finding that “the harm she suffered, primarily as a result of a series of home invasions during which she was seriously injured, was on account of her religious beliefs and practices, and that it rose to the level of persecution” and determining “that the respondent suffered past persecution and is entitled to the resulting regulatory presumption that she has a well-founded fear of future persecution if she must return to Ukraine”).

³⁶ *Matter of S-A-*, 22 I. & N. Dec. at 1336.

³⁷ *Matter of S-A-*, 22 I. & N. Dec. at 1336.

³⁸ UNHCR Religious Claims Guidelines, *supra* note 20, at ¶ 13. USCIS Asylum Officer Basic Training Course, Asylum Eligibility Part III, *supra* note 25, at 18-19 (citing Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the UNHCR Handbook).

³⁹ UNHCR Religious Claims Guidelines, *supra* note 20, at ¶ 12.

⁴⁰ UNHCR Religious Claims Guidelines, *supra* note 20, at ¶ 13 (noting that religious beliefs are considered so fundamental to human identity and conscience that an individual cannot be “compelled to hide, change or renounce this in order to avoid persecution”).

⁴¹ UNHCR Guidance Note, *supra* note 6, at ¶ 32.

⁴² UNHCR Guidance Note, *supra* note 6, at ¶ 12.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ UNHCR Guidance Note, *supra* note 6, at ¶ 32.

⁴⁶ *Id.*

⁴⁷ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador*, U.N. Refugee Agency, U.N. Doc. HCR/EG/SLV/16/01, at 29, 31-32 (2016).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Frydman and Desai, “Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs,” 12-10 Immigration Briefings 1 (Oct. 2012) (“Although to date there have been no successful published religion cases based on gang persecution in the federal courts, such claims have been granted in immigration court.”). Some commentators are optimistic about the prospects for these types of claims, emphasizing that “there is no reason to believe that these claims will continue to fail in the circuit courts if the nexus between religious views and persecution can be established. In cases in which gang members *knew* of the claimant’s religious opinions before approaching them, the claim would be better-situated than those which the circuit courts have addressed thus far.” Carlson and Gallagher, *Humanitarian Protection for Children Fleeing Gang-Based Violence in the Americas*, 3 J. Migration & Human Sec. 129, 149 (2015) (Noting that “circuit courts that have adjudicated gang-based religious persecution cases have not yet approved a case, each finding lack

of a sufficient nexus. However, these cases either lacked evidence that gang members knew of and cared about the claimants' religious views, or they involved a mixed-motive, and the courts found personal and financial reasons to be the initial and central cause of the persecution.”).

⁵¹USCIS Asylum Officer Basic Training Course, Asylum Eligibility Part III, *supra* note 25, at 31. Country condition evidence can provide context and help explain the relationship between past harm or fear of future events and a protected ground. In addition, as discussed in Part V, *infra*, it is equally important to interview asylum seekers thoroughly in order to present testimony that sufficiently explains the well-founded fear and connects the harm to a protected ground.

⁵²Frydman and Desai, “Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs,” 12-10 Immigration Briefings 1 (Oct. 2012) (noting that adjudicators have at times “misinterpret[ed] the REAL ID Act to require that the protected ground be the central reason, as opposed to [at least] one central reason, for persecution by gangs”). See, e.g., *Quinteros-Mendoza v. Holder*, 556 F.3d 159 (4th Cir. 2009) (denying petition for review in case involving a Seventh Day Adventist targeted by gangs where court found attacks were motivated by “money and personal animosity, not religion or politics” and concluding that “Quinteros-Mendoza has provided no evidence that his religion or political beliefs were more than incidental or tangential to any part of the persecution he suffered”); *Bueso-Avila v. Holder*, 663 F.3d 934 (7th Cir. 2011) (denying petition for review to Evangelical Christian involved in proselytizing to youth, upholding BIA finding that motive was to recruit, and finding that “there is substantial evidence in the record to support the finding that the gang threatened Bueso-Avila simply because he was a youth who refused to join their street gang, regardless of his religious activities”). For an extensive critique of these two cases, see Frydman and Desai, *supra* (arguing that the court’s approach in *Quinteros-Mendoza* “misreads applicable law” and that the decision in *Bueso-Avila v. Holder* “reveals a deficit in judges’ understanding of the context of gang violence and their assessment of these cases. In particular, the court failed to grasp that gangs may view individuals like Bueso-Avila, who are driven by faith to proselytize youth to join the church and leave gangs, as a threat and persecute them to suppress their religion”).

⁵³See, e.g., *Rios v. Lynch*, 807 F.3d 1123, 1126-27

(9th Cir. 2015) (finding that “[s]ubstantial evidence supports the BIA’s conclusions” that “Flores-Rios failed to establish a sufficient nexus between the murders of his relatives and their religious beliefs” and “because Flores-Rios had never been threatened or harmed due to his religious affiliation and did not engage in proselytizing efforts, there was little likelihood that he would be persecuted as a result of his religious beliefs. . . . However, our analysis does not end there. The crux of this appeal is Flores-Rios’s claim for withholding of removal due to persecution on the basis of his membership in a particular social group—his family.”); *Balam-Ruiz v. U.S. Atty. Gen.*, 608 Fed. Appx. 908, n. 2 (11th Cir. 2015) (unpublished); *De Leon-Reynoso v. Holder*, 573 Fed. Appx. 531, 536-37 (6th Cir. 2014) (unpublished) (noting that “De Leon defined his social group as young Guatemalan males who refuse induction into gangs for religious and moral reasons and face gang reprisals as a result of refusal to become gang members” and deferring to Board’s decision that “ ‘persons subjected to gang recruitment who resisted based on personal, moral, and religious opposition to gangs[] do not constitute a cognizable particular social group’ ” and “that De Leon’s claimed treatment by the Guatemalan police lacked nexus to any protected characteristic because it was ‘unscrupulous police shaking down a citizen for money’ ”); *Gonzalez-Hernandez v. Holder*, 464 Fed. Appx. 558 (9th Cir. 2011) (unpublished) (Noting that “Petitioner argues that the BIA erred by overlooking evidence that she was persecuted on account of her religion” but deferring to the Board’s decision and denying the petition for review where “[t]he BIA’s determination that Petitioner was targeted by the Mara Salvatrucha gang (MS) for criminal purposes, rather than on account of her religion, is supported by substantial evidence. The BIA correctly noted that there is no evidence in the record showing that any MS member ever referred to Petitioner’s religion while threatening her. The BIA also noted that the gang members never objected to Petitioner’s religious activities and were only angry that she was making negative comments about the gang.”).

⁵⁴*Matter of* — (Arlington, VA, Mar. 20, 2008) (Case H.019), previously available at <http://www.refugees.org/resources/for-lawyers/asylum-research/gang-related-asylum-resources/immigration-judge.html> (on file with author).

⁵⁵Cleveland, “Two New Gang-Based Asylum Victories,” *Immigration Daily*, available at <https://www.ilw.com/articles/2008,0522-cleveland.shtm>.

⁵⁶*Matter of* — (Newark, NJ, May 13, 2008) (Case

ES.017), previously available at <http://www.refugees.org/resources/for-lawyers/asylum-research/gang-related-asylum-resources/immigration-judge.html> (on file with author).

⁵⁷Id.

⁵⁸Id.

⁵⁹Id.

⁶⁰*Matter of* — (Arlington, VA July 16, 2010) (cited in Anker, *Law of Asylum in the United States* § 5:25) (on file with author and CAIR Coalition).

⁶¹Id.

⁶²*Matter of* — (Arlington, VA Aug. 10, 2012), IJ Grants El Salvadoran Asylum Case Based on Religious Persecution, AILA InfoNet, Doc. No. 12102931, Aug. 10, 2012 (posted Oct. 29, 2012) (cited in Anker, *Law of Asylum in the United States* § 5:25).

⁶³Id.

⁶⁴Id.

⁶⁵Frydman and Desai, “Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs,” 12-10 Immigration Briefings 1 (Oct. 2012), nn. 291-92 (citing CGRS Case #6991 and noting that “[t]he judge in the case issued an oral decision and DHS did not appeal, thus no decision is on file.”).

⁶⁶Frydman and Desai, “Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs,” 12-10 Immigration Briefings 1 (Oct. 2012), n. 293 (citing CGRS Case #8989 and noting that “[t]his was a pre-REAL ID Act case”).

⁶⁷The government conceded eligibility for asylum in this case represented by the Harvard Immigration and Refugee Clinic, and no written decision was issued.

⁶⁸In this case, the asylum seeker, represented by the Harvard Immigration and Refugee Clinic, was granted asylum on the basis of domestic violence suffered and feared by the mother. No written decision was issued.

⁶⁹Frydman and Desai, “Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs,” 12-10 Immigration Briefings 1 (Oct. 2012).

⁷⁰See Corsettia, Note: Marked For Death: The Maras of Central America and Those Who Flee Their Wrath, 20 *Geo. Immigr. L.J.* 407, 419-20, 425-27 (Spring 2006).

⁷¹See *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 483, 112 S. Ct. 812, 117 L. Ed. 2d 38 (1992) (“Elias-Zacarias objects that he cannot be expected to provide direct proof of his persecutors’ motives. We do not require that.”).

⁷²Seymour, “Christians caught in crossfire of El Salvador’s gang war,” World News Group, Jan. 22, 2014, available at https://world.wng.org/2014/01/christians_caught_in_crossfire_of_el_salvadors_gang_war (“The Christians were leaving a church in the El Nispero district of the city of Tacuba when the attackers unleashed a volley of gunfire, according to Fox News Latino. . . . The federal prosecutor’s office in Ahuachapan state near the border of Guatemala said the victims were riddled with bullets. Witnesses said five attackers ordered the Christians—most of them farmers—to lift their shirts and then shot them. . . . The massacre was the second attack on Christians in El Salvador in a week, after gunmen ambushed a bus full of missionaries on Jan. 4.”). Allen, “In El Salvador, the Church debates whether to make a deal with the devil,” *Crux Now*, Apr. 9, 2015, available at <http://www.cruxnow.com/church/2015/04/09/in-el-salvador-the-church-debates-whether-to-make-a-deal-with-the-devil/> (“[I]n 2014 alone, six members of an Evangelical church were killed in Tacuba; the Pentecostal Elim Church reported attacks against its members; an 84-year-old guard at the historic ‘Don Rua’ church, a Catholic parish, was murdered, and a man was shot dead at ‘la Luz del Mundo’ Evangelical Church. Churchgoers complain of being hassled before and after services, and some stay away out of fear.”).

⁷³Compass Direct News, “Murder of Pastor in Honduras Raises Security Questions,” *The Christian Post*, Feb. 27, 2011, available at <http://www.christianpost.com/news/murder-of-pastor-in-honduras-raises-security-questions-49202/> (“Marroquín was the second pastor to be murdered in Honduras this year, after the Jan. 30 killing of Raymundo Fuentes, 43, pastor of the New Jerusalem Temple. Fuentes was slain as he was leaving the evening service at his church with his wife. Two days prior the daughter of an evangelical pastor had been killed. . . . Misael Argeñal, a pastor of Harvest Ministry with many years’ experience in San Pedro Sula, told reporters, ‘There are already six pastors who have died in Honduras in recent months. There must be a project, an escalation . . . they must investigate to find out who is behind everything.’ . . . An anonymous caller gave police the names of two suspects in the murder of Marroquín. Saying the two suspects were in the car and attacked him, the caller identified them as belonging to a cell of the infamous

Mara Salvatrucha gangs.”). MacHarg, “Honduran Pastor Says Robberies Target Ministries,” *Persecution.org*, Jan. 4, 2008, available at <http://www.persecution.org/2008/01/06/honduran-pastor-says-robberies-target-ministries/> (“The pastor of a large church here who was beaten and robbed last month for the second time in three years says organized criminals opposed to his stand against violence are behind the attacks . . . ‘It was an act of intimidation to stop my work,’ the pastor said, pointing out that the thieves did not take his car . . . A week before the attack, Argeñal told Spanish-language TV network Univision, two men dressed as policemen on a motorcycle followed him as he left his 25,000-member, La Cosecha (The Harvest) church. ‘They told me that if I didn’t stop (my ministry) they would kill me,’ he said.”). See also Tobia, “No Country for Lost Kids,” *PBS Newshour*, June 20, 2014, available at <http://www.pbs.org/newshour/updates/country-lost-kids/> (noting that the gangs are “‘recruiting at schools, they’re recruiting at youth centers, they’re recruiting and going after children who are participating in youth groups and churches . . . ’”).

⁷⁴See, e.g., MacHarg, “Honduras: Christians Experience Threat, Danger in One of the World’s Most Violent Cities,” *Assist News Service*, Apr. 18, 2013, available at <http://www.christiansincrisis.net/latest-news/1385-honduras-christians-experience-threat-danger-in-one-of-the-world-s-most-violent-cities.html>. “Persecution of Christians, particularly by criminal organizations, is generally motivated by a combination of two elements. Firstly, criminal groups view Christians who openly oppose their activities as a threat, especially when Christians get involved in social programs or in politics. Secondly, they fear Christians will influence members of the community or even members of their own organizations to oppose their activities.” *World Watch Monitor*, Analysis: Latin American Christians Need Protection from Organized Crime, Sept. 29, 2015, available at <http://www.crossmap.com/news/analysis-latin-american-christians-need-protection-from-organized-crime-21318> (“[P]racticing Christians are often singled out and targeted due to their ‘perceived threat to the hegemony and influence of criminal organizations’ . . . Christians are vulnerable because their behavior – based on the biblical worldview – is contrary to the greed of organized crime.”).

⁷⁵UNHCR, Guidance Note on Refugee Claims Relating to Victims of Organized Gangs ¶ 12 (Mar. 2010), available at <http://www.refworld.org/docid/4bb>

21fa02.html (“Members of this group [of ‘gang-resisters,’ including ‘participants in community- or church-based groups who oppose gangs’] need to be understood in their specific country and societal contexts.”).

⁷⁶Frydman and Desai, “Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs,” 12-10 *Immigration Briefings* 1 (Oct. 2012) (noting that the court in *Bueso-Avila* cited “the lack of direct evidence, lack of proof that the gang was aware of his religious beliefs and activities, lack of evidence that the gang targets individuals because of their religion or church youth group affiliation, and the fact that the most serious attack on Bueso-Avila occurred after work—not church”).

⁷⁷Frydman and Desai suggest exploring “the role of the church in the applicant’s community” as one potential avenue for developing the claim and identify the following useful questions to consider:

Does the church pose a threat to the gang’s power? How influential is it in shaping opinions in the community? What social services does it provide, particularly for vulnerable youth? Does the church recruit youth away from gangs? Also, look to the historical relationship between the church and gangs. Has the gang targeted other church members? Has the gang desecrated church property in the past? Additionally, think about details surrounding the persecution: Did it take place at the church or some other religiously affiliated space? Did the gang leave any of its markings on the petitioner or in the church? Consider the applicant’s relationship to the church: Does he or she have a longstanding relationship with the church and involvement with specific church activities beyond regular attendance?

Frydman and Desai, “Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs,” 12-10 *Immigration Briefings* 1 (Oct. 2012).

⁷⁸See generally Anker, *Law of Asylum in the United States* § 4:23; Ardalan and Lawrence, “The Importance of Nonphysical Harm: Psychological Harm and Violations of Economic, Social, and Cultural Rights in U.S. Asylum Law,” 14-09 *Immigration Briefings* 1 (Sept. 2014).

⁷⁹Frydman and Desai, “Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs,” 12-10 *Immigration Briefings* 1 (Oct. 2012).

⁸⁰8 C.F.R. § 208.13(b)(3).