

No. 25-1225

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**UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

VICTOR GEOVANY LOPEZ MARTINEZ; M.G.L.G.,

Petitioners

v.

PAMELA J. BONDI, UNITED STATES ATTORNEY GENERAL,

Respondent

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ON PETITION FOR REVIEW OF THE ORDER OF THE BOARD OF  
IMMIGRATION APPEALS

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**BRIEF OF *AMICI CURIAE*  
AMERICAN IMMIGRATION LAWYERS ASSOCIATION AND  
CENTER FOR GENDER & REFUGEE STUDIES  
IN SUPPORT OF PETITIONER AND REVERSAL**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *Amici Curiae* American Immigration Lawyers Association and Center for Gender & Refugee Studies certify that they do not have a parent corporation and that no publicly held corporation owns 10% or more of the stock of *amici*.

Dated: June 16, 2025

Respectfully submitted,

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## STATEMENT OF *AMICI CURIAE*<sup>1</sup>

*Amicus*, the American Immigration Lawyers Association (“AILA”), is a national association with nearly 17,000 members throughout the United States, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to advance the administration of law pertaining to immigration, nationality, and naturalization; to cultivate the jurisprudence of the immigration laws; and to facilitate the administration of justice and elevate the standard of integrity, honor, and courtesy of those appearing in a representative capacity in immigration and naturalization matters. The questions under consideration in this appeal, regarding the proper interpretation of the “political opinion” ground for asylum, implicate issues central to AILA’s core interest and expertise. AILA’s members regularly practice before federal appellate courts, including this Court, and have practiced before the U.S. Supreme Court regarding legal interpretations of domestic asylum law.

*Amicus*, the Center for Gender & Refugee Studies (“CGRS”), has played a central role in the development of refugee law and policy consistent with

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<sup>1</sup> *Amici* represent that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party contributed money intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel contributed money intended to fund the preparation and submission of this brief. Fed. R. App. P. 29(a)(4)(E). Petitioner and the Government have consented to the filing of this brief.

international norms through its scholarship, expert consultations, and litigation. The critical questions under consideration in this appeal, which relate to the proper interpretation of the “political opinion” ground for asylum, implicate issues central to CGRS’s core interest and expertise. CGRS has published articles on the topics of refugee claims based on political opinion and on resistance to organized gangs. CGRS has also provided expert consultation to attorneys in at least 400 cases where the applicant feared persecution by organized gangs if returned to their country of origin. In addition, CGRS has presented argument, both as *amicus* and as counsel of record, regarding the interpretation of domestic asylum law in this Court and nearly every other federal court of appeals.

### **SUMMARY OF ARGUMENT**

In Honduras, defying Barrio 18 is a political act that can lead to persecution on account of actual or imputed anti-gang political opinions. U.S. courts and international tribunals alike have recognized that opposition to gangs can constitute expression of a political opinion or be the basis for an imputed political opinion asylum claim, depending on the country conditions and context. That conclusion is consistent with the purpose of the Refugee Act, which Congress passed to bring U.S. law into conformance with its international treaty obligations. Courts and the Board of Immigration Appeals (“BIA” or “Board”) have also recognized that gangs may have multiple reasons for targeting a person, but asylum applicants need only show

that an anti-gang opinion was or will be at least one central reason for the persecution they suffered or fear.

The Board thus erred in summarily rejecting Petitioner’s anti-gang political opinion claim. This Court should correct the Board’s error and vacate its decision.

## **ARGUMENT**

### **I. OPPOSITION TO GANG VIOLENCE CAN CONSTITUTE EXPRESSION OF A POLITICAL OPINION.**

This Court should recognize that defying a gang—by criticizing it, refusing to support it, or defying its demands—can constitute expression of a political opinion and can make a person vulnerable to persecution on account of that opinion, depending on the country conditions and context. This recognition is consistent with decisions by this Court, its sister circuits, and the Board.

What constitutes a political opinion must be considered in light of the “specific geographical, historical, political, legal, judicial, and sociocultural context of the country of origin.” United Nations High Comm’r for Refugees, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador* 28 (Mar. 15, 2016).<sup>2</sup> An expression of a political opinion ““must involve some support for or disagreement with the belief system, policies, or practices of a government and its instrumentalities, an entity that seeks to directly influence laws,

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<sup>2</sup> Available at <https://www.refworld.org/policy/countrypos/unhcr/2016/en/111230>.

regulations, or policy, an organization that aims to overthrow the government, or a group that plays some other similar role in society.” *Chavez v. Garland*, 51 F.4th 424, 430 (1st Cir. 2022) (quoting *Zelaya-Moreno v. Wilkinson*, 989 F.3d 190, 199–200 (2d Cir. 2021)). In Honduras, opposition to gang violence perpetrated by Barrio 18 constitutes expression of a political opinion given Barrio 18’s power and territorial control and the Honduran authorities’ complicity with Barrio 18.<sup>3</sup>

Barrio 18 is an organized and disciplined political entity that plays a quasi-governmental role in Honduras and seeks to usurp the Honduran government’s control in many regions. CAR at 397, 405–06, 525, 557–59, 563. It functions

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<sup>3</sup> The BIA’s reliance on *Ramos-Gutierrez v. Garland* to reject Mr. Lopez Martinez’s political opinion claim is misguided. *Ramos-Gutierrez v. Garland*, 110 F.4th 1, 7 (1st Cir. 2024); *cf.* Certified Administrative Record (“CAR”) at 8. In that case, this Court’s decision was predicated on the asylum seeker’s statement that the gang was threatening “everyone” in the region. *See Ramos-Gutierrez*, 110 F.4th at 7. Thus, this Court concluded, the asylum seeker’s resistance was not a central reason for his persecution. *Id.* While this Court and the BIA have held that, in specific contexts, people who have resisted a gang may not constitute a cognizable particular social group, neither this Court nor the BIA has held that resisting a gang can never constitute expression of a political opinion. The BIA has specifically articulated that its decisions in *Matter of S-E-G*, 24 I. & N. Dec. 579, 589 (BIA 2008), and *Matter of E-A-G-*, 24 I. & N. Dec. 591 (BIA 2008), “should not be read as a blanket rejection of all factual scenarios [in asylum claims] involving gangs.” *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 251 (BIA 2014). The particular social group and political opinion asylum grounds are distinct and should not be conflated. *See* 8 U.S.C. § 1101(a)(42) (identifying distinct grounds for asylum: “race, religion, nationality, membership in a particular social group, or political opinion”); *M-E-V-G-*, 26 I. & N. Dec. at 244 (comparing the distinct analysis required in claims involving asylum based on political opinion and religion and asylum based on particular social group membership).

similarly to the state in its assertion of sovereignty over defined jurisdictions through its security and surveillance networks, substantial weapons arsenal, and the violence it inflicts against those who defy it. *See generally* CAR at 547–83. In the areas it controls, Barrio 18 engages in quintessential governmental activities, including tax collection, disciplinary action, and provision of employment to residents. CAR at 555, 557. In addition, Barrio 18 seeks to directly influence the Honduran government through political negotiations, infiltration of state institutions, and collaboration with political elites, armed forces, and law enforcement officials. CAR at 442, 502, 525, 528, 565.

Individuals who refuse to comply with Barrio 18’s demands are often threatened, attacked, or killed as part of the gang’s strategy to maintain political power and territorial control. CAR at 526–28. In this context, Hondurans who defy gangs like Barrio 18 are perceived as threats to the gang’s ability to maintain political authority and must therefore be silenced. CAR at 560. Yet, despite ample record evidence, the Board and the Immigration Judge (“IJ”) failed to recognize both the political nature of Barrio 18 and the fact that defiance of Barrio 18 may constitute an expressed political opinion.

Where an asylum seeker claims persecution because of their actual political opinion, the individual must show only that they hold the opinion and that their persecutors perceived that opinion and inflicted harm because of it. *Chavez*, 51 F.4th

at 430. The political opinion ground does not require an asylum seeker to participate in formal activities like membership in a political party. *See Ahmed v. Keisler*, 504 F.3d 1183, 1192 (9th Cir. 2007) (“A political opinion encompasses more than electoral politics or formal political ideology or action.”); *see also Mendez v. Garland*, 67 F.4th 474, 484 (1st Cir. 2023) (finding disbandment of an applicant’s political party had no direct bearing on his fear of future persecution for his political opinion opposing another party). Rather, an asylum seeker may express a political opinion if they disagree with the belief system of a quasi-governmental, political actor like Barrio 18, or refuse to participate in the group’s activities or support the group.

Courts have recognized that publicly criticizing a gang or the violent tactics of an organization, like Barrio 18, can constitute expression of a political opinion. The Ninth Circuit, for example, has explained that “opposition to the strategy of using violence can constitute a political opinion[.]” *Regalado-Escobar v. Holder*, 717 F.3d 724, 729 (9th Cir. 2013); *see also Yusuf v. Sessions*, 724 F. App’x 575, 577 (9th Cir. 2018) (finding that an asylum seeker who told a militia leader he refused to join because he did not want to “kill innocent people” or “become ‘a murderer’” expressed a political opinion); *Meza-Manay v. I.N.S.*, 139 F.3d 759, 763–64 (9th Cir. 1998) (recognizing political opinion of asylum seeker who opposed the Shining Path’s violent tactics); *Sherpa v. Holder*, 533 F. App’x 827, 830 (10th Cir. 2013)

(concluding that asylum seeker who “discouraged the villagers from joining the Maoists” expressed a political opinion).

Courts have also recognized that anti-gang political opinions may be demonstrated through actions, such as refusal to support a gang or follow its orders, where there is evidence that the gang would view such actions as “political opposition.” *Alvarez Lagos v. Barr*, 927 F.3d 236, 254–55 (4th Cir. 2019); *see infra* Part II. Where opposition to a gang “transcends mere self-protection and represents a challenge to the legitimacy or authority” of the group, it can amount to a political opinion that warrants asylum protection. *See Hernandez-Chacon v. Barr*, 948 F.3d 94, 104 (2d Cir. 2020) (internal quotation marks omitted); *Dhokal v. Holder*, 544 F. App’x 35, 36 (2d Cir. 2013) (noting that “refusing to join a group or capitulate to its demands” can establish a political opinion claim where that refusal is based on “ideological opposition to the group”); *Cordero-Trejo v. I.N.S.*, 40 F.3d 482, 485, 487 n.5, 491–92 (1st Cir. 1994) (recognizing the importance of assessing persecution of petitioner involved with a community-based religious organization dedicated to, *inter alia*, helping Guatemalans ““rise above poverty”” in light of country conditions “confirming persecution of religious, community, and social activists, religious lay workers and members of the clergy”); *see also Bhattarai v. Garland*, No. 21-70530, 2022 WL 1301867, at \*1 (9th Cir. May 2, 2022) (recognizing that political neutrality can constitute a political opinion); *Martinez-Buendia v. Holder*, 616 F.3d 711, 716–

17 (7th Cir. 2010) (refusing to cooperate with the FARC insurgency in Colombia constituted expression of a political opinion); *Fedunyak v. Gonzales*, 477 F.3d 1126, 1129–30 (9th Cir. 2007) (finding resistance to government extortion constituted an expressed political opinion); *Mendoza Perez v. I.N.S.*, 902 F.2d 760, 762 (9th Cir. 1990) (citing petitioner’s involvement in a land reform organization as basis for “politically motivated” persecution).

This Court has acknowledged that refusal to comply with a gang’s demands may constitute expression of a political opinion where there is evidence that the gang perceives that refusal as political. *See, e.g., Mayorga-Vidal v. Holder*, 675 F.3d 9 (1st Cir. 2012) (finding that applicant had not established persecution based on political opinion where the applicant pointed to “no evidence compelling a conclusion that the gang members understood his mere refusal to join their ranks was an expression of an anti-gang, pro-establishment political opinion”); *Alvizures-Gomes v. Lynch*, 830 F.3d 49, 53 (1st Cir. 2016) (noting that “‘mere refusal to join a gang, without more, does not compel a conclusion’” that applicant was persecuted on the basis of political opinion).

The BIA and IJs have also recognized that resistance to gangs may establish a political opinion. *See, e.g., E-X-C-M-*, AXXX XXX 151 (BIA Oct. 22, 2020), Addendum (“Add.”) I (unpublished) (remanding to IJ to reassess whether applicant demonstrated well-founded fear on the basis of political opinion by resisting gang’s

demand for information and refusing to sell gang's drugs in store); A-E-M-P-, AXXX XXX 795 (BIA Mar. 16, 2020), Add. II (unpublished) (remanding for further consideration of political opinion claim based on anti-gang political expression); H-A-C-G-, AXXX XXX 420 (BIA May 8, 2019), Add. III (unpublished) (remanding for further consideration because IJ did not meaningfully consider anti-gang political opinion claim); *see also* —, AXXX XXX XXX (Boston Immigration Court Sept. 18, 2019), Add. IV, available at [perma.cc/BW9P-V9VK](https://perma.cc/BW9P-V9VK) (finding respondent was persecuted on account of her anti-gang political opinion, which she demonstrated through her efforts to keep children away from gangs in her community in El Salvador); D-P-, AXXX XXX XXX (Boston Immigration Court Nov. 9, 2015), Add. V, available at [perma.cc/8SFG-B29A](https://perma.cc/8SFG-B29A) (“The respondent, through his credible testimony and supporting documentary evidence, established that he was targeted and threatened with death by the gangs in El Salvador for his anti-gang political opinion, which he expressed through his continued social activism.”); *see also* *Matter of N-M-*, 25 I. & N. Dec. 526, 528, 532 (BIA 2011) (recognizing that resistance to corruption can constitute a political opinion).

Mr. Lopez Martinez publicly denounced the gangs by calling their actions sinful. CAR at 19–21. He further expressed his opposition to gang authority and control through both his refusal to permit his son to associate with gang members and his religious activities preaching to gang members and encouraging them to

renounce their gang affiliation. *Id.* The community saw him as a religious leader who threatened the gang’s ability to maintain power and control. CAR at 19. His anti-gang political opinions were thus well-established through both his words and actions. CAR at 19–21.

## **II. AN ANTI-GANG POLITICAL OPINION MAY BE IMPUTED BASED ON RESISTANCE TO OR REFUSAL TO COMPLY WITH GANG DEMANDS.**

Gangs may impute anti-gang beliefs based on an individual’s actions, regardless of the individual’s actual beliefs or whether their opinions were expressed. *See, e.g., Alvarez Lagos*, 927 F.3d at 254 (holding that the agency erred by focusing on whether the applicant intended to express a political opinion, rather than on whether Barrio 18 would perceive her actions as an anti-gang political opinion); *see also Zelaya-Moreno*, 989 F.3d at 199–200 (recognizing that refusing to join a gang may lead to an imputed political opinion where the gang perceives the refusal as related to the gang’s policies or ideology). Evaluating an imputed political opinion claim requires looking at the applicant “from the perspective of the persecutor.” *Lazo-Majano v. I.N.S.*, 813 F.2d 1432, 1435 (9th Cir. 1987) (finding that military official “cynically” attributed a “subversive” political opinion to the applicant and persecuted her for it), *overruled in part on other grounds by Fisher v. I.N.S.*, 79 F.3d 955 (9th Cir. 1996) (en banc). As the Office of the United Nations High Commissioner for Refugees (“UNHCR”) has explained, “gangs typically

impute anti-gang sentiment to the victim whether or not [that person] voices actual gang opposition.” UNHCR, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs* 18 (Mar. 31, 2010).<sup>4</sup>

Courts have repeatedly recognized that gangs impute antagonistic political opinions to those who fail to comply with their demands, resist their criminal activity, or avoid supporting their operations. In *Alvarez Lagos*, for example, the Fourth Circuit recognized that an applicant’s failure to comply with a gang’s demands and subsequent flight from the country could be perceived by the gang as “political act[s]” and inspire persecution. *Alvarez Lagos*, 927 F.3d at 251. In that case, a Barrio 18 member demanded money from Ms. Alvarez Lagos, and she told him she could not afford to pay. *Id.* at 244. In response, the gang member threatened to rape and kill her and her daughter, so they fled the country. *Id.* Citing expert evidence that Ms. Alvarez Lagos’s refusal to pay “would be seen by Barrio 18 as a direct challenge to its efforts to establish and maintain political domination within

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<sup>4</sup> Available at <http://www.unhcr.org/refworld/docid/4bb21fa02.html> [perma.cc/89BG-ZCBX]; see also Patrick J. McNamara, *Political Refugees from El Salvador: Gang Politics, the State, and Asylum Claims*, 36 *Refugee Surv. Q.* 1, 22 (2017) (explaining that from the gang’s perspective, “civilians commit acts of political resistance when they report crimes to the police, when they sponsor or participate in anti-gang youth programmes, when they refuse to pay extortion demands, and when they abandon their homes to try to find safety rather than submit to gang authority”); Ericka Welsh, *The Path of Most Resistance: Resisting Gang Recruitment as a Political Opinion in Central America’s Join-or-Die Gang Culture*, 44 *Pepp. L. Rev.* 1083, 1110 (2017) (noting that in the gang context, even “a neutral stance can express a political opinion”).

Honduras,” the Fourth Circuit remanded and ordered the Board to consider her imputed political opinion claim. *Id.* at 251 (internal quotation marks omitted).

Similarly, the Second Circuit has recognized that resistance to sexual abuse by gang members in Honduras may cause the gang to impute a political opinion. *Hernandez-Chacon*, 948 F.3d at 105. The Second Circuit concluded in *Hernandez-Chacon* that “gang members wanted to punish her because they believed she was taking a stand[.]” *Id.* So too here. The record shows that Barrio 18 perceived Mr. Lopez Martinez’s refusal to let them recruit his son as taking a stand against the gang, which resulted in Barrio 18 imputing an anti-gang political opinion to him. CAR at 20–21.

Additionally, affiliation with an organization, like the Evangelical Church in Honduras which draws youth away from the gangs, can lead to the imputation of a political opinion. For example, in *Mendoza Perez v. I.N.S.*, the Ninth Circuit held that an asylum seeker’s involvement with a Salvadoran land reform organization led to persecution for his imputed political opinion. *Mendoza Perez*, 902 F.2d at 762. Similarly, in *Garcia-Ramos v. I.N.S.*, the court recognized that an asylum seeker’s involvement with an anti-government group in El Salvador led to persecution on account of an imputed political opinion. *Garcia-Ramos v. I.N.S.*, 775 F.2d 1370, 1374 (9th Cir. 1985); *see also Cantarero Castro v. U.S. Atty. Gen.*, 832 Fed. App’x. 126, 132–33 (3d Cir. 2020) (finding that BIA and IJ failed to consider whether gang

attributed to applicant an anti-gang political opinion upon discovering he had voted for a political party opposed by the gangs).

In Honduras, the Evangelical Church is not merely a religious institution; it also serves a political function by evangelizing to youth, including gang members, and encouraging them to follow God, not the gangs. *See, e.g.*, CAR at 145–47. The Church thus poses an active threat to gangs like Barrio 18 by drawing gang members and potential gang members away from it, and the gang may as a result impute an oppositional political opinion to those that follow the Church. *See* CAR at 153–54, 168, 419; U.S. Dept. of State International Religious Freedom Report: Honduras (2017) (discussing gangs targeting religious leaders and Evangelicals because of their prominence and efforts to combat gang activities); *see also Cordero-Trejo*, 40 F.3d at 491–92 (remanding for further consideration claims based on persecution on account of imputed political opinion, where a group of Christian lay workers were targeted after working on behalf of the poor).

The Board has also recognized imputed political opinion claims based on actions undertaken in opposition to gangs and affiliation with anti-gang organizations. *See* Appeal ID 5384382 (BIA Sept. 22, 2022), Add. VI (unpublished) (remanding for IJ to reassess whether respondent established an imputed political opinion based on his involvement in an anti-gang group and finding that IJ erred in rejecting opposition to MS-13 as a political opinion simply because a gang is not a

political organization); E-X-C-M-, AXXX XXX 151 (BIA Oct. 22, 2020), Add. I (unpublished) (remanding for further consideration of whether respondent's opposition to gangs could be construed as an imputed political opinion); O-D-M-, AXXX XXX 398 (Feb. 3, 2016), Add. VII (unpublished) (remanding to consider whether husband's anti-gang teachings comprised a political opinion that could be imputed to respondent, where husband advised students not to join gangs and was threatened and attacked by MS-13).

The record reflects that Barrio 18 targeted Mr. Lopez Martinez after he told Barrio 18 gang members to stay away from his son and convinced another gang member to leave the gang. CAR at 19–21. Thus, the IJ and Board were required to consider whether Barrio 18 imputed an anti-gang opinion to him and erred as a matter of law by failing to do so. *See Cordero-Trejo*, 40 F.3d at 491–92 (holding the agency erred by failing to consider facts and country conditions relevant to asylum claim based on imputed political opinion); *Vasquez v. I.N.S.*, 177 F.3d 62, 65 (1st Cir. 1999) (“An imputed political opinion, whether correctly or incorrectly attributed, may constitute a reason for political persecution within the meaning of the Act.”) (quoting *Ravindran v. I.N.S.*, 976 F.2d 754, 760 (1st Cir. 1992)).<sup>5</sup>

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<sup>5</sup> If the Court agrees that individuals can hold anti-gang political opinions, either real or imputed, *amici* urge it to instruct the Board on remand that the law does “not require an asylum applicant to demonstrate that he was singled out *only* due to his protected trait; rather, he must show that such characteristic was ‘one central reason’

### III. INTERNATIONAL TRIBUNALS HAVE RECOGNIZED ELIGIBILITY FOR ASYLUM ON ACCOUNT OF ACTUAL OR IMPUTED ANTI-GANG POLITICAL OPINIONS.

Among other signatories to the Refugee Convention and its 1967 Protocol,<sup>6</sup> it is well established that opposition to a gang may constitute a protected political opinion. The views of other signatories are directly relevant to the proper interpretation of the INA, given that “the definition of ‘refugee’ that Congress adopted . . . is virtually identical to the one” in the Refugee Convention. *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 436–37 (1987) (noting that “one of Congress’ primary purposes [in passing the Refugee Act of 1980] was to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees” (internal quotation marks omitted)); *see also Negusie v. Holder*, 555 U.S. 511, 537 (2009) (“When we interpret treaties, we consider the interpretations of the courts of other nations, and we should do the same when

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for his abuse” and to remind the Board to apply the “at least one central reason” for persecution standard. *Ordonez-Quino v. Holder*, 760 F.3d 80, 90 (1st Cir. 2014); 8 U.S.C. § 1158(b)(1)(B)(i); *see also* CAR at 4 (acknowledging that the IJ found Mr. Lopez Martinez was targeted “primarily because he opposed gangs and prevented their efforts at recruitment”).

<sup>6</sup> The United States is a signatory to the 1967 Protocol relating to the Status of Refugees, which incorporated most of the provisions of the 1951 Convention, while removing certain temporal and geographical limitations. *See* Protocol relating to the Status of Refugees, adopted Jan. 31, 1967, entered into force Oct. 4, 1967, 606 UNTS 267; Convention relating to the Status of Refugees, adopted July 28, 1951, entered into force Apr. 22, 1954, 189 UNTS 137.

Congress asks us to interpret a statute in light of a treaty’s language.”) (Stevens, J., concurring in part and dissenting in part)).

Foreign courts and UNHCR guidance mandate interpretation of the term “political opinion” in light of “the specific geographical, historical, political, legal, judicial, and socio-cultural context of the country of origin.” United Nations High Comm’r for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs* 16 (Mar. 31, 2010). Where “gangs directly control society and *de facto* exercise power in the areas where they operate[,]” opposition to gangs may “be properly analysed within the political opinion Convention ground.” *Id.* In its seminal decision, *Canada v. Ward*, the Canadian Supreme Court adopted a broad definition of political opinion as including “any opinion on any matter in which the machinery of state, government, and policy may be engaged.” *Canada v. Ward* [1993], 2 S.C.R. 689, 734 (Can.) (citing Guy S. Goodwin-Gill, *The Refugee in International Law* 31 (1983)).

Courts in the U.K. and Australia have followed suit, emphasizing that persecution by non-state actors can reflect political dynamics similar to those of state persecution—particularly where such actors wield real societal power. *See Gomez Colombia* [2000] UKIAT 7 § 30 (U.K. Immigration Appeal Tribunal) (“[E]ven in contexts where the persecutor may be simply another private individual, if his persecutory actions against a claimant are motivated by an intention to stifle his or

her beliefs, the opinion being imputed can be seen as political[.]”); *V v. Minister for Immigr. and Multicultural Affairs*, [1999] FCA 428 § 18 (Austl.) (acknowledging that “an attitude of resistance to systemic corruption of, and criminality by, government officers” can constitute a political opinion).

As the U.K. Upper Tribunal has explained, courts “must not narrow the definition of political [opinion] beyond recognition,” and should not rely on “intricate distinctions” that would ignore how political power operates in different societies. *Gomez Colombia* [2000] UKIAT 7 § 21 (U.K. Immigration Appeal Tribunal); *see also Daljit Singh v. Minister for Immigr. and Multicultural Affairs*, [1999] FCA 1599 § 10 (Austl.) (considering information concerning the treatment of Sikhs in the Punjab area of India to determine whether imputed political opinion would put applicant at risk of persecution in India).

This contextual method of evaluating political opinion claims has led states parties to the Refugee Convention and Protocol to conclude that opposition to gangs can constitute a political opinion. For example, the U.K. Upper Tribunal, in *EMAP (El Salvador)*, concluded that gangs may be engaged in “major power transactions” in their societies, making opposition to their control a political act. *EMAP El Salvador CG v. Sec’y of State for the Home Dep’t* [2022] UKUT 00335 § 134 (IAC). In *EMAP*, the Barrio 18 gang in El Salvador persecuted and extorted the applicant, and when gang members saw him speaking to police, the gang wrongly assumed the

applicant had reported them to the police. *Id.* § 127. The gang responded with violence—holding the applicant at gunpoint, physically assaulting him, and threatening to kill him and his daughters if he had further contact with the authorities. *Id.* Despite that threat, he did report the gang to the police. Learning it would take months for the authorities to bring an investigation, the applicant fled with his wife and children. *Id.* Days after he left, Barrio 18 murdered his brother-in-law and threatened his other relatives. *Id.* § 128. The Tribunal concluded that it was “reasonably likely that the Appellant’s relatives were targeted because of his actions in taking a stand against the gangs. In doing so he revealed that he held a thought, belief or opinion about their policies and methods.” *Id.* § 140.

Since *EMAP*, U.K. courts have reaffirmed this reasoning in additional cases involving gang persecution in El Salvador. *See AAFI v. Sec’y of State for the Home Dep’t*, UI-2022-003935, [2023] UKUT (IAC) (Sept. 14, 2023); *NASA v. Sec’y of State for the Home Dep’t*, UI-2021-000844, [2024] UKUT (IAC) (Jan. 25, 2024). In each, the applicant had refused gang extortion. The courts found that the gangs were engaged in “major power transactions” and that standing up to them reflected an imputed political opinion.

European refugee law reflects the same logic. In *EMAP*, the tribunal noted that Article 6(c) of the EU Qualification Directive includes gangs as potential “actors of persecution” when state protection is lacking, and Article 10(1)(e) affirms that

political opinion includes beliefs related to the “policies or methods” of such actors. *EMAP* § 89.<sup>7</sup> The *EMAP* tribunal interpreted these provisions to mean that if gangs meet the criteria for actors of persecution under Article 6, opinions about them necessarily fall under Article 10’s political opinion clause. *Id.*

These examples underscore the Board’s error in this case. By applying a categorical rule against anti-gang political opinions, the BIA ignored the socio-cultural context in which Mr. Lopez Martinez expressed his opinion. The Board’s stance thus not only contravenes U.S. asylum law, but is also at odds with international law and the Convention itself.

## CONCLUSION

For the foregoing reasons, this Court should reverse the BIA’s decision and remand for consideration of Mr. Lopez Martinez’s argument that he was persecuted on account of his political opinion under the correct legal standards.

Dated: June 16, 2025

Respectfully submitted,

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<sup>7</sup> See Council Directive 2004/83/EC of April 29, 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, 2004 O.J. (L 304) at 12, available at <https://eur-lex.europa.eu/eli/dir/2004/83/oj/eng>.

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**CERTIFICATE OF SERVICE**

On June 16, 2025, I, Sabrineh Ardalan, served a copy of this Brief on Petitioner and Respondent through the Court's CM/ECF system.

Dated: June 16, 2025

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to the Federal Rules of Appellate Procedure, the undersigned counsel certifies that this brief:

(i) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word and is set in 14-point Times New Roman font, and

(ii) complies with the length requirements of Rule 29(a)(5) and Rule 32(a)(5)(B), because it is 4758 words excluding the items exempted by Rule 32(f).

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