

Considerations for Hondurans in the American Asylum Process:

Relevant Law and Country of Origin Information



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28 March 2014

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Executive Summary

The United States is currently experiencing a renewed influx of migrants from Honduras. While the factors driving this surge in migration are complex, a deterioration of country conditions in Honduras in recent years is a primary factor. Rule of law is particularly weak as a result of a combination of political instability following the 2009 coup, and the increasingly powerful role of various non-state actors, including street gangs, transnational drug cartels, multi-national companies, and certain elite businessmen and landowners. Symptomatic of this climate of lawlessness is the fact that Honduras has held the dubious distinction of having the highest homicide rate in the world for the past four years. In this environment, violence has become the primary means for asserting social control, including targeted killings carried out by hit-men, violent actions by paramilitary private security teams, and a heavily militarized approach to addressing systemic social problems by Honduran police.

In light of these conditions, some Hondurans fleeing north attempt to claim refugee status through the U.S. asylum process. The U.S. asylum system is supposed to facilitate the protection of individuals fleeing persecution or who have a well-founded fear of future persecution in their country of origin. In reality, the asylum process is a high-stakes process for those whose life is in danger in their home country: asylum applicants risk the

possibility of deportation to assert their case for recognition as an asylee. Under federal statute, asylum claimants must show both that they have a well-founded fear of persecution in their country of origin and that they are a member of one of the groups protected by the 1980 U.S. Refugee Act, a statute that mirrors the protected categories in the 1951 Convention Relating to the Status of Refugees. They may also file a claim under the Convention Against Torture, which forbids the U.S. from deporting anyone into a situation where they will be tortured.

While Hondurans are increasingly filing for asylum, Honduran claims are granted at a much lower rate than those from other countries around the world. Honduran asylum seekers are typically fleeing violence by persecutors with mixed motives, and it is not always clear if violence or threats to a person's physical integrity have been committed by state or non-state actors. This makes claiming asylum difficult under the often adversarial U.S. asylum system, where the legal framework for asylum claims heavily favors those who are clearly persecuted by state actors on account of "traditional grounds" such as race, nationality or religion. In a country with a weak rule of law and generalized violence, proving that an individual has been specifically targeted on account of a particular trait can be difficult, since motives for violence are complex. Similarly, courts are often hesitant to consider infliction of certain economic harms to be persecution, even when (like in Honduras) they are frequently inseparable from

¹ J.D., Georgetown University Law Center (expected 2015); B.A., Fordham University (2012)

socio-political power structures, and are usually accompanied by serious threats or acts of violence. Thus even though Hondurans may have experienced violence or threats directed specifically at them, and even though the state fails to provide protection or is complicit in the victimization of these asylum seekers, Hondurans may be denied asylum by U.S. courts.

The last section of this report explores the various social groups which are particularly vulnerable to targeted violence and persecution in Honduras. Courts frequently are either not presented with this information or do not give sufficient weight to it, and accordingly are suspicious of Honduran asylum seekers who frequently have legitimate fears for their lives and well-being. In an increasingly globalized world where transnational criminal syndicates' interaction with fragile and corrupt states give rise to new flows of forcibly displaced people, U.S. immigration officials must begin to evaluate claims in light of these present day realities and give adequate consideration to claims by Hondurans for humanitarian relief.

I. Introduction

In the last several years, a number of political and social factors have combined to cause many Hondurans to leave their country and attempt the dangerous journey through Mexico to the United States. Some Hondurans detained at the border or apprehended after they have entered the United States have chosen to claim refugee status—essentially arguing that conditions in Honduras are sufficiently severe for them personally that they rise to the level of persecution, and that the Honduran government is unwilling and/or unable to offer them protection. In general, few of these claims succeed. This is partly a result of a legal environment in the U.S. asylum system that fails to fully grasp many of the forms of violence in contemporary Honduras, and the penetration of state entities by organized criminal enterprises that increasingly use government institutions to pursue targets and terrorize communities. A robust analysis of targeted and generalized violence in Honduras, and an understanding of the various groups most vulnerable to targeted violence and other forms of persecution will assist the U.S. to more completely meet the humanitarian and international protection needs of Hondurans forced to flee their homeland. This memo will highlight some of these issues by providing a brief overview of the current environment within Honduras, followed by a discussion of the U.S. law related to asylum claims in general and challenges faced by Hondurans more particularly. Finally, this memo will undertake an analysis of some of the groups most vulnerable to persecution and displacement within Honduran society.

II. Country of Origin Information: Current Environment

Honduras has a history of political violence, domination of certain sectors of society by organized crime, and volatile land disputes. Further, instability following a 2009 coup has allowed street level gangs to flourish and larger multinational cartels to seize unprecedented power and influence.² The response to public outcry surrounding the surging rates of violent crime, including the highest per capita murder rate in the world, has been a *mano dura* crackdown in many impoverished neighborhoods and the deployment of military to certain regions of the country while militarizing civilian law enforcement entities. An overall climate of fear and instability abounds and a weak and divided civil society has reported harassment and targeting by law enforcement officials. Attempts to purge the police of criminal and corrupt elements have been slow and largely unsuccessful.³ This is exacerbated by broad impunity, lack of an independent judiciary, and widespread use of assassinations by both private and public actors.⁴

Gangs have effective control over much of Honduras: one Honduran official noted that they are now operating in 40% of the country.⁵ Extortion of businesses, taxis, teachers, and others is an important means of funding for gangs. Recently gangs have begun targeting homeowners, killing or taking over the homes of those who cannot pay the so-called “war tax.”⁶ In some areas whole neighborhoods have been displaced. Both street gang members and police officers operate as hired assassins,⁷ and there is a growing involvement of drug cartels in the political affairs of the country.⁸

² JAMES BOSWORTH, HONDURAS: ORGANIZED CRIME GAINING AMID POLITICAL CRISIS 4 (Dec. 2010), available at <http://www.wilsoncenter.org/sites/default/files/Bosworth.FIN.pdf>.

³ *Honduran Police Directors Resign over Force's Slow Purge*, BBC, Apr. 26, 2013, <http://www.bbc.com/news/world-latin-america-22319339>.

⁴ Gustavo Palencia, *Honduras Murder Rate Falls in 2013, but Remains World's Highest*, REUTERS, Feb. 17, 2013, <http://www.reuters.com/article/2014/02/17/us-honduras-homicides-idUSBREA1G1E520140217>.

⁵ Freddy Cuevas, *Gangs Present in 40% of Honduras: Officials Say*, THE ASSOCIATED PRESS, Aug. 1, 2013, <http://www.news24.com/World/News/Gangs-present-in-40-of-Honduras-Official-20130801>.

⁶ Alberto Arce, *Gangs Extort Cash from Honduran Homeowners*, THE ASSOCIATED PRESS, AUG. 8, 2012, 10:32 PM, <http://bigstory.ap.org/article/gangs-extort-cash-honduran-homeowners>.

⁷ Rory Carroll, *Honduras: 'We Are Burying Kids All the Time'*, THE GUARDIAN, Nov. 12, 2010, <http://www.theguardian.com/world/2010/nov/13/honduras-maras-gangs-deaths-kids>.

⁸ JAMES BOSWORTH, HONDURAS: ORGANIZED CRIME GAINING AMID POLITICAL CRISIS 18 (Dec. 2010), <http://www.wilsoncenter.org/sites/default/files/Bosworth.FIN.pdf>.

Government ability to control gang activity is at best ineffective and at worst complicit. “Organized crime has made its way into some sectors of the police, politics and the judicial branch, to the point that it appears to have grown beyond law enforcement’s ability to deal with it.”⁹ Police are frequently compromised or directly responsible for violence: in June, the entire investigative police unit (1400 officers) was suspended over allegations of corruption.¹⁰ Extortion rackets are conducted in coordination with government officials or police.¹¹ The situation is compounded by a weak justice system: police corruption and inefficiency, as well as public distrust, mean that only 20% of crimes are reported to the police, and of those, less than 4% are investigated.¹²

Lacking effective institutional remedies for gang violence, the primary governmental response has been heavily militarized which has been criticized for contributing to violence rather than increasing security. Regionally, a *mano dura* policy was adopted in the early 2000s that was characterized by mass incarceration of suspected gang-affiliated youth, use of military forces instead of police, and the enactment of strict anti-gang laws.¹³ Despite initially strong popular support, the initiative has proved broadly ineffective: gangs adapted around the new laws and evolved into more sophisticated criminal networks, the charges of most arrestees are dismissed, and incarcerated youth formerly unaffiliated with gangs are recruited in gang controlled prisons.¹⁴ Furthermore, the granting of

military powers to the police and reliance on the military to maintain security in certain regions has raised concerns over t disproportionate use of force and human rights abuses.¹⁵ Although many *mano dura* policies have been phased out across the region, in Honduras the military retains broad police powers, and new president Juan Orlando Hernandez has committed to reviving the *mano dura* tactics, abandoning efforts to purge the police of corruption in favor of increased militarization.¹⁶

This militarized approach has also been used as a solution to other social and political disputes. Military forces have been used to respond to land conflicts, development projects, and to perform traditional police functions. This is further complicated by a heavy reliance on private paramilitary security forces, who have been used to perform typical police duties such as dispersing protests or enforcing evictions, and for whom there is concern regarding the lack of regulation.¹⁷ The Honduran police have been accused of running death squads that target both political opposition and gang members. There is evidence of these death squads participating in the “social cleansing” of young men seen as dangerous or undesirable.¹⁸ Even without these abuses, policies of militarization are hard to justify. Across Central America, “evidence also indicates that military involvement in public security functions has not reduced crime rates significantly.”¹⁹ Despite a small decrease in the overall number of homicides over the last year, Honduras still has the highest

⁹ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ANNUAL REPORT 2012, ¶177 (2012), available at <http://www.oas.org/en/iachr/docs/annual/2012/TOC.asp>.

¹⁰ Marguerite Cawley, *1,400 Honduras Police Suspended for Links to Organized Crime*, INSIGHT CRIME (June 6, 2013), <http://www.insightcrime.org/news-briefs/1400-honduras-police-suspended-for-links-to-organized-crime>.

¹¹ *Id.*

¹² PEN INTERNATIONAL, HONDURAS: JOURNALISM IN THE SHADOW OF IMPUNITY 6 (2014), available at http://pencanada.ca/wp-content/uploads/2014/01/Honduras-Report_English_Final.pdf.

¹³ CLARE RIBANDO SEELKE, CONG. RESEARCH SERV. RL34112, GANGS IN CENTRAL AMERICA 10 (Jan. 28, 2013), available at <http://www.fas.org/sgp/crs/row/RL34112.pdf>.

¹⁴ *See id.*

¹⁵ *See id.* at 10-11.

¹⁶ *Mano Dura Wins the Day*, THE ECONOMIST, Nov. 28, 2013, <http://www.economist.com/news/americas/21590900-new-president-violent-country-will-have-weak-mandate-threatens-brandish-big>; Russell Sheptak, *Should Honduras be Eliminating It’s Police Reform Commission?*, CHRISTIAN SCIENCE MONITOR, Jan. 24, 2014, <http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2014/0124/Should-Honduras-be-eliminating-its-police-reform-commission>.

¹⁷ *Private Military and Security Companies in Honduras Need Robust and Effective Monitoring, Says UN Expert Group*, UNITED NATIONS HUMAN RIGHTS (Feb. 25, 2013), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13032&LangID=E>.

¹⁸ Alberto Arce and Katherine Corcoran, *US Aids Honduran Police Despite Death Squad Fears*, THE ASSOCIATED PRESS, Mar. 23, 2013, <http://bigstory.ap.org/article/us-aids-honduran-police-despite-death-squad-fears>; Alberto Arce, *Correction: Death-Squads Story*, THE ASSOCIATED PRESS, May 17, 2013, 3:01 PM, <http://bigstory.ap.org/article/ap-impact-honduran-criminals-missing-after-arrest> (describing extrajudicial killings of gang members); Mark Weisbrot, *Will Congress Act to Stop US Support for Honduras’ Death Squad Regime?*, THE GUARDIAN, Mar. 20, 2013, <http://www.theguardian.com/commentisfree/2013/mar/30/congress-us-support-honduras-death-squad-regime>

¹⁹ CLARE RIBANDO SEELKE, CONG. RESEARCH SERV. RL34112, GANGS IN CENTRAL AMERICA 10 (Jan. 28, 2013), available at <http://www.fas.org/sgp/crs/row/RL34112.pdf>.

homicide rate in the world, and there has been an increase in “atrocious crimes” such as mutilation or decapitation.²⁰ The harm to human rights and rule of law caused by military involvement in police work is an immense price to pay for a negligible decrease in violence.

Finally, violence has been institutionalized not only in the policing functions of the state, but also by various economic actors who are often closely linked to political and/or criminal elements. Honduran resources have historically been held by a few powerful families and multinational corporations. Some commentators have suggested that Honduras’ business elite were the true drivers of the 2009 coup, and that since then there has been a “fusion of the transnational business class with government.”²¹ Accordingly, many disputes over land or other natural resources have been deeply politicized.²² Furthermore, powerful economic actors are tied to gang activity and often affiliated with the cartels. The “Los Cachiros” family, one of the primary drug trafficking organizations in Honduras, runs key businesses involved with mining, eco-tourism, and African palm oil.²³ The Cachiros influence extends to the political sphere: for example, the assassination of a Senator has been tied to his failure to support the Cachiros’s pick for a particular ministerial appointment.²⁴ The actions of the Cachiros are just one example of the nexus between gang activity, politics, and economic control that has been forged in Honduras.

III. Asylum under US Law

Asylum seekers typically file three claims for humanitarian relief: an application for asylum, an application for withholding of removal, and a claim under the Convention Against Torture (CAT). Under

the 1980 U.S. Refugee Act, asylum claims consist of three requirements under U.S. law: a refugee is defined as one who is 1) unable or unwilling to return to or avail himself of protection in his country of nationality, 2) because of persecution or a well-founded fear of persecution 3) on account of race, religion, nationality, political opinion, or membership in a particular social group.²⁵

This third requirement establishes a number of protected categories which mirror the 1951 Convention Relating to the Status of Refugees. In 2009, however, the Board of Immigration Appeals (BIA) introduced new and generally stricter definitional elements for the “particular social group” category, requiring that the group have “social visibility” and “particularity.”²⁶ The 3rd and 7th Circuits have refused to apply these new requirements: the 7th Circuit has noted that this is an arbitrary standard, as “particular social groups” have been found when “social visibility” is lacking: “Women who have not yet undergone female genital mutilation in tribes that practice it do not look different from anyone else. A homosexual in a homophobic society will pass as heterosexual.”²⁷ However, most circuits have adopted the social visibility and particularity requirements. When persecution is on account of “mixed motives,” for example a non-state actor having targeted an asylum seeker for both personal enrichment and also because of the asylum seeker’s ethnic group, under the REAL ID Act of 2005 one of the protected grounds must be a “central reason.”²⁸

Withholding of removal is mandatory if “the alien’s life or freedom is threatened,” but bears a higher standard of showing persecution compared to asylum applications.²⁹ The withholding claim will necessarily fail if the asylum claim fails. Withholding of removal may be used to prevent

²⁰ Gustavo Palencia, *Honduras Murder Rate Falls in 2013, but Remains World’s Highest*, REUTERS, Feb. 17, 2014, <http://www.reuters.com/article/2014/02/17/us-honduras-homicides-idUSBREA1G1E520140217>.

²¹ Dawn Paley, *The Honduran Business Elite One Year After the Coup*, NORTH AMERICAN CONGRESS ON LATIN AMERICA (Jun 23, 2010), <https://nacla.org/news/honduran-business-elite-one-year-after-coup>.

²² See discussion *infra* pp. 13-15.

²³ *Treasury Targets “Los Cachiros” Drug Trafficking Organization in Honduras*, DEPARTMENT OF THE TREASURY (Sept. 19, 2013), <http://www.treasury.gov/press-center/press-releases/Pages/j12168.aspx>.

²⁴ Steven Dudley, *US Pushes Honduras to Crack Down on Cachiros*, INSIGHT CRIME, Sept. 19, 2013, <http://www.insightcrime.org/news-analysis/us-treasury-names-names-sort-of-in-honduras-case>.

²⁵ 8 U.S.C.A. § 1101(a)(42).

²⁶ See *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008).

²⁷ *Gatimi v. Holder*, 578 F.3d 611, 615 (7th Cir. 2009).

²⁸ 8 U.S.C.A. § 1158.

²⁹ 8 U.S.C.A. § 1253.

the deportation of a person who would be otherwise be eligible for asylum but who cannot benefit from asylum under U.S. law because of a particularity of his/her case, such as not filing for asylum in a timely manner. A CAT claim will succeed if the asylum seeker will more likely than not face torture upon return to his home country. This includes torture by a private actor if government acquiescence or consent is present.³⁰

Procedurally, there are two primary forms of asylum. An “affirmative asylum” claim is a request made by anyone seeking asylum in the United States who is not already subject to removal proceedings.³¹ A “defensive asylum” claim, by contrast, is raised once removal proceedings have begun against an individual.³² Both of these claims are governed by the same legal standards, and can be made either upon entering the United States or once someone is already present in the country.³³ Procedurally, however, there is a difference: defensive asylum claims go directly to a judge, while affirmative asylum claims are first handled by an asylum officer conducting an “asylum interview,” after which the officer is empowered to grant asylum. The standard for passing this interview is whether the asylum seeker has a “well-founded” fear of future persecution.³⁴

A special process exists, however, for an “arriving asylum seeker”—those claiming asylum at a port of entry or who are subject to the expedited removal process (used against those apprehended within 100 miles of the border). These asylum seekers supposed to be referred for review by

immigration enforcement personnel (usually Border Patrol agents or Customs and Border Protection Officers) after they have expressed a fear of returning to their country of origin. They then receive a “credible fear interview,” which has a much lower standard than those governing the asylum interview for affirmative claims: an asylum seeker must merely show that there is a “significant possibility” that a well-founded fear of persecution can be established in immigration court.³⁵ Those surviving the credible fear interview go before an immigration judge; those that do not are deported unless they are savvy enough to request a review by an immigration judge.³⁶

The lower-bar for credible fear interviews should be a protective mechanism for asylum seekers who face expedited deportation, but unfortunately this is not always the case. A 2005 study by the U.S. Commission on Religious Freedom found that 15% of asylum seekers who expressed a fear of return to their country of origin where not properly referred to the credible fear interview process.³⁷ While more recent studies have not been conducted, there continue to be reports of migrants who cannot obtain asylum because of confusion among immigration enforcement authorities and newly arrived immigration over the process and other failures of the system.³⁸ Such shortcomings in the asylum process are not limited to the credible fear interview stage: serious questions have been raised regarding the consistent application of legal standards during these determinations, although further research on this problem is needed.³⁹

³⁰ *Cole v. Holder*, 659 F.3d 762 (9th Cir. 2011).

³¹ RUTH ELLEN WASEM, CONG. RESEARCH SERV. R41753, ASYLUM AND “CREDIBLE FEAR” ISSUES IN U.S. IMMIGRATION POLICY 6-8 (June 29, 2011), available at <https://www.fas.org/sgp/crs/homesec/R41753.pdf>.

³² *Id.*

³³ *Id.*

³⁴ RUTH ELLEN WASEM, CONG. RESEARCH SERV. R41753, ASYLUM AND “CREDIBLE FEAR” ISSUES IN U.S. IMMIGRATION POLICY 6-8 (June 29, 2011), available at <http://www.aiala.org/content/default.aspx?docid=35072>.

³⁵ *Questions and Answers: Credible Fear Screening*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (last updated June 18, 2013), <http://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-answers-credible-fear-screening>.

³⁶ *Id.*

³⁷ UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, ASYLUM SEEKERS IN EXPEDITED REMOVAL, *Executive Summary 6* (2005), available at http://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/execsum.pdf.

³⁸ See, e.g., *U.S. Judiciary Committee Hearing on the Credible Fear Interview and Asylum Parole Processes*, 113th Cong. (2013) (testimony of Mary Meg McCarthy, Executive Director, National Immigrant Justice Center), available at http://immigrantjustice.org/nijc-testimony-submitted-us-house-judiciary-committee-hearing-credible-fear-interview-and-asylum-par#_ftnref8.

³⁹ See generally ANDREW I. SCHOENHOLTZ, PHILIP G. SCHRAG, & JAYA RAMJI-NOGALES, *LIVES IN THE BALANCE: ASYLUM ADJUDICATION BY THE DEPARTMENT OF HOMELAND SECURITY* (2014).

IV. The Law Affecting Honduran Claims in American Courts

Hondurans generally have a low rate of success in the asylum process, although the availability of comprehensive Honduran-specific data is limited. Of the 1,257 asylum requests from Honduras that passed a credible fear interview and made it into immigration court in the 2012 fiscal year, only 93 were granted.⁴⁰ Between 2002 and 2011, the success rate for asylum applicants from Honduras was around 10%.⁴¹ It is important to note, however, that the number of Honduran asylum seekers granted asylum has changed significantly over that time period: in 2003, only 9 affirmative asylum claims from Honduras were granted, as opposed to 141 in 2012 (for defensive claims, the jump was from 34 to 93).⁴² Changes in country conditions since the 2009 coup may be partially responsible for this. Due to the fact that the surge in asylum claims from Honduras has been so recent, much of the subsequent analysis will also look to other countries in the Northern Triangle of Central America.

A primary challenge for many Hondurans seeking asylum is establishing that they fall within a protected category (religion, political opinion, nationality, race, or a particular social group). Much of the violence in Honduras is “mixed-motive,” meaning that even when someone is persecuted because of their membership in a certain group, it is often also linked to economic or other reasons. Extortion has a strong economic motivation, for example, even if it targets a particular group. Under the REAL ID Act of 2005, when persecution of an asylum-seeker is “mixed motive,” one of the protected grounds (religion, political opinion, etc) must be a “central reason” for the persecution.⁴³ This can make establishing

asylum for Hondurans difficult, because economic motivations are seen as central to much of the violence. For example, religion was not considered a central motive for attacks and extortion of a Salvadoran on his way to church, despite threats warning him to stop attending services.⁴⁴ Similarly, a Honduran member of a land cooperative who opposed the sale of land by local landlords was not considered to be persecuted for his political opinion because the landlords targeted him on account of his land, not his political opinions about the land.⁴⁵ Such an approach overlooks the fact that land cooperatives in Honduras often pose a direct threat to the power of elite land owners who are inextricably linked to politically powerful individuals and state institutions.⁴⁶

Hondurans fleeing gang violence and/or recruitment find obtaining asylum in the United States particularly difficult. In *Elias-Zacarias*, a case similar in substance to Honduran asylum pleas, a Guatemalan who feared persecution for refusing to join guerillas sought asylum. The Supreme Court held that resistance to recruitment is not necessarily an expression of political opinion. As a result, most Hondurans who flee targeting or recruitment by gangs must establish membership in some “particular social group.” However, “resisting gang recruitment” is generally considered too broad, and attempts to narrow this category by listing attributes such as youth, lack of parental care, etc., usually fail as well.⁴⁷ The BIA’s “social visibility” requirement is especially problematic: a woman who was gang raped after refusing to join a gang argued that she was a member of a group of young Salvadoran women who resist gang recruitment, but was not successful because the group was sufficiently particular, but not socially visible.⁴⁸ The social visibility means that the most vulnerable—those with no particular platform in society—are less

⁴⁰ *Immigration Courts FY 2012 Asylum Statistics*, U.S. DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (accessed Mar. 4, 2013), <http://www.justice.gov/eoir/efoia/FY12AsyStats-Current.pdf>.

⁴¹ Joel Millman, *More Illegal Immigrants Ask for Asylum*, WALL STREET JOURNAL, Oct. 17, 2013, <http://online.wsj.com/news/articles/SB10001424052702304795804579097473250468020>.

⁴² *Yearbook of Immigration Statistics: 2012*, DEPARTMENT OF HOMELAND SECURITY (accessed Mar. 4, 2013), <http://www.dhs.gov/yearbook-immigration-statistics-2012-refugees-and-asylees>.

⁴³ 8 U.S.C.A. § 1158.

⁴⁴ *Quinteros-Mendoza v. Holder*, 556 F.3d 159 (4th Cir. 2009).

⁴⁵ *Ontunez-Tursios v. Ashcroft*, 303 F.3d 341, 352 (5th Cir. 2002).

⁴⁶ See discussion *infra* pp. 13-15.

⁴⁷ See *Valdiviezo-Galdamez v. Attorney General of U.S.*, 663 F.3d 582 (3d Cir. 2011); *Escobar v. Gonzales*, 417 F.3d 363 (3d Cir. 2005); *Zelaya v. Holder*, 668 F.3d 159 (4th Cir. 2010).

⁴⁸ *Rivera-Barrientos v. Holder*, 666 F.3d 641 (10th Cir. 2012); *Orellana-Monson v. Holder*, 685 F.3d 511 (5th Cir. 2012).

likely to be granted asylum, even though they may be most likely to be targeted by gangs.⁴⁹

Demonstrating persecution may also be difficult for victims of gang violence because this requirement is dependent on an inability or unwillingness by the state to control private actors. Mere inaction by the police does not necessarily show an inability or unwillingness to control private actors,⁵⁰ and a failure to report crime or abuse to police may be a barrier to establishing government inability to protect victims, even when the victim fears police corruption or entanglement with persecutors.⁵¹ A Salvadoran woman who refused to be a gang member's girlfriend was the victim of an attempted murder and her grandmother was shot and killed, but the fact that police responded and investigated her grandmother's death and her attempted murder –despite the fact that the identified perpetrator was neither charged, arrested or convicted –meant the court did not hold the Salvadoran state unable or unwilling to control organized criminal actors implicated in the case.⁵² This approach assumes a police and government capacity that is often lacking in Central American states, and ignores the entanglement of gangs and drug cartels in police forces.

Former gang members attempting to leave Honduras face additional challenges, although in some circuits it will be easier to establish these individuals as members of a particular social group. First, if they committed serious non-political crimes while in the gang, they may be ineligible for asylum. Second, circuit courts are split on whether to treat former gang membership as a protected class: two circuit courts (the 1st and 9th) have explicitly refused to extend asylum to former gang members, two have said former gang membership can be a particular social group in certain circumstances (6th and 7th), and the

rest remain undecided.⁵³ So far, courts have not always extended analysis from other geographic regions to bear on this issue. For example, despite strong similarities between gang recruitment of children in Central America and the recruitment of child soldiers in other parts of the world, the analysis used in child soldier cases has not been extended to former child gang members.⁵⁴ It remains to be seen whether the undecided circuits will extend this analysis to Honduran former gang members, or follow the 1st and 9th Circuits in refusing to treat former gang members as a particular social group.

When asylum claims are foreclosed by the above challenges, CAT claims can provide a promising alternate route, although such claims can be difficult to make in the Honduran context. On the one hand, even circuits that have explicitly refused to extend asylum to former gang members will still consider CAT claims.⁵⁵ An especially promising case from the 9th Circuit determined that the BIA failed to consider evidence related to the torture of gang members with tattoos in Honduran prisons.⁵⁶ In general, however, CAT claims frequently fail, primarily because of the difficulty of showing government acquiescence to private conduct. While “willful blindness” is sufficient to show government acquiescence to torture, providing proof is often difficult: listing general reports without specific evidence that the Salvadoran police arbitrarily tortured suspected gang members was insufficient in the 1st circuit.⁵⁷ In addition, ineffective government protection or assistance or a lack of financial resources for protection do not constitute government acquiescence to torture.⁵⁸ Such ineffective protection is often a result of gang influence or corruption of government entities, but absent proof of these elements, these claims often fail.

In summary, American law has not adapted to recognize forms of persecution carried out by

⁴⁹ See *Gatimi v. Holder*, 578 F.3d 611, 615 (7th Cir. 2009) (“If you are a member of a group that has been targeted for assassination or torture or some other mode of persecution, you will take pains to avoid being socially visible; and to the extent that the members of the target group are successful in remaining invisible, they will not be ‘seen’ by other people in the society ‘as a segment of the population.’”).

⁵⁰ *Menjivar v. Gonzales*, 416 F.3d 918 (8th Cir. 2005).

⁵¹ *Mayorga-Vidal v. Holder*, 675 F.3d 9 (1st Cir. 2012).

⁵² *Menjivar v. Gonzales*, 416 F.3d 918 (8th Cir. 2005).

⁵³ 2 Immigration Law Service 2d § 10:164; *Cantarero v. Holder*, 2013 WL 58326552 (1st Cir. 2013); *Castellano-Chacon v. I.N.S.*, 341 F.3d 533 (6th Cir. 2003); *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009).

⁵⁴ Compare *Lukwago v. Ashcroft*, 329 F.3d 157 (3rd Cir. 2003) with *Escobar v. Gonzales*, 417 F.3d 363 (3d Cir. 2005), for example.

⁵⁵ *Cole v. Holder*, 659 F.3d 762, 772 (9th Cir. 2011).

⁵⁶ *Id.*

⁵⁷ *Cantarero v. Holder*, 2013 WL 58326552 (1st Cir. 2013).

⁵⁸ *Tamara-Gomez v. Gonzales*, 447 F.3d 343, 351 (5th Cir. 2006).

powerful non-state actors or resulting from a combination of political and economic factors, despite the fact that such actions are responsible for widespread violence and displacement in countries like Honduras. This may partially account for a dramatic difference in the success rates of asylum applicants from Colombia, where violence is primarily caused by the FARC, versus Guatemala, El Salvador, and Honduras, where most violence stems from gang or cartel activity.⁵⁹ This is despite the fact that transnational drug cartels often are more powerful and have a broader reach than the state, that they increasingly are becoming entangled with national politics, and that they are diversifying their activities into non-traditional spheres such as extortion, human trafficking, and even mining operations.⁶⁰ An additional concern with American treatment of asylum claims is that the high rates of migration from Central America may have colored courts' interpretations of claims from Honduras: a heavy emphasis on economic factors for migration and an inadequate appreciation of violence induced displacement from Honduras typifies many of the underlying assumptions of U.S. courts. Too often courts fail to account for the inability of police to provide any meaningful protection from targeted violence by these private actors, nor do courts recognize the particular vulnerability of children to gang recruitment. The result is a near-routine denial of Honduran asylum claims, even when Hondurans face grave risks in returning to their country of origin.

V. Country of Origin Information: Vulnerable Groups

The following represents a (non-comprehensive) list of those groups within Honduran society who

are especially at risk. Note that there is no necessary correlation between these groups and which groups are protected under American asylum law—rather, many of these have been explicitly not considered a particular social group or are likely too broad. However, they do highlight the various (and often intersecting) attributes for which Hondurans may be persecuted or otherwise targeted by either state or private actors.

i. Campesinos, the Rural Poor, and Land and Environmental Activists

Inequality in land ownership and access to land, as well as ongoing land disputes in parts of Honduras, have left numerous Hondurans landless, unemployed, and in poverty. While a 1992 law included some positive steps, such as recognizing the rights of indigenous peoples to their land and removed a prior limit on land titles for small farms, it also removed existing protections for small landowners.⁶¹ As a result, a few large landowners have consolidated much of the arable land: currently, a quarter of it is owned by less than one percent of farmers.⁶² Accordingly, there still remains a large number of the landless rural poor. Small landowners may lose their land to hard or soft coercive tactics by more powerful landowners, and ongoing disputes resulting from a byzantine system and competing conceptions of land ownership occasionally result in violence.⁶³ It is important to note that these disputes are not merely economic: debates over land ownership and reform are heavily politicized, often pitting a politically-powerful land-owning class against campesino groups who have developed discrete identities on account of their activism on land issues over the last few decades.⁶⁴

In addition to economic dislocation and poverty, these resource struggles have been accompanied

⁵⁹ For specific rates, see Joel Millman, *More Illegal Immigrants Ask for Asylum*, WALL STREET JOURNAL, Oct. 17, 2013, <http://online.wsj.com/news/articles/SB10001424052702304795804579097473250468020>.

⁶⁰ In Mexico, for example, the Knights Templar make their primary sources of income not from drug trafficking, but from mining, logging, and extortion. E. Eduardo Castillo, *Drug Cartel's Main Source of Income Isn't What You Might Think*, HUFFINGTON POST, Mar. 17, 2014, http://www.huffingtonpost.com/2014/03/17/drug-cartels-iron-ore_n_4978564.html.

⁶¹ See Lauren Carasik, *Honduran Campesinos in the Crosshairs*, ALJAZEERA, Apr. 6, 2012, <http://www.aljazeera.com/indepth/opinion/2012/04/201242111850554190.html>; FAO Land Tenure Series, *The Continuing Need for Land Reform: Making the Case for Civil Society*, THE INTERNATIONAL LAND COALITION (accessed March 4, 2014), <http://www.landcoalition.org/sites/default/files/legacy/legacydocs/odfaomon2hon.htm>.

⁶² Eric Holt Gimenez, *Honduras: The War on Peasants*, THE HUFFINGTON POST, Feb. 12, 2013, http://www.huffingtonpost.com/eric-holt-gimenez/honduras-the-war-on-peasa_b_2632033.html.

⁶³ See RICHARD T. NELSON, HONDURAS COUNTRY BRIEF: PROPERTY RIGHTS AND LAND MARKETS (June 2003).

⁶⁴ See, e.g., HUMAN RIGHTS WATCH, "THERE ARE NO INVESTIGATIONS HERE": IMPUNITY FOR KILLINGS AND OTHER ABUSES IN BAJO AGUAN, HONDURAS 13-16 (Feb. 2014), available at <http://www.hrw.org/sites/default/files/reports/honduras0214web.pdf>; Lauren Carasik, *Honduras' Political Violence Threatens to Undermine its November Elections*, ALJAZEERA, Nov. 3, 2013, <http://america.aljazeera.com/articles/2013/11/3/honduras-electionspoliticalviolence.html>.

by an alarming amount of violence by multiple parties. Between the coup of 2009 and February of 2013, at least 60 land rights activists and indigenous leaders were killed.⁶⁵ First, both street gangs and drug cartels exploit resource disputes and poverty for their own gain. As cartels are pushed out of cities by anti-gang efforts, they use rural or isolated land to build airplane strips and other infrastructure that support their activities.⁶⁶ They accordingly use threats and violence to force many subsistence landowners into abandoning or selling their land.⁶⁷ Second, private security militias hired by wealthy landowners function as small armies throughout rural Honduras with little government oversight or regulation of their activities. These private security groups sometimes work in tandem with government forces, and may shoot to kill or use otherwise abusive tactics.⁶⁸ Private security militias have been accused of various human rights abuses, including carrying out functions typically under the jurisdiction of government actors such as responding forcibly to political protests or executing evictions.⁶⁹ Government forces, rather than serving as a check on this violence, become an additional actor in its perpetuation. In the Bajo Aguan region of Honduras, for example, Human Rights Watch has reported the eviction and burning of campesino homes, torture of individuals, and excessive use of force against protestors, all by government agents.⁷⁰ A heavily militarized approach to land conflicts often results in a failure to protect *campesinos* and others poor laborers—rather, security forces are frequently presumed to be corrupt or aligned with landowner/or corporate interests, in addition to

being accused of complicity in human rights abuses.⁷¹

Understanding this nexus between resource conflicts and violence is key in the context of asylum claims, which are unlikely to succeed based on poverty alone. Effectively, many poor Hondurans face coercive tactics to sell their land from wealthier land owners or developers on the one hand, and forced sales or land theft from drug cartels on the other, with a government that is unable to protect them or complicit in the abuse. However, courts often fail to take these coercive influences into account, instead viewing Hondurans as primarily economic migrants: one circuit refused to recognize a *campesino* farming cooperative as a particular social group, reasoning that landowners were not discriminating against the *campesinos* generally but were rather only interested in the land.⁷²

ii. Indigenous and Afro-Honduran Communities Calling for Land Rights or Environmental Protection

Although indigenous groups now have greater rights and recognition in Honduras than they have historically, significant poverty and inequality remain.⁷³ Furthermore, large development projects present a new and concerning threat to the livelihoods and land of many indigenous communities, whose attempts at protest have frequently been met with violence. Under Honduras' international legal obligations, development projects affecting indigenous territory must obtain consent from affected

⁶⁵ Eric Holt Gimenez, *Honduras: The War on Peasants*, THE HUFFINGTON POST, Feb. 12, 2013, http://www.huffingtonpost.com/eric-holt-gimenez/honduras-the-war-on-peasa_b_2632033.html.

⁶⁶ Ben Wolford, *Narcos in the Mist*, NEWSWEEK (Jan. 31, 2014), <http://www.newsweek.com/narcos-mist-227667>.

⁶⁷ See *id.*

⁶⁸ See, e.g., Rep. of the Working Group on the Use of Mercenaries, Human Rights Council, 4th Sess., April 10-20, 2012, A/HRC/4/42/Add.1, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/4/42/Add.1.

⁶⁹ See *Private Military and Security Companies in Honduras Need Robust and Effective Monitoring*, Says UN Expert Group, UNITED NATIONS HUMAN RIGHTS (Feb. 25, 2013), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13032&LangID=E>.

⁷⁰ HUMAN RIGHTS WATCH, "THERE ARE NON INVESTIGATIONS HERE" 48-56 (Feb. 2014), available at <http://www.hrw.org/sites/default/files/reports/honduras0214web.pdf>.

⁷¹ See generally FIDH, HONDURAS: HUMAN RIGHTS VIOLATIONS IN BAJO AGUAN 23 (Sept. 2011), available at <http://www.fidh.org/IMG/pdf/honduras573ang.pdf>.

⁷² See *Ontunez-Tursios v. Ashcroft*, 303 F.3d 341, 352 (5th Cir. 2002).

⁷³ See generally *Honduras Overview*, WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES (accessed at March 4, 2014), <http://www.minorityrights.org/2577/honduras/honduras-overview.html>; *Committee on the Elimination of Racial Discrimination, Combined initial and second to fifth period reports submitted under article 9 of the Convention due in 2003, 2005, 2007, 2009 and 2011:: Honduras*, ¶ 341, U.N. Doc. CERD/C/HND/1-5 (May 13, 2013), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CERD/C/HND/1-5&Lang=en.

indigenous communities.⁷⁴ However, this frequently does not occur: in 2012, there were 15 reported projects throughout Honduras that threatened indigenous land and were proceeding without community consent.⁷⁵ In some instances, consent or agreements to sign over land ownership have been obtained using violence or other coercive tactics: for example, one Garifuna leader reported that she was forced at gunpoint to sign a document surrendering communal Garifuna property.⁷⁶ There are several development projects that currently have an especially severe impact on indigenous groups. The Tela Bay tourism resort project has hurt the ability of Garifuna to pursue traditional livelihoods and altered the natural ecosystem.⁷⁷ The Lenca indigenous community, who have refused to give approval for a dam project in the Rio Blanco region and have been actively engaged in a peaceful blockade of an access road for the project, are also particularly vulnerable as a result.⁷⁸ Recent incidents include the murder of three members of Tolupan tribes who had been engaged in peaceful anti-mining protests in August 2013.⁷⁹

Finally, indigenous groups are particularly vulnerable to the effects of the general instability and conflict that have plagued Honduras. Indigenous girls, for example, are at an especially high risk for human trafficking. In recent years

their rates of sexual and organ trafficking among indigenous communities have been increasing.⁸⁰ Similarly, indigenous communities have been particularly affected by the operations of illicit groups and the accompanying anti-drug trafficking efforts. The North Atlantic coast, home to many indigenous people, represents an ideal smuggling site because of its geographic location and isolation: it is estimated that 87% of planes smuggling cocaine into the United States land in Honduras first.⁸¹ Unemployment rates in indigenous communities are high—around 50%⁸²—and with traditional livelihoods disrupted by economic exploitation and drug-related violence, assistance to (or at least tolerance of) drug traffickers becomes unavoidable.⁸³ Military operations attempting to stop the trafficking have mistaken civilians for traffickers and been accused of entering communities “with more concern for seizing cocaine than protecting people.”⁸⁴ As a result, indigenous communities face violence from both traffickers and military forces.

iii. Those at Risk of Imprisonment

Those who may be imprisoned upon returning to Honduras constitute another group that is particularly vulnerable to abuse upon deportation. Honduran prisons are overcrowded, violent, and

⁷⁴ See United Nations Declaration on the Rights of Indigenous People, G.A. Res. 61/295, U.N. Doc A/RES/61/295 (March 2008); Indigenous and Tribal Peoples Convention, June 7, 1989, No. 169, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169; Nina Lakhani, *Honduras Dam Project Shadowed by Violence*, ALJAZEERA, Dec. 24, 2013, <http://www.aljazeera.com/indepth/features/2013/12/honduras-dam-project-shadowed-violence-201312211490337166.html>.

⁷⁵ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ANNUAL REPORT 2012, ¶342 (2012), available at <http://www.oas.org/en/iachr/docs/annual/2012/TOC.asp>.

⁷⁶ *Garifuna Community Leader in Honduras Threatened with Death*, HUMAN RIGHTS FIRST (July 6, 2006), http://secure.humanrightsfirst.org/defenders/hrd_women/alert070606_garifuna.asp. See also Ben Wolford, *Narcos in the Mist*, NEWSWEEK, Jan. 31, 2014, <http://www.newsweek.com/narcos-mist-227667>.

⁷⁷ *Honduras: Mega-tourism Resort Continues to Threaten Local Communities*, TOURISM CONCERN (Feb. 25, 2009), <http://www.tourismconcern.org.uk/index.php/news/102/61/Honduras-Mega-tourism-resort-continues-to-threaten-local-communities.html>.

⁷⁸ Nina Lakhani, *Honduras Dam Project Shadowed by Violence*, ALJAZEERA, Dec. 24, 2013, <http://www.aljazeera.com/indepth/features/2013/12/honduras-dam-project-shadowed-violence-201312211490337166.html>; Annie Bird, *THE AGUA ZARCA DAM AND LENCA COMMUNITIES IN HONDURAS*, RIGHTS ACTION (Oct. 3, 2013), available at http://rightsaction.org/sites/default/files/Rpt_131001_RioBlanco_Final.pdf.

⁷⁹ *Honduras: Killing of Indigenous Environmental Rights Defenders, Ms Maria Enriqueta Matute, Mr Armando Runez Medina, and Mr Ricardo Soto Funez*, FRONT LINE DEFENDERS (Aug. 29, 2013), <http://www.frontlinedefenders.org/node/23653>.

⁸⁰ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ANNUAL REPORT 2012, ¶341 (2012), available at <http://www.oas.org/en/iachr/docs/annual/2012/TOC.asp>.

⁸¹ BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS, 2013 INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT VOL. I 189 (Mar. 2013), available at <http://www.state.gov/documents/organization/204265.pdf>.

⁸² Committee on the Elimination of Racial Discrimination, *Combined initial and second to fifth period reports submitted under article 9 of the Convention due in 2003, 2005, 2007, 2009 and 2011:: Honduras*, ¶ 341, U.N. Doc. CERD/C/HND/1-5 (May 13, 2013), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/HND/1-5&Lang=en.

⁸³ See JAMES BOSWORTH, *HONDURAS: ORGANIZED CRIME GAINING AMID POLITICAL CRISIS* 19 (Dec. 2010), available at <http://www.wilsoncenter.org/sites/default/files/Bosworth.FIN.pdf>; Damien Cave, *Honduran Villages Caught in Drug War's Cross-Fire*, N.Y. TIMES, May 23, 2012, <http://www.nytimes.com/2012/05/24/world/americas/in-remote-honduras-area-drug-raid-stirs-anger.html?pagewanted=all>.

⁸⁴ Damien Cave, *Honduran Villages Caught in Drug War's Cross-Fire*, N.Y. TIMES, May 23, 2012, <http://www.nytimes.com/2012/05/24/world/americas/in-remote-honduras-area-drug-raid-stirs-anger.html>.

corrupt. As of 2012, approximately half of all inmates in Honduran prisons had never been convicted of a crime.⁸⁵ The prisons follow a self-governance structure in which prisoners create their own internal command structure and elect 'coordinators'.⁸⁶ The result is that as of 2013, gangs were reported to control all of Honduras' prisons, and in several locations the prison officials could not even enter the prison without permission from the inmates.⁸⁷ Inmate 'coordinators' assault fellow prisoners, engage in violent altercations with rival gangs, and maintain control over access to food, cells/ living spaces, and other resources, both legal and illegal.⁸⁸ Health care, hygiene, and other safety features are often lacking, and in 2012, a prison fire killed over 350 inmates.⁸⁹ Women are especially vulnerable: there is only one female prison, and when that is full women are not segregated in the alternate prisons.⁹⁰

These conditions may qualify as torture under the CAT, and accordingly individuals who are not eligible for asylum because of prior crimes may have some success making a CAT claim related to prison conditions. The question of mistreatment because of gang affiliation should at least be considered by the BIA: the 9th Circuit has specified that the BIA was required to consider a claim that a Honduran would be denied medical care in prison because of gang tattoos, and his case was remanded.⁹¹

Finally, it should be noted that these considerations apply not only to those who will be sent to prison upon returning to Honduras, but to

anyone with gang tattoos, gang affiliation, or even young men in general. All of these groups are vulnerable to imprisonment without charges being filed: Under a 2003 anti-gang law, Honduran police can arrest those who merely appear to be gang affiliated, which includes those who have tattoos.⁹² Accordingly, some of this analysis could also be useful in an asylum context as well as a CAT context.

iv. Youth

Impoverished youth are especially vulnerable to gang recruitment and subsequent anti-gang backlash. A Honduran study in 2012 reported that most surveyed gang members had joined between age 11 and 20.⁹³ Data from 2007 suggests that 77% of new gang members are 15 years of age or younger.⁹⁴ Schools are often subject to extortion or recruitment efforts, with reported recruitments of youth as young as six.⁹⁵ Children are attractive to gangs because they frequently have immunity under Honduran law.⁹⁶ This targeting of youth has led to increased flows of unaccompanied minors attempting entry to the United States in recent years.⁹⁷ While there is some debate as to the extent to which forcible recruitment is responsible for gang membership, it certainly exists, especially among the poor or otherwise vulnerable. Leaving the gang is possible in some cases, but is often accompanied by retaliatory attacks.⁹⁸

Because gangs are seen as a youth problem, certain Honduran youth also may face persecution

⁸⁵ *Id.*

⁸⁶ INTER-AM. COMM'N H.R., REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE SITUATION OF PERSONS DEPRIVED OF LIBERTY IN HONDURAS 1 (2013), available at <https://www.oas.org/en/iachr/pdl/docs/pdf/HONDURAS-PPL2013ENG.pdf>.

⁸⁷ See *id.* at 12.

⁸⁸ *Id.* at 12-15.

⁸⁹ Anger Mounts over Honduran Prison Tragedy, ALJAZEERA, Feb. 17, 2012, <http://www.aljazeera.com/news/americas/2012/02/201221742346728622.html>.

⁹⁰ INTER-AM. COMM'N H.R., REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE SITUATION OF PERSONS DEPRIVED OF LIBERTY IN HONDURAS 34 (2013), available at <https://www.oas.org/en/iachr/pdl/docs/pdf/HONDURAS-PPL2013ENG.pdf>.

⁹¹ *Cole v. Holder*, 659 F.3d 762 (9th Cir. 2011).

⁹² Javier C. Hernandez, *Cries for Justice amid Tears in Honduras*, N.Y. TIMES, Feb. 16, 2012, <http://www.nytimes.com/2012/02/17/world/americas/after-honduras-fire-cries-for-justice-amid-tears.html>.

⁹³ Marcos Gonzalez, *UNICEF-supported Study Sheds Light on Gangs in Honduras*, UNICEF, July 2, 2012, http://www.unicef.org/infobycountry/honduras_65204.html

⁹⁴ IMMIGRATION AND REFUGEE BOARD OF CANADA, HONDURAS: THE RECRUITMENT OF MARA SALVATRUCHA (MS) AND 18TH STREET (CALLE 18 OR MARA 18) GANG MEMBERS (Jan. 24, 2012), available at <http://www.refworld.org/docid/4f4f2eeb2.html>.

⁹⁵ Victoria Rossi, *Honduran Maras Recruit Children in Kindergarten*, INSIGHT CRIME, Sept. 10 2012, <http://www.insightcrime.org/news-briefs/honduran-maras-recruit-children-in-kindergarten-report>.

⁹⁶ *Id.*

⁹⁷ UNITED STATES CONFERENCE OF CATHOLIC BISHOPS MIGRATION AND REFUGEE SERVICES, THE CHANGING FACE OF THE UNACCOMPANIED ALIEN CHILD (Dec. 2012), available at http://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs_USCCB-December2012.pdf.

⁹⁸ IMMIGRATION AND REFUGEE BOARD OF CANADA, HONDURAS: THE RECRUITMENT OF MARA SALVATRUCHA (MS) AND 18TH STREET (CALLE 18 OR MARA 18) GANG MEMBERS (Jan. 24, 2012), available at <http://www.refworld.org/docid/4f4f2eeb2.html>.

from the Honduran government. Anti-gang policies often target youth, who sometimes become a scapegoat for violence within Honduras.⁹⁹ This is compounded by the high number of arrestees who are detained and never receive a trial, meaning youth with no connections to gangs may be held within detention facilities under the anti-gang laws.¹⁰⁰ Furthermore, there have been reports of vigilante groups committing extrajudicial killings of young people presumed to be in gangs.¹⁰¹ Seeking legal redress is unlikely to be effective, as 93% of crimes against youth in Honduras end in impunity.¹⁰²

The result of violence by these various actors means that rates of extrajudicial killing of children and youth is extremely high. Currently, about 73 youth under the age of 23 are killed per month.¹⁰³ Despite these troubling facts, youth alone is most likely an insufficient basis for establishing a protected group. Even without applying a particularity or social visibility requirement, the 3rd circuit has noted that “Nor is youth alone a sufficient requirement, disappearing as it does with age,” determining that street children were not a particular social group.¹⁰⁴

v. Women and “Girlfriends” of Gang Members

The rate of violence and homicides targeting Honduran women and girls has risen sharply in

Honduras in recent years and at a much faster rate than the still disturbing increase in the male homicide rate: in 2012, despite a slight decrease in the overall homicide rate, homicides with female victims rose by 30%. Of those homicides, less than 5% were a result of domestic violence.¹⁰⁵ Instead, this violence appears to be related to a number of factors, including the militarization of security forces and the police, impunity, targeting of women activists, and the killing of women to send messages to family members. Security forces have been accused of sexual violence after the coup as well as in the Bajo Aguan region, and beatings and rapes of women by Honduran police forces are reported to be routine.¹⁰⁶ Gangs often target women who are unprotected by a male family member in the home (if, for example, the father has migrated or travels for work), and such women are especially vulnerable to sexual abuse¹⁰⁷ or extortion.¹⁰⁸

Those women and girls who are gang members, gang “girlfriends,” or recruited as a gang member’s girlfriend are especially at risk. Women and girls in a relationship with a gang member are not necessarily considered part of the gang—indeed, most gang members look for girlfriends outside the gang who are usually between the ages of 13 and 15.¹⁰⁹ If these girls then give birth to a gang member’s child, they may have their infants taken away and placed with gang members.¹¹⁰ The killing

⁹⁹ See CLARE RIBANDO SEELKE, CONG. RESEARCH SERV. RL34112, GANGS IN CENTRAL AMERICA 10 (Jan. 28, 2013), available at <http://www.fas.org/sgp/crs/row/RL34112.pdf>.

¹⁰⁰ See *id.*; INTER-AM. COMM’N H.R., REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE SITUATION OF PERSONS DEPRIVED OF LIBERTY IN HONDURAS 9 (2013), available at <https://www.oas.org/en/iachr/pdl/docs/pdf/HONDURAS-PPL2013ENG.pdf>.

¹⁰¹ CLARE RIBANDO SEELKE, CONG. RESEARCH SERV. RL34112, GANGS IN CENTRAL AMERICA 10 (Jan. 28, 2013), available at <http://www.fas.org/sgp/crs/row/RL34112.pdf>.

¹⁰² MIGRATION AND REFUGEE SERVICES OF THE U.S. CONFERENCE OF CATHOLIC BISHOPS, MISSION TO CENTRAL AMERICA: THE FLIGHT OF UNACCOMPANIED CHILDREN TO THE UNITED STATES 5, available at <http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL2.pdf>.

¹⁰³ *Murders of Young People on the Rise in Honduras*, LA PRENSA, Jan. 31, 2013, http://www.laprensasa.com/309_america-in-english/1912172_murders-of-young-people-on-the-rise-in-honduras.html.

¹⁰⁴ *Id.*

¹⁰⁵ Francisco Pavon and Maritza Gallardo, *Femicide in Honduras*, OXFAM POLICY & PRACTICE BLOG (Nov. 23, 2012), <http://policy-practice.oxfam.org.uk/blog/2012/11/femicide-in-honduras>.

¹⁰⁶ See HUMAN RIGHTS WATCH, AFTER THE COUP 15 (Dec. 2010), available at http://www.hrw.org/sites/default/files/reports/honduras1210webwcover_0.pdf; FIDH, HONDURAS: HUMAN RIGHTS VIOLATIONS IN BAJO AGUAN 23 (Sept. 2011), available at <http://www.fidh.org/IMG/pdf/honduras573ang.pdf>; Nobel Women’s Initiative, From Survivors to Defenders 9 (June 2012), available at http://nobelwomensinitiative.org/wp-content/uploads/2012/06/Report_AmericasDelgation-20121.pdf.

¹⁰⁷ MIGRATION AND REFUGEE SERVICES OF THE U.S. CONFERENCE OF CATHOLIC BISHOPS, MISSION TO CENTRAL AMERICA: THE FLIGHT OF UNACCOMPANIED CHILDREN TO THE UNITED STATES 7, available at <http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL2.pdf>.

¹⁰⁸ Alberto Arce, *Gangs Extort Cash from Honduran Homeowners*, THE ASSOCIATED PRESS, AUG. 8, 2012, 10:32 PM, <http://bigstory.ap.org/article/gangs-extort-cash-honduran-homeowners>.

¹⁰⁹ ISABEL AGUILAR UMAÑA AND JEANNE RIKKERS, VIOLENT WOMEN AND VIOLENCE AGAINST WOMEN (April 2012), available at <http://www.ifp-ew.eu/pdf/201204ifPEWViolentWomenAndViolenceAgainstWomen.pdf>

¹¹⁰ IMMIGRATION AND REFUGEE BOARD OF CANADA, HONDURAS: THE RECRUITMENT OF MARA SALVATRUCHA (MS) AND 18TH STREET (CALLE 18 OR MARA 18) GANG MEMBERS (Jan. 24, 2012), available at <http://www.refworld.org/docid/4f4f2eeb2.html>.

of a gang member's girlfriend (or mother) as an act of reprisal has become increasingly common.¹¹¹ Women likely constitute a larger share of gang membership than has previously been thought—one estimate suggests 20% of Honduran gang members are female.¹¹² Female gang members have often been sexually abused or tortured as part of gang initiation rituals or during the course of their membership in the gang.¹¹³

Recent trends in American courts suggest a greater willingness to consider women as a particular social group in some circumstances. In general, this has been tied to risk for female genital mutilation or domestic violence.¹¹⁴ However, a 9th Circuit decision noted that “all women in Guatemala” could be a particular social group.¹¹⁵ The outcome of this case on remand will be important because of its concern with high rates of femicide and impunity for perpetrators.

vi. Victims of Trafficking and Returned Migrants

The combination of post-coup unrest, institutional fragility, and counter-narcotics operations have incentivized criminal enterprises to diversify their income sources has opened a greater market for human trafficking within Honduras. Hondurans have been trafficked for forced labor purposes, especially to the United States, Mexico, and Guatemala. There are also instances of forced labor within Honduras.¹¹⁶ Sex trafficking of Honduran women and children, as well as an increasing number of LGBT Hondurans, is an

ongoing concern, both within Honduras as part of a sex tourism industry and outside of Honduras.¹¹⁷ There are also high numbers of child prostitutes within Honduras: a recent report suggests there are 3,000 in San Pedro Sula alone.¹¹⁸

Hondurans who attempt to immigrate to the United States or elsewhere are particularly at risk for trafficking and other abuses. The journey through Mexico to the United States is particularly dangerous. Those taking it are frequently at the mercy of smugglers or others demanding fees and other services.¹¹⁹ There have been numerous deaths along the United States southern border,¹²⁰ and as many as 6 out of every 10 women are believed to be sexually abused while making this journey.¹²¹ Nonetheless, many migrants take the risks either because of conditions in Honduras or because they have family in the United States. About half of all who attempt to cross the American southern border have family members in the United States, including almost a quarter who have a child who is a U.S. citizen.¹²²

Honduran migrants are further at risk in comparison to those from other Central American countries. Because Honduras did not experience the civil wars others in the region suffered in the 1980s, migration to the United States was not common until the 1990s, and especially increased after Hurricane Mitch in 1998 and the coup in 2009.¹²³ This means Hondurans did not generally benefit from earlier immigration laws that provided legal status to many other Central Americans living in the United States. Consequently, relatives

¹¹¹ *The Country that Hates Women: Just why have 1,000 females been slaughtered in Honduras in the last two years?*, DAILY MAIL, July 30, 2012, <http://www.dailymail.co.uk/news/article-2181118/Female-murder-rate-skyrockets-Honduras-dozens-women-killed-month.html>.

¹¹² *Id.*

¹¹³ Marc Lacey, *Abuse Trails Central American Girls into Gangs*, N.Y. TIMES, Apr. 11, 2008, <http://www.nytimes.com/2008/04/11/world/americas/11guatemala.html>.

¹¹⁴ See *Hassan v. Gonzales*, 484 F.3d 513 (8th Cir. 2007); Karen Musalo, *A Short History of Gender Asylum in the United States*, 29 *Refugee Status Q.* 46 (2010), available at http://cgrs.uchastings.edu/sites/default/files/short_history_of_gender_asylum_Musalo_2010_0.pdf.

¹¹⁵ *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010).

¹¹⁶ U.S. DEPARTMENT OF STATE, *TRAFFICKING IN PERSONS REPORT 189* (2013), available at <http://www.state.gov/documents/organization/210739.pdf>.

¹¹⁷ *Id.*

¹¹⁸ Marguerite Cawley, *Youth in LatAm Increasingly Perpetrators, Victims of Violence Crime*, INSIGHT CRIME, Jan. 27, 2013, <http://www.insightcrime.org/news-analysis/rise-in-colombia-mexico-youth-crime-highlights-regional-trend>.

¹¹⁹ See generally Erin Siegal McIntyre & Seth Freed Wessler, *Border Deaths: The Last Crossing of Tiger Martinez*, AL-JAZEERA, Jan. 25, 2014, <http://america.aljazeera.com/features/2014/1/lost-in-the-corridorofdeath.html>.

¹²⁰ *Id.* (describing the events leading to the death of one particular Honduran migrant).

¹²¹ AMNESTY INTERNATIONAL, *INVISIBLE VICTIMS: MIGRANTS ON THE MOVE IN MEXICO 5* (2010), available at <http://www.amnesty.org/en/library/asset/AMR41/014/2010/en/8459f0ac-03ce-4302-8bd2-3305bdae9cde/amr410142010eng.pdf>.

¹²² JEREMY SLACK ET AL., *IN THE SHADOW OF THE WALL: FAMILY SEPARATION, IMMIGRATION ENFORCEMENT AND SECURITY 11*, available at http://las.arizona.edu/sites/las.arizona.edu/files/UA_Immigration_Report2013web.pdf.

¹²³ Daniel Reichman, *Honduras: The Perils of Remittance Dependence and Clandestine Migration*, MIGRATION POLICY INSTITUTE (Apr. 11, 2013), <http://www.migrationpolicy.org/article/honduras-perils-remittance-dependence-and-clandestine-migration>.

in the United States are less likely to have legal status, so Hondurans have less access to support networks or pathways to legal citizenship as compared to other Central Americans. Those who have been deported or otherwise returned to Honduras may have suffered trauma, abuse or be additionally vulnerable.

For purposes of analysis of eligibility for humanitarian relief, it is important to recognize that the dangers faced by irregular migrants attempting to enter the United States make them particularly vulnerable upon their return home. However, because most of the harm occurs outside of Honduras, establishing persecution on a protected ground within Honduras is likely to be quite different for returned migrants: attempts to establish a particular social group around unaccompanied children with family members in the U.S., for example, have been largely unsuccessful.¹²⁴ Of further note is that U.S. law distinguishes between those who have been trafficked into the U.S. and those who have been smuggled, providing greater flexibility and care for the former rather than the later.¹²⁵ This distinction may be somewhat incoherent at times, given the abusive conditions which surround smuggling, but nonetheless remains an important one legally.

vii. Other Vulnerable Groups

Human Rights Defenders

Honduras's high homicide rate, the availability of hired assassins, and the culture of impunity creates an environment that is especially hostile for various human rights defenders, many of whom have been killed, threatened, arbitrarily detained, or otherwise harassed.¹²⁶ As of 2012, over 380 Hondurans had

precautionary measures issued for their protection by the Inter-American Human Rights system of the Organization of American States (OAS); however, many of these remain at risk and are concerned for their safety because of the failure of Honduran authorities to appropriately implement protection mechanisms.¹²⁷ Furthermore, many human rights defenders do not seek protection from the state because they believe that doing so makes them more vulnerable, and the state does not always have the means or interest in providing adequate protection.¹²⁸

Lawyers and Members of the Judiciary

A weak judicial system, combined with rampant violence and crime, means that a climate of fear is the reality for many judges and lawyers in Honduras. A high number of lawyers have been victims of homicides, threats, or other crimes: between 2010 and 2012, 53 lawyers were killed.¹²⁹ Some of these were linked to particular activism or criminal law work, but others practiced commercial or family law, suggesting that lawyers are targets merely because of the nature of their profession.¹³⁰ This being said, those involved with criminal prosecutions face the highest risk. The Office of the Public Prosecutor in particular has struggled to perform its duties because of political interference, corruption in the police, resource shortages, and death threats made to staff.¹³¹

The lack of an independent judiciary and a targeting of judges places them in a similarly vulnerable position. The Honduran judiciary is heavily reliant on political currents: in 2012, the National Congress removed four Supreme

¹²⁴ See generally Maura M. Ooi, Note, *Unaccompanied Should Not Mean Unprotected: The inadequacies of Relief for Unaccompanied Immigrant Minors*, 25 GEO. IMMIGR. L.J. 883 (2011).

¹²⁵ CLARE RIBANDO SEELKE, CONG. RESEARCH SERV. RL34112, *TRAFFICKING IN PERSONS IN LATIN AMERICA AND THE CARRIBEAN 2* (July 15, 2013), available at <https://www.fas.org/sgp/crs/row/RL33200.pdf>.

¹²⁶ U.N. Special Rapporteur on the Situation of Human Rights Defenders, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Mission to Honduras*, ¶64, U.N. Doc. A/HRC/22/47/Add. 1 (Dec. 13, 2012), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2247Add.1_English.pdf.

¹²⁷ *Id.* at 67.

¹²⁸ See *id.* at 98-99.

¹²⁹ James Bargent, *Report Highlights Targeting of Lawyers in Honduras*, INSIGHT CRIME (Mar. 21, 2013), <http://www.insightcrime.org/news-briefs/report-highlights-lawyers-honduras>.

¹³⁰ See *id.*

¹³¹ U.N. Special Rapporteur on the Situation of Human Rights Defenders, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Mission to Honduras*, ¶46, U.N. Doc. A/HRC/22/47/Add. 1 (Dec. 13, 2012), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2247Add.1_English.pdf.

Court justices after controversial rulings by the Constitutional Chamber that a “Police Purge Law” and a “Charter Cities Law” were unconstitutional.¹³² In addition to political pressure, many justices receive death threats while they are hearing organized crime related cases.¹³³ This violence has resulted in instances of resignation or assassination of judges.¹³⁴

Journalists

There have been ongoing reports of threats, harassments, and homicides of journalists and their families, most prominently by criminal groups and often in retaliation for reporting on drug trafficking or other sensitive crime issues.¹³⁵ Since the 2009 coup, at least 27 journalists have been murdered (10 of which a direct link between their work and their homicide can be established)¹³⁶ and many more have been issued precautionary protective measures by the OAS’ Inter-American Commission on Human Rights.¹³⁷ Radio and television journalists face a higher risk of homicide because of their public profile, although print journalists are the target of 60% of all aggression (lethal and non-lethal).¹³⁸ Journalists appear to be at the most risk when they cover topics related to corruption, development projects, drug trafficking, or

political campaigns.¹³⁹ However, responsibility for a homicide may be hard to trace, especially because the impunity rate for the murder of journalists is around 97%.¹⁴⁰ Importantly, what may appear to be gang violence (or is claimed to be by state officials) may nonetheless involve state officials: circumstantial evidence surrounding the deaths of some journalists suggests state involvement.¹⁴¹ The implications of this could be important for journalists attempting to link persecution to the state’s action or inaction for asylum claim purposes.

Political candidates and supporters

Immediately following the 2009 coup, there were multiple instances of attacks and killings of opposition members and protestors, excessive use of force used against protestors, and instances of arbitrary detention and torture.¹⁴² Although there have been some attempts made to address this violence, broad impunity remains for many of the abuses.¹⁴³ Although violence and other forms of persecution based on political affiliation has diminished somewhat since the coup, it remains an ongoing issue, and both majority and opposition supporters have been targeted. Since the coup, at least sixteen candidates from opposition party LIBRE have been killed.^{144, 145}

¹³² INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ANNUAL REPORT 2012, ¶216 (2012), available at <http://www.oas.org/en/iachr/docs/annual/2012/TOC.asp>.

¹³³ *Id.* at ¶201.

¹³⁴ *Id.*

¹³⁵ *Freedom of the Press 2013: Honduras*, FREEDOM HOUSE (2013), [http://www.freedomhouse.org/report/freedom-press/2013/honduras#.UtmBtPQo7Qc](http://www.freedomhouse.org/report/freedom-press/2013/honduras#.UtmBtPQo7Qc;); INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ANNUAL REPORT 2012, ¶251-285 (2012), available at <http://www.oas.org/en/iachr/docs/annual/2012/TOC.asp> (describing numerous instances of threats and other harassment of journalists in the year 2012).

¹³⁶ *Hondurans Urged to Rebuild Rule of Law, Media Pluralism, After Elections*, IFEX (Nov. 27, 2013), http://www.ifex.org/honduras/2013/11/27/debe_reconstruirse/.

¹³⁷ One of the frequent targets for death threats is a Jesuit-run community-based radio station, Radio Progreso. Since 2009 the IACHR has issued precautionary measures on four different occasions, ordering the Honduran state to take steps to protect the lives of 16 different Radio Progreso staff. See *Radio Progreso Employee Murdered After Getting Threats*, Reporters Without Borders (Apr. 14, 2014), <http://en.rsf.org/honduras-radio-progreso-employee-murdered-14-04-2014,46143.html>.

¹³⁸ PEN INTERNATIONAL, HONDURAS: JOURNALISM IN THE SHADOW OF IMPUNITY 8 (2014), available at http://pencanada.ca/wp-content/uploads/2014/01/Honduras-Report_English_Final.pdf.

¹³⁹ *United States Congress Tom Lantos Human Rights Commission*, 113th Cong. 4 (2013) (testimony of Lisa Haugaard, Executive Director, Latin America Working Group Education Fund), available at http://tlhrc.house.gov/docs/transcripts/2013_07_25_Honduras/Lisa%20Haugaard%20Testimony.pdf.

¹⁴⁰ *Id.*

¹⁴¹ PEN INTERNATIONAL, HONDURAS: JOURNALISM IN THE SHADOW OF IMPUNITY 22-23 (2014), available at http://pencanada.ca/wp-content/uploads/2014/01/Honduras-Report_English_Final.pdf.

¹⁴² See generally HUMAN RIGHTS WATCH, AFTER THE COUP (2010), available at http://www.hrw.org/sites/default/files/reports/honduras1210webwcover_0.pdf.

¹⁴³ *Id.*

¹⁴⁴ *United States Congress Tom Lantos Human Rights Commission*, 113th Cong. 5 (2013) (testimony of Lisa Haugaard, Executive Director, Latin America Working Group Education Fund), available at http://tlhrc.house.gov/docs/transcripts/2013_07_25_Honduras/Lisa%20Haugaard%20Testimony.pdf.

¹⁴⁵ *Id.*

LGBT Activists and Community

There have been a number of instances of violence or threats made against LGBT activists or members of the LGBT community. These include a number of homicides of transgender individuals, and the shooting of several activists. In total, civil society estimates report the murders of 90 LGBT persons between 2008 and February 2013.¹⁴⁶ In addition, police have threatened LGBT activists with arbitrary detention or prohibited them from meeting in public places. The UN Special Rapporteur for Human Rights Defenders has suggested that violence and attacks against LGBT persons by police and private security may constitute a pattern of hate crimes.¹⁴⁷

Extortion victims

A number of groups are particularly at risk of extortion, and accordingly are more likely to be deprived of their means of livelihood or home. Although their deaths often receive less press than the deaths of lawyers or journalists, taxi drivers (along with police officers) represent a much higher number of the homicides in Honduras.¹⁴⁸ Taxi drivers can be easily targeted because of their regular routine, and many belong to cooperatives that have been forced to pay fees to various gangs.¹⁴⁹ Changing professions is seldom an option because of scarce employment opportunities for the drivers, and filing a police complaint risks

violent reprisals from the gangs.¹⁵⁰ Bus drivers, who handle large amounts of cash and are highly visible, face many of the same challenges and are similarly targeted.¹⁵¹

In addition to professional groups, gangs often extort homeowners, and residents requiring fines to live in certain areas. When homeowners or tenants are no longer able to pay this “war tax,” gangs kill them or take over the house.¹⁵² Homeowners perceived as wealthy or with relatives in the United States are especially at risk.¹⁵³ Conversely, some wealthy owners form secure districts in which they hire private security and cordon off their street; thus those living in very poor neighborhoods are also at especially high risk for extortion (and, being poor, often unable to pay the fees and more likely to be forced from their homes or killed).¹⁵⁴

Asylum seekers fleeing extortion have an especially difficult case to make. Extortion by gangs is typically seen as economically motivated. For example, the 11th Circuit has refused to grant asylum to victims of extortion even when the actor was one with an overtly stated political motivation (the FARC guerillas of Colombia), finding no political opinion was imputed because of the extortion.¹⁵⁵ Similarly, courts have rejected claims that time spent in the United States will make one a target of extortion by gangs for perceived wealth.¹⁵⁶

¹⁴⁶ *Id.*

¹⁴⁷ U.N. Special Rapporteur on the Situation of Human Rights Defenders, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Mission to Honduras*, ¶¶90-91, U.N. Doc. A/HRC/22/47/Add. 1 (Dec. 13, 2012), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2247Add.1_English.pdf.

¹⁴⁸ *Out of Control*, THE ECONOMIST, Mar. 9, 2013, <http://www.economist.com/news/americas/21573108-first-two-reports-threat-rampant-violence-central-americas-small>.

¹⁴⁹ Alberto Arce, *Death of a Honduran Taxi Driver*, THE ASSOCIATED PRESS, Nov. 21, 2013, 6:19 PM, <http://bigstory.ap.org/article/death-honduran-taxi-driver>.

¹⁵⁰ *Id.*

¹⁵¹ Christopher Loof, *Honduras Launches Offensive against Gang Extortion of Bus Drivers*, INSIGHT CRIME, Mar. 8, 2012, <http://www.insightcrime.org/news-briefs/honduras-launches-offensive-against-gang-extortion-of-bus-drivers>.

¹⁵² Alberto Arce, *Gangs Extort Cash from Honduran Homeowners*, THE ASSOCIATED PRESS, AUG. 8, 2012, 10:32 PM, <http://bigstory.ap.org/article/gangs-extort-cash-honduran-homeowners>.

¹⁵³ *Id.*

¹⁵⁴ *Out of Control*, THE ECONOMIST, Mar. 9, 2013, <http://www.economist.com/news/americas/21573108-first-two-reports-threat-rampant-violence-central-americas-small>.

¹⁵⁵ *Rivera v. U.S. Attorney General*, 487 F.3d 815 (11th Cir. 2007).

¹⁵⁶ *Escobar v. Holder*, 698 F.3d 36 (1st Cir. 2012).

VI. Questions for Further Research

These concerns over the treatment of Honduran asylum claims in the United States raise a number of questions for further consideration. First, it reflects the need for a greater research into Honduran-specific asylum trends. Statistics reflecting the recent increases in Honduran immigration over the past few years are still difficult to obtain, making policy analysis difficult. The publication of information regarding the number of Hondurans who are referred for credible fear interviews, the screening mechanisms used by Customs and Border Protection personnel to make these referrals, the number who successfully pass credible fear interviews, etc., would be especially useful given concerns procedural due process concerns at that level. In addition, strong research analyzing the intersection between older push factors and newer immigration trends could be informative, and greater analysis of current country conditions (particularly in English) is a needed resource for judges and lawyers. Finally, the case law dealing with Honduran asylum claims is also somewhat thin, presumably because Honduran claims are still working their way through the system.

Second, greater access to resources documenting the current situation in Honduras would assist judges, lawyers, asylum officers, and border patrol agents in recognizing the full reality of targeted and generalized violence in Honduras today. Due to the fact that much of the violence in Honduras is never investigated, and impunity is widespread, it can be difficult to establish an exact persecutor, and seeking assistance from the Honduran law enforcement may prove dangerous. Furthermore, what looks like private violence often implicates public actors, and courts need to understand the ways in which public and private violence are linked in Honduras. In particular, because courts are hesitant to define persecution in terms of economic harm, further research is needed on the

connections between economically-motivated crime and violence in Honduras and political or social circumstances that drive such economic crimes. Better documentation of these dynamics (especially in English) would give lawyers access to greater tools when arguing asylum cases, and would assist advocates in discussions over needed asylum reforms and the current treatment of those fleeing violence or other persecution in Honduras.

Finally, there needs to be further discussion of the ways American asylum law fails to respond to modern forms of persecution. Asylum law in the U.S., developed under the shadow of the Cold War, is heavily concerned with the infringement of civil and political liberties under strong, centralized states. Today, many asylum seekers come from weak or fragile states with complicated ties to powerful transnational actors. Such transnational actors may be extraordinarily well-financed and have greater political sway than the state. Accordingly, what may look like arbitrary violence to American courts or asylum officers may in reality reflect the persecution of certain groups which pose a threat to or represent an opportunity for exploitation by these powerful actors.

VII. Conclusion

Hondurans seeking asylum in the United States often face enormous risks to reach the border: migrants represent easy targets for both gangs and smugglers, often are underage and travelling alone, and face heightened risk of sexual assault and other forms of violence.¹⁵⁷ The journey is nonetheless increasingly dangerous and violence and impunity in Honduras has become pervasive, creating a climate which has allowed numerous actors, both criminal and non-criminal, to use violence as an effective tool for social and political control. This leaves many Hondurans with no choice but to flee Honduras when they become targets for the violence or are otherwise entangled in the social and political unrest.

¹⁵⁷ See *infra* pp 25-26.

¹⁵⁸ Louise Arbour, *Next Year's Wars*, FOREIGN POLICY, Dec. 30, 2013, http://www.foreignpolicy.com/articles/2013/12/30/next_year_s_wars. The full list included Honduras, Central Asia, Iraq, the Sahel, Sudan, Syria/ Lebanon, Bangladesh, the Central African Republic, Libya, and the North Caucasus.

The American asylum system, however, continues to view Honduran immigration as primarily a product of economic flight. Gang violence in particular is seen as an economic problem, without a full appreciation of its political nature or the amount of political control exercised by drug cartels. Furthermore, close proximity of the United States to Central America and the resulting high numbers of persons arriving from Central American countries facilitates certain assumptions and fears in the American social imagination, including a fear that taking asylum claims from Honduras seriously will “open the floodgates” to millions fleeing violence. Yet the extraordinary amount of violence in Honduras easily rivals (and exceeds) that of many countries at war around the world: in addition to having the world’s highest homicide rate, Honduras has been listed with the likes of Iraq, Libya, the Central African Republic, and Syria as one of the most serious conflicts expected in 2014.¹⁵⁸ Given the current social conflict in Honduras, immigration officials in the United States, and indeed other countries in the region, have an obligation to carefully screen Honduran arrivals for possible humanitarian relief, recognizing that many Hondurans have been forced to flee the pervasive and sometimes targeted violence gripping their homeland.

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