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Non-Detained

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
130 Delaware Avenue, Suite 300
Buffalo, NY, 14202

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In the Matter of	)	
	)	
Oscar Patricio Azogue Martinez	)	File No. A 245-892-413
	)	
In Removal Proceedings	)	
	)	
_____	)	

Immigration Judge: N/A

Next Hearing: N/A

RESPONDENT'S PRE-HEARING STATEMENT REGARDING ASYLUM,
WITHHOLDING OF REMOVAL, AND CAT ELIGIBILITY

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I. INTRODUCTION AND PROCEDURAL POSTURE

Respondent Oscar Patricio Azogue Martinez, a native and citizen of Ecuador, respectfully submits this Pre-Hearing Statement in support of his applications for asylum under INA § 208, 8 U.S.C. § 1158; withholding of removal under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3); and protection under the Convention Against Torture, 8 C.F.R. §§ 1208.16(c), 1208.17, and 1208.18.

Respondent entered the United States on or about March 9, 2024, near Lukeville, Arizona. He filed Form I-589 on February 3, 2025, within one year of his last entry, satisfying INA § 208(a)(2)(B).¹ Petitioner prepared and filed that initial application on his own, without any legal assistance, and without understanding what the grounds for asylum required². With the assistance of legal counsel, he then filed an amendment articulating all grounds for protection³.

The evidentiary record establishes that Respondent suffered past persecution in Ecuador on account of political opinion and, cumulatively, membership in a cognizable particular social group; that his life or freedom would more likely than not be threatened upon return; and that it

¹See Form I-589, Application for Asylum and for Withholding of Removal, filed on February 3, 2025.

²See Declaration of Oscar Patricio Azogue Martinez ¶ 43 (Evidence).

³See Amendment of Form I-589, prepared by undersigned counsel and filed on August 13, 2026.

is more likely than not that he would be tortured with the acquiescence of the Ecuadorian State. Respondent respectfully requests that this Court grant asylum and, alternatively, withholding of removal, and protection under the Convention Against Torture.

II. STATEMENT OF FACTS⁴

Respondent is a citizen of Ecuador born on January 2, 1989, who resided in the city of Ambato, province of Tungurahua, and worked in the construction sector, lastly as an on-site works supervisor on projects in Ambato and the neighboring province of Cotopaxi.⁵

Beginning around February 1, 2023, while Respondent supervised construction sites, an individual made contact through one of his workers by leaving a note stating that they "needed his services" and providing a telephone number. Believing that the message might have come from a prospective client or someone interested in construction work, Respondent called the number left for him. When Respondent returned the call, it became clear that the contact had not come from a legitimate client. The individual spoke of purported protection for his work and his employees and demanded a weekly payment in exchange. Respondent refused, declining to recognize the authority that Los Choneros sought to impose over his business and his workers.⁶

Respondent began to receive repeated calls, in which the organization demanded his cooperation, including to use his work as a channel to move their illicit money. Individuals connected to Los Choneros then began arriving by motorcycle near the worksite, watching the construction projects and asking questions about Respondent and the jobsite. On August 2023, three of them confronted Respondent directly and threatened him for his earlier refusal to cooperate. They made him understand that they knew who he was and could find him, and warned that continued refusal would carry consequences. Respondent again refused, telling the men he did not need their protection.⁷

⁴ The Statement of Facts is based on the following Respondent's documents: Oscar Patricio Azogue Martinez's Declaration (Evidence); Oscar Patricio Azogue Martinez's Birth Certificate (Evidence Part 01); Respondent's Country Conditions in Support of Asylum and Withholding of Removal (Evidence Part 02); Cintya Lizbeth Llango Cangui's Letter of Support (Evidence Part 03, Exhibit 1); Jordy Fabian Sinchiguano Pilatasig's Letter of Support (Evidence Part 03, Exhibit 2); Edison Fabian Leon Chicaiza's Letter of Support (Evidence Part 03, Exhibit 3); Photograph of Head Wound Inflicted on Respondent During the December 29, 2023 Incident and Medical Report Documenting Physical Injury Sustained by the Respondent (Evidence Part 04).

⁵ See Declaration of Oscar Patricio Azogue Martinez ¶¶ 1 to 5 and 25 (Evidence).

⁶ See Declaration of Oscar Patricio Azogue Martinez ¶¶ 7 to 9 (Evidence).

⁷ See Declaration of Oscar Patricio Azogue Martinez ¶¶ 12 to 20 (Evidence).

These demands were not merely economic in nature; rather, it reflected the criminal organization's assertion of dominance over his work and personal liberty, and its attempt to exert control over the Respondent, compelling his submission to their authority through fear. And Respondent categorically rejected any association with the organization, making a clear statement he would not submit to their authority. This was interpreted as a direct challenge to the organization's control, creating a lasting target on Respondent for reprisal⁸.

On December 29, 2023, at approximately 11:30 at night, three individuals with covered faces intercepted Respondent on the main road in the San Buenaventura sector of Latacunga as he returned to his rented apartment. They threw him to the ground and beat him, striking his body and his head, including with a weapon one of them carried. One assailant told the others to shoot him; another responded that this would instead stand as a final warning, telling Respondent that the next time he would not survive, and that if he continued to refuse to pay they would kill him. Respondent lost consciousness and was assisted by neighbors who witnessed the assault and intervened, causing the attackers to flee.⁹ Respondent suffered a deep injury to his head and required medical assistance¹⁰.

In the days that followed, Respondent continued to receive calls from unknown numbers, which he stopped answering out of fear that they could be used to locate him. Los Choneros already knew where his mother lived, where his daughters lived, and how he moved between cities, leaving Respondent without any place within Ecuador where he could regard himself as beyond the organization's reach.¹¹

Respondent did not formally report the attack to the police. In his experience, the police in Ecuador did not effectively protect people against groups like Los Choneros, and he knew, through acquaintances who worked as officers, that the local police were infiltrated by the organization, so that a report would have carried the information itself back to Los Choneros.¹² In the weeks that followed, Respondent suffered persistent fear, anxiety, and insomnia,

⁸ See Declaration of Oscar Patricio Azogue Martinez ¶¶ 14 to 17 (Evidence).

⁹ See Declaration of Oscar Patricio Azogue Martinez ¶¶ 25 to 32 (Evidence); see also Letters of Support (Evidence Part 03).

¹⁰ See Photograph of Head Wound Inflicted on Respondent During the December 29, 2023 Incident and Medical Report Documenting Physical Injury Sustained by the Respondent (Evidence Part 04).

¹¹ See Declaration of Oscar Patricio Azogue Martinez ¶¶ 38 to 39 (Evidence).

¹² See Declaration of Oscar Patricio Azogue Martinez ¶ 36 (Evidence); see also Section VI, *infra*.

disconnected his telephone numbers, and avoided seeing his relatives and his daughters out of fear that his presence could place them in danger.¹³

Fearing for his life, Respondent departed Ecuador in January 2024 and traveled overland through Colombia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala, and Mexico, arriving at the southwest border of the United States on or about March 9, 2024, where he presented himself and was processed by immigration authorities.¹⁴

Respondent fled Ecuador in January 2024, within days of the December 29, 2023 attack that left him unconscious in a public street with a documented head injury and against a backdrop of continuing telephonic death threats from a designated Foreign Terrorist Organization.¹⁵ The immediate proximity between the attack, the threats, and his departure demonstrates that his flight was driven by an acute and ongoing threat to life, not by a considered choice to bypass available lawful pathways.

III. LEGAL FRAMEWORK

Asylum requires past persecution or a well-founded fear of persecution on account of a protected ground, with that ground being "one central reason" for the persecution. INA § 208(b)(1)(B)(i); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 to 432 (1987) (a well-founded fear exists where there is a reasonable possibility, substantially less than a probability, of persecution). Where past persecution is established, a rebuttable presumption of a well-founded fear of future persecution arises. 8 C.F.R. § 1208.13(b)(1).

To establish persecution on account of political opinion, the applicant must show that the persecution is on account of the victim's political opinion, not the persecutor's. *See INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992); *see also Castro v. Holder*, 597 F.3d 93, 100 (2d Cir. 2010). The persecutor's motive must arise from the applicant's own political belief or from a political belief imputed to him by the persecutor. *See Elias-Zacarias*, 502 U.S. at 483; *Zelaya-Moreno v. Wilkinson*, 989 F.3d 190, 196 (2d Cir. 2021). The applicant must also specify the political opinion on which he relies. *See Zelaya-Moreno*, 989 F.3d at 197 to 201 (holding that

¹³See Declaration of Oscar Patricio Azogue Martinez ¶¶ 34 (Evidence).

¹⁴See Declaration of Oscar Patricio Azogue Martinez ¶¶ 37 to 41 (Evidence).

¹⁵Declaration of Oscar Patricio Azogue Martinez ¶¶ 14 to 22 (Evidence); Photograph of Head Wound Inflicted on Respondent During the December 29, 2023 Incident and Medical Report Documenting Physical Injury Sustained by the Respondent (Evidence Part 04); U.S. Dep't of State, Foreign Terrorist Organization Designation of Los Choneros and Los Lobos (Evidence Part 06).

the applicant's anti-gang views did not constitute a political opinion where his sole political statement was that "gangs are bad" and the record contained no evidence that the gang advocated a political agenda or employed tactics in service of a political philosophy).

Particular social group claims are analyzed under the framework the Board set out in *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014), and *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014), to which the Second Circuit extends deference. *See Paloka v. Holder*, 762 F.3d 191, 195-196 (2d Cir. 2014). A cognizable group must be defined by an immutable or fundamental characteristic, defined with particularity, and socially distinct within Ecuadorian society, without relying on the persecution itself to define the group. *See Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985).

Withholding of removal requires the applicant to show that it is more likely than not that his life or freedom would be threatened on account of a protected ground upon return. INA § 241(b)(3); *INS v. Stevic*, 467 U.S. 407 (1984). Unlike circuits that apply a lower nexus standard to withholding, the Second Circuit has held, deferring to the Board's decision in *Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010), that the one central reason standard governs withholding claims as well as asylum claims. *Quitizaca v. Garland*, 52 F.4th 103, 108 to 114 (2d Cir. 2022). Respondent's nexus showing is accordingly developed under the one central reason standard throughout this Statement, rather than under the lower "a reason" standard some other circuits apply to withholding. *See Barajas-Romero v. Lynch*, 846 F.3d 351, 358 to 360 (9th Cir. 2017) (cited only to illustrate the circuit split, not as controlling authority in this proceeding).

Protection under the Convention Against Torture requires the applicant to establish that it is more likely than not that he would be tortured if removed, by or with the consent or acquiescence of a public official. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). Acquiescence includes a public official's willful blindness to torture inflicted by a private actor, followed by the official's breach of a legal duty to intervene. *Pierre v. Gonzales*, 502 F.3d 109, 118 to 119 (2d Cir. 2007); *De La Rosa v. Holder*, 598 F.3d 103, 109 to 110 (2d Cir. 2010). CAT eligibility does not require a protected ground.

IV. ARGUMENT

1. Mr. Oscar Patricio Azogue Martinez is Eligible for Asylum

a) Past Persecution

An asylum applicant establishes past persecution by showing that he suffered harm in his country of nationality on account of a protected ground and that, because of such persecution, he is unable or unwilling to return to that country or to avail himself of its protection. INA §§ 101(a)(42)(A), 208(b)(1)(B); 8 C.F.R. § 1208.13(b)(1). "Persecution is the infliction of suffering or harm upon those who differ on the basis of a protected statutory ground," and includes "non-life-threatening violence and physical abuse." *Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332, 341 (2d Cir. 2006) (internal quotation marks and citations omitted). The harm must be inflicted by either the government or by a person or entity the government is "unwilling or unable to control." *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). In assessing whether persecution has occurred, the adjudicator must consider the relevant events cumulatively rather than in isolation. *Poradisova v. Gonzales*, 420 F.3d 70, 79-80 (2d Cir. 2005).

Respondent endured a months-long campaign directed at forcing his submission to Los Choneros, beginning with demands communicated through his workers, escalating to repeated threats conveyed by phone, sustained surveillance of his worksite and direct confrontations in which the men identified him by name, demonstrated knowledge of where he lived and how he moved through the city, and warned that his continued refusal would carry consequences. Respondent clearly understood these threats to mean they would take his life for challenging their authority.¹⁶

The campaign culminated in a coordinated nighttime assault on December 29, 2023, when three individuals from the criminal organization intercepted Respondent as he returned home, threw him to the ground, and beat him, striking his head with a weapon and causing a deep laceration, heavy bleeding, and loss of consciousness in a public street. The assailants told him he was being punished for his defiance and for behaving as an informer, and that he would not survive the next encounter. Respondent sustained a deep head injury that caused him to lose consciousness and left a permanent scar that remains as a reminder of his trauma to this day. A physician examined Respondent the following day and certified a head trauma, corroborating the physical harm.¹⁷

¹⁶See Declaration of Oscar Patricio Azogue Martinez ¶¶ 7 to 21 (Evidence)

¹⁷See Declaration of Oscar Patricio Azogue Martinez ¶¶ 25 to 33 (Evidence); see also Photograph of Head Wound Inflicted on Respondent During the December 29, 2023 Incident and Medical Report Documenting Physical Injury Sustained by the Respondent (Evidence Part 04); see also Letters of Support (Evidence Part 03).

The harm did not end with the assault. In the days that followed, Los Choneros continued to surveil his worksite and Respondent continued to receive calls from unknown numbers, which he stopped answering out of fear that they could be used to locate him, and he understood that Los Choneros already knew where his mother and his daughters lived and how he moved between cities. Even after he departed the country, his brother continued receiving calls from the group, demonstrating the group's interest in retaliation remains.¹⁸

The persecutor is Los Choneros, one of Ecuador's most powerful and violent criminal organizations, which exercises territorial control and quasi-governmental authority, including in the provinces where Respondent lived and worked and throughout the national territory¹⁹.

Death threats are among the “extreme” forms of harm that can be characterized as persecution. *See Rios v. Ashcroft*, 287 F.3d 895, 900 (9th Cir. 2002) (“The fact that anonymous callers repeatedly threatened to kill petitioners’ family is sufficient basis to find persecution”). The threats posed on Respondent are neither speculative or specious; rather, they are immediate and concrete, as they ultimately escalated to life-threatening physical violence, which was solely interrupted by external interference. These circumstances satisfy the criteria for past persecution articulated by the Second Circuit in *KC v. Garland*, 108 F.4th 130 (2d Cir. 2024).

Physical assaults and beatings are well-established forms of persecution under U.S. asylum law. *See Beskovic v. Gonzales*, 467 F.3d 223, 2006 (2nd Cir. 2006); *Tian-Yong Chen v. INS*, 359 F.3d 121, 128 (2d Cir.2004). *Ivanishvili v. U.S. Department of Justice*, 433 F.3d 332, 342 (2d Cir.2006) (recognizing that “violent conduct generally goes beyond the mere annoyance and distress that characterize harassment”). Non-life threatening violence and physical abuse also characterizes past persecution. *Tian-Yong Chen v. INS*, 359 F.3d 121, 128 (2d Cir.2004). In the present case, the violence Respondent suffered rises to the level of life-threatening harm, as he inflicted a deep head injury and caused him to lose consciousness, far exceeding the level of mere harassment.

Considered cumulatively, the repeated death threats, the surveillance of Respondent's worksite, the violent assault and resulting head trauma, and the post-attack threats to Respondent and his family establish past persecution.

b) Well-Founded Fear of Future Persecution and Futility of Internal Relocation

¹⁸ See Declaration of Oscar Patricio Azogue Martinez ¶¶ 39 (Evidence)

¹⁹ See Country Conditions (Evidence Part 02).

Because Respondent has established past persecution on account of a protected ground, a regulatory presumption arises that he holds a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). The Department of Homeland Security bears the burden of rebutting that presumption by a preponderance of the evidence, either by showing a fundamental change in circumstances or by showing that Respondent could safely and reasonably relocate within Ecuador. 8 C.F.R. § 1208.13(b)(1)(i)-(ii).

The record forecloses a finding of fundamental change. Respondent's own testimony establishes that Los Choneros remains one of Ecuador's strongest criminal organizations, that the government wages a constant campaign against it, and that it nonetheless persists, notwithstanding the extradition to the United States of its principal leader, alias Fito. Rather than diminishing the group's reach, the extradition further fragmented the organization and intensified factional violence and territorial disputes nationwide.²⁰

The threats against Respondent likewise did not cease with his departure. Unknown callers continued contacting his brother both while Respondent was in transit and after his arrival in the United States, demonstrating that the group's interest in him persisted and was not contained to a single province, but extended beyond national borders.²¹

Respondent's own attempt at relocation confirms rather than rebuts this conclusion. After the December 2023 attack, he did not remain in the area where he had been targeted; his mother took him to her home in Ambato, where he stayed for approximately twenty days before leaving Ecuador. Even there, he continued receiving calls from unknown numbers, which he stopped answering out of fear that they could be used to locate him. During the threats that preceded the attack, Los Choneros had already told Respondent that they knew where his mother lived, where his daughters lived, and how he moved between cities.²² Relocation is accordingly not a hypothetical vulnerability in this case; it is a documented failure that already occurred on this record.

The country conditions evidence corroborates what Respondent experienced individually. Los Choneros and allied or rival factions such as Los Lobos control drug trafficking corridors, prisons, and territory across multiple provinces, and both organizations were designated Foreign Terrorist Organizations by the U.S. Department of State based on findings of national and

²⁰See Country Conditions (Evidence Part 03, CC6, CC14)

²¹See Declaration of Oscar Patricio Azogue Martinez ¶ 39 (Evidence).

²²See Declaration of Oscar Patricio Azogue Martinez ¶¶ 38, 39 (Evidence).

international reach.²³ Rather than weakening that reach, the 2025 extradition of Los Choneros' principal leader intensified factional violence and territorial disputes nationwide, driving a surge in massacres.²⁴ Human Rights Watch reports that the country's homicide rate has risen approximately 430 percent within five years, reflecting the growing influence of criminal organizations throughout the national territory.²⁵ State institutions, meanwhile, face documented corruption and incapacity in confronting these organizations, including infiltration of local police forces.²⁶ Respondent's own decision not to report the December 2023 attack, based on his knowledge that police in his sector were infiltrated by the organization, reflects at the individual level the same institutional incapacity the country conditions record describes at the national level.²⁷

For internal relocation to defeat a claim, there must be an area of the country where conditions are substantially better than those giving rise to the original fear, not merely a different location within the same national landscape of risk. *See Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33 (BIA 2012). The factors set out in 8 C.F.R. § 1208.13(b)(3), including the size of the country, and the size, numerosity, and reach of the alleged persecutor, weigh uniformly against reasonableness here. The organization pursuing Respondent operates on a national, rather than merely regional, scale, and it is equipped with high-powered military equipment and maintains direct cooperation and alliances with government actors.²⁸

Respondent also satisfies the objective component of a well-founded fear, which requires a showing that a persecutor has the capability and inclination to carry out the harm feared and is aware, or could become aware, of the applicant's protected characteristic. *See Kyaw Zwar Tun v. INS*, 445 F.3d 554 (2d Cir. 2006); *Matter of Mogharrabi*, 19 I&N Dec. 439, 445–46 (BIA 1987). Los Choneros demonstrated capability through its documented national infrastructure and its FTO designation²⁹, it demonstrated inclination through an escalating pattern of threats culminating in a violent physical attack in which Respondent was told he would not survive a second encounter, and it demonstrated awareness of Respondent specifically, not merely of persons in his situation generally, by identifying him as the individual in charge of his job site

²³ See Country Conditions (Evidence Part 03, CC6, CC7, CC8)

²⁴ See Country Conditions (Evidence Part 03, CC14, CC10)

²⁵ See Country Conditions (Evidence Part 03, CC15).

²⁶ See Country Conditions (Evidence Part 03, CC2, CC5, CC12)

²⁷ See Declaration of Oscar Patricio Azogue Martínez ¶ 36 (Evidence).

²⁸ See Country Conditions (Evidence Part 03, CC9).

²⁹ See Country Conditions (Evidence Part 03, CC8)

and by locating his mother's and daughters' residences after his relocation. For these reasons, this case is unlike *Singh v. Garland*, 11 F.4th 106, 117 (2d Cir. 2021), where the Second Circuit upheld a relocation finding based on the absence of any nationwide tracking mechanism and the absence of evidence that anyone other than high-profile individuals drew the pursuing organization's interest.

The record establishes neither a fundamental change in circumstances, given Los Choneros' continued and expanding national operations following the extradition of its principal leader, nor the availability of a safe and reasonable internal relocation, given the organization's documented nationwide reach, the state's compromised capacity to confront it, and Respondent's own failed attempt to relocate to Ambato.

c) Mr. Oscar Patricio Azogue Martinez Suffered Past Persecution on Account of His Imputed Political Opinion Antithetical to the Authority Los Choneros Claimed as a Parallel Structure of Power

A political opinion involves 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, regulations, or policy, an organization that aims to overthrow the government, or a group that plays some other similar role in society. *See Zelaya-Moreno v. Wilkinson*, 989 F.3d 190, 199 to 200 (2d Cir. 2021). Consistent with that standard, resistance to a criminal organization can constitute political opinion when it transcends mere self-protection and represents a challenge to the legitimacy or authority the organization claims to exercise. *See Hernandez-Chacon v. Barr*, 948 F.3d 94, 104 (2d Cir. 2020) (resistance to a gang member's assault "arguably took on a political dimension by transcending mere self-protection to also constitute a challenge to the authority" of the gang).

By contrast, a refusal to pay that reflects only a self-interested unwillingness to be victimized, without more, does not by itself establish a political opinion. *See INS v. Elias-Zacarias*, 502 U.S. 478, 482 to 83 (1992) (forcible recruitment by a guerrilla organization does not itself show that the organization was motivated by the recruit's actual or imputed political opinion).

Respondent's refusal aligns with the resistance found politically significant in *Hernandez-Chacon* and thereby meets the political opinion standard that *Elias-Zacarias* requires. Los Choneros is a designated Foreign Terrorist Organization that exercises substantial territorial

control, imposes its own internal rules, regulates and taxes economic activity, and punishes those who defy its authority. Through these practices, the organization operates not merely as a criminal enterprise, but as an autonomous power structure capable of imposing its authority over individuals and communities within the territories it controls.³⁰

Respondent did not simply decline to pay on a single occasion. He refused publicly and repeatedly over a period of months, in the presence of witnesses, after the organization escalated to surveillance, death threats and physical abuse. The persecutors' own words at the moment of the assault confirm that framing. They warned Respondent that he would not survive to tell anyone or seek help, associating his behavior to that of an informer, and told him that the attack was punishment for his continued refusal to obey, not an unresolved debt.³¹

That framing is consistent with the anti-corruption and anti-authority cases in which resistance to a persecutor's claimed authority has been recognized as political opinion. *See Grava v. INS*, 205 F.3d 1177, 1181 (9th Cir. 2000) (exposing or refusing to participate in official corruption may amount to political opinion); *Sagaydak v. Gonzales*, 405 F.3d 1035 (9th Cir. 2005); *Hernandez-Chacon v. Barr*, 948 F.3d 94, 104 (2d Cir. 2020) (resisting corruption and abuse of power, including non-governmental abuse of power, can be an expression of political opinion).

Los Choneros' conduct toward Respondent must be understood against the organization's function as a parallel structure of governance, not as an isolated series of criminal demands. Los Choneros did not operate as isolated criminals but as an organized group exercising territorial control over local commerce and, in Respondent's own words, local politics³².

The organization determined who could work without paying, collected recurring protection payments from merchants and businesses throughout the area, and enforced its rules through violence when disobeyed, all while the Ecuadorian government, as Respondent testified, constantly confronted the organization without managing to control it.³³ The organization's documented reach and structure, including its designation as a Foreign Terrorist Organization and its role in trafficking, extortion, and territorial control across multiple provinces, corroborates that Respondent's community was not an isolated exception.³⁴

³⁰See Country Conditions (Evidence Part 03, CC7, CC8, CC10)

³¹See Declaration of Oscar Patricio Azogue Martinez ¶¶ 29 to 30 (Evidence).

³²See Declaration of Oscar Patricio Azogue Martinez ¶ 10 (Evidence).

³³See Declaration of Oscar Patricio Azogue Martinez ¶¶ 10 to 11 (Evidence); *see also* Country Conditions (Evidence Part 03, CC1, CC5)

³⁴See Country Conditions (Evidence Part 03, CC 5, CC 6, CC 7, CC 8)

Respondent's refusal aligns with the resistance found politically significant in *Hernandez-Chacon* and thereby meets the political opinion standard that *Elias-Zacarias* requires. Respondent did not simply decline to pay on a single occasion. He refused publicly and repeatedly over a period of months, in the presence of witnesses, and under strong pressure to submit.³⁵

Within that structure, Respondent's sustained refusal was not perceived by Los Choneros as a private financial disagreement, but as conduct antithetical to the order it sought to impose, treated first as defiance requiring correction, and ultimately as a belief that demanded complete suppression, in order to affirm its power.

It was this political challenge that motivated the persecution described herein and ultimately culminated in a violent life-threatening assault during which Respondent was beaten until he partly lost consciousness.³⁶

The persecutors' own words at the moment of the assault confirm that framing. They warned Respondent that he would not survive to tell anyone or seek help, and told him that the attack was punishment for his continued refusal to obey.³⁷ That the organization sought to foreclose Respondent's access to protection, not merely to collect payment, is corroborated by his own decision not to report the assault to the police, based on his knowledge that officers in his sector were infiltrated by the organization.³⁸

This framing is consistent with the consolidated understanding that resistance to a persecutor's claimed authority has been recognized as carrying a political dimension. *See Grava v. INS*, 205 F.3d 1177, 1181 (9th Cir. 2000) (exposing or refusing to participate in official corruption may amount to political opinion); *see also Castro v. Holder*, 597 F.3d 93, 100-01 (2d Cir. 2010) (opposition to corruption may be political when it transcends self-protection and challenges the legitimacy of the ruling regime, particularly where the corruption is inextricably intertwined with governmental operation).

Extortion of a small business, standing alone, does not suffice to establish a political opinion. *See Quichimbo-Caracundo v. Bondi*, 130 F.4th 42 (2d Cir. 2025) (summary order) (denying review of asylum and withholding claims premised on gang extortion of a small

³⁵See Declaration of Oscar Patricio Azogue Martinez ¶¶ 9-12, 16-21 (Evidence)

³⁶See Declaration of Oscar Patricio Azogue Martinez ¶¶ 29, 40 (Evidence)

³⁷See Declaration of Oscar Patricio Azogue Martinez ¶ 29 (Evidence)

³⁸See Declaration of Oscar Patricio Azogue Martinez ¶ 36 (Evidence)

business, where the the record is insufficient to identify the opposition to the gang as taking a political dimension and surpassing the self-protection standard).

This case differs because Respondent did not merely decline to pay and seek police protection. He affirmatively expressed his opposition to the group and his refusal to submit to its authority; his statements and conduct communicated to the organization that he rejected its claimed power over his personal liberty, livelihood, and freedom of movement, not solely the payment requests³⁹ – Los Choneros’ perception of defiance derives from Respondent’s own position. The organization consequently had direct reason to perceive Respondent not merely as someone unwilling to pay or comply, but as someone who affirmatively rejected its authority and refused to submit to its control. His resistance therefore transcended mere self-protection or economic self-interest and constituted a direct challenge to the organization’s authority.

Where the persecutor itself frames the harm as punishment for defiance, forecloses the victim's access to protection, and treats resistance as a challenge to the order it claims to impose, the self-protective characterization that controlled in *Quichimbo-Caracundo* does not control here.

d) Mr. Oscar Patricio Azogue Martinez Suffered Past Persecution on Account of His Particular Social Groups

Although Respondent did not initially identify membership in a particular social group as a ground for his claim in his original Form I-589, he subsequently corrected this omission by submitting an amended Form I-589. His initial reliance solely on political opinion resulted from his lack of legal knowledge as a *pro se* respondent and did not accurately reflect the full scope of his claim or the facts underlying his persecution. As demonstrated below, Respondent can clearly establish that he was persecuted on account of his membership in a particular social group, both cumulatively with his political opinion and on an independent basis.

i) Particular Social Groups Consisting of “Ecuadorians Who, Having Been Directly Confronted by Los Choneros, Refused to Submit to the the Organization’s Authority Asserted Over Their Liberty” and “Ecuadorians Publicly Identified as Opponents of Los Choneros”

³⁹ See Declaration of Oscar Patricio Azogue Martinez ¶¶ 9 to ‘5.

Matter of Acosta 19 I&N Dec. 211, 222 (BIA 1985) held that a particular social group is comprised of persons who hold a common, immutable characteristic. A particular social group must also be defined with particularity and be socially distinct. *See Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *see also Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014). Immutability has been defined as a characteristic that one cannot change or is so fundamental that individual should not be required to change it. *See Matter of Acosta* 19 I&N Dec. 211, 222 (BIA 1985). Particularity means that the group cannot be indeterminate, too subjective, inchoate, or variable. *See Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007). Lastly, social distinction requires that the group be perceived as a group by the society in which it exists. *See Matter of W-G-R-*, 26 I&N Dec. at 216.

The groups here provided are cognizable because they satisfy each of the three requirements the Board has established for a particular social group: a common, immutable characteristic, particularity, and social distinction. *See Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985); *See Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014) (clarifying that the earlier "social visibility" formulation refers to social distinction, meaning perception by the relevant society, rather than literal ocular visibility). As demonstrated below, the group is defined by a completed and therefore immutable act, is bounded with sufficient particularity to exclude the general population exposed to Los Choneros' activity, and is recognized as distinct both within Respondent's own community and, at the national level, in the documented country conditions record.

Immutability: The characteristic defining this group is not the refusal itself as an ongoing trait, but the completed, historical act of having been directly confronted by Los Choneros and having refused, publicly and repeatedly, to submit to the authority the organization asserted over Respondent's liberty. A past experience is, by its very nature, immutable, because it has already occurred and cannot be undone. *See Matter of C-A-*, 23 I&N Dec. 951, 958 (BIA 2006). That refusal began in February 2023, when Respondent rejected the initial demand for weekly payment, and continued through repeated calls and an in-person confrontation in August 2023, culminating in the December 2023 assault.⁴⁰ Because this is past conduct rather than a present, changeable trait, it satisfies the immutability requirement in the same manner as other historical experiences the Board has recognized. *See Matter of Acosta*, 19 I&N Dec. at 233-34; *see also Matter of R-A-*, 22 I&N Dec. 906, 918 (BIA 1999) (citing *Fatin v. INS*, 12 F.3d 1233, 1239-41

⁴⁰See Declaration of Oscar Patricio Azogue Martinez ¶¶ 9, 14, 16-17, 20-21 (Evidence)

(3d Cir. 1993)). Likewise, the label of an “opponent” imposed by Los Choneros cannot be voluntarily changed or disavowed by the individual. And the Respondent should not be expected to change his belief system that motivated refusal, as it is fundamental to his individual conscience. *Matter of Acosta*, 19 I&N Dec. at 233-34; *Matter of C-A-*, 23 I&N Dec. at 956.

Particularity: Particularity here is supplied by the combination of three concrete elements: a) the identity of the persecutor, Los Choneros specifically, rather than criminal actors generally; b) the requirement of direct, in-person confrontation by that organization, rather than mere indirect exposure to a criminal environment; and c) the requirement of an express and public refusal, communicated to the organization, rather than passive, private, or unknown noncompliance; or d) the parcel of the national population that were classified as “opponents” to the aforementioned criminal organization, and who that are publicly and immediately recognized as so. Respondent satisfies each element concretely. He was contacted by phone and then in person by individuals who identified themselves as Los Choneros, he refused repeatedly over a period of months, and he was confronted in person with a witness present.⁴¹ Los Choneros specifically targeted him because of his continued refusal, viewing his defiance as an opposition to their authority and, consequently, as a threat to their continued power and control.

This group is materially narrower than categories already rejected for lack of particularity. It differs from “Mexican business owners” in *Galeana v. Garland*, No. 23-3664 (6th Cir. Mar. 4, 2024), which contained no limitation as to size, the nature of the commercial activity, or location. It also differs from the group of “noncriminal drug informants working against the Cali drug cartel,” rejected in *Matter of C-A-*, 23 I&N Dec. at 957-61, where the Board found that the cartel itself retaliated against “anyone perceived to have interfered with its operations”. The groups proposed here do not encompass anyone who may have interfered in some way with Los Choneros’ operations; it encompasses only those the organization directly confronted and who, even then, refused publicly and repeatedly, being labeled as opponents to their authority, a universe defined by specific, verifiable conduct rather than generalized exposure to criminal risk.

Social Distinction: Social distinction requires proof that the relevant society, not merely the persecutor, perceives the group as distinct. See *Matter of A-M-E & J-G-U-*, 24 I&N Dec. at 74-75. That requirement defeated the proposed group of “affluent Guatemalans” in that case, because the record showed that crime and extortion in Guatemala affected all socioeconomic

⁴¹See Declaration of Oscar Patricio Azogue Martinez ¶¶ 9, 20, 22 (Evidence); Edson Fabian Leon Chicaiza’s Letter of Support (Evidence Part 03, Exhibit 3).

levels indiscriminately, without evidence that society recognized the wealthy as a specifically targeted class. Similarly, in *Matter of C-A-*, the Board denied social visibility to informants because, by their very nature, informants seek to remain unknown, and the record showed the cartel attacked anyone perceived as a threat, not a recognizable social category. 23 I&N Dec. at 959-961.

Respondent's case is distinguishable from both. Unlike the informants in *C-A-*, his refusal was not a hidden act, it was public, witnessed by others, and known within the community.⁴² Respondent was well-known in all of the region and his associates and family members were directly targeted because of his association to him⁴³. Unlike the "affluent Guatemalans" in *A-M-E & J-G-U-*, the pattern of consequences for refusal here was not generic or indiscriminate. Respondent testified that he knew of other people in his community who were also being threatened by the same group, and that it was commonly known how Los Choneros treated those who refused to pay or obey, including businesses that closed for non-payment and killings in the area for similar reasons.⁴⁴ General Ecuadorian society identifies the opponents to one of the largest factions in the country.

This is community-level knowledge of a recognized consequence specifically tied to refusal, not a diffuse, generalized perception of risk shared across all of society. That community-level pattern is corroborated at the national level by the country conditions record, which documents Los Choneros' collection of "vacunas" as a widely reported phenomenon affecting businesses and transport companies across multiple provinces, not an isolated or hidden practice.⁴⁵

ii) Particular Social Group Consisting of “Ecuadorian construction supervisors who were personally and directly confronted by Los Choneros and who openly refused to recognize the organization's authority over their worksites”

As demonstrated below, the group is defined by a completed and therefore immutable act, is bounded with sufficient particularity to exclude both the general population and the broader category of construction workers generally, and is recognized as distinct both within

⁴²See Declaration of Oscar Patricio Azogue Martinez ¶¶ 7, 14, 18-22 (Evidence); Letters of Support (Evidence Part 03).

⁴³See Declaration of Oscar Patricio Azogue Martinez ¶¶ 5-6, 18-20, 39 (Evidence)

⁴⁴See Declaration of Oscar Patricio Azogue Martinez ¶¶ 11, 24 (Evidence)

⁴⁵See Country Conditions (Evidence Part 03, CC 5)

Respondent's own community and, at the national level, in the documented country conditions record.

Immutability: The characteristic defining this group is not Respondent's occupation standing alone, but the completed, historical act of having been personally and directly confronted by Los Choneros in his role as construction supervisor and having openly and repeatedly refused to recognize the organization's authority over his worksite. A past experience is, by its very nature, immutable, because it has already occurred and cannot be undone. *See Matter of C-A-*, 23 I&N Dec. 951, 958 to 959 (BIA 2006). Respondent's occupational role made him visible⁴⁶ and placed him in a position where the organization approached him directly, and on each occasion he refused.⁴⁷ Because this refusal, communicated in the context of his supervisory role, is past conduct rather than a present or changeable condition, it satisfies the immutability requirement in the same manner as other completed, historical experiences the Board has recognized. *See Matter of Acosta*, 19 I&N Dec. at 233-34.

Particularity: Particularity here is supplied by the combination of four concrete elements: a) the occupational role of construction supervisor, which placed Respondent in a position of visible authority over a worksite's workforce and made him identifiable and reachable to the organization; b) the identity of the persecutor, Los Choneros specifically; c) the requirement of direct, in-person confrontation by that organization; and d) the requirement that the refusal be open and repeated, communicated by Respondent himself to Los Choneros on more than one occasion, rather than inferred or passive noncompliance.

Respondent's own testimony establishes each element. His work made him visible, moving between projects such that others could know where he worked and who worked under him. He was contacted directly and confronted in person, and he refused repeatedly over several months, with a coworker directly present for at least one confrontation.⁴⁸

The group proposed here excludes construction workers generally, since it is limited to those occupying a supervisory role; it excludes anyone never directly and personally confronted by Los Choneros; and it excludes anyone whose noncompliance was passive, private, or unknown to the organization. What remains is a group defined by verifiable, specific conduct

⁴⁶ See Declaration of Oscar Patricio Azogue Martinez ¶ 6 (Evidence).

⁴⁷ See Declaration of Oscar Patricio Azogue Martinez ¶¶ 5, 7, 9, 20-21 (Evidence).

⁴⁸ See Declaration of Oscar Patricio Azogue Martinez ¶¶ 6, 7, 9, 14, 16, 17, 20 (Evidence)

occurring within a specific occupational role, not a broad economic status or generalized exposure to crime.

Social Distinction: The social distinction requirement demands evidence that the group is recognized as distinct by the surrounding society, not simply by the organization that targets it. *See Matter of A-M-E & J-G-U-*, 24 I&N Dec. 69, 74-75 (BIA 2007). The Board denied social distinction to the proposed group of "affluent Guatemalans" in that case precisely because extortion and violent crime there cut across every socioeconomic class, leaving no evidentiary basis for a societal perception that wealth marked out a specifically targeted group. The same requirement barred the informants' claim in *Matter of C-A-*, since informants by design try to stay hidden, and the record there showed the Cali cartel struck at anyone it viewed as a threat, not at a category the community would recognize as distinct. Neither obstacle is present here.

Respondent's occupational role was not something he could keep private. His work required him to move visibly between jobsites, in a manner that made his identity and function known to others in the area.⁴⁹ His confrontations with Los Choneros were likewise not concealed. At least one occurred with a coworker present who heard part of the threats.⁵⁰

Respondent's testimony also shows that his experience formed part of a pattern already known within his community, not an isolated event. He was aware of others in his community facing threats from the same organization, and he understood, from what circulated locally, how Los Choneros dealt with those in his position who refused to pay or obey, including business closures tied to non-payment and killings in the area attributed to the same cause.⁵¹ This local recognition finds a national counterpart in the country conditions record, which documents the collection of "vacunas" from businesses across several provinces as an openly reported practice rather than a concealed or isolated one.⁵²

The proposed group is, thus, cognizable.

V. STATE UNABLE OR UNWILLING TO PROTECT

Where the persecutor is a non-state actor, the applicant need only show that the government is unable or unwilling to control it. *See Matter of Acosta*, 19 I&N Dec. 211, 222-23 (BIA 1985). The record establishes that incapacity decisively, at the national level. Faced with an

⁴⁹See Declaration of Oscar Patricio Azogue Martinez ¶ 6 (Evidence)

⁵⁰See Declaration of Oscar Patricio Azogue Martinez ¶ 20 (Evidence)

⁵¹See Declaration of Oscar Patricio Azogue Martinez ¶¶ 11, 24 (Evidence)

⁵²See Country Conditions (Evidence Part 03, CC 5)

organization it could not contain through ordinary law enforcement, the government of Ecuador declared a nationwide state of emergency and an "internal armed conflict" in January 2024 and designated Los Choneros among twenty-two criminal groups characterized as terrorist organizations, authorizing expanded military operations against them.⁵³

More than two years later, that same organization continues to operate, to expand, and to punish those who defy it, the clearest possible evidence that the state's own emergency measures have not succeeded in displacing it. On the contrary, this intense militarization only led to rising reports of human rights abuses.⁵⁴

The scale of the organization Respondent faced explains why. Los Choneros emerged in the 1990s as a local gang in Chone, Manabí province, but transformed over the following decade into Ecuador's most formidable prison mafia and a key service provider to transnational drug traffickers, including Mexico's Sinaloa Cartel and the Jalisco Cartel Nueva Generación.⁵⁵

By the start of 2024, the Choneros and their sub-factions, the Águilas and the Fatales, were present in ten of Ecuador's twenty-four provinces, and the organization, together with Los Lobos and Los Tiguerones, has consolidated control over drug trafficking routes and prison corridors nationwide, financing electoral campaigns and maintaining influence over local governance structures in the process.⁵⁶ This is the same organization the United States Department of State designated a Foreign Terrorist Organization on September 5, 2025, based on findings of national and international reach, not a loosely organized band of local extortionists.⁵⁷

Ecuador's own record confirms it cannot reach this organization through its institutions. Investigations into organized crime routinely stall, and the same country conditions record that documents the government's emergency measures also documents credible allegations of arbitrary killings, torture, and enforced disappearances committed by the security forces deployed to combat these groups, evidence of an institutional response that has traded one form of lawlessness for another rather than restoring the rule of law.⁵⁸

This incapacity is not confined to the coastal provinces most associated with Los Choneros. In Ambato and the surrounding province of Tungurahua, where Respondent's mother and daughters live and where he himself sought refuge after the December 2023 assault,

⁵³See Country Conditions (Evidence Part 03, CC 1)

⁵⁴See Country Conditions (Evidence Part 03, CC13).

⁵⁵See Country Conditions (Evidence Part 03, CC 6, CC7)

⁵⁶See Country Conditions (Evidence Part 03, CC 5, CC6, CC7)

⁵⁷See Country Conditions (Evidence Part 03, CC 8)

⁵⁸See Country Conditions (Evidence Part 03, CC1, CC2)

hundreds of residents marched in June 2026 to demand basic security following the disappearance of a community member, a demonstration that occurred only after searches by the National Police and assurances from the provincial prosecutor had produced no results.⁵⁹

Respondent's own decision not to report the December 2023 assault reflects the same reality documented at the national level, not a personal choice that undermines his claim. He knew that officers in his sector were infiltrated by Los Choneros, so that a formal report risked delivering the information directly to the organization he feared.⁶⁰ This distrust of the police and law enforcement agencies is a common denominator in Ecuador, and the public does see state institutions as reliable or effective in assuring protection.⁶¹

The penetration of Los Choneros and other organized criminal groups into Ecuadorian state institutions further undermines the State's ability and willingness to provide effective protection. Reports indicate deep-rooted corruption, including narco-generals within the security forces, manipulation of judicial appointments by criminal organizations, and criminal groups' financing of electoral campaigns and influence over local governance structures⁶². This infiltration compromises the independence and effectiveness of the very institutions responsible for protecting victims and, where officials are compromised or influenced by criminal interests, diminishes any incentive to meaningfully confront these organizations.

Given a country conditions record showing that the state itself has resorted to a declared internal armed conflict and military deployment against an organization that nonetheless continues to expand, Respondent's individualized assessment that denunciation would be futile and dangerous was not merely reasonable, it was consistent with the documented experience of Ecuadorian institutions as a whole.

VI. WITHHOLDING OF REMOVAL

Should the Court deny Respondent's application for asylum, he is alternatively entitled to withholding of removal. A finding of past persecution gives rise to a presumption of future persecution sufficient to establish eligibility for withholding of removal. 8 C.F.R. § 1208.16(b)(1)(i). Even an applicant who has not established past persecution is statutorily eligible for withholding of removal upon a showing that it is more likely than not that he would

⁵⁹See Country Conditions (Evidence Part 03, CC 16)

⁶⁰See Declaration of Oscar Patricio Azogue Martinez ¶ 36 (Evidence)

⁶¹See Country Conditions (Evidence Part 03, CC 12, CC9).

⁶²See Country Conditions (Evidence Part 03, CC5, CC9, CC10, CC3).

be persecuted on account of a protected ground, and that internal relocation would not be reasonable. 8 C.F.R. § 1208.16(b)(2).

As set forth above, Respondent established past persecution on account of his imputed political opinion and, cumulatively, his membership in the proposed particular social groups, which entitles him to the rebuttable presumption of future persecution. 8 C.F.R. § 1208.16(b)(1)(i).

Los Choneros has not weakened since Respondent's departure; its reach expanded following the 2025 extradition of its principal leader, its threats against Respondent continued through contact with his brother after he left the country, and the state's inability to control the organization is documented at both the national and local level. Nor was internal relocation reasonably available to him.

Respondent's nexus showing satisfies the one central reason standard the Second Circuit applies to withholding claims. *See Quituizaca v. Garland*, 52 F.4th 103, 108-14 (2d Cir. 2022). His sustained, public refusal to submit to the authority Los Choneros claimed over his liberty was the reason his persecutors themselves gave for the December 2023 assault, not an incidental byproduct of a broader criminal enterprise.

Because Respondent has established past persecution on account of a protected ground, an un rebutted presumption of future persecution, and the requisite nexus, the Court must grant Respondent's application for withholding of removal.

VII. PROTECTION UNDER THE CONVENTION AGAINST TORTURE

For an act to constitute torture, it must satisfy each of the following elements: the act causes severe physical or mental pain and suffering; the act is intentionally inflicted; the act is inflicted for a proscribed purpose; the act is inflicted by, at the instigation of, or with the consent or acquiescence of a public official who has custody or control of the victim, and the act does not arise from lawful sanctions. *See Matter of J-E-*, 23 I&N Dec. 291, 297 (BIA 2002); 8 C.F.R. § 1208.18(a)(1). All evidence relevant to the possibility of future torture must be considered. *See Matter of J-E-*, 23 I&N Dec. at 304; 8 C.F.R. § 1208.16(c)(3). As set forth throughout this brief and addressed specifically here, Respondent is more likely than not to be tortured if returned to Ecuador.

The December 29, 2023 attack independently satisfies the definition of torture. Three individuals threw Respondent to the ground, punched and kicked him throughout his body, and

struck him in the head with a weapon, causing a deep, heavily bleeding wound and partial loss of consciousness. Respondent was left with a deep cut on the head and is permanently scarred⁶³. This was not a spontaneous or opportunistic act, it was coordinated, involved multiple assailants, and was accompanied by explicit statements that it was punishment for Respondent's continued refusal to obey and a warning that a second encounter would be fatal. That combination, coordinated group violence, a weapon-inflicted head injury, and an express threat to his life, satisfies the requirement of severe physical and mental pain and suffering, intentionally inflicted for the proscribed purpose of punishing and coercing him.

The record establishes that *Los Choneros* operates with the acquiescence of the Ecuadorian State, including through willful blindness.⁶⁴ Acquiescence encompasses situations in which public officials remain willfully blind to torture inflicted by non-state actors and thereafter fail to discharge their legal duty to intervene. *Pierre v. Gonzales*, 502 F.3d at 118 to 119; *De La Rosa v. Holder*, 598 F.3d at 109 to 110. The United States government's own designation of *Los Choneros* as a Foreign Terrorist Organization is authoritative recognition that the Ecuadorian State has been unable to control the organization.⁶⁵

Considering the totality of the evidence, including the past torture Respondent has already suffered, the continuing threats communicated to his family after his departure, Los Choneros' documented nationwide reach, and the state's demonstrated incapacity and acquiescence, it is more likely than not that Respondent would be tortured if removed to Ecuador. He therefore qualifies for withholding of removal under the Convention Against Torture and, in the alternative, for deferral of removal under 8 C.F.R. § 1208.17.

VIII. HUMANITARIAN ASYLUM

Even if the Court were to find that the presumption of a well-founded fear of future persecution has been rebutted, Respondent remains eligible for asylum on humanitarian grounds based on the severity of the past persecution he suffered. Asylum may be granted, in the exercise of discretion, where the applicant has demonstrated compelling reasons arising from the severity

⁶³See Declaration of Oscar Patricio Azogue Martinez ¶¶ 27-29 (Evidence); see also Photograph of Head Wound Inflicted on Respondent During the December 29, 2023 Incident and Medical Report Documenting Physical Injury Sustained by the Respondent (Evidence Part 04); Letters of Support (Evidence Part 03).

⁶⁴See Country Conditions (Evidence Part 03, CC 1, CC4, CC7, CC13, CC14)

⁶⁵See Country Conditions (Evidence Part 03, CC 8)

of the past persecution that render return unconscionable, regardless of the likelihood of future harm. *See* 8 C.F.R. § 1208.13(b)(1)(iii)(A).

The Board has long recognized that a favorable exercise of discretion may be warranted for humanitarian reasons even where there is little likelihood of future persecution, consistent with the general humanitarian principle that a person who has suffered under atrocious forms of persecution should not be expected to repatriate. *See Matter of Chen*, Interim Dec. 3104, at 19 (BIA 1989) (quoting Office of the U.N. High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status § 136 (1988)); *see also Matter of S-A-K- & H-A-H-*, 24 I&N Dec. 464, 465 (BIA 2008).

The severity standard is satisfied here regardless of any change in country conditions, because it turns on the nature and lasting effects of the harm itself, not on present-day risk. Respondent was punched and kicked throughout his body and struck in the head with a weapon, causing a deep, heavily bleeding wound, and he partly lost consciousness during the attack. He was warned that he would not survive a second encounter and forced to live in fear.⁶⁶

The lasting effects of that assault persist. Respondent continues to feel pain and bears scars from his injuries, experiences a recurring physical sensation at the site of the head wound that reminds him of the attack, and suffers ongoing fear, anxiety, and insomnia.⁶⁷ This combination of severe physical violence, a weapon-inflicted head injury, an explicit death threat tied to survival itself, and persistent physical and psychological aftereffects reflects the kind of atrocity the humanitarian asylum framework was designed to address.

The discretionary factors also favor Respondent. He complied with immigration processing at the border, filed his asylum application before his first hearing, has maintained stable residence and lawful construction employment since shortly after his arrival, and has no adverse immigration or criminal history. *See Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987) (addressing the exercise of discretion with respect to asylum). No adverse factor in the record weighs against a favorable exercise of discretion.

IX. RESPONDENT'S APPLICATION IS NOT SUBJECT TO PRETERMISSION UNDER MATTER OF H-A-A-V

⁶⁶*See* Declaration of Oscar Patricio Azogue Martinez ¶¶ 27-30 (Evidence)

⁶⁷*See* Declaration of Oscar Patricio Azogue Martinez ¶¶ 34, 35 (Evidence)

Pretermission is an extraordinary procedural device, appropriate only where there are no factual issues in dispute and the respondent cannot minimally establish eligibility for relief as a matter of law. *Matter of H-A-A-V*, 29 I&N Dec. 233 (BIA 2025). In the case that gave rise to that standard, the Immigration Judge confirmed with counsel that no facts were in dispute, and the respondent had not identified a particular social group or any other protected ground as the basis for his claim. *Id.* Respondent's case presents the opposite circumstances on both prongs, and pretermission would accordingly be inappropriate here.

Respondent has articulated specific, legally cognizable grounds for relief, supported by a developed evidentiary record. These theories are supported by his declaration, corroborating support letters from the two neighbors who intervened during the December 2023 assault and from the coworker to whom he disclosed the organization's attempt to recruit him for money laundering, a medical report and photograph documenting the physical harm inflicted on him, and sixteen country conditions exhibits documenting Los Choneros' structure, reach, and the state's documented incapacity to control it⁶⁸.

Respondent's claim rests on his imputed political opinion opposing the authority Los Choneros and on his membership in particular social groups defined by his direct, repeated, and public refusal to submit to that authority, protected grounds the respondent in *Matter of H-A-A-V* never identified despite being given the opportunity to do so at the master calendar hearing. *Id.* at 235-36.

This is not a case, as in *H-A-A-V*, where the respondent failed to identify any protected ground; Respondent's claims are pleaded with the specificity, nexus, and evidentiary support that *H-A-A-V* itself contemplates as sufficient to proceed to a merits hearing.

Material factual disputes also remain that only Respondent's own testimony can resolve. These include the credibility of his account of the escalating threats and the December 2023 assault, the extent and effect of the local police infiltration he described and his resulting decision not to report the assault, whether internal relocation was reasonably available to him given his own unsuccessful attempt to relocate to Ambato, and the weight and application of the country conditions evidence to his individualized circumstances.

The evidence presented corroborate portions of this account, but they do not substitute for Respondent's own sworn, cross-examinable testimony on these points. Determinations of this

⁶⁸ See Evidence to Evidence Part 04.

kind, credibility, nexus, and the reasonableness of internal relocation, are inherently factual and cannot be resolved without Respondent's live testimony.

Section 240(b)(4)(B) of the INA, 8 U.S.C. § 1229a(b)(4)(B), guarantees Respondent a reasonable opportunity to present evidence and to be examined on his application, and section 240(c)(4)(B), 8 U.S.C. § 1229a(c)(4)(B), requires the trier of fact to weigh his credible testimony together with the rest of the record before determining whether the burden of proof has been met.

Because Respondent has articulated cognizable protected grounds supported by developed evidence and because genuine factual disputes remain for resolution at a merits hearing, this case falls outside the narrow circumstances in which *Matter of H-A-A-V* permits pretermission, and the application should proceed to a full evidentiary hearing.

X. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court proceed to adjudicate the merits of his claims, and ultimately grant asylum under INA § 208, withholding of removal under INA § 241(b)(3), and protection under the Convention Against Torture.

Respectfully submitted,



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PROOF OF SERVICE

On this day, I, Otavio Haverroth Silva, served a copy of the following documents:

**RESPONDENT'S PRE-HEARING STATEMENT REGARDING ASYLUM,
WITHHOLDING OF REMOVAL, AND CAT ELIGIBILITY**

To the following:

Office Location:	Mailing Address:
Office of the Principal Legal Advisor Department of Homeland Security 250 Delaware Avenue, Suite 773 Buffalo, NY 14202	US Immigration and Customs Enforcement US Department of Homeland Security Office of the Chief Counsel 250 Delaware Avenue, Suite 773 Buffalo, NY 14202

by:

- ☒ Through the EOIR Courts and Appeals System (ECAS), which will automatically send service notification to both parties that a new document has been filed.



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