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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

_____)	
In the Matter of)	
)	
Douglas Santos Conclaves,)	File No. A 220-762-085
Debora Do Carmo Andrade Santos,)	File No. A 220-762-086
Bianca Santos Andrade,)	File No. A 220-762-087
Beatriz Santos Andrade,)	File No. A 220-762-088
Benicio Santos Andrade,)	File No. A 220-762-089
In Removal Proceedings)	
_____)	

Immigration Judge: **Baumgarten, Mary C.** Next Hearing Date: **July 31, 2026, at 1:00 PM**

**RESPONDENTS' LEGAL BRIEF IN SUPPORT OF APPLICATION
FOR ASYLUM, WITHHOLDING OF REMOVAL AND
PROTECTION UNDER CAT**

**RESPONDENTS' LEGAL BRIEF IN SUPPORT OF APPLICATION FOR ASYLUM,
WITHHOLDING OF REMOVAL, AND PROTECTION UNDER THE CONVENTION
AGAINST TORTURE**

Respondents, Douglas Santos Gonçalves (“Mr. Santos” or “Respondent”), the principal applicant, by and through undersigned counsel, respectfully submits this brief in support of his application for asylum and, in the alternative, for withholding of removal and protection under the Convention Against Torture (CAT).

Mr. Santos seeks asylum based on his past persecution and well-founded fear of future persecution on account of his membership in the particular social groups “Former peripheral PCC affiliates recruited as minors who permanently renounced the organization”, “Former PCC affiliates who refused reentry into the organization after being located and contacted”, and “Brazilian men who are perceived by the PCC as traitors for having abandoned the organization”, as well as his actual and imputed political opinion. The persecutor is the Primeiro Comando da Capital (“PCC”), one of the largest and most violent criminal organizations in Brazil, which targeted Mr. Santos after he renounced his peripheral affiliation with the organization and refused its demand that he resume that affiliation.

STATEMENT OF FACTS¹

Mr. Santos was born on September 15, 1983, in the city of Santos, in the state of São Paulo, Brazil. He is a Brazilian national and a practicing Evangelical Christian. He has been married to Debora do Carmo Andrade Santos since 2009, and together they are the parents of three children, Bianca, Beatriz, and Benício, each of whom fled Brazil with him.²

Mr. Santos grew up in conditions of extreme poverty and without stable family support, circumstances that left him exposed to the influence of organized crime from an early age.³ Beginning at approximately sixteen years of age, while still a minor, he was gradually drawn into

¹ Based on the following Respondent's documents: Form I-589 and Amendment; Declaration of Douglas Santos Gonçalves (*See Evidence*); Douglas Santos Gonçalves' Birth Certificate and Passport (*See Evidence Part 04, Exhibit 1*); Respondent's marriage certificate (*See Evidence Part 04, Exhibit 5*); Country Conditions (*See Evidence Part 01*); Letters of Support written by Adan Martins, Ella Margaret Hart, and James and Nancy Hart (*See Evidence Part 02*).

² *See Evidence*, Respondent's Declaration ¶ 1 (*Evidence*).

³ *See Evidence*, Respondent's Declaration ¶¶ 3, 5 (*Evidence*).

the orbit of older youths in his neighborhood who were connected to organized crime, at first without understanding the nature of that environment.⁴

By approximately seventeen, his contact with persons associated with the PCC had become more direct, and he came to be identified within the organization as a “primo leal” (“loyal cousin”), a peripheral status the organization treats as comparable to that of an intern. He was never “baptized,” the term the PCC uses for formal initiation; he never held any leadership position; and he never participated in the organization’s strategic decisions. His involvement remained peripheral throughout and lasted approximately three years, from the age of seventeen to twenty.⁵

At the age of eighteen, Mr. Santos was arrested in São Vicente, São Paulo for possession of drugs for personal use, and he received an alternative sentence, serving no time beyond a period of detention of slightly more than ninety days.⁶

That period of detention deepened rather than diminished his exposure to the organization, because the facility in which he was held operated under the internal control of the PCC.⁷

It was after his release that Mr. Santos encountered the Christian faith, reflected on the direction of his life, and resolved to distance himself permanently from the PCC.⁸ That decision was not a matter of mere convenience or self-protection; it was the product of a genuine ideological transformation through which Mr. Santos came to reject the organization, its methods, the violence it inflicted, and the submission it demanded of those within its orbit.⁹ He understood from experience that openly announcing an intention to leave could be treated as disloyalty or betrayal, and that persons the organization perceives as traitors may face severe retaliation.¹⁰

He therefore made no formal declaration of departure. Instead, he simply stopped appearing, stopped responding to contacts, and relocated to another state without disclosing his

⁴ See Evidence, Respondent’s Declaration ¶¶ 4, 5.

⁵ See Evidence, Respondent’s Declaration ¶ 6.

⁶ See Evidence, Respondent’s Declaration ¶ 7.

⁷ See Evidence, Respondent’s Declaration ¶¶ 7, 8.

⁸ See Evidence, Respondent’s Declaration ¶ 9.

⁹ See Evidence, Respondent’s Declaration ¶¶ 9, 14.

¹⁰ See Evidence, Respondent’s Declaration ¶ 10.

destination, moving to the city of Ipatinga, in the state of Minas Gerais, with the intention of rebuilding his life and living discreetly.¹¹

For several years, Mr. Santos succeeded in living beyond the organization's reach. In late 2018, he started a business producing savory snacks for parties and events, and as the business grew he began using social media to advertise his products and to communicate with customers¹².

The business ultimately grew to encompass two physical commercial locations, a food production factory, and nearly thirty-two employees — a scale of public visibility that made concealment impossible. He believes that the visibility of the business on social media is what allowed persons associated with the PCC to locate him, after years in which he had successfully remained hidden.¹³

Mr. Santos began receiving telephone calls from persons whom he recognized, by their voices, their manner of speaking, and their references, as connected to the PCC. The demands were initially financial: the callers wanted him to contribute money and to resume some form of connection with the group.¹⁴

From the PCC's perspective, his years of absence were not a closed matter. The organization's internal framework treats those who leave without permission as deserters and, ultimately, as traitors. The demands were not primarily financial in nature; they were the organization's attempt to reverse, through coercion, the departure that Mr. Santos had made years earlier when he relocated to Minas Gerais and rebuilt his life.

Refusing to return meant confirming the betrayal that began the day he left. Mr. Santos refused, because he had resolved to separate himself completely from the organization and would not reestablish any relationship of submission or belonging with it.¹⁵

After he refused, the contacts escalated into direct threats against his life and against the lives of his wife and children, the callers stating that they would come after him and that he could be killed for having distanced himself from the group and for refusing to cooperate. The callers made clear that the threat was not confined to Mr. Santos alone: should he continue to

¹¹ See Evidence, Respondent's Declaration ¶¶ 10, 11.

¹² See Evidence, Respondent's Declaration ¶ 12.

¹³ See Evidence, Respondent's Declaration ¶ 12.

¹⁴ See Evidence, Respondent's Declaration ¶ 13.

¹⁵ See Evidence, Respondent's Declaration ¶¶ 13, 14.

refuse, his wife and children would be threatened, harmed, or killed in retaliation, as a way of forcing his compliance.¹⁶

Drawing on his own experience and his understanding of how the PCC operates, Mr. Santos took the threats seriously and understood that his refusal was perceived not as an ordinary financial dispute but as rejection, disobedience, and disloyalty on the part of a person who had abandoned the organization.¹⁷ In the PCC's internal code, a member who departs without authorization is classified as a traitor, a designation that is permanent and carries a known lethal consequence: the organization's established response to those it classifies as traitors is death. Mr. Santos understood from what he had witnessed and experienced that this was not an abstract threat.

He did not seek police protection, a decision grounded not in indifference but in his reasoned judgment that a police report could expose him to greater danger, could come to the attention of persons connected to the organization, and would be unlikely to produce effective protection given the PCC's reach and influence.¹⁸

Having already relocated once within Brazil and been found nonetheless, he concluded that neither remaining in the country nor attempting another internal move would keep his family safe, and he began to seek a way to leave.¹⁹

Mr. Santos and his family left Brazil on October 19, 2021, abandoning their home and the business he had built.²⁰ The family entered the United States on October 23, 2021.²¹

Mr. Santos and his family have remained in the United States since their entry. He continues to fear that, if he is returned to Brazil, the PCC will locate him as it did before and carry out the threats it made against him and against his wife and children.²²

Here, the Respondent has built an honest and productive life, establishing deep roots in this country. He is the owner of a successful cleaning business that employs eight individuals, creating meaningful job opportunities within the community. Through his hard work, he supports

¹⁶ See Evidence, Respondent's Declaration ¶ 15.

¹⁷ See Evidence, Respondent's Declaration ¶ 16.

¹⁸ See Evidence, Respondent's Declaration ¶ 17.

¹⁹ See Evidence, Respondent's Declaration ¶ 18.

²⁰ See Evidence, Respondent's Declaration ¶ 19.

²¹ See Evidence, Respondent's Declaration ¶ 22.

²² See Evidence, Respondent's Declaration ¶¶ 31, 32.

his family, contributes to the local economy, and has consistently demonstrated his commitment to being a responsible and law-abiding member of society.²³

I. MR. SANTOS IS ELIGIBLE FOR ASYLUM

To establish eligibility for asylum, an applicant must demonstrate that he is unable or unwilling to return to his country of origin because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA §§ 101(a)(42), 208(b)(1)(B)(i). Mr. Santos satisfies this standard.

He has a well-founded fear of persecution, and has suffered past persecution, on account of his actual and imputed political opinion of rejection of and opposition to the PCC, and on account of his membership in cognizable particular social groups; the persecutor is a non-state actor that the Brazilian government is unable and unwilling to control; and he cannot reasonably relocate within Brazil to avoid the harm.

A. The Applicant Qualifies for the Extraordinary Circumstances Exception to the One-Year Filing Deadline

An applicant for asylum must ordinarily demonstrate by clear and convincing evidence that the application was filed within one year of arrival in the United States. INA § 208(a)(2)(B). That requirement does not apply, however, where the applicant establishes the existence of extraordinary circumstances relating to the delay in filing, provided that the application is filed within a reasonable period given those circumstances. INA § 208(a)(2)(D); 8 C.F.R. § 1208.4(a)(5). Mr. Santos respectfully submits that this exception applies here, and that he is eligible for asylum on the merits set forth in Section II below.

The inquiry is therefore twofold: whether extraordinary circumstances exist, and whether the application was filed within a reasonable period after those circumstances ceased to prevent a timely filing. Extraordinary circumstances are events or factors directly related to the failure to meet the deadline that were not intentionally created by the applicant through his own action or inaction. 8 C.F.R. § 1208.4(a)(5).

²³ See Evidence, Respondent's Declaration ¶ 33.

The circumstances enumerated in the regulation are illustrative rather than exhaustive, and the determination turns on the totality of the circumstances bearing on the delay.

Mr. Santos entered the United States on October 23, 2021, and filed his formal asylum application on January 18, 2025.²⁴ The delay is attributable to a convergence of extraordinary circumstances that persisted throughout the intervening period. First, the manner of Mr. Santos's entry and his initial contact with immigration authorities gave him an objectively reasonable, though mistaken, belief that his request for protection was already pending.

Upon entry he was interviewed by immigration authorities, expressed his fear of returning to Brazil, received documents, was placed into removal proceedings, and was scheduled to appear before the Immigration Court. Following a positive credible fear determination conducted with the assistance of a Portuguese-language interpreter, he was released from detention and enrolled, as head of family, in ICE's Alternatives to Detention program, under continuous government monitoring.²⁵

At that initial moment, no one informed Mr. Santos that a separate, formal asylum application, subject to its own one-year deadline, would also need to be filed in addition to his appearances in the removal proceedings the government had commenced. Understanding neither English nor the structure of United States immigration law, he believed that this sequence of events itself constituted his application for protection and that his case was already underway. No one advised him about the need to file a formal application for asylum or about its correlating one-year deadline.²⁶

For a self-represented respondent who does not speak English and who was actively participating in proceedings commenced by the government, that misunderstanding was not the product of neglect but a natural reading of his own situation.

Second, Mr. Santos and his family arrived in a condition of acute vulnerability that consumed his attention and resources during this same period. He bore sole responsibility for the housing, food, and basic stability of his wife and three children in an unfamiliar country, without fluency in English, without knowledge of the legal system, and without an established support network, and he devoted himself to manual and cleaning work simply to keep his family afloat.²⁷

²⁴ See Evidence, Respondent's Declaration ¶ 22.

²⁵ See Evidence, Respondent's Declaration ¶ 23.

²⁶ See Evidence, Respondent's Declaration ¶¶ 23, 24.

²⁷ See Evidence, Respondent's Declaration ¶ 27.

That vulnerability was compounded by a concrete financial setback: the first time Mr. Santos drove in snow, his car was involved in an accident at an intersection, resulting in a total loss of the vehicle.²⁸

He was required to use his family's savings to purchase a replacement, consuming resources that would otherwise have been available to retain counsel. He reported this circumstance to the immigration judge at one of his hearings.²⁹ At the same time, the work that sustained his family required his household to relocate across multiple states, from Newark, New Jersey, to Jamestown, to Binghamton, then to Jacksonville, and ultimately to Pennsylvania, with his case transferred from New York to the Buffalo Immigration Court in the process. Throughout this period, Mr. Santos appeared at every scheduled hearing without exception, including his first Buffalo hearing at which he appeared with his entire family.³⁰

A pro se respondent who relocated repeatedly by necessity, watched his case transfer across courts, and never missed a hearing was not evading the process; he was navigating it as best he could under circumstances that foreclosed any real opportunity to learn what additional steps were required.

Third, he lacked the means to retain private counsel. He did not simply forgo legal assistance; he actively sought it through the free legal service providers listed in the materials he received from the Court, calling the telephone numbers provided on repeated occasions, but his calls went unanswered or he was redirected from one number to another without ever obtaining assistance.³¹ That sustained but unsuccessful effort to obtain free representation left him without the legal guidance that would have alerted him to the filing requirement.

These conditions did not operate in isolation. They reinforced one another, so that the very circumstances that made a timely filing difficult also prevented Mr. Santos from learning that a timely filing was required.

The psychological dimension of Mr. Santos's circumstances must also be considered. He and his family arrived in the United States carrying the weight of having fled credible death threats directed at him, his wife, and his three children. The constant state of vigilance, the fear of being located again, and the trauma of having abandoned everything they had built in Brazil

²⁸ See Evidence, Respondent's Declaration ¶ 27.

²⁹ See Evidence, Respondent's Declaration ¶ 27.

³⁰ See Evidence, Respondent's Declaration ¶¶ 25, 26.

³¹ See Evidence, Respondent's Declaration ¶ 28.

directly impaired his capacity to navigate an unfamiliar administrative system in a language he did not speak.³² That impairment is itself an extraordinary circumstance within the meaning of the regulation, independently and in combination with the other factors identified above.

Once the extraordinary circumstances ceased to operate, Mr. Santos acted promptly. He obtained legal guidance and understood for the first time that a separate asylum application had to be filed, and he initiated and completed that filing without further delay and within the deadline set by the Immigration Judge.³³

Because the controlling question under the regulation is whether the application was filed within a reasonable period given the extraordinary circumstances, and because those circumstances, namely the sustained misunderstanding, the language barrier, the indigence, the psychological burden resulting from past experience, and the absence of counsel, persisted until shortly before the application was filed, the period of delay is fully accounted for.

The interval between the moment Mr. Santos was in a position to file and the moment he actually filed was brief, and an application filed promptly after the impediment to filing is removed is filed within a reasonable period.

These are precisely the kind of circumstances the extraordinary circumstances exception was designed to address. The delay did not result from disinterest, strategy, or neglect, and Mr. Santos filed without delay once he was advised about the requirement of the law. The Court should therefore find the asylum application timely under INA § 208(a)(2)(D) and 8 C.F.R. § 1208.4(a)(5) and proceed to the merits.

In all events, the one-year filing deadline applies only to the application for asylum; it does not bar Mr. Santos's claim for withholding of removal under INA § 241(b)(3) or his claim for protection under the Convention Against Torture, neither of which is subject to a filing deadline. Even were the Court to conclude that the asylum application was untimely, it would remain obligated to adjudicate those claims on their merits.

³² See Evidence, Respondent's Declaration ¶ 30.

³³ See Evidence, Respondent's Declaration ¶ 29.

B. The Harm Mr. Santos Faces, and the Harm He Has Already Suffered, Rises to the Level of Persecution

The Immigration and Nationality Act does not define "persecution" therefore, the court must defer to the Court of Appeals cases that do address past persecution. *See Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991). The BIA has defined "persecution" as "either a threat to life or freedom of, or infliction of suffering or harm upon those who differ in a way regarded as offensive". *See Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). Persecution encompasses a variety of forms of adverse treatment, including non-life threatening violence and physical abuse or non-physical forms of harm. *See Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1998).

The Second Circuit has likewise recognized that persecution may take forms other than physical violence, and that the adjudicator must assess the cumulative significance of the harms an applicant has suffered rather than evaluating each incident in isolation. *Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332, 341 (2d Cir. 2006); *Poradisova v. Gonzales*, 420 F.3d 70, 79–80 (2d Cir. 2005); *Manzur v. DHS*, 494 F.3d 281, 290 (2d Cir. 2007).

Death threats are among the most extreme forms of harm recognized as persecution under asylum law. Courts have consistently held that credible death threats, standing alone, may constitute persecution. *Navas v. INS*, 217 F.3d 646, 658 (9th Cir. 2000); *Rios v. Ashcroft*, 287 F.3d 895, 900 (9th Cir. 2002).

A credible death threat made by a person who has the immediate ability to act on it constitutes persecution regardless of whether the threat is successfully carried out. *Diallo v. U.S. Att'y Gen.*, 596 F.3d 1329, 1333–34 (11th Cir. 2010).

Mr. Santos was subjected to a sustained campaign of direct threats against his life and the lives of his wife and children, delivered by persons he recognized as connected to the PCC, an organization he knew from personal experience to be capable of carrying out such threats.³⁴

These were not abstract or anonymous warnings. They came from identifiable members of the organization, were tied to a specific demand that he resume his affiliation and provide financial contributions, escalated after he refused, and were issued by a group with a documented

³⁴ See Evidence, Respondent's Declaration ¶¶ 13, 15, 16.

record of lethal retaliation against those it perceives as disloyal.³⁵ The PCC's capacity to locate Mr. Santos across state lines, years after he had severed contact and despite his deliberate efforts to remain hidden, demonstrates that the threats were not hollow. The credibility of a death threat and the demonstrated capacity of the persecutor to act upon it are central to whether the threat constitutes persecution, and both are present here.

The harm did not end with the threats: to escape them, Mr. Santos was forced to abandon his home, his business with nearly thirty-two employees, and his country, and to flee with his entire family.³⁶ Considered cumulatively, as the governing authority requires, the sustained threats of death against Mr. Santos and his immediate family, the credible capacity of the PCC to carry them out, and the resulting destruction of the life he had built in Brazil are sufficiently severe to constitute past persecution.

Mr. Santos is therefore entitled to the legal consequences that follow from a showing of past persecution, including a rebuttable presumption that his fear of future persecution is well founded. 8 C.F.R. § 1208.13(b)(1).

To the extent the Court concludes that the harm Mr. Santos has suffered to date does not independently rise to the level of past persecution, that harm remains highly probative of the objective reasonableness of his fear of future persecution, which is analyzed below.

C. Mr. Santos Has a Well-Founded Fear of Future Persecution

An applicant who establishes past persecution is presumed to have a well-founded fear of future persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). That presumption applies here, and it may be rebutted only if the Department establishes, by a preponderance of the evidence, either a fundamental change in circumstances such that Mr. Santos no longer has a well-founded fear, or that he could avoid future persecution by relocating within Brazil and that it would be reasonable to expect him to do so. 8 C.F.R. § 1208.13(b)(1)(i). As set forth below, the Department can make neither showing: the PCC remains active and powerful throughout Brazil, and internal relocation is neither safe nor reasonable for Mr. Santos.

Independently of that presumption, Mr. Santos satisfies the well-founded fear standard on the present record. A well-founded fear requires both a subjectively genuine fear and an

³⁵ See Evidence, Respondent's Declaration ¶ 16; See also Evidence Part 01, Country Conditions, Exh. 9 (CC 7, PCC Profile – InSight Crime).

³⁶ See Evidence, Respondent's Declaration ¶¶ 12, 18, 19.

objectively reasonable basis for it. The objective component is satisfied by a showing of a reasonable possibility of persecution, a standard the Supreme Court has explained may be met even where the likelihood of persecution is well below fifty percent, and as low as a ten percent chance. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431, 440 (1987); *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987).

Mr. Santos's fear is subjectively genuine: he fled Brazil with his entire family, abandoning his home and business, precisely because he believed that he and his family would be killed if he remained.³⁷ That fear is also objectively reasonable. The PCC has already demonstrated both the will and the capacity to find him: after he severed contact and relocated from São Paulo to Minas Gerais, the organization located him years later and resumed its demands and threats.³⁸ Its threats expressly contemplated his death and extended to his wife and children.³⁹

That fear has only deepened with the passage of time. The PCC was formally designated a Foreign Terrorist Organization and Specially Designated Global Terrorist by the United States Department of State, effective June 5, 2026. That designation, the product of an independent governmental assessment of the organization's violence and reach, confirmed what he had known from personal experience since leaving the organization: that the PCC is an entity capable of the lethal retaliation he fears, operating at a scale that no internal relocation within Brazil can neutralize.⁴⁰

The country conditions' evidence confirms that the PCC operates throughout Brazil and that it enforces its authority through violence against those who defy or abandon it, which independently corroborates the objective reasonableness of his fear.⁴¹ A reasonable person in Mr. Santos's circumstances would fear persecution upon return to Brazil.

³⁷ See Evidence, Respondent's Declaration ¶¶ 18, 19, 31, 32.

³⁸ See Evidence, Respondent's Declaration ¶¶ 11, 12, 13.

³⁹ See Evidence, Respondent's Declaration ¶ 15.

⁴⁰ See Evidence, Respondent's Declaration ¶ 31.

⁴¹ See Evidence Part 01, Country Conditions, Exh. 5 (CC 3, Terrorist Designation of the PCC – U.S. Dep't of State), Exh. 9 (CC 7, PCC Profile – InSight Crime), Exh. 10 (CC 8, Crime Strengthens Crime – InSight Crime).

D. Mr. Santos Was Targeted on Account of His Political Opinion of Opposition to the Authority of the PCC

1. Legal Framework

Persecution on account of political opinion may rest on an opinion the applicant actually holds or on one the persecutor imputes to him, whether or not he in fact holds it. *Chun Gao v. Gonzales*, 424 F.3d 122, 129 (2d Cir. 2005). Political opinion is construed broadly and assessed within the political context of the country. The Second Circuit has recognized that resistance to the abuse of power, including by non-governmental actors, may constitute a political opinion where the resistance transcends mere self-protection and challenges the authority of the entity in question. *Castro v. Holder*, 597 F.3d 93, 100–06 (2d Cir. 2010); *Hernandez-Chacon v. Barr*, 948 F.3d 94, 102–05 (2d Cir. 2020). In *Hernandez-Chacon*, the Second Circuit emphasized that political expression involves a complex and contextual factual inquiry into the nature of the asylum applicant’s activities in relation to the political context of their country. See *Hernandez-Chacon v. Barr*, 984 F.3d at 105.

The Second Circuit has articulated the governing test for what qualifies as a political opinion in the asylum context. A political opinion may consist of opposition to 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” as a governmental or quasi-governmental authority. *Zelaya-Moreno v. Wilkinson*, 989 F.3d 190, 199–200 (2d Cir. 2021).

The court in *Zelaya-Moreno* found that the applicant’s anti-gang views did not qualify because, on that record, the gang at issue, Mara Salvatrucha, appeared to be “a criminal organization in El Salvador, and not a political one,” and there was no evidence that the gang “advocate[d] for a political agenda or that [it] employ[ed] tactics in service of a political philosophy.” *Id.* at 201.

2. This case differs from that portrayed in *Zelaya-Moreno*, because the PCC Operates as a Quasi-State Actor

The limitation identified in *Zelaya-Moreno* does not apply here because the PCC is categorically different from Mara Salvatrucha. The evidentiary record in this case establishes that

the PCC is not a mere criminal street gang. It exercises quasi-governmental control over Brazilian territory, maintains documented relationships with elected officials through municipal contracts, has infiltrated elements of law enforcement and the judiciary, operates in at least twenty-eight countries, and was designated a Foreign Terrorist Organization and Specially Designated Global Terrorist by the United States Department of State, effective June 5, 2026.⁴²

The PCC regulates conduct within its territories, imposes its own code of discipline, adjudicates disputes, and punishes disobedience with lethal force, functions that are characteristic of a state rather than a criminal enterprise.⁴³ The PCC is precisely the kind of entity that “plays some other similar role in society” as a governmental or quasi-governmental authority that *Zelaya-Moreno* described, and opposition to its claimed dominion is the kind of political opinion that qualifies for protection under the governing test. *Zelaya-Moreno v. Wilkinson*, 989 F.3d 190 (2d Cir. 2021).

Where opposition to an entrenched institution transcends mere self-protection and represents a challenge to its modes of official behavior, a petitioner may be eligible for asylum. *See Yu v. Holder*, 693 F.3d 294, 298–99 (2d Cir. 2012). The Board has likewise recognized that “opposition to . . . corruption may, in some circumstances, constitute the expression of political opinion or give a persecutor a reason to impute such an opinion” to the applicant. *Matter of N-M-*, 25 I&N Dec. 526, 528 (BIA 2011).

In *Yu v. Holder*, 693 F.3d 294, 298–99 (2d Cir. 2012), the court went further, holding that even where the applicant’s opposition was directed at a single institution, the inquiry must assess the “overall climate and context in which the opposition takes place” and whether the applicant’s conduct was “typical of political protest.” 693 F.3d at 298–99.

3. Mr. Santos Holds a Political Opinion of Opposition to the PCC

Mr. Santos’s departure from the PCC was not a reflexive act of self-preservation. It was the product of a profound personal and ideological transformation: a religious conversion that led him to reject, consciously and permanently, the organization, its methods, the violence it inflicted, and the submission it demanded.⁴⁴

⁴² See Evidence Part 01, Country Conditions, Exh. 5 (CC 3, Terrorist Designation of the PCC – U.S. Dep’t of State, effective June 5, 2026), Exh. 9 (CC 7, PCC Profile – InSight Crime), Exh. 12 (CC 10, PCC Municipal Contracts – InSight Crime).

⁴³ See Evidence Part 01, Country Conditions, Exh. 9 (CC 7, PCC Profile – InSight Crime).

⁴⁴ See Evidence, Respondent’s Declaration ¶¶ 9, 10, 14.

That rejection was not passive. He relocated, rebuilt his life in deliberate opposition to everything the PCC represented, founded a legitimate business, and formed a family grounded in the values his conversion produced. His opposition was directed not merely at avoiding personal harm but at repudiating the PCC's claimed authority over him, its criminal activities, and its ideology of coerced obedience.

When the PCC located him years later and demanded that he return and submit, he refused again, because of who he had become and what he stood against.⁴⁵ That refusal was the expression of a conviction fundamental to his identity and moral conscience: the conviction that the PCC has no legitimate claim to his loyalty or obedience and that its criminal activities and violent methods are antithetical to the life he has chosen. That is the challenge to authority that *Hernandez-Chacon* identifies as the hallmark of political opinion. 948 F.3d at 103.

4. The PCC Imputed an Anti-PCC Political Opinion to Mr. Santos

Independently, the PCC imputed to Mr. Santos a political opinion of opposition to its authority. An imputed political opinion, whether correctly or incorrectly attributed, can constitute a ground of political persecution within the meaning of the Immigration and Nationality Act. *See Hernandez-Chacon*, 948 F.3d at 104; *see also Chun Gao v. Gonzales*, 424 F.3d 122, 129 (2d Cir. 2005).

Similarly, the BIA has held that persecution is motivated by political opinion when there is "direct or circumstantial evidence from which it is reasonable to believe that those who harmed the applicant were in part motivated by an assumption that [her] political views were antithetical to those of the government." *Matter of S-P-*, 21 I. & N. Dec. 486, 494 (B.I.A. 1996).

To a quasi-state actor like the PCC, which demands absolute sovereignty over those within its orbit, Mr. Santos's departure and sustained refusal to return were not a mere denial of cooperation. They were an act of political defiance that challenged the PCC's authority over its members and its claimed right to govern those within its reach. The PCC's internal framework classifies those who leave without authorization as traitors, a designation that is permanent and carries a known lethal consequence.⁴⁶

The organization does not pursue every person who declines an invitation to join; it pursues those who were within its structure, left, and refused to return. The targeting is

⁴⁵ *See* Evidence, Respondent's Declaration ¶¶ 13, 14.

⁴⁶ *See* Evidence, Respondent's Declaration ¶¶ 15, 16.

institutional in its scope and ideological in its purpose: the PCC perceives each such departure as a political challenge to its legitimacy that must be suppressed through lethal retaliation.⁴⁷

The persecutor's own conduct confirms the imputation. The callers did not threaten Mr. Santos for failing to pay a debt or for any reason unconnected to his history with the organization. The threats were expressly tied to his departure from the PCC and his refusal to resume his affiliation.⁴⁸ The PCC perceived his refusal as a political act, a repudiation of its authority, and responded accordingly, with the institutional violence it reserves for those it classifies as ideological enemies.

5. The Distinction from Personal Retaliation

The Supreme Court has cautioned that a refusal to cooperate with a non-state armed group does not, without more, establish a political motive. *INS v. Elias-Zacarias*, 502 U.S. 478, 482–83 (1992). Under *Elias-Zacarias*, a victim of forced recruitment must prove that the persecutor is targeting him because of his opinion, not just because the group wants more members or more money. That showing is made here, and the case is distinguishable from *Elias-Zacarias* in several critical respects.

First, Mr. Santos is not a person who simply declined a recruitment attempt. He was a former affiliate who entered the organization, spent years within it, made a conscious ideological decision to leave based on religious and moral ideals, and sustained that opposition over two decades of separation. His opposition to the PCC is grounded in a deeply held conviction, not in a reflexive desire to avoid conscription.

Second, the PCC's motive is not the acquisition of a new member. It is the punishment of a former affiliate whose departure and sustained defiance represent a challenge to the organization's authority and internal discipline. The PCC applies the same lethal response to every former affiliate who abandons it and refuses to return, as a matter of institutional policy enforcing organizational loyalty. That is not personal retaliation; it is the programmatic enforcement of submission to the PCC's authority, which is the hallmark of political persecution.

Third, the evidence establishes that the PCC functions as a parallel state, not as an ordinary criminal enterprise, and that resisting its authority is inherently a political act in the

⁴⁷ See Evidence Part 01, Country Conditions, Exh. 9 (CC 7, PCC Profile – InSight Crime).

⁴⁸ See Evidence, Respondent's Declaration ¶¶ 15, 16.

Brazilian context.⁴⁹ Challenging the dominion of an entity that exercises quasi-governmental control over territory, population, and the apparatus of state is fundamentally different from refusing to join a street gang.

E. Mr. Santos Suffered Persecution on Account of His Membership in Particular Social Groups

Independently of the political opinion ground, Mr. Santos establishes membership in the following cognizable particular social groups: (1) “Former peripheral PCC affiliates recruited as minors who permanently renounced the organization”; (2) “Former PCC affiliates who refused reentry into the organization after being located and contacted”; “Brazilian men who are perceived by the PCC as traitors for having abandoned the organization”.

The Board’s framework requires that the group share a common immutable characteristic, be defined with particularity, and be socially distinct within the society in question. *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208, 212–18 (BIA 2014).

The Court should be mindful that the BIA has rejected PSG formulations based on former gang membership where the definition was broad, amorphous, and not verifiably distinct within the society in question. *Matter of W-G-R-*, 26 I&N Dec., at 221; *Matter of E-A-G-*, 24 I&N Dec., 591, 594–96 (BIA 2008).

The groups proposed here differ in three critical respects: first, they are delimited by narrow, objective criteria (peripheral status, recruitment as a minor, formal renunciation, and the persecutor’s own classification); second, extensive country conditions evidence documents the PCC’s formal institutional structure and its specific internal classification of those who leave as “traitors” subject to a distinct and documented protocol of retaliation⁵⁰; and third, the PCC itself, unlike the less institutionalized gangs at issue in the rejected cases, maintains a rigid internal hierarchy with formal distinctions between categories of affiliates, a characteristic that independently supplies the social distinction the Board found lacking in *W-G-R-*.

⁴⁹ See Evidence Part 01, Country Conditions, Exh. 9 (CC 7, PCC Profile – InSight Crime).

⁵⁰ See Evidence Part 01, Country Conditions, Exh. 7 (CC 5, Global Initiative), Exh. 14 (CC 12, Human Rights Watch – Rio Police), Exh. 9 (CC 7, PCC Profile – InSight Crime).

1. The Groups Are Defined by a Common Immutable Characteristic

A particular social group must rest on a characteristic that its members either cannot change or should not be required to change because it is fundamental to their individual identities or consciences. *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985).

The proposed groups rest on characteristics that are immutable in two independent senses. First, prior affiliation with the PCC is a shared past experience that, by its nature, has already occurred and cannot be undone. The Board has long recognized that a shared past experience can constitute an immutable characteristic. *See Matter of Acosta*, 19 I&N Dec. at 233. The Second Circuit has applied this principle to hold that the shared past experience of witnessing a crime and cooperating with authorities is immutable. *See Gashi v. Holder*, 702 F.3d 130, 137 (2d Cir. 2012). Mr. Santos's past affiliation with the PCC, and the knowledge of the organization that he acquired through it, is a completed and unchangeable fact.

The PCC itself treats this bond as lifelong and irreversible: in the organization's internal framework, the relationship between the PCC and anyone who has been within its structure is permanent, and any attempt to sever it is classified as betrayal warranting death.⁵¹

Second, his renunciation of the organization, rooted in a religious conversion and a conscientious decision to abandon a criminal life, reflects a conviction so fundamental to his identity and conscience that he should not be required to abandon it. *See Matter of Acosta*, 19 I&N Dec. at 233. Requiring Mr. Santos to avoid persecution by resuming his submission to the PCC would demand precisely the surrender of conscience that the immutability requirement forbids.⁵²

2. The Groups Are Defined with Particularity

Particularity requires that the group be defined by characteristics that provide a clear benchmark for determining who falls within the group and that the group not be amorphously defined. *See Matter of M-E-V-G-*, 26 I&N Dec. at 239; *Matter of W-G-R-*, 26 I&N Dec. at 214. The proposed groups are bounded by objective and verifiable criteria: prior affiliation with a specific and identifiable organization (the PCC), level of involvement with the criminal organization, age, the act of renunciation and disassociation, and the persecutor's own formal

⁵¹ See Evidence Part 01, Country Conditions, Exh. 9 (CC 7, PCC Profile – InSight Crime)..

⁵² See Evidence, Respondent's Declaration ¶¶ 9, 14.

classification of the individual as a traitor.⁵³ Each of these criteria is susceptible to objective proof and yields a determinate and finite class.

3. The Groups Are Socially Distinct

Social distinction is determined by whether the relevant society, including the persecutor, perceives the proposed group as a distinct class, and not by whether its members are visually identifiable on sight. *Matter of M-E-V-G-*, 26 I&N Dec. at 238.

The PCC maintains a formal internal hierarchy that distinguishes “baptized” members from peripheral affiliates, governs its members through an internal code, and treats abandonment as betrayal warranting retaliation.⁵⁴

The PCC formally and explicitly classifies those who leave the organization without authorization as traitors. That classification is not informal or ad hoc; it is a defined category within the PCC’s internal code of discipline, carrying a specific and documented consequence: death.⁵⁵

The country conditions’ evidence corroborates this internal structure, documenting the PCC’s formal organization, its system of rules and discipline, and its violent enforcement of authority against those who defy or abandon it.⁵⁶

That an organization exercising quasi-governmental control over territory and population singles out former affiliates who have renounced it for distinct and severe treatment is strong evidence that the class is socially distinct, and the perception of the persecutor is itself probative of that distinction. *Matter of M-E-V-G-*, 26 I&N Dec. at 242. The PCC’s own conduct demonstrates that it perceives Mr. Santos as belonging to a recognized category, that of the disloyal former affiliate marked for lethal retaliation, and not merely as a random target.

4. The Groups Are Not Defined Circularly by the Persecution

A particular social group may not be defined solely by the persecution its members suffer, but the existence of persecution does not disqualify a group that is otherwise defined by

⁵³ See Evidence, Respondent’s Declaration ¶¶ 6, 10.

⁵⁴ See Evidence, Respondent’s Declaration ¶¶ 6, 10, 16 (Evidence); See also Country Conditions, Exh. 7 (CC 5, Global Initiative).

⁵⁵ See Evidence Part 01, Country Conditions, Exh. 9 (CC 7, PCC Profile – InSight Crime).

⁵⁶ See Evidence Part 01, Country Conditions, Exh. 14 (CC 12, Human Rights Watch – Rio Police), Exh. 3 (CC 1, U.S. Dep’t of State Human Rights Report 2024), Exh. 4 (CC 2, OSAC Country Security Report).

characteristics independent of the harm. *See Matter of W-G-R-*, 26 I&N Dec. at 215. Mr. Santos's defining characteristics, his prior peripheral affiliation with the PCC and his subsequent renunciation of it, existed independently of, and prior to, any threat directed at him. The persecution is a consequence of his membership in the group, not its definition.

The groups would exist, and would be socially distinct, whether or not their members were ultimately targeted, because it is the organization's recognized category of the disloyal former affiliate, and not the fact of any particular reprisal, that gives the groups their contours.

F. Mr. Santos's Political Opinion and His Membership in the Particular Social Groups Are at Least One Central Reason for the Persecution

To satisfy the nexus requirement, an applicant must establish that a protected ground was or would be at least one central reason for the persecution. INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212–14 (BIA 2007). The protected ground need not be the sole reason for the harm, and the presence of an additional motive, including a financial one, does not defeat the claim so long as the protected ground is more than incidental, tangential, superficial, or subordinate to another reason for the persecution. *Id.*

The persecutor's motive may be proved by direct or circumstantial evidence, including the persecutor's own statements and conduct. Both the political opinion established in Section C and the particular social groups established in Section D are independently established grounds for relief; the nexus analysis set out below applies to each.

The persecutor's own conduct supplies direct evidence of its motive. The callers threatened Mr. Santos with death because he had left the organization and refused to return.⁵⁷ The threats were expressly tied to his departure from the PCC and his refusal to resume his affiliation. Mr. Santos understood, from his own experience within the PCC, that his refusal was perceived as defiance and betrayal by a person who had abandoned the organization.⁵⁸

The organization's selectivity confirms the point: the PCC does not pursue every business owner in Brazil; it pursued Mr. Santos because of his particular history as a former affiliate who renounced the organization and because his sustained refusal represented a challenge to its authority.

⁵⁷ *See* Evidence, Respondent's Declaration ¶¶ 15, 16.

⁵⁸ *See* Evidence, Respondent's Declaration ¶ 16.

That the demands were initially framed in financial terms does not reduce the protected grounds to an incidental cause. The financial demand was the mechanism through which the organization sought to reassert control over a former affiliate who had left and refused to return.

The animating reason for the escalation to death threats was Mr. Santos's ideological departure from the PCC and his categorical refusal to resume any connection with it. In the PCC's internal code, departure without permission is permanent treason, and the established consequence is death. The harm is the programmatic enforcement of organizational loyalty, which is precisely the kind of institutional targeting that the nexus requirement is designed to capture.

G. The Persecutor Is a Non-State Actor That the Brazilian Government Is Unable and Unwilling to Control

Harm inflicted by a non-state actor is persecution within the meaning of the Act where the government is unable or unwilling to control that actor. *Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332, 342 (2d Cir. 2006). The applicant need not show that the government condones the harm; a demonstrated inability to control the persecutor is sufficient. Nor is an applicant required to have sought the protection of the authorities where doing so would have been futile or would itself have exposed him to greater danger.

Mr. Santos did not report the PCC's threats to the police, and that decision was reasoned rather than negligent: he understood that a report could come to the attention of persons connected to the organization, could be construed as a challenge that would provoke further retaliation, and would be unlikely to result in any effective protection.⁵⁹ His decision not to report therefore does not defeat his claim; it reflects a realistic appraisal of the state's incapacity in the face of the PCC.

That appraisal is corroborated by the country conditions' evidence. The PCC operates with substantial impunity, has penetrated public institutions, and contests the state for control of territory, while the Brazilian government has proven unable to coordinate effective measures against it or to protect the individuals it targets, including through witness and victim protection

⁵⁹ See Evidence, Respondent's Declaration ¶ 17.

mechanisms whose ineffectiveness is well documented.⁶⁰ The organization has also extended its influence through municipal contracts and legitimate economic structures, creating direct relationships with elected officials and law enforcement that compound the state's inability to provide protection against it.⁶¹

The most concrete evidence of the state's inability to protect Mr. Santos is the conduct of the PCC itself. The organization located him across state lines, years after he had severed contact and despite his deliberate efforts to live discreetly, and it did so without any apparent fear of interference by the authorities.⁶² An actor that can find and threaten a person who has relocated and concealed himself, and that operates with the impunity the record documents, is one the state is unable or unwilling to control. The Brazilian government cannot protect Mr. Santos from the PCC.

H. Mr. Santos Cannot Reasonably Relocate Within Brazil

Because Mr. Santos has established past persecution, the burden rests on the Department to demonstrate, by a preponderance of the evidence, that he could avoid future persecution by relocating within Brazil. 8 C.F.R. § 1208.13(b)(1)(i)(B), (b)(3).

The PCC is not a localized actor. The country conditions' evidence documents that the organization maintains a presence throughout Brazil, across its twenty-six states and the Federal District, and that its diffuse and decentralized leadership structure makes it resilient and far-reaching.⁶³ Mr. Santos's own experience demonstrates the impossibility of internal relocation: he already relocated once, from São Paulo to Minas Gerais, severed contact, and lived discreetly for eighteen years, and the organization located him nonetheless.⁶⁴

There is no reason to believe that a second relocation, within the reach of the same nationwide organization, would succeed where the first did not. The Department cannot meet its burden, and the presumption of a well-founded fear stands un rebutted on this ground.

⁶⁰ See Evidence Part 01, Country Conditions, Exh. 9 (CC 7, PCC Profile – InSight Crime), Exh. 15 (CC 13, BBC News Brazil – Narco-State), Exh. 11 (CC 9, Freedom House Brazil 2025), Exh. 6 (CC 4, Brazilian Yearbook of Public Security 2025).

⁶¹ See Evidence Part 01, Country Conditions, Exh. 12 (CC 10, PCC Municipal Contracts – InSight Crime), Exh. 18 (CC 16, UK Home Office) .

⁶² See Evidence, Respondent's Declaration ¶¶ 11, 12.

⁶³ See Evidence Part 01, Country Conditions, Exh. 5 (CC 3, Terrorist Designation – U.S. Dep't of State), Exh. 9 (CC 7, PCC Profile – InSight Crime), Exh. 7 (CC 5, Global Initiative), Exh. 14 (CC 12, Human Rights Watch).

⁶⁴ See Evidence, Respondent's Declaration ¶¶ 11, 12.

I. Credibility and Sufficiency of Testimony

Under the REAL ID Act, the testimony of an applicant may be sufficient to sustain his burden of proof without corroboration where that testimony is credible, persuasive, and refers to specific facts sufficient to demonstrate eligibility. INA § 208(b)(1)(B)(ii). Where the trier of fact determines that corroborating evidence should be provided, such evidence may be required only when it is reasonably available to the applicant. *Id.* Credibility is assessed under the totality of the circumstances, considering, among other factors, the consistency and plausibility of the applicant's account and its consistency with the country conditions evidence. INA § 208(b)(1)(B)(iii). An applicant's testimony alone may be sufficient to establish eligibility for asylum where it is detailed, consistent, and plausible. *See Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987).

Mr. Santos's account is detailed, internally consistent, and consistent with what is independently documented about the PCC. The nature of the harm explains the limited documentary record, and the corroboration the Department might otherwise expect is not reasonably available here. The threats were communicated orally, by telephone, by a clandestine organization that does not memorialize its conduct, and Mr. Santos reasonably declined to file a police report for the reasons already stated, so no police record exists.⁶⁵ The absence of such records does not undermine his credibility; it reflects the realities of the persecution he experienced and the circumstances in which it occurred.

What documentary corroboration the case admits of is supplied by the extensive country conditions evidence, which independently confirms the essential structure of Mr. Santos's account: that the PCC operates nationwide, enforces its authority through violence against those who defy or abandon it, and does so with substantial impunity and institutional penetration.⁶⁶

The United States Government's own designation of the PCC as a Foreign Terrorist Organization further corroborates Mr. Santos's account of the organization's violence, reach, and capacity.⁶⁷ His testimony, credible on its own terms and corroborated in its essentials by the objective evidence, is sufficient to establish his eligibility for relief.

⁶⁵ *See* Evidence, Respondent's Declaration ¶¶ 15, 17 (Evidence).

⁶⁶ *See* Evidence Part 01, Country Conditions, Exh. 14 (CC 12, Human Rights Watch – Rio Police), Exh. 7 (CC 5, Global Initiative), Exh. 3 (CC 1, U.S. Dep't of State Human Rights Report 2024), Exh. 4 (CC 2, OSAC Country Security Report), Exh. 18 (CC 16, UK Home Office).

⁶⁷ *See* Evidence Part 01, Country Conditions Package, Exh. 5 (CC 3, Terrorist Designation of the PCC as an FTO and SDGT – U.S. Dep't of State, effective June 5, 2026).

III. IN THE ALTERNATIVE, MR. SANTOS IS ENTITLED TO WITHHOLDING OF REMOVAL

Should the Court deny asylum, Mr. Santos is entitled to withholding of removal under INA § 241(b)(3). Withholding requires a showing that it is more likely than not that the applicant's life or freedom would be threatened on account of a protected ground, a clear-probability standard higher than the well-founded-fear standard that governs asylum. *INS v. Stevic*, 467 U.S. 407, 429–30 (1984); 8 C.F.R. § 1208.16(b). Unlike asylum, withholding is mandatory rather than discretionary once the standard is met, and it is not subject to the one-year filing deadline.

As with asylum, a finding of past persecution gives rise to a rebuttable presumption that the applicant's life or freedom would be threatened in the future, and the Department bears the burden of rebutting that presumption. 8 C.F.R. § 1208.16(b)(1).

For the reasons set forth above, Mr. Santos has shown that his membership in a cognizable particular social group and political opinion are at least one central reason for the harm he faces, that the PCC has both the capacity and the will to carry out its threats, that the Brazilian government cannot protect him, and that he cannot reasonably relocate within Brazil.

The harm he faces is not diffuse hardship but death, and the same evidence that establishes a well-founded fear, considered together with the PCC's demonstrated record of locating and retaliating against those it regards as disloyal, establishes that it is more likely than not that his life or freedom would be threatened upon return. The Department cannot rebut the presumption that flows from his past persecution. The Court should therefore grant withholding of removal in the alternative.

IV. IN THE FURTHER ALTERNATIVE, MR. SANTOS IS ENTITLED TO PROTECTION UNDER THE CONVENTION AGAINST TORTURE

To qualify for protection under the Convention Against Torture, an applicant must establish that it is more likely than not that he would be tortured upon removal to the proposed country of removal. 8 C.F.R. §§ 1208.16(c), 1208.18(a). Under *In re J-E-*, 23 I&N Dec. 291, 297 (BIA 2002), for an act to rise to the level of torture, it must satisfy each of the following elements: (1) the act must cause severe physical or mental pain or suffering; (2) the act must be

intentionally inflicted; (3) the act must be inflicted for a proscribed purpose; (4) the act must be inflicted by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim; and (5) the act cannot arise from lawful sanctions. CAT protection is mandatory where the standard is met, is not subject to the one-year filing deadline, and does not require a nexus to a protected ground.

It is more likely than not that Mr. Santos will suffer torture if removed to Brazil. Each element of the *J-E*- framework is satisfied on this record.

As to the first element, Mr. Santos has direct knowledge of how the PCC treats those it classifies as traitors: they are subjected to severe beatings, physical abuse, and other forms of violent punishment as a matter of organizational discipline, with punishment deliberately inflicted before execution.⁶⁸ The severe physical pain and suffering inherent in this treatment is self-evident.

As to the second element, the harm the PCC inflicts on those it designates as traitors is not negligent or incidental. It is the intentional and deliberate application of the organization's internal disciplinary code. The PCC identifies its targets, locates them, and carries out lethal retaliation as a matter of institutional policy.⁶⁹

As to the third element, the PCC's violence against former affiliates who have abandoned the organization serves a proscribed purpose: the punishment of Mr. Santos for his departure and refusal to return, and the intimidation and coercion of others who might consider similar acts of defiance. These purposes fall squarely within the regulatory definition. 8 C.F.R. § 1208.18(a)(1).

As to the fourth element, the acquiescence of public officials is established by the country conditions' evidence, which documents the penetration of Brazilian public institutions by the PCC, the corruption and cooptation of elements of the police, and the state's demonstrated inability or unwillingness to protect those the organization targets.⁷⁰ Where public officials are aware of the organization's lethal conduct and either participate in it, deliberately ignore it, or are systematically unable to intervene, the acquiescence standard, including its willful-blindness component, is met.⁷¹

⁶⁸ See Evidence, Respondent's Declaration ¶ 34; See also Amendment of Form I-589, Part B, Q.4.

⁶⁹ See Evidence Part 01, Country Conditions, Exh. 9 (CC 7, PCC Profile – InSight Crime).

⁷⁰ See Evidence Part 01, Country Conditions, Exh. 5 (CC 3, Terrorist Designation – U.S. Dep't of State), Exh. 9 (CC 7, PCC Profile – InSight Crime), Exh. 12 (CC 10, PCC Municipal Contracts – InSight Crime).

⁷¹ See Evidence Part 01, Country Conditions, Exh. 14 (CC 12, Human Rights Watch – Rio Police), Exh. 4 (CC 2, OSAC Country Security Report).

As to the fifth element, the harm Mr. Santos fears does not arise from any lawful sanction. The PCC is a criminal organization, and its punishment of those it classifies as traitors has no basis in law.

Counsel submits that the evidence of the PCC's reach, its demonstrated capacity to locate Mr. Santos, the documented pattern of lethal retaliation against former affiliates, and the limits and compromise of state protection together establish that it is more likely than not that Mr. Santos will be tortured if removed to Brazil. The Court should grant protection under the Convention Against Torture in the further alternative.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court find the asylum application timely and grant Mr. Santos asylum. In the alternative, the Respondent requests that he be granted withholding of removal under INA § 241(b)(3) or protection under the Convention Against Torture; and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



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PROOF OF SERVICE

On this day, I, Guilherme Castilho Zaia, served a copy of the following documents:

**RESPONDENTS' LEGAL BRIEF IN SUPPORT OF APPLICATION
FOR ASYLUM, WITHHOLDING OF REMOVAL AND
PROTECTION UNDER CAT**

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 Principal Legal Advisor 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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