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Non-Detained

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1855 Gateway Boulevard, Suite 850,
Concord, CA 94520

In the Matter of	)	
Jose Carlos Pereira dos Santos	)	**File No. A 240-169-089**
Jaqueline das Neves Dantas Maia	)	**File No. A 240-169-090**
Jose Carlos Pereira dos Santos Junior	)	**File No. A 240-169-091**
In Removal Proceedings	)	

Immigration Judge: **Espana, Patrick A.** Next Hearing: **October 27, 2026 at 1:00 PM**

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

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I. INTRODUCTION AND PROCEDURAL POSTURE

Respondent Jose Carlos Pereira dos Santos, a native and citizen of Brazil, respectfully submits this Brief in support of his applications for asylum under INA § 208, 8 U.S.C. § 1158, including humanitarian asylum under 8 C.F.R. § 1208.13(b)(1)(iii)(A) and (B); 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's claims rest on his actual political opinion, alternatively on his imputed political opinion, and, independently, on his membership in the particular social groups of *"Brazilian nationals who publicly and identifiably campaigned in their own communities for the candidacy of Jair Bolsonaro in the 2022 presidential election"* and *"Members of the Immediate Family of a Brazilian Who Publicly and Identifiably Campaigned for the Candidacy of Jair Bolsonaro in the 2022 Presidential Election "*. His wife, Jaqueline das Neves Dantas Maia, and

their minor son, Jose Carlos Pereira dos Santos Junior, are included in the application as derivative beneficiaries.

Respondent arrived in the United States on December 22, 2022, on a direct flight from Brazil to San Francisco International Airport. He was inspected, paroled into the United States under INA § 212(d)(5), and served with a Notice to Appear charging him as an arriving alien inadmissible under INA § 212(a)(7)(A)(i)(I) and INA § 212(a)(9)(B)(i)(II). He filed Form I-589 on April 14, 2023, within one year of his last arrival, satisfying INA § 208(a)(2)(B).

That initial application expressly reserved the detailed account of the events giving rise to the claim, stating that a completed declaration would be furnished before the hearing before the Immigration Judge. Respondent now submits that account, together with his declaration and the documentary record supporting it, as an amendment and supplement to the timely filed application.

The evidentiary record establishes that Respondent suffered past persecution in Brazil on account of his political opinion, both actual and imputed, and on account of his membership in the particular social groups of "Brazilian nationals who publicly and identifiably campaigned in their own communities for the candidacy of Jair Bolsonaro in the 2022 presidential election" and "Members of the Immediate Family of a Brazilian Who Publicly and Identifiably Campaigned for the Candidacy of Jair Bolsonaro in the 2022 Presidential Election"; that he holds a well-founded fear of future persecution on those grounds, which the Brazilian State has proven unwilling or unable to control; that his life or freedom would more likely than not be threatened upon return; and that it is more likely than not that he would be tortured with the consent or acquiescence of Brazilian public officials. Respondent advances membership in these particular social groups as independent and alternative grounds for relief, such that the rejection of any one ground does not diminish the viability of the others.

Should the Court find the presumption of a well-founded fear rebutted, Respondent remains eligible for a humanitarian grant of asylum under 8 C.F.R. § 1208.13(b)(1)(iii)(A) and (B), as set forth in Section VIII. Because Respondent has articulated cognizable protected grounds with specificity and material factual disputes remain that only his sworn testimony can resolve, his application is not subject to pretermission under *Matter of H-A-A-V-*, 29 I&N Dec. 233 (BIA 2025), as set forth in Section IX. Respondent respectfully requests that this Court grant asylum and, alternatively, withholding of removal and protection under the Convention Against Torture.

II. STATEMENT OF FACTS[1]

Respondent is a citizen of Brazil born on December 13, 1974, in João Pessoa, State of Paraíba, where he lived until December 2022 and worked on his own account in cargo transportation, delivering appliances to local stores and private customers.[2] He is married to Jaqueline das Neves Dantas Maia and is the father of two children, one of whom, a minor, is included in this application as a derivative beneficiary.[3] Respondent had long been active in the neighborhood where he lived, taking the lead in local demands and requests for improvements, so that many residents knew him and came to him.[4]

Respondent first came to the United States in October 2017 and was admitted as a B-2 visitor. He came to see the country, not to flee any harm, and at that time he had received no threats and faced no personal risk in Brazil. His wife's mother died in 2019, and in January 2020 the family voluntarily returned to Brazil because they did not wish to remain without lawful status and because their home, their work, and their family were there. Respondent then resumed a stable life. He worked on his own account, his wife held a tenured position in the public

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[1]The Statement of Facts is based on the following Respondent's documents: Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence); Respondents' Personal Documents (Evidence Part 01); Respondents' Country Conditions in Support of Asylum and Withholding of Removal (Evidence Part 02); Helcio Emilio Alves de Souza Junior's Letter of Support With English Translation (Evidence Part 03, Exhibit 1); Maria do Socorro Dantas Maia's Letter of Support With English Translation (Evidence Part 03, Exhibit 2); Elaine Lima dos Santos' Letter of Support With English Translation (Evidence Part 03, Exhibit 3); Ellen Danielle Maia Tenório de Souza's Letter of Support With English Translation (Evidence Part 03, Exhibit 4); Police Report Filed on January 25, 2023, Documenting the Attack of December 1, 2022, With English Translation (Evidence Part 04, Exhibit 1); Police Report Filed on May 11, 2023, Documenting the Attack of May 9, 2023, With English Translation (Evidence Part 04, Exhibit 1); Photographs Documenting Gunshot Damage to the Respondents' Residence in João Pessoa (Evidence Part 04, Exhibit 1); Jaqueline das Neves Dantas Maia's Psychological Report With English Translation (Evidence Part 04, Exhibit 2); Jaqueline das Neves Dantas Maia's Medical Report With English Translation (Evidence Part 04, Exhibit 2); Photographs of Respondent and His Wife at Political Demonstrations in Support of Candidate Jair Bolsonaro (Evidence Part 04, Exhibit 3); Photographs of the Respondents' Family Vehicle Displaying Political Campaign Materials at Their Residence, Dated October 29, 2022 (Evidence Part 04, Exhibit 3); Photographs of Respondent's Work Vehicle Displaying His Business Name and Telephone Number (Evidence Part 04, Exhibit 3); and Jose Carlos Pereira dos Santos' Psychological Evaluation (Evidence Part 05).

[2]*See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 1, 9); *see also* Photographs of Respondent's Work Vehicle Displaying His Business Name and Telephone Number (Evidence Part 04, Exhibit 3).

[3] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 1); Respondents' Personal Documents (Evidence Part 01).

[4]*See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 13).

service, and the family owned its home and two vehicles. He had no intention of moving back to the United States and would not have returned had his life in Brazil not been threatened.[5]

Beginning in 2022, Brazil experienced acute political polarization surrounding the presidential election. Respondent supported the ideas of candidate Jair Bolsonaro, particularly his positions on public safety, although he was never affiliated with any political party and never held any party office. His support was public and known where he lived. He spoke openly about his views and took part in demonstrations held in the city, and the family's vehicle stood at their residence in the José Américo de Almeida neighborhood bearing the number 22, the ballot number of the candidate he supported and a Brazilian flag as late as October 29, 2022, the eve of the second round of the election. Neighbors who supported candidate Luiz Inácio Lula da Silva, of the Workers' Party, argued about politics with him, at times heatedly, although Respondent never harmed anyone over a political opinion.[6]

Respondent's occupation compounded his visibility. His delivery work took him daily through several neighborhoods of João Pessoa, so that his customers, friends, and neighbors knew his political position.[7] He used a single telephone number for his work and his personal life, and that number was painted on the side and on the rear of his delivery vehicle, so that any person who passed the vehicle had access to it and Respondent was obliged to answer calls from unknown numbers in order to obtain work.[8] That same telephone number appears as Respondent's contact number in both police incident records he later filed with the Civil Police of Paraíba.[9]

In October 2022, during the election period, Respondent began receiving anonymous telephone calls containing death threats connected to his political involvement. The callers never identified themselves and did not converse. They ordered him to keep quiet and stay out of politics, and in several calls stated plainly that he would die if he did not remain silent. The calls continued frequently and ceased only when he changed his number after arriving in the United

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[5] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 10, 11, 12).
[6] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 13, 14, 15); *see also* Photographs of Respondent and His Wife at Political Demonstrations in Support of Candidate Jair Bolsonaro (Evidence Part 04, Exhibit 3); Photographs of the Respondents' Family Vehicle Displaying Political Campaign Materials at Their Residence, Dated October 29, 2022 (Evidence Part 04, Exhibit 3).
[7] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 14).
[8] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 9); *see also* Photographs of Respondent's Work Vehicle Displaying His Business Name and Telephone Number (Evidence Part 04, Exhibit 3).
[9] *See* Police Report Filed on January 25, 2023 (Evidence Part 04, Exhibit 1); *see also* Police Report Filed on May 11, 2023 (Evidence Part 04, Exhibit 1).

States. Others in his circle who openly supported the same candidate received similar anonymous calls.[10]

On December 1, 2022, at approximately 10:00 p.m., as Respondent was driving home alone from work in his work vehicle along his usual route, two men on a motorcycle fired at him. As they shot, the attackers shouted that they were affiliated with the PT political party and that "Bolsonaristas" had to die. Respondent was not hit. He could not identify either man, because it was night, the attackers wore helmets, and from the first shot his only concern was to escape, nor could he see the motorcycle's license plate.[11]

The attack was not criminal in the ordinary sense. Nothing was taken from Respondent, no attempt was made to rob him, and he had no dispute with anyone concerning money, property, or any personal matter. What the attackers demanded, through the calls that preceded the shooting and through the words they shouted as they fired, was that Respondent cease supporting the candidate he supported and cease expressing his political views. The shooting followed two months of telephonic death threats to that same effect, occurred within weeks of the close of the election, and was directed at a man whose political position was publicly known in the neighborhood where he lived and worked and was displayed at his own residence.[12]

Respondent approached a police officer and reported what had occurred. The officer told him that, because he did not know who had shot at him, there was nothing the police could do.[13] That response was the same one Respondent had received in 2017, when his house was burglarized while the family was away and the officer who assisted him stated that nothing could be done without an identified suspect and merely recorded the report.[14] Respondent did not formalize a report at the time because he had no suspect to present and did not believe a report would serve any purpose, and he filed the report only after he had reached the United States, on January 25, 2023.[15]

Respondent left Brazil with his wife and youngest son on December 21, 2022, in haste and with only the clothing they were wearing, leaving behind his home, his work, and his

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[10] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 16, 17).
[11] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 18, 19); *see also* Police Report Filed on January 25, 2023, Documenting the Attack of December 1, 2022 (Evidence Part 04, Exhibit 1).
[12] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 21).
[13] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 20).
[14] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 8).
[15] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 20); *see also* Police Report Filed on January 25, 2023, Documenting the Attack of December 1, 2022 (Evidence Part 04, Exhibit 1).

property, which he later had to sell through powers of attorney executed from abroad. He arrived at San Francisco International Airport on December 22, 2022, and was interviewed by an officer of Immigration and Customs Enforcement at the airport, to whom he described what had happened to him and his fear of returning.[16]

The threat did not end with Respondent's departure. In the early morning of May 9, 2023, at approximately 2:30 a.m., when the family had been in the United States for nearly five months and the house stood vacant, individuals went to Respondent's residence at 600 Rua Paulo Gomes de Almeida, José Américo de Almeida, João Pessoa, fired several shots at the front wall, and spray-painted the initials of the PT on the wall in red paint.[17] Respondent reported that attack to the same authority on May 11, 2023, stating that he believed it had been done once again to threaten him because he belonged to the political right.[18] That the attackers retained his address and returned to it nearly five months after he fled, when no one remained in the house, confirms that no place within Brazil would have placed him beyond their reach.[19]

The harm has persisted. Respondent lives with severe insomnia, episodes of night terror, a constant state of alert, and the sensation of being watched, and he avoids empty places and crowds.[20] A licensed clinician in California who evaluated him found that he meets the criteria for post-traumatic stress disorder, generalized anxiety disorder, and anhedonia, with primary insomnia, and expressly ruled out malingering.[21] Respondent's wife was diagnosed with post-traumatic stress disorder following the attack on her husband, with severe indices of anxiety and depression, and remains in continuous psychiatric treatment with medication, with only partial remission and significant functional impairment.[22] The effect on the family is described as well by those who knew them in Brazil.[23]

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[16] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 25) .
[17] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 26); *see also* Photographs Documenting Gunshot Damage to the Respondents' Residence in João Pessoa (Evidence Part 04, Exhibit 1).
[18] *See* Police Report Filed on May 11, 2023, Documenting the Attack of May 9, 2023 (Evidence Part 04, Exhibit 1).
[19] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 24-27).
[20] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 29).
[21] *See* Jose Carlos Pereira dos Santos' Psychological Evaluation (Evidence Part 05).
[22] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 30); *see also* Jaqueline das Neves Dantas Maia's Psychological Report (Evidence Part 04, Exhibit 2); Jaqueline das Neves Dantas Maia's Medical Report (Evidence Part 04, Exhibit 2).
[23] *See* Maria do Socorro Dantas Maia's Letter of Support (Evidence Part 03, Exhibit 1); Elaine Lima dos Santos' Letter of Support (Evidence Part 03, Exhibit 2); Ellen Danielle Maia Tenório de Souza's Letter of Support (Evidence Part 03, Exhibit 3).

Respondent has not abandoned the political convictions that made him a target. He continues to hold the same views, would vote the same way, and does not intend to conceal what he believes.[24] He fled Brazil three weeks after being shot at on a public road, after two months of telephonic death threats, and after being told by a police officer that nothing could be done. He traveled directly to the United States by air, transited no third country, presented himself to immigration authorities upon arrival, and filed his application for asylum on April 14, 2023, within one year of his entry. The proximity between the threats, the attack, and his departure establishes that his flight answered an acute and continuing danger to his life, and the attack on his residence nearly five months later establishes that the danger did not end when he left.

III. LEGAL FRAMEWORK

Asylum requires past persecution or a well-founded fear of persecution on account of a protected ground, with that ground being at least one central reason for the persecution. INA § 208(b)(1)(B)(i); *see INS v. Cardoza-Fonseca*, 480 U.S. 421, 431-32 (1987) (a well-founded fear exists where there is a reasonable possibility, substantially less than a probability, of persecution). A protected ground is one central reason where it is a cause the persecutor cares about, and not a reason that is incidental or tangential to the persecutor's motivation. *See Parussimova v. Mukasey*, 555 F.3d 734, 740-41 (9th Cir. 2009). 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).

Persecution on account of political opinion must be on account of the victim's political opinion, not the persecutor's. *See INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992). The persecutor's motive must arise from the applicant's own political belief or from a political belief the persecutor imputes to him, and the applicant must specify the opinion on which he relies. *Id.* at 483; *see Sangha v. INS,* 103 F.3d 1482, 1489 (9th Cir. 1997). In this Circuit the doctrine of imputed political opinion is settled, and the applicant need not himself hold the opinion attributed to him, because the inquiry turns on the belief the persecutor formed and acted upon. *See Navas v. INS,* 217 F.3d 646, 656 (9th Cir. 2000); *see also Lazo-Majano v. INS*, 813 F.2d 1432, 1435 (9th Cir. 1987).

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, 237 (BIA 2014), and *Matter of W-G-R-*, 26 I&N Dec.

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[24] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 32).

208, 212-18 (BIA 2014), which requires that the group be composed of members who share a common immutable characteristic, be defined with particularity, and be socially distinct within the society in question, here Brazilian society. A group may not be defined by the persecution its members suffer. *See Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007); *Matter of W-G-R-*, 26 I&N Dec. at 215. The Ninth Circuit has endorsed that three-part test while repeatedly correcting over-restrictive applications of it by the agency, holding that whether a group is cognizable requires a fact-specific inquiry based on the evidence in the particular case and that summary or categorical rejection is error. *See Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1086-87 (9th Cir. 2020); *Plancarte Sauceda v. Garland*, 23 F.4th 824, 833-34 (9th Cir. 2022). Because this proceeding arises within the Ninth Circuit, that court's precedent controls whether Respondent's proposed group is cognizable, and the group must be assessed on the evidence presented rather than by reference to categorical rules.

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); *see INS v. Stevic*, 467 U.S. 407, 429-30 (1984). The nexus standard governing withholding in this Circuit is lower than the standard governing asylum. Section 241(b)(3) contains no "one central reason" language, and an applicant for withholding need show only that a protected ground was "a reason" for the threatened harm. *See Barajas-Romero v. Lynch,* 846 F.3d 351, 357-60 (9th Cir. 2017). Respondent's showing satisfies the more demanding asylum standard and therefore satisfies the withholding standard as well.

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 or other person acting in an official capacity. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). Acquiescence does not require actual knowledge or willful acceptance. Willful blindness suffices, and the standard is met where a public official is aware of the activity constituting torture and thereafter breaches a legal responsibility to intervene. *See Zheng v. Ashcroft,* 332 F.3d 1186, 1194-96 (9th Cir. 2003); *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1059-60 (9th Cir. 2006); *see also Matter of J-E-*, 23 I&N Dec. 291, 297 (BIA 2002). Eligibility for protection under the Convention does not require a nexus to a protected ground. 8 C.F.R. § 1208.16(c)(2).

IV. ARGUMENT

1. Mr. Jose Carlos Pereira dos Santos 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 in a way regarded as offensive, and threats of violence and death are enough. *See Cordon-Garcia v. INS,* 204 F.3d 985, 990 (9th Cir. 2000). In asylum and withholding cases the Ninth Circuit has "consistently held that death threats alone can constitute persecution." *See Canales-Vargas v. Gonzales*, 441 F.3d 739, 743 (9th Cir. 2006) (quoting Navas v. INS, 217 F.3d 646, 658 (9th Cir. 2000)).

The harm may be inflicted by the government or by forces the government is unable or unwilling to control. *See Hussain v. Rosen*, 985 F.3d 634, 645 (9th Cir. 2021). Seven factors guide the analysis, among them physical violence, an ongoing pattern of serious maltreatment, threats that are repeated, specific, and combined with confrontation or other mistreatment, and harm to family and friends. *See Lapadat v. Bondi*, 145 F.4th 942, 952 (9th Cir. 2025) (citing *Sharma v. Garland*, 9 F.4th 1052, 1060-63 (9th Cir. 2021)). An applicant's own testimony may alone sustain his burden of proof where it is credible, is persuasive, and refers to specific facts sufficient to demonstrate that he is a refugee, and corroborating evidence is required only where the trier of fact determines that it should be provided and the applicant has it or can reasonably obtain it. INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.13(a); *see Ren v. Holder*, 648 F.3d 1079, 1090-93 (9th Cir. 2011). The agency must look at the totality of the circumstances in deciding whether a finding of persecution is compelled. *See Guo v. Ashcroft*, 361 F.3d 1194, 1203 (9th Cir. 2004).

Respondent endured a campaign of death threats that began in October 2022, during the presidential election, and continued without interruption until he left the country. The threats were not diffuse expressions of hostility. The callers directed Respondent to abandon his political expression, told him to keep quiet and stay out of politics, and stated that he would die if he did

not. Respondent could not evade them, because the number they used was the number painted on his delivery vehicle, which he was obliged to answer in order to work.[25]

The campaign culminated on the night of December 1, 2022, when two men on a motorcycle, on a public road near his home, fired at Respondent, shouting as they shot that they were affiliated with the PT and that Bolsonaristas had to die. Respondent survived because the shots missed him. He could not identify his assailants, who wore helmets and struck at night, and from the first shot his only concern was to escape. Within twenty days he abandoned his home, his business, and his property and fled the country with his wife and minor son.[26]

The harm did not end with his flight. In the early morning of May 9, 2023, nearly five months after the family left and with the house standing empty, individuals fired several rounds into the front wall of Respondent's residence and painted the initials of the PT there in red. Nothing was taken and nothing could have been. The act served no purpose other than to mark the address of a man identified with a political position and to signal that he remained a target.[27]

The persecutors were private actors whom the Brazilian State proved unable or unwilling to control. *See Hussain v. Rosen,* 985 F.3d 634, 645 (9th Cir. 2021). When Respondent reported the shooting, the officer told him that nothing could be done because he could not name a suspect, the same answer he had received in 2017 when his home was burglarized.[28] He nonetheless filed two formal reports with the Civil Police of Paraíba, on January 25 and May 11, 2023, and knows of no investigation, no suspect identified, and no protective measure arising from either. The country conditions record establishes that this is systemic rather than particular: only thirty-six percent of homicides committed in Brazil in 2023 had been cleared by the end of 2024, and the national clearance rate has held near thirty-five percent since 2015.[29] The Department of State reports that the government did not consistently identify and punish officials who committed human rights abuses.[30]

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[25]*See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 9, 16); *see also* Photographs of Respondent's Work Vehicle Displaying His Business Name and Telephone Number (Evidence Part 04, Exhibit 3).
[26]*See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 18, 19, 25); *see also* Police Report Filed on January 25, 2023 (Evidence Part 04, Exhibit 1).
[27]*See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 26); *see also* Photographs Documenting Gunshot Damage to the Respondents' Residence in João Pessoa (Evidence Part 04, Exhibit 1); Police Report Filed on May 11, 2023 (Evidence Part 04, Exhibit 1).
[28]*See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 8, 20).
[29]*See* Country Conditions (Evidence Part 02, CC10).
[30]*See* Country Conditions (Evidence Part 02, CC1).

Harms befalling a petitioner's family members strengthen a past-persecution claim where they form part of a pattern closely tied to the petitioner himself. *See Singh v. Garland*, 57 F.4th 643, 654 (9th Cir. 2022); *see also Sharma v. Garland*, 9 F.4th 1052, 1062 (9th Cir. 2021); *Lapadat v. Bondi*, 145 F.4th 942, 952 (9th Cir. 2025). Respondent's wife was diagnosed with post-traumatic stress disorder arising from the attack on her husband, with severe indices of anxiety and depression, and remains under psychiatric treatment with only partial remission.[31] The same campaign that targeted Respondent reached his household. Respondent himself was diagnosed with post-traumatic stress disorder, generalized anxiety disorder, and anhedonia.[32]

Considered cumulatively, the sustained death threats, the attempt on Respondent's life by gunfire, the armed attack on his residence after his flight, the State's refusal to act on either report, and the diagnosed psychological injury to Respondent and his wife establish past persecution. That this harm was inflicted on account of Respondent's political opinion is established below.

b) Respondent's Protected Grounds Were at Least One Central Reason for the Persecution He Suffered

A protected ground need not be the sole cause of the harm. It must be at least one central reason for the persecution, and it fails that standard only where it is incidental, tangential, superficial, or subordinate to another reason for the harm. INA § 208(b)(1)(B)(i), 8 U.S.C. § 1158(b)(1)(B)(i); *see Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-14 (BIA 2007). The Ninth Circuit has adopted that formulation and has held that a motive is a central reason where the persecutor would not have harmed the applicant had the motive not existed, or where that motive, standing alone, would have led the persecutor to act. *See Parussimova v. Mukasey*, 555 F.3d 734, 740-41 (9th Cir. 2009). The persecutor's motive may be established by direct or by circumstantial evidence, including the persecutor's own statements and conduct. *See Matter of J-B-N- & S-M-*, 24 I&N Dec. at 213-14. For withholding of removal, the applicant need show only that a protected ground was a reason for the threatened harm. *See Barajas-Romero v. Lynch*, 846 F.3d 351, 357-60 (9th Cir. 2017).

The record here requires no inference as to motive, because the persecutors announced it. As they fired at Respondent on December 1, 2022, the two men shouted that they were affiliated with the PT and that Bolsonaristas had to die. The anonymous callers who preceded the shooting

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[31] *See* Jaqueline das Neves Dantas Maia's Psychological Report and Medical Report (Evidence Part 04, Exhibit 2).
[32] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 29); *see also* Jose Carlos Pereira dos Santos' Psychological Evaluation (Evidence Part 05).

demanded that he stop speaking about politics and keep quiet, and told him he would die if he did not. The men who attacked his residence on May 9, 2023 left the initials of that same political party painted in red on the front wall. Nothing was taken in either attack, no payment or ransom was demanded, no robbery was attempted, and Respondent had no dispute with any person over money, property, or any personal matter. What distinguished him from his neighbors was neither wealth nor occupation nor residence, but his public and identifiable campaigning for the candidacy of Jair Bolsonaro and the household that campaigning identified. The motive the persecutors stated would, standing alone, have led them to act, which is sufficient under *Parussimova*, and it is the opposite of incidental, tangential, superficial, or subordinate under *Matter of J-B-N- & S-M-*.

That motive satisfies the standard as to each ground advanced. Respondent's actual political opinion, the political opinion imputed to him, and his membership in the particular social groups defined below are established by the same direct evidence, and each is developed in the sections that follow. Because the showing satisfies the more demanding asylum standard, it necessarily satisfies the lower standard governing withholding of removal.

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

Because Respondent has established past persecution, a rebuttable presumption arises that he has a well-founded fear of future persecution, and the evidentiary burden shifts to the Department. *See* 8 C.F.R. § 1208.13(b)(1); s*ee also Canales-Vargas v. Gonzales*, 441 F.3d 739, 743 (9th Cir. 2006); *Sharma v. Garland*, 9 F.4th 1052, 1060 (9th Cir. 2021). To rebut it, the Department must show either a fundamental change in circumstances or that Respondent could avoid future persecution by relocating within Brazil and that, under all the circumstances, it would be reasonable to expect him to do so. *See Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1089 (9th Cir. 2005) (quoting 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B)). On the relocation question the burden rests on the Government, and the analysis must be thorough and individualized, taking account of the persons who caused the past persecution, the nature and extent of that persecution, and the applicant's future political activities. *See Kaur v. Wilkinson,* 986 F.3d 1216, 1231 (9th Cir. 2021) (citing *Singh v. Whitaker*, 914 F.3d 654, 659, 661 (9th Cir. 2019)); *see also Singh v. Garland*, 57 F.4th 643 (9th Cir. 2022).

The record forecloses a finding of fundamental change. The political hostility that produced the threats and the shooting did not end with the 2022 election. Country conditions

evidence documents 760 deaths arising from political violence over two decades, in incidents recorded in every Brazilian state, approximately ninety percent of which involved the use of firearms, many of them carried out as execution-style shootings.[33] The 2024 Department of State report records continuing and disproportionate suppression of the expression of supporters of the candidate Respondent supported.[34] Id., CC 1. Documented killings of Bolsonaro supporters following political confrontations confirm that the hostility extends to lethal violence against private individuals.[35]

Respondent's own case supplies the most direct answer to any suggestion of changed circumstances. The attack on his residence occurred on May 9, 2023, nearly five months after he fled and at a house he no longer occupied.[36] His persecutors retained his address and returned to it when they had nothing to gain but the making of a point. Whatever changed in Brazil between December 2022 and May 2023, it was not their interest in him.

Internal relocation is not available to him. An applicant cannot be said to have the ability to relocate within his home country if he would have to remain in hiding there. *See Akosung v. Barr*, 970 F.3d 1095, 1102 (9th Cir. 2020). Respondent would have to. The men who called him were anonymous, and the men who shot at him wore helmets and were never identified, arrested, or prosecuted.[37] He cannot avoid people he would not recognize, and he cannot know which places are safe from persecutors he cannot name. Concealment is the only protective measure available to him anywhere in Brazil, and concealment is not relocation.

The practical avenues by which he would be found operate nationally rather than locally. His mother and his sisters remain in João Pessoa, he maintains contact with friends and acquaintances there, and anyone seeking him would reach him through them or through social media.[38] The reach of the political violence documented in the country conditions record is likewise national rather than regional: incidents were recorded in every state of the federation. And the northern and northeastern regions, where Respondent lived, sustain rates of violence higher than the rest of the country.[39]

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[33] *See* Country Conditions (Evidence Part 02, CC11).
[34] *See* Country Conditions (Evidence Part 02, CC1).
[35] *See* Country Conditions (Evidence Part 02, CC13, CC14).
[36] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 26); *see also* Police Report Filed on May 11, 2023 (Evidence Part 04, Exhibit 1).
[37] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 16, 19, 20).
[38] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 23).
[39] *See* Country Conditions (Evidence Part 02, CC11, CC2).

Relocation would also place Respondent in the same relationship to the State that he occupied in João Pessoa. The officer who received his report told him that nothing could be done because he could not name a suspect, and neither of the two reports he filed produced an investigation, an identified suspect, or a protective measure.[40] That result is not local. Only thirty-six percent of the homicides committed in Brazil in 2023 had been cleared by the end of 2024, and the national clearance rate has held near thirty-five percent since 2015.[41] A man who moves to another state carries with him the same inability to identify his persecutors and arrives at the same institutional answer.

Respondent's fear satisfies the objective standard independently of the presumption. A petitioner who cannot show past persecution might nevertheless be eligible for relief if he instead shows a well-founded fear of future persecution. *See Hussain v. Rosen*, 985 F.3d 634, 645-46 (9th Cir. 2021). A well-founded fear must be both subjectively genuine and objectively reasonable, and the objective component requires credible, direct, and specific evidence in the record of facts that would support a reasonable fear of persecution. *See Nagoulko v. INS*, 333 F.3d 1012, 1016 (9th Cir. 2003); *see also Mansour v. Ashcroft*, 390 F.3d 667, 673 (9th Cir. 2004). Respondent's rests on facts, not apprehension: two months of death threats, an attempt on his life by gunfire, an armed attack on his home five months after his flight, unidentified assailants still at large, and a documented national pattern of lethal violence directed at persons identified by political allegiance. He also continues to hold the views that made him a target and does not intend to conceal them.[42]

The Department can establish neither a fundamental change in circumstances nor the availability of safe and reasonable relocation, and the presumption of a well-founded fear therefore stands unrebutted.

d) Mr. Jose Carlos Pereira dos Santos Suffered Past Persecution on Account of His Actual and Publicly Expressed Political Opinion in Support of the Candidacy of Jair Bolsonaro, and, Alternatively, on Account of the Political Opinion His Persecutors Imputed to Him

An applicant can establish his political opinion on the basis of his own affirmative political views, his political neutrality, or a political opinion imputed to him by his persecutors.

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[40] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 20,26).
[41] *See* Country Conditions (Evidence Part 02, CC10).
[42] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 32).

See Sangha v. INS, 103 F.3d 1482, 1488 (9th Cir. 1997). Where the claim rests on political opinion, the applicant must establish that he was a victim of persecution, that he holds a political opinion, that the opinion is known to or imputed by the persecutors, and that the persecution was on account of that opinion. *Id.* at 1487. The first element is established above.

Respondent's political opinion requires no construction. It is affirmative, specific, and stated in his own words. He supported the ideas of the candidate Jair Bolsonaro in the 2022 presidential election, and above all his positions on public security and the protection of the citizen, although he was never affiliated with any political party and never held party office.[43] He identified himself in those terms to the Brazilian police in May 2023, reporting that his home had been attacked in order to threaten him because he belongs to the political right.[44] He holds that opinion today, would vote the same way, and does not intend to conceal it.[45]

The opinion for which Respondent was targeted is the opinion his persecutors themselves named. As they fired on him, the gunmen shouted that Bolsonaristas had to die.[46] The class they identified is the class to which Respondent belonged, by his own public conduct and by his own account of himself. Persecution must be on account of the victim's political opinion rather than the persecutor's, and this record presents no distance between the two. *See INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992).

Respondent's political opinion was known to those who threatened him. An applicant must show that his persecutor is aware, or could easily become aware, that he holds the opinion for which he was harmed. *See Matter of Sanchez and Escobar*, 19 I&N Dec. 276, 287 (BIA 1985). The inquiry is made from the perspective of the persecutor, and what matters is the opinion the persecutor attributes to the applicant and acts upon. *See Navas v. INS*, 217 F.3d 646, 656 (9th Cir. 2000); *see also Lazo-Majano v. INS*, 813 F.2d 1432, 1435 (9th Cir. 1987), *overruled on other grounds by Fisher v. INS*, 79 F.3d 955 (9th Cir. 1996) (en banc) (overruling *Lazo-Majano* only insofar as it took judicial notice of material outside the administrative record). Everything Respondent did to express his opinion he did in public, throughout the months of the campaign, in the same neighborhood where he lived and worked and where his neighbors already knew him by name.[47] Where the applicants in *Sanchez and Escobar* had never been

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[43] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 13).
[44] *See* Police Report Filed on May 11, 2023, Documenting the Attack of May 9, 2023 (Evidence Part 04, Exhibit 1).
[45] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 32).
[46] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 13); *see also* Police Report Filed on January 25, 2023, Documenting the Attack of December 1, 2022 (Evidence Part 04, Exhibit 1).
[47] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 13-15).

politically active, had never called public attention to themselves by expressing opposition, and had never received threats tied to their beliefs, Respondent did each of those things. *Id.* at 287.

The persecutors themselves supplied the proof. Anonymous callers do not order a man to stop speaking about politics unless they have already identified him by his politics, and these callers made that demand repeatedly for two months before the shooting.[48] As in *Aguilera-Cota v. INS*, 914 F.2d 1375 (9th Cir. 1990), where an anonymous note directing the applicant to abandon his government post established persecution on account of imputed political opinion, the content of the demand reveals what the persecutors believed about Respondent and why they acted.

The persecution was on account of that opinion. Causation must rest on direct or circumstantial evidence, and the opinion at issue must be the victim's rather than the persecutor's. *See INS v. Elias-Zacarias*, 502 U.S. 478, 482-83 (1992). The protected ground must be at least one central reason for the harm. *See* 8 U.S.C. § 1158(b)(1)(B)(i). That the harm was inflicted on account of a protected ground may be shown by inference where the inference is one that may clearly be drawn from the facts in evidence. *Cordon-Garcia v. INS*, 204 F.3d 985, 990 (9th Cir. 2000). No inference is required here, because the persecutors stated their reason twice. The callers demanded that Respondent stop speaking about politics and told him he would die if he did not. The gunmen, as they fired, named the class they had come to kill by the political allegiance of its members.[49] Since *Elias-Zacarias*, the Ninth Circuit has found persecution on account of political opinion where the persecutors say they are acting because of the victim's political beliefs, and, independently, where there is no other logical reason for the persecution. *See Sangha v. I.N.S.*, 103 F.3d 1482, 1490 (9th Cir. 1997).

The absence of any competing explanation is an independent basis for the same conclusion. *Id.* 1490. Respondent was not robbed, no robbery was attempted, and he had no dispute with any person over money, property, or any personal matter.[50] This is the inverse of *Sanchez and Escobar*, where the Board found a beating and a death threat unrelated to political opinion because the record did not suggest that the assailants knew who the victim was or had singled him out for political reasons, and because the threat appeared incidental to the robbery that accompanied it. *Id. at* 287. Here nothing was taken because nothing was wanted. Absent

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[48] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 16).
[49] See Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 16, 19); *see also* Police Report Filed on January 25, 2023 (Evidence Part 04, Exhibit 1).
[50] See Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 21).

Respondent's public identification with the candidate he supported, nothing in this record would have brought him to the attention of the men who called him and then shot at him. *See Cordon-Garcia v. INS,* 204 F.3d 985, 992 (9th Cir. 2000).

The political character of the harm is not a characterization Respondent arrived at for purposes of this proceeding. He recorded it with Brazilian authorities at the time. In the report he filed with the Online Police Station of the Civil Police of Paraíba on January 25, 2023, he stated that he had been receiving several threats for political reasons, and he described the attack of December 1, 2022, including that the men who fired at him shouted that they were affiliated with the PT and that Bolsonaristas would die. That statement was made in an official Brazilian document, recorded by a named civil police officer under a certificate that warns the declarant of the criminal consequences of a false statement under Article 299 of the Brazilian Penal Code, and it was made months before his application for asylum was prepared and filed on April 14, 2023. The certified English translation of that report is itself dated August 3, 2023. The second report, filed on May 11, 2023, is to the same effect, recording his statement that the attack on his residence had been carried out once again to threaten him because he belonged to the political right. The account Respondent gives in this proceeding is the account he gave to the police of his own country when the events were recent, and it has not changed.

In the alternative, and as an independent ground, Respondent was persecuted on account of a political opinion imputed to him. Where the persecutor attributes a political opinion to the victim and acts upon the attribution, that imputed view becomes the applicant's political opinion within the meaning of the Act. *See Sangha v. I.N.S.*, 103 F.3d 1482, 1489 (9th Cir. 1997). The inquiry looks at the applicant from the perspective of the persecutor. *See Aguilera-Cota v. INS*, 914 F.2d 1375, 1379 (9th Cir. 1990). And whether the political opinion is actually held or implied makes little difference where the alien's life is equally at risk. *See Singh v. Ilchert*, 63 F.3d 1501, 1509 (9th Cir. 1995) (quoting *Desir v. Ilchert*, 840 F.2d 723, 729 (9th Cir. 1988)).

Whatever view is taken of the depth of Respondent's own convictions, those who telephoned him and those who fired on him classified him as a "Bolsonarista," demanded that he abandon that position, and acted on the classification when he refused. The attribution and the acting upon it are here the same conduct that constitutes the persecution, and they establish the political opinion and the motive at once. These grounds are advanced cumulatively and independently, and the rejection of either does not diminish the other.

e) Mr. Jose Carlos Pereira dos Santos Suffered Past Persecution on Account of His Particular Social Groups Consisting of "Brazilian Nationals Who Publicly and Identifiably Campaigned in Their Own Communities for the Candidacy of Jair Bolsonaro in the 2022 Presidential Election"

Matter of Acosta, 19 I&N Dec. 211, 233 (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, 233 (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.

Respondent proposes the particular social group of *"Brazilian nationals who publicly and identifiably campaigned in their own communities for the candidacy of Jair Bolsonaro in the 2022 presidential election."* The group here proposed because it satisfies each of the three requirements the Board has established: it is composed of members who share a common immutable characteristic, it is defined with particularity, and it is socially distinct within the society in question. *See Matter of Acosta,* 19 I&N Dec. 211, 233 (BIA 1985); *see also Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014).

Recognition turns on the perception of the society in question rather than on the perception of the persecutor, and persecutory conduct alone cannot define the group. *See Matter of M-E-V-G-*, 26 I&N Dec. at 242. The group advanced here is defined without reference to any threat, attack, or targeting, and therefore exists independently of the harm asserted. As demonstrated below, it is defined by a completed and therefore immutable act, is bounded with sufficient particularity to exclude both the general voting population and those who held the same views without ever expressing them publicly, 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 that defines this group is the completed historical act of having campaigned publicly and identifiably, in one's own community, for a particular candidacy

in an election that closed in October 2022. A past experience is by its very nature immutable, as it has already occurred and cannot be undone. *See Matter of C-A-*, 23 I&N Dec. 951, 958 (BIA 2006). Respondent cannot now unattend the demonstrations he attended, unsay what he said to his customers and neighbors across the months of the campaign, or remove the campaign materials that stood at his residence on October 29, 2022.[51] The characteristic is immutable on a second and independent basis. The conviction that motivated that conduct is so fundamental to individual identity and conscience that it ought not be required to be changed. *See Matter of Acosta,* 19 I&N Dec. at 233. Respondent holds the same views today and does not intend to conceal them.[52]

Particularity. The group is bounded by four concrete limits, each verifiable by conduct rather than by degree of belief. It is limited to nationals of Brazil. It is limited to a single electoral contest, the presidential election of 2022, and therefore to a closed period of time. It is limited to one candidacy. And it is limited to those whose campaigning was public and identifiable within their own community, which excludes those who merely voted, those who held the view privately, those who expressed it only among intimates, and those who supported the candidacy anonymously or from a distance. The group therefore suffers from none of the indeterminacy that defeated the proposed group of affluent Guatemalans, where the defining concept was so imprecise that membership could range from one percent to twenty percent of the population or more. *See Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007). What remains here is a determinate universe defined by observable acts: attending public demonstrations, displaying campaign materials at one's own address, and soliciting neighbors and customers face to face. Respondent satisfies each element, and the record documents each.[53]

Social Distinction. Social distinction requires proof that the relevant society, and 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; *see also Matter of M-E-V-G-*, 26 I&N Dec. at 242. That requirement defeated the group of affluent Guatemalans because the record disclosed no background evidence that wealthy Guatemalans "would be recognized as a group that is at a greater risk of crime in general or of extortion or robbery in particular," crime in that country falling across every socioeconomic

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[51]See Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 13, 14); *see also* Photographs of Respondent and His Wife at Political Demonstrations in Support of Candidate Jair Bolsonaro (Evidence Part 04, Exhibit 3); Photographs of the Respondents' Family Vehicle Displaying Political Campaign Materials at Their Residence, Dated October 29, 2022 (Evidence Part 04, Exhibit 3).

[52]See Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 32).

[53]*See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 13, 14).

class without distinction. *See Matter of A-M-E- & J-G-U-*, 24 I&N Dec. at 74. The record here is the opposite in kind, not merely in degree.

Brazilian society names, counts, studies, and reports this category as a category. A national Observatory of Political and Electoral Violence tracks incidents by that classification and recorded at least 214 involving candidates, officials, and government workers in 2022 alone, including 45 alleged homicides.[54] A two-decade study conducted by the University of São Paulo and the Brazilian Center for Analysis and Planning identified 760 deaths arising from political violence and recorded incidents in every Brazilian state.That study is not confined to persons who hold or seek office. It surveyed violence against professional politicians and, as a distinct and equally central object, violence against activists, a category the study defines to include union members and participants in social movements, organizations, and civil associations, and it found that episodes of violence against activists account for approximately thirty-six percent of the cases surveyed. The researcher responsible for the project frames the distinction as one between those who engage in politics within the institution and those who engage in politics outside it, and identifies the latter as being at high risk. [55] Respondent belongs to the second category, and belonged to it before the 2022 campaign. He had long been active in the neighborhood where he lived, taking the lead in requests and demands for improvements for the neighborhood, and for that reason many people knew him and came to him for help.[56] His public campaigning in 2022 was the continuation of a locally visible civic role rather than an isolated act, and it is precisely that visibility which placed him within the group.

The classification likewise reaches persons with no connection to office. The Observatory of Political and Electoral Violence at the Federal University of Rio de Janeiro compiled 426 cases of threats and violence against individuals engaged in politics, or their relatives, from January through September 2022.[57] Freedom House, citing Agência Pública, recorded fifteen murders and twenty-three attempted murders during the electoral period, and reported that in an August 2022 survey almost seventy percent of Brazilian respondents feared threats and harassment on account of their political views.[58] Amnesty International documented electoral coercion directed at ordinary working people pressured to declare their vote, and assaults and

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[54] *See* Country Conditions (Evidence Part 02, CC12).
[55] *See* Country Conditions (Evidence Part 02, CC11).
[56] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 13, 14).
[57] *See* Country Conditions (Evidence Part 02, CC5).
[58] *See* Country Conditions (Evidence Part 02, CC7).

persecution directed at persons who expressed an opposing political opinion.[59]A society does not create observatories, commission two-decade studies, and survey its own population about victimization for political affiliation unless it perceives that affiliation as a line along which people are singled out.

The perception extends specifically to persons publicly identified with the candidacy Respondent supported. Hildor Henker, who had publicly identified himself as a supporter of that candidacy on social media, was fatally stabbed following a confrontation, and José Roberto Gomes Mendes, likewise a supporter, was killed following a political argument with a supporter of the opposing candidate.[60] The recognition is institutional rather than anecdotal. National research conducted by the Datafolha Institute and commissioned by the Brazilian Forum on Public Security measured the proportion of Brazilians who fear physical assault because of their political or partisan choices and found that 59.6 percent of Brazilians aged sixteen or older hold that fear. Brazilian institutions thus frame political affiliation as a basis on which a person may be singled out for violence, which is the perception that social distinction requires. [61]

That national recognition is mirrored where Respondent lived. He had been a known figure in his neighborhood for years before the election, his identification with the candidacy stood visible on the vehicle in his own driveway on the eve of the second round, and neighbors who supported the opposing party argued politics with him openly. His membership in the group was not a fact that had to be discovered. It was a matter of local knowledge.[62]

Nexus. For the reasons set out in the nexus section above, membership in this group was at least one central reason for the harm Respondent suffered. What the persecutors responded to was conduct rather than belief. The anonymous callers demanded that he stop speaking about politics and keep quiet, a demand intelligible only as a response to expression that was public and known in the place where he lived and worked. The men who fired at him announced the candidacy that made him a target, identifying the victim class by reference to the very campaign in which he had openly taken part. The initials painted on the wall of his residence marked an address already associated in that neighborhood with the same campaign. Nothing in this record connects Respondent to these persecutors other than the public and identifiable campaigning that

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[59]*See* Country Conditions (Evidence Part 02, CC6).
[60]*See* Country Conditions (Evidence Part 02, CC14, CC13).
[61]*See* Country Conditions (Evidence Part 02, CC1).
[62]*See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 13, 15); *see also* Photographs of the Respondents' Family Vehicle Displaying Political Campaign Materials at Their Residence, Dated October 29, 2022 (Evidence Part 04, Exhibit 3)

defines the group, and it was that campaigning, and not any belief he might have held in private, to which they responded.

Application. Respondent is a member of the group. He campaigned publicly and identifiably in his own community for the candidacy of Jair Bolsonaro in the 2022 presidential election, and the record establishes that conduct independently of any harm that followed. The anonymous calls that began in October 2022 and the shooting of December 1, 2022 followed his membership in the group rather than defining it. This ground is advanced cumulatively with, and independently of, the grounds of actual and imputed political opinion, and the rejection of any one of them does not diminish the others.

f) Mr. Jose Carlos Pereira dos Santos Suffered Past Persecution on Account of His Membership in the Particular Social Groups Consisting of "Members of the Immediate Family of a Brazilian Who Publicly and Identifiably Campaigned for the Candidacy of Jair Bolsonaro in the 2022 Presidential Election "

Respondent advances, as a further and independent ground, the particular social group of members of the immediate family of a Brazilian publicly and identifiably identified with the candidacy of Jair Bolsonaro in the 2022 presidential election. The group satisfies each of the three requirements the Board has established, namely that it be composed of members who share a common immutable characteristic, that it be defined with particularity, and that it be socially distinct within the society in question. *See Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208, 216 (BIA 2014). It is likewise the group in which Respondent's wife, Jaqueline das Neves Dantas Maia, and their minor son, Jose Carlos Pereira dos Santos Junior, are themselves members, and the harm directed at the household is accordingly relevant to each of them as well as to Respondent.

Immutability. Kinship is the paradigmatic immutable characteristic. A person cannot change who his spouse and children are, and cannot be required to renounce them. The Ninth Circuit has held that, even under the Board's refined framework, the family remains the quintessential particular social group. *See Rios v. Lynch*, 807 F.3d 1123, 1128 (9th Cir. 2015). That court has further recognized that persecutors are more likely to identify individual family members as part of a particular social group where familial ties are linked to race, religion, or political affiliation. *Id.* (quoting *Thomas v. Gonzales*, 409 F.3d 1177, 1188 (9th Cir. 2005) (en banc), *vacated on other grounds*, *Gonzales v. Thomas*, 547 U.S. 183 (2006)). The second

component of the definition is immutable for the reasons set out above. Respondent campaigned publicly and identifiably in his own community for the candidacy of Jair Bolsonaro, and the fact that he did so is a completed historical act. A past experience is by its very nature immutable, as it has already occurred and cannot be undone. *See Matter of C-A-*, 23 I&N Dec. 951, 958 (BIA 2006). Respondent's wife and son cannot cease to be his wife and son, and they cannot cause his having openly campaigned for that candidacy never to have occurred. Nor does that identification lapse with the electoral calendar. The attack on the family residence occurred on May 9, 2023, more than six months after the election closed, and the persecutors marked the wall with the initials of the same political party, which demonstrates that the identification survived the contest that gave rise to it. The country conditions record confirms that political violence in Brazil has continued and intensified outside electoral periods.[63]

Particularity. The group is bounded by two objective limits, neither of which depends on degree of belief or on any subjective assessment. The first is the legal and biological relationship of immediate family, which excludes friends, neighbors, employees, and acquaintances, and which is verifiable by civil records. The second is the same limitation that bounds the group proposed above, namely that the family member campaigned publicly and identifiably, within his own community, for a single candidacy in a single electoral contest. That temporal boundary delimits who belongs to the group; it does not measure how long the members remain exposed to harm, as the attack on the family residence in May 2023 demonstrates. The resulting universe is determinate and admits of none of the indeterminacy that defeated the proposed group of affluent Guatemalans, where the defining concept was so subjective, inchoate, and variable that membership could range from one percent to twenty percent of the population or more. *See Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007). A person either is or is not the spouse or the child of such an individual.

Social Distinction. Social distinction requires evidence that society in general perceives, considers, or recognizes persons sharing the characteristic to be a group, and it is the perception of the society in question rather than that of the persecutor that governs. *See Matter of W-G-R-*, 26 I&N Dec. at 216; *Matter of M-E-V-G-*, 26 I&N Dec. at 242. Brazilian society recognizes the relatives of politically identified persons as a distinct category of potential victims, and it does so expressly. The Observatory of Political and Electoral Violence at the Federal University of Rio de Janeiro compiled 426 cases of threats and violence against individuals engaged in politics, or

[63] *See* Country Conditions (Evidence Part 02, CC16).

their relatives, from January through September 2022.[64] The classification is the Observatory's own. A national body that counts political violence does not record relatives as a separate class of victims unless the society in which it operates perceives that relatives are targeted because of the political identification of the family member. Amnesty International documented electoral coercion reaching into the domestic and working lives of ordinary people pressured to declare their vote.[65] Research conducted by the Datafolha Institute and commissioned by the Brazilian Forum on Public Security found that 59.6 percent of Brazilians aged sixteen or older fear physical assault because of their political or partisan choices.[66] The perception is also local. Respondent's family lived at the address where the campaign materials stood on the eve of the second round, and his neighbors knew that household as his household.

Nexus. For the reasons set out in the nexus section above, membership in this group was at least one central reason for the harm directed at Respondent's family. The attack of May 9, 2023 was directed at the family residence. By that date the address had ceased to serve any commercial or political function and was nothing other than the home in which Respondent's wife and son had lived, and the house stood empty. The initials painted on the front wall identified the reason for which that address had been selected. Neither Respondent's wife nor his son engaged in the same sustained and publicly identifiable campaigning that characterizes the first group. What made the residence a target on May 9, 2023 was not a political act by either of them, but the identification of that address with Respondent's political campaigning. The attack was therefore directed at the household as such, based on its association with Respondent and his publicly visible political activity. Harms that have befallen a petitioner's family members strengthen a past-persecution claim where they form part of a pattern of persecution closely tied to the petitioner himself, and here the persecutors did not reach the family incidentally; they returned to the family home nearly five months after the family had gone. *See Singh v. Garland*, 57 F.4th 643, 654 (9th Cir. 2022); *see also Sharma v. Garland*, 9 F.4th 1052, 1062 (9th Cir. 2021). Respondent's wife was diagnosed with post-traumatic stress disorder arising from the attack on her husband, with severe indices of anxiety and depression, and remains under continuous psychiatric treatment with only partial remission.[67]

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[64] *See* Country Conditions (Evidence Part 02, CC5).
[65] *See* Country Conditions (Evidence Part 02, CC6).
[66] *See* Country Conditions (Evidence Part 02, CC15).
[67] *See* Jaqueline das Neves Dantas Maia's Psychological Report With English Translation (Evidence Part 04, Exhibit 2)

Application. Respondent is a member of this group, as are his wife and his minor son. The group is defined by kinship and by a completed public identification, and not by any threat, attack, or targeting, so that it exists independently of the harm asserted and does not rest on the perception of the persecutor. *See Matter of M-E-V-G-*, 26 I&N Dec. at 242. The armed attack on the family residence followed from that membership rather than defining it. This ground is advanced cumulatively with, and independently of, the grounds of actual political opinion, imputed political opinion, and membership in the particular social groups proposed above, and the rejection of any one of them does not diminish the others.

V. THE BRAZILIAN STATE WAS UNABLE OR UNWILLING TO CONTROL RESPONDENT'S PERSECUTORS

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 inquiry is directed at the State's capacity and willingness to control the persecutors, not at whether the persecutors were themselves state agents, and the absence of governmental affiliation does not dispose of the question. *See Singh v. Garland*, 57 F.4th 643, 652 (9th Cir. 2022).

Respondent sought the protection of the Brazilian State, and he sought it three times. Immediately after the shooting of December 1, 2022, he approached a police officer and reported what had happened.[68] He filed a formal report with the Online Police Station of the Civil Police Neither Respondent's wife of Paraíba on January 25, 2023, describing the anonymous death threats, the attempt on his life, and the words the attackers shouted.[69] He filed a second report on May 11, 2023, describing the gunfire and the political marking left on the wall of his residence.[70] This is not a record in which the applicant never approached the authorities. *See Hussain*, 985 F.3d at 648 (weighing against the applicant that he never claimed to have reported the attacks or sought police assistance).

The State's response to each approach was the same, and it was nothing. The officer told Respondent that because he could not name a suspect there was nothing the police could do. Neither written report produced an investigation, the identification of any suspect, or any

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[68] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 20).
[69] *See* Police Report Filed on January 25, 2023 (Evidence Part 04, Exhibit 1).
[70] *See* Police Report Filed on May 11, 2023 (Evidence Part 04, Exhibit 1).

protective measure of which Respondent is aware.[71] What Respondent received was not a failed effort at protection but a refusal to begin one, conditioned on his supplying information that the manner of the attack had made impossible: the men wore helmets, they struck at night, and they were gone in a few minutes.[72]

That answer was not the disposition of a single officer. Respondent had received the identical answer in 2017, when his home was burglarized and the officer who assisted him said that without an identified suspect nothing could be done, then limited himself to recording the report. Five years and two very different crimes produced one institutional response.[73]

The institutional answer Respondent received was the ordinary institutional answer, and that the failure of the Brazilian State to act on his reports reflects its capacity and its willingness. Only thirty-six percent of the homicides committed in Brazil in 2023 had been cleared by the end of 2024, and the national clearance rate has remained near thirty-five percent since 2015.[74] A State that does not identify the perpetrator in roughly two of every three killings is not a State that was going to identify two helmeted men on a motorcycle who fired at night and left. The Overseas Security Advisory Council reports that local law enforcement may have limited ability to respond to serious crimes.[75]

The 2024 Department of State report records that the government did not always take credible steps to identify and punish officials who committed human rights abuses.[76] Police officers and soldiers have been associated with collaboration with criminal organizations and with the formation of militias, while the courts have been described as slow and generally ineffective.[77]

That the State took no effective step is confirmed by what followed. Respondent filed his first report on January 25, 2023. On May 9, 2023, his residence was fired upon and marked. Whatever the report accomplished, it did not stop the persecutors, and no measure was taken to protect the property or to identify the men who attacked it. The existence of a formal channel for complaints does not establish adequate protection where the harm continues after the complaint is made. *See Cordon-Garcia v. INS*, 204 F.3d 990 (9th Cir. 2000) (rejecting the conclusion that

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[71] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 20, 26).
[72] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 19).
[73] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 8).
[74] *See* Country Conditions (Evidence Part 02, CC10).
[75] *See* Country Conditions (Evidence Part 02, CC2).
[76] *See* Country Conditions (Evidence Part 02, CC1).
[77] *See* Country Conditions (Evidence Part 02, CC8)

the government was able to protect the applicant where guerrillas killed her uncle after protection ceased).

Respondent has therefore satisfied the element. He was harmed by private actors, he placed the facts before the Brazilian State on three separate occasions, the State declined to act on any of them, and the documented condition of Brazilian law enforcement establishes that the outcome he experienced is the ordinary one.

VI. WITHHOLDING OF REMOVAL

Should the Court deny Respondent's application for asylum, he is alternatively entitled to withholding of removal. Withholding of removal requires the applicant to establish a clear probability that his life or freedom would be threatened on account of a protected ground upon return, a standard more stringent than the well-founded fear standard governing asylum. INA § 241(b)(3)(A), 8 U.S.C. § 1231(b)(3)(A); *see INS v. Stevic*, 467 U.S. 407, 429-30 (1984). Unlike asylum, which is discretionary, withholding is mandatory where that standard is met. *See Canales-Vargas v. Gonzales*, 441 F.3d 739, 746 (9th Cir. 2006).

A finding of past persecution gives rise to a presumption of future persecution sufficient to establish eligibility for withholding of removal. *See* 8 C.F.R. § 1208.16(b)(1)(i). An applicant who has not established past persecution remains statutorily eligible upon a showing that it is more likely than not that he would be persecuted on account of a protected ground and that internal relocation would not be reasonable. *See* 8 C.F.R. § 1208.16(b)(2). Where past persecution on account of a protected ground has been established, it is presumed that the applicant's life or freedom would be threatened in the future in the country of removal on the basis of the original claim, and the Department bears the burden of rebutting that presumption by a preponderance of the evidence. 8 C.F.R. § 1208.16(b)(1)(i), (ii).

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

Nothing in this record rebuts the presumption. The political hostility that produced the threats and the shooting did not end with the 2022 election, and the 2024 Department of State

report documents its continuation.[78] Respondent's own persecutors demonstrated that their interest in him survived his departure: they went to his address on May 9, 2023, nearly five months after he fled and at a house he no longer occupied, fired into the front wall, and left a political marking there.[79] The men who threatened him and the men who shot at him were never identified, arrested, or prosecuted, and the Brazilian State declined to act on either of the two reports he filed.[80] Nor was internal relocation reasonably available to him, for the reasons set forth above.

Respondent's nexus showing is direct rather than inferential. The persecutors stated their reason as they acted: the callers demanded that he cease speaking about politics and told him he would die if he did not, and the gunmen named by political allegiance the class they had come to kill.[81] The harm was the object of the campaign against him and not an incidental byproduct of anything else. Nothing was taken from him, no robbery was attempted, and he had no dispute with any person over money, property, or any personal matter.[82]

Should the Court conclude otherwise as to asylum, the record establishes at a minimum that Respondent's political opinion was "a reason" for the anonymous death threats and for the shooting of December 1, 2022. Because Respondent has established past persecution on account of a protected ground, an unrebutted presumption of future persecution, and the requisite nexus, the Court should grant his application for withholding of removal.

VII. PROTECTION UNDER THE CONVENTION AGAINST TORTURE

Relief under the Convention does not require any nexus to a protected ground. 8 C.F.R. § 1208.16(c)(2). To constitute torture, an act must cause severe physical or mental pain or suffering, be intentionally inflicted, be inflicted for a proscribed purpose, be inflicted by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity, and not arise from lawful sanctions. *See Matter of J-E-*, 23 I&N Dec. 291, 297-301 (BIA 2002); 8 C.F.R. § 1208.18(a)(1). The regulation further requires that the act be specifically intended to inflict severe physical or mental pain or suffering, 8 C.F.R. §

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[78] *See* Country Conditions (Evidence Part 02, CC1).
[79] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 26); *see also* Photographs Documenting Gunshot Damage to the Respondents' Residence in João Pessoa (Evidence Part 04, Exhibit 1); Police Report Filed on May 11, 2023 (Evidence Part 04, Exhibit 1).
[80] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 19, 20, 26).
[81] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 16, 19); *see also* Police Report Filed on January 25, 2023 (Evidence Part 04, Exhibit 1).
[82] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 21)

1208.18(a)(5), and that it be directed against a person in the offender's custody or physical control, 8 C.F.R. § 1208.18(a)(6). The applicant must establish that it is more likely than not that he would be tortured in the country of removal, and the adjudicator must consider all evidence relevant to the possibility of future torture, including evidence of past torture, evidence that the applicant could relocate to a part of the country where he is not likely to be tortured, evidence of gross, flagrant, or mass violations of human rights, and other relevant country conditions. 8 C.F.R. § 1208.16(c)(2), (c)(3); *see Matter of J-E-*, 23 I&N Dec. at 304.

Acquiescence of a public official requires that the official, prior to the activity constituting torture, have awareness of such activity and thereafter breach a legal responsibility to intervene to prevent it, and willful blindness satisfies that standard. *See Barajas-Romero v. Lynch*, 846 F.3d 351, 363-64 (9th Cir. 2017). There is no rogue official exception, and the regulation is satisfied by the acts of a public official or of another person acting in an official capacity, either one sufficing. *Id.* at 362. The inquiry examines the efficacy of the State's efforts and not merely the existence of laws or of a declared national policy, and acquiescence at the state or local level suffices. *Id.* (citing *Madrigal v. Holder*, 716 F.3d 499, 509-10 (9th Cir. 2013)). Relief under the Convention is forward-looking and does not require that the applicant have been tortured in the past. *Id.* at 363.

The harm Respondent fears is specifically intended within the meaning of 8 C.F.R. § 1208.18(a)(5). The men who fired at him on December 1, 2022 announced, as they fired, that Bolsonaristas had to die, which states an intention to kill for a stated purpose and excludes any suggestion of accidental or incidental harm. The men who returned to his residence on May 9, 2023, nearly five months after the family had fled, fired into the wall of an empty house and painted the initials of a political party on it, conduct that has no function other than the deliberate infliction of fear. The country conditions record establishes that political violence in Brazil is generally planned rather than impulsive, that almost ninety percent of the incidents surveyed involved firearms, and that the characteristic pattern is execution-style shooting carried out by persons who have no prior relationship with the victim.[83] Harm inflicted for the purpose of punishing a person for his political opinion and of intimidating him and others into silence is inflicted for a proscribed purpose under 8 C.F.R. § 1208.18(a)(1)(i).

The harm Respondent fears would also be inflicted while he is in the offenders' physical control, as 8 C.F.R. § 1208.18(a)(6) requires. He fears being located, seized, and held while harm

[83] *See* Country Conditions (Evidence Part 02, CC11).

is inflicted upon him before he is killed. The persecutors have twice demonstrated the capacity to locate him, once on the road he traveled home from work and once at his residence after he had left the country, and the documented national pattern is one of planned attacks executed at close quarters by persons dispatched for that purpose. A person who is intercepted, overpowered, and held by armed men is under their physical control within the meaning of the regulation for the period during which the harm is inflicted, and the regulation requires no formal detention.

Internal relocation would not avoid the risk, and the evidence bearing on that question under 8 C.F.R. § 1208.16(c)(3)(ii) is the evidence set out in the asylum analysis above. The men who attacked Respondent were never identified, so he cannot know from whom or from where the danger would come. They located his residence and returned to it nearly five months after he had gone, which demonstrates that his address remained known and that distance in time did not extinguish their interest. The country conditions record documents that political violence in Brazil is distributed throughout the national territory and has been recorded in every Brazilian state over two decades, and that it has increased rather than receded since 2022, reaching its highest recorded values in 2024.[84] The failure of the Brazilian State to identify a suspect is a national and not a local phenomenon, with roughly two of every three homicides unsolved.[85] The burden of establishing eligibility rests on Respondent, but he is not required to prove the absence of any place in Brazil where he might hypothetically be safe. *See Maldonado v. Lynch*, 786 F.3d 1155, 1162-64 (9th Cir. 2015) (en banc).

Considering the totality of the evidence, Respondent has established that it is more likely than not that he would be tortured if removed to Brazil, with the consent or acquiescence of Brazilian public officials who were told what was being done to him and did nothing. 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. An applicant who has established past persecution but no longer has a well-founded fear may nevertheless warrant a discretionary grant of asylum based either on compelling reasons arising

[84] *See* Country Conditions (Evidence Part 02, CC11, CC16).
[85] *See* Country Conditions (Evidence Part 02, CC10).

out of the severity of the past persecution, 8 C.F.R. § 1208.13(b)(1)(iii)(A), or on a reasonable possibility that he may suffer other serious harm upon removal, 8 C.F.R. § 1208.13(b)(1)(iii)(B). *See Matter of L-S-*, 25 I&N Dec. 705, 715 (BIA 2012).

As to the first ground, 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*, 20 I&N Dec. 16, 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 Board weighs the degree of harm suffered, the length of time over which it was inflicted, and the evidence of severe psychological trauma stemming from it. *See Matter of L-S-*, 25 I&N Dec. at 712 (discussing *Matter of N-M-A-*, 22 I&N Dec. 312, 325-26 (BIA 1998)). The third factor is established clinically rather than asserted. Over two months he was told by anonymous callers that he would die if he did not stop speaking about politics; he was then fired upon at close range on a public road at night and survived only because the shots missed; and within twenty days he abandoned his home, his business, and everything he owned and left the country with his wife and his ten-year-old son carrying only what they wore.[86] A licensed clinician found post-traumatic stress disorder, generalized anxiety disorder, anhedonia, and primary insomnia, assessed his global functioning at 50, and expressly ruled out malingering.[87]

The second ground is satisfied independently and on different terms. An applicant proceeding under it need not show that the harm suffered in the past was atrocious; the inquiry is forward-looking, and the other serious harm may be wholly unrelated to the past harm and need not be inflicted on account of a protected ground, though it must be so serious that it equals the severity of persecution. *See Matter of L-S-*, 25 I&N Dec. 705, 714. Adjudicators are directed to attend to conditions that might not significantly harm others but that could severely affect the particular applicant, including situations in which he could experience severe mental or emotional harm. *Id.* at 714. Return would place Respondent in the city he fled, at the address that was fired upon and marked after his departure, among persecutors who were never identified, arrested, or prosecuted, and it would place him there carrying a trauma disorder that originated in

[86] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 16, 18-19, 25).
[87] *See* Jose Carlos Pereira dos Santos' Psychological Evaluation (Evidence Part 05).

precisely those circumstances.[88] His wife, included in this application, would return in the same posture, with post-traumatic stress disorder in only partial remission and significant functional impairment.[89] *See Mohammed v. Gonzales*, 400 F.3d 785, 801 (9th Cir. 2005).

The discretionary factors favor Respondent. He arrived on a direct commercial flight, transited no third country, presented himself to an officer of Immigration and Customs Enforcement at the airport, and described what had happened to him and his fear of returning.[90] He filed his application for asylum within one year of arrival. He has lived at the same address in Hercules, California, for more than three years, is lawfully employed pursuant to an employment authorization document, and has no criminal history of any kind, nor has any member of his family included in this application. *See Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987).

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

Pretermission is an extraordinary procedural device, appropriate only where no factual issues are 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 produced that standard, the Immigration Judge confirmed with counsel that no facts were in dispute, and the respondent had identified no particular social group and no other protected ground as the basis for his claim even when given the opportunity to do so. *Id.* at 235-36. Respondent's case presents the opposite circumstances on both conditions.

Respondent has articulated cognizable protected grounds with specificity and supported them with a developed evidentiary record: actual political opinion, alternatively imputed political opinion, and, independently, membership in two particular social groups defined and delimited above. The record includes his declaration; two police incident reports filed with the Civil Police of Paraíba, with certified translations; photographs documenting the gunshot damage to his residence; photographs of his participation in political demonstrations, of the campaign materials displayed at his home on the eve of the second round, and of the work vehicle that carried his name and telephone number; three letters of support with certified translations; a psychological

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[88] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶¶ 19-20, 26, 29).
[89] *See* Jaqueline das Neves Dantas Maia's Psychological Report and Medical Report (Evidence Part 04, Exhibit 2).
[90] *See* Jose Carlos Pereira dos Santos' Declaration in Support of Asylum Application (Evidence; ¶ 25).

evaluation of Respondent and psychological and medical reports concerning his wife; and sixteen country conditions exhibits.

Material factual disputes remain that only Respondent's sworn, cross-examinable testimony can resolve. They include the credibility of his account of the anonymous calls that began in October 2022 and of the shooting of December 1, 2022; what the attackers said as they fired and what he was able to perceive of them; his contact with a police officer immediately after the attack and the response he received; and the reasonableness of internal relocation in light of persecutors who were never identified. The documentary record corroborates portions of that account but does not substitute for his testimony on any of these points. Section 240(b)(4)(B) of the Act, 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. Because cognizable grounds have been articulated and genuine factual disputes remain, 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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Jose Carlos Pereira dos Santos — **File No. A 240-169-089**
Jaqueline das Neves Dantas Maia — **File No. A 240-169-090**
Jose Carlos Pereira dos Santos Junior — **File No. A 240-169-091**

PROOF OF SERVICE

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

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

To the following:

Office Location:	**Mailing Address:**
Office ofthe ChiefCounsel Department of Homeland Security 100 Montgomery Street, Suite 200 San Francisco, CA 94104	US Immigration and Customs Enforcement US Department of Homeland Security Office of the Chief Counsel P.O. Box 26449 San Francisco, CA 94126 -6449

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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