

Youth, Gangs, and Corruption in Honduras: Social Group Membership and Political Opinion as Grounds for Political Asylum in the United States

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On the Run

Fearing for his life, Enrique Gonzales¹ first fled his country, Honduras, in January of 1999. He left his family, friends, and belongings, and headed for the anticipated safety of the United States. The trek from Honduras through Guatemala and then Mexico was a difficult and dangerous one. After several years and two unsuccessful attempts, Enrique finally reached Laredo, Texas on May 22, 2002. Three days later he was picked up by immigration authorities and incarcerated at the Laredo Detention Center on account of his illegal entry into the United States.

By the age of ten Enrique Gonzales had been abandoned by both of his parents. The child struggled for approximately one year thereafter to keep himself and his three sisters alive, together, and off the streets. He was then able to enter himself and his siblings into an orphanage, where he lived until he was nineteen years old. Throughout his high school years and after graduation, Enrique faced persecution by an intricate web of *maras*, or street gangs, prevalent in his city and throughout the country. Despite the fact that Enrique came from the same socio-economic background as the majority of the *mareros*, or gang members, he never joined the gangs. This was rather unique for an abandoned, neglected, and abused youth, even one who is fortunate enough to find the safe haven of an orphanage. Many children under such circumstances turn to a life on the streets and eventually the *maras*. Thus, the *mareros* found it difficult to believe that Enrique did not belong to a gang, and he was often accused by one gang of belonging to another. Their suspicion and disbelief created a cycle of many years of torment for Enrique. With no visible family unit to serve as a deterrent, he was constantly watched, threatened, abused and recruited by the gangs.

Enrique did not receive attention or assistance of any kind from the local police or national government regarding his status as an abandoned child or his battle with the gangs. In fact, action taken at the national level intended to restore peace to the Honduran society has resulted in increased rates of violence and severe violation of youth's human rights. The police themselves have been known to murder unarmed street youth, and go unpunished.² Enrique observed this situation around him and came to believe that the gangs were used as an instrument to carry out the "dirty work" of powerful business and

¹ All names have been changed in order to ensure the privacy of those parties involved in this case.

² Amnesty International. "Honduras: Human rights violations against children." AI Index: AMR37/011/1999 (1 October 1999). www.amnesty.org/library/index/ENGAMR370111999?open&of=ENG-HND. (accessed October 28, 2004)

government elites.³ He often explained to the children in the orphanage and later to the people in the barrio where he lived the many dangers of being a *marero* and the negative effect that *maras* have on society. Enrique's refusal to join the gangs made him an extremely vulnerable target. His outspoken nature augmented his susceptibility to their aggression.⁴

The definition of a refugee is set out in the 1951 Convention Relating to the Status of Refugees and later was expanded and adopted by the United States. A refugee is any person outside of his or her country of origin who proves a well founded fear of persecution based on account of his or her race, religion, nationality, membership in a particular social group or political opinion, and as a result of such fear, is unable or unwilling to return to his or her country or country of former habitual residence. In this article I argue that the treatment that Enrique received from the gangs as a member of a particular social group amounted to persecution. Enrique resisted pressure and openly expressed his opposition to the gangs, as well as his beliefs about the connection between the government, business elites and the gangs. For these reasons and because the state was unable or unwilling to prevent the threats to Enrique's life and even added to the violent circumstances, Enrique is eligible for asylum recognition under the mandate of the refugee definition.

The Root of my Participation

I met Enrique for the first time in August 1996 while serving as a volunteer in the orphanage that he called home. I was intrigued by his self-confidence and strength of character, and we immediately became friends. Due to the increase in social chaos and specifically gang violence after the October 1998 Hurricane Mitch, my volunteer group was not able to return for what would have been my fifth trip in 1999. Enrique and I were able to remain in contact throughout the following years, mainly due to the assistance of Enrique's Boston-born Jesuit friend John Wagner, who had been stationed in Enrique's hometown, El Progreso, for many years.

In May 2002, Enrique contacted me from Mexico and told me that he planned to attempt to cross into the United States. I feared for his life as I was well aware of the dangers of border crossing. After days of not hearing from him, I received a collect call from the Laredo Detention Center. Enrique was incarcerated, but alive, and knowing his long history of hardship, I made a commitment to help. Fortunately, John Wagner was able to put me in contact with a Boston based immigration law firm headed by a friend of his. A strong willed and dedicated attorney took on the case pro-bono and we began to converse.

³ Personal communication with the applicant in preparation of the affidavit for this case (2002).

⁴ *Affidavit of Respondent in Support of Applications for Asylum and Withholding of Removal*. (Submitted by respondent's attorney on 14 November 2002).

Then, with the financial support of my family, we purchased a bond for Enrique, and he was released from the Detention Center one week later on June 18, 2003. We found that, under U.S. immigration law, despite Enrique's illegal entry status, he had the right to apply for asylum. Enrique began the process of retelling the story of why he originally fled Honduras, why it took him so long to reach the United States, and why he feared returning.

Historical and Social Context of the Case

Honduras

Honduras is the second largest country of Central America, bordering Guatemala, El Salvador, and Nicaragua. The country has a population of approximately 6.2 million inhabitants, 51% of whom are persons under 18 years of age.⁵ Honduras has one of the highest annual birth rates in Latin America (2.8%), and has a per capita annual income level of US\$ 870.35, which is seven times lower than the Latin American average of \$US 6,728.⁶ According to the UN Development Program, an estimated 65 % of the total population lives below the poverty line.⁷ Though many Honduran youth have neither work nor a means to get an education, there are no government sponsored programs that provide them alternatives to a life on the streets and associating with, if not becoming, a *marero*. The only options open to these "at risk" youth are to leave the country or to join the gangs, which give them a sense of identity and a temporary means of survival.⁸

Hurricane Mitch struck Honduras in late October 1998, further aggravating the poor social, economic, and environmental conditions throughout the nation.⁹ Mitch

⁵ Margaret Swedish, "Honduras: New President Elected," *Bimonthly Journal of the Religious Task Force on Central America and Mexico*, 21, no. 4 (December 2001), 2. http://www.rtfcam.org/report/volume_21/No_5/article_11.htm. (accessed October 28, 2004)

⁶ Casa Alianza. *Casa Alianza Testimony to the United Nations Commission on Human Rights on the Murders of Honduran Children and Youth* (3 February 2002). [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2003.NGO.190.En?OpenDocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2003.NGO.190.En?OpenDocument) (accessed October 28, 2004).

⁷ Swedish, 1.

⁸ *Affidavit of Respondent in Support of Applications for Asylum and Withholding of Removal* (Submitted by respondent's attorney 14 November 2002), paragraph 34.

⁹ Douglas Payne, "Question and Answer Series: Honduras Hardship Considerations," *INS Resource Information Center* (September 1999), 1.

affected 40% of the Honduran population in some direct way: people lost family members, belongings, homes, and jobs.¹⁰ The storm killed 5,657 people and injured another 12, 272.¹¹ Over 1.5 million people suffered property loss due to the hurricane while an additional 441,150 people's homes were lost or damaged and were forced to seek shelter with family, friends, or in public facilities.¹² Banana production, on which El Progreso depended, was practically destroyed. Large parts of the city and surrounding areas were flooded. Many children were orphaned or left homeless due to the destruction of the storm. *Maras*, like virtually every other institution and person in Honduras, were devastated by Mitch. Their regular sources of income were disrupted, and they needed new recruits to assist them. Increasingly, the *maras* turned their attention to people, especially teenagers and young men, who lived in the areas in which they controlled. The violence escalated as attempts to recruit young people became more brutal.

Honduras' problems do not begin or end with youth and street gangs, however. After all, gangs are not the cause of society's problems, but rather the product of a power structure characterized by extreme social and economic inequality. Due to the increases in poverty, unemployment, marginalization¹³, and a continued lack of social mobility since the destruction of Hurricane Mitch, rates of crime and violence have increased tremendously in Honduras.¹⁴ The World Health Organization (WHO) states that a rate of more than 10 murders per 100,000 inhabitants per year represents a very high risk society. The capital city of Honduras, Tegucigalpa, now has an annual murder rate of 51 per 100,000 inhabitants, while the most developed city, San Pedro Sula, has a rate of 95 murders per 100,000 inhabitants.¹⁵ The Inter American Development Bank now considers

¹⁰ Casa Alianza. *Casa Alianza Testimony to the United Nations Commission on Human Rights on the Murders of Honduran Children and Youth*. *Op. cit.*

¹¹ Inter-American Development Bank, *Central America After Hurricane Mitch: The Challenge of Turning a Disaster into an Opportunity* (Stockholm: 25-28 May 1999), 6. From Payne, *op. cit.*, 9.

¹² Government of Honduras, *Master Plan for National Reconstruction and Transformation (Condensed Version)* (Stockholm: 25-28 May 1999), 3. From Payne, *op. cit.*, 10.

¹³ Casa Alianza, *Casa Alianza Testimony to the United Nations Commission on Human Rights on the Murders of Honduran Children and Youth*

¹⁴ Tim Rogers, "The Spiral of Violence in Central America," *Z Magazine* (September 2000), 1. http://www.thirdworldtraveler.com/Central_America/Spiral_Violence_CA.html. (accessed November 3, 2004)

¹⁵ Casa Alianza, *Investigation upon extra-judicial executions of children, girls, and young in Honduras* (1998/2000).

San Pedro Sula to be the fourth most violent city of Latin America, behind Medellin and Cali, Colombia and Caracas, Venezuela.¹⁶ The gangs are not the social sector committing the highest rate of crimes however.¹⁷ Much of the crime is carried out by well organized, heavily armed criminal groups.¹⁸ There is also a “well-founded perception” that corrupt police and armed forces personnel are “complicit in the high crime rate”.¹⁹ With the goal of restoring peace to an increasingly chaotic society, President Ricardo Maduro adopted a Zero Tolerance Policy against crime in 2002.²⁰ The strategy of this policy was to break down the chain of command and coherency within the gangs by utilizing a large number of additional law enforcement officers in order to put gang leaders behind bars. This policy, however well intentioned, has had the opposite effect.

Death squads, which human rights organizations and the Catholic Church in Honduras have alleged consist of former police officers and soldiers (an allegation denied by the government),²¹ emerged in full force and to this day indiscriminately murder suspicious looking youth, either gang members or those from the same marginalized sector of society. Civilians have also viewed the Zero Tolerance policy as a “green light” for

¹⁶ Inter American Development Bank. *San Pedro Sula, como zona de Guerra* (2003).

¹⁷ Amnesty International. “Honduras- No more empty promises- Investigate murders of children and youth,” AI Index AMR37/004/2003 (25 February 2003).
<http://news.amnesty.org/index/ENGAMR370042003>. (accessed October 28, 2004)

¹⁸ *La Prensa*, “Crimen organizado tiene buenos contactos en Honduras, dice Fiscal del Estado,” (June 16, 1997).

¹⁹ Bureau of Democracy, Human Rights and Labor, “Honduras,” *Country Report on Human Rights Practices for 1999* (Washington, DC: US Department of State, 25 February 2000), 6. www.state.gov/www/global/human_rights/1999_hrp_report/honduras.html. (accessed on October 28, 2004) From Douglas Payne, “Perspective Series: Honduras Update on Human Rights Considerations,” *INS Resource Information Center* (September 2000), 6.

²⁰ Paul Jeffrey, “Honeymoon ending for president,” 21 October 2002.
<http://www.lapress.org/Article.asp?lanCode=1&artCode=2848>. (accessed October 28, 2004)

²¹ Bureau of Democracy, Human Rights and Labor. “Honduras,” *Country Report on Human Rights Practices for 1999* (Washington, DC: US Department of State, 25 February 2000), 6 www.state.gov/www/global/human_rights/1999_hrp_report/honduras.html. From Payne, “Perspective Series: Honduras Update on Human Rights Considerations,” 7.

settling vendettas and establishing justice that the Honduran legal system was unable to do in a lawful manner.²² The misconception that the *mareros* had of Enrique belonging to a gang is the same misconception that endangered his life due to this “street cleansing” campaign.²³ Poor youth, particularly those who do not have parents or homes, pay the price for society’s problems.

The United Nations investigator on extra-judicial and arbitrary executions, Asma Jahangir, says that police and private security agents have murdered scores of Honduran street children over the past four years.²⁴ Casa Alianza, a Latin American non-profit organization devoted to children’s rights, reported that 1567 youth (under the age of 23) had been subject to extra-judicial, summary, or arbitrary executions from January 1998 to the end of 2002. Currently an average of one to two of the country’s youth is murdered each day.²⁵ Aside from failing to prevent violent acts against the youth, however, the Honduran government has also failed to investigate the reported abuses and effectively prosecute those responsible, creating an atmosphere of tolerance for these violations of human rights.²⁶ Between the gangs and the death squads Enrique struggled each day to avoid becoming yet another casualty brought to attention and discarded with the following day’s newspaper.

Enrique’s early childhood

Enrique was born in Honduras on July 29, 1979. Until he was 8 years old, he lived in the city of El Progreso with both of his parents, his younger brother, Pablo, and a

²² Casa Alianza, *Casa Alianza Testimony to the United Nations Commission on Human Rights on the Murders of Honduran Children and Youth* and Colin Grey, “Dead and Dying on the streets of Honduras: The street kids of Honduras are a target for police, vigilantes and members of rival gangs,” *The Ottawa Citizen* (10 March 2001).

²³ Amnesty International, *Honduras Country Report 2000*.
<http://www.amnestyusa.org/countries/honduras/document.do?id=1D74E9D243D20848802568E400729EFD> (accessed October 28, 2004)

²⁴ Freddy Cuevas, “UN official says police involved in Honduran child slayings,” *Associated Press Worldstream*, (16 August 2002).

²⁵ Casa Alianza, *Casa Alianza Testimony to the United Nations Commission on Human Rights on the Murders of Honduran Children and Youth*

²⁶ Amnesty International, “Honduras: Human rights violations against children- Update,” AI Index AMR 37/002/2000 (15 January 2000).
<http://web.amnesty.org/library/index/ENGAMR370022000>. (accessed October 28, 2004)

younger sister, Angela. He has said that during that time he felt part of a “very strong and loving family” and that it was a “safe and good place to be a child”²⁷. When Enrique was eight, however, his parents separated and his father never returned to the family. His mother then began to see a new man, Antonio, and the family went to live with him and Antonio’s mother, where they lived there for less than one year. During that time, a second sister, Luz, was born to Enrique’s mother and Antonio. With an expanding family and nowhere to go, Enrique’s mother made a request to the mayor for a plot of land for them to live on. They were given a piece of land in the mountains and then all but Antonio’s mother moved to this mountain land. Enrique’s youngest sister, Carolina, was born there.²⁸

Approximately eight months after moving to the mountains, Enrique was playing during recess when a classmate told him that his brother Pablo, aged 9, had disappeared. They looked everywhere for him, but without success. When Enrique told the news to his mother after she had arrived home from work that night, she left the family and never returned to live with her children or to fulfill the same role as mother that she had in the past. Enrique’s mother thereafter spent much of her time searching the streets of El Progreso and the neighboring cities for her lost child. Within a few days, Antonio also left and never returned. With no adult at home, Enrique, at age ten, took on the task of caring for his three younger sisters. He left school in order to earn money and food by doing small jobs for his neighbors.²⁹

In 1990, after approximately one year of caring for his sisters, Enrique learned about a home for street children called *Hogar Amistad* (House of Friendship). Enrique left his sisters under the care of his neighbors, went to the orphanage and was immediately accepted. Two months later the orphanage accepted his sisters as well. When he went to retrieve his sisters, he learned that while he had been at the orphanage his mother had returned and taken his baby sister to her godparents, who then took care of her. During his time in the orphanage Enrique made visits to his mother every couple of months in the barrio Centroamericana, where she was residing. Enrique’s two other sisters, Angela and Luz, still live at *Hogar Amistad* today.³⁰

Upon entering the orphanage Enrique was able to continue grammar school and graduated with excellent grades at the age of fourteen. He received a scholarship to a well respected Jesuit school called San Jose. The orphanage promised to allow Enrique to remain with them until his twentieth birthday, two years longer than the usual age limit,

²⁷ *Affidavit of Respondent in Support of Applications for Asylum and Withholding of Removal* (Submitted by respondent’s attorney on 14 November 2002), paragraph 3.

²⁸ *Affidavit*, paragraphs 3 and 4.

²⁹ *Affidavit*, paragraphs 6 and 7.

³⁰ *Affidavit*, paragraphs 8 and 10.

because he was the first to take such a tremendous step. For the first few months, Enrique was very happy at San Jose. Then he was suddenly hit by a car while riding his bicycle to school and was hospitalized for four months. He therefore would have had to repeat the whole year at San Jose, and not graduate until he was twenty-one, far exceeding the orphanage age limit and hindering his own needs. Enrique therefore left San Jose in 1995 and enrolled in the technical school, Instituto Tecnico Loyola in El Progreso, a four year program also operated by the Jesuits. There he studied welding and industrial mechanics, and graduated in November of 1998 at the age of nineteen. Enrique obtained a job in a machine shop in San Pedro Sula, and then rented a room in Barrio Centroamericana in order to be closer to his mother.³¹

Gangs in the Backyard

Gangs present an extraordinarily large and powerful force in Honduras. During and after high school, Enrique was recruited and threatened by the two gangs which are dominant in El Progreso, MS 13 (Mara Salvatrucha Trece) and Mara 18, which take their names from the two streets in Los Angeles where they first emerged. Both MS13 and Mara 18 were imported from the United States, bringing their methods of violent crime, initiation rites and behavior patterns to Central America, as well as Mexico and Canada.³² These gangs beat, shot at, and pulled guns, knives and *chimbos* (homemade weapons) on Enrique. They threatened his life and that of his family, extorted him, robbed his house, and stripped his clothes off in the street. They did these things both because they wanted to recruit him and also because he had spoken out against them to the children of the orphanage and later to the people in his barrio.³³

During his four years at Instituto Tecnico Loyola, Enrique was regularly confronted by the gangs on his path going to and coming from school. Angered by Enrique's continuous rejection of them, the gangs took everything of value from him, including four bicycles that had been given to him in order to speed pass the *mareros* waiting on foot. After graduating from Loyola, Enrique moved to the Barrio Centroamericana. Mara 18 controlled this barrio, while MS 13 controlled the bordering Barrio Policarpo. Each gang demanded *renta*, a bribe to let a person pass without being harmed. Mara 18 would often rush out of hiding in order to rob and harm people, while MS 13 rarely bothered to plan a sneak attack. Gangs harass virtually all of the citizens of El Progreso; however, wealthier individuals and families can often minimize this danger through their ability to pay bribes and by physically distancing themselves from the gangs. The poorest people living in the

³¹ Affidavit, paragraphs 11-14.

³² Nnfer Mucoz, "Youth gangs- a byproduct of globalization," *The Pioneer* (14 January 2002). http://www.thepioneer.com/international/jan19_youthgangs.htm. (accessed October 28, 2004)

³³ Affidavit, paragraphs 15 and 16.

most gang ridden neighborhoods do not have this option. Young people like Enrique, who the gangs perceive as their own yet fail to recruit, face exceptional daily risk. Some are killed.

In the neighborhood many knew Enrique, gangs and non-gangs alike, because he was often alone and had virtually no family, yet he managed to stay strong, continue with school, and put up a fight. Enrique somehow did what so many had failed to do, and so was admired by some gang members, envied by others, and despised by still others. This made him an even greater target. Enrique has said that the gangs believed that if they could recruit him, a person who resisted so strongly, who had gone to the school with the Jesuits, and had had contacts with Americans through the orphanage, then they could recruit anyone.³⁴

Enrique constantly underwent questioning as to his gang affiliation. When stopped, each gang found it hard to believe that he did not belong to another gang. They thought that he was lying and he was punished for this. Gang members who came to El Progreso from other cities in Honduras and who, therefore, did not know him, proved to be even more dangerous than the local *mareros*. On one occasion, a *marero* who had just come to El Progreso from another city approached him and demanded that Enrique take off his clothes in order search his body for any gang identifying tattoos. This *marero* was angered and confused by the fact that Enrique did not have any tattoos, and threatened him by holding a knife to his side. A *marero* from El Progreso who Enrique had known from childhood happened to be passing by and intervened on Enrique's behalf.³⁵ In this context, it was helpful for Enrique to know the *mareros* as they sometimes helped him escape attacks from rivals. Although Enrique did live in a particularly dangerous area, moving to another city would have been worse for him as he would not have been known by anyone at all.

Life is particularly difficult for those young Hondurans who return from the United States because of the perception that returnees from the U.S. have money, something every gang wants. Enrique had a friend named Jorge who had returned to Honduras after a three month trip in the United States. One day, when Jorge and Enrique were talking on the street, they were approached by *mareros* who surrounded them and pointed a gun at Jorge. They questioned him as to his whereabouts and activities in the United States. Fortunately, they just took from him everything that he had, and informed him that they would be watching him, but he could have been killed just as easily. After this, Jorge left Honduras and, to the best of Enrique's knowledge, never returned.³⁶

³⁴ *Affidavit*, paragraph 18.

³⁵ *Affidavit*, paragraph 39.

³⁶ *Affidavit*, paragraph 40.

The gangs persisted in trying to recruit Enrique; they threatened him almost every day until he left Honduras. Enrique recalled that the *mareros* were always high when they stopped him. They used marijuana, glue, cocaine, crack, gasoline, shoe polish and alcohol. “They do drugs to be crazier, to not fear to kill, and to not fear that someone might actually fight back and kill them,” Enrique said. Mara 18 always followed him with guns and wanted him to shave his head as they had. Mara MS 13 wanted him to grow his hair long like them. As a young person Enrique was subjected to all of this. It was a no win situation for Enrique.³⁷

Enrique’s Refusal to Join

There were many reasons for Enrique’s resistance to joining the gangs. He recalls that until he was eight years old he had had a good family life that instilled in him values regarding the difference between right and wrong. His education and his experience at the orphanage reinforced these same values. After his brother’s disappearance, he knew that he needed to protect and support his little sisters. If he joined a gang, there was a good chance that he would become a drug addict and/or be killed. Enrique also felt that he had a responsibility to the other children in the orphanage, especially to the younger ones. He was like a big brother to them and wanted them to succeed. He always encouraged the children to study. The directors of the orphanage told Enrique that the children looked up to him and told the staff that they wanted to study like him and not be on the streets. They called him a *luchador*, a fighter. Enrique took his responsibility as a role model seriously.³⁸

In addition to his concern for the welfare of his sisters and the children of the orphanage, Enrique believed that gangs were detrimental to his people. “Gangs take from poor young men and women their opportunity to build better lives for themselves, for their families, and for Honduras, and they play into the hands of the wealthy who run Honduras.” Honduras is a country where the majority of citizens consist of children and young adults. Enrique believes that the only way the elite can stay in power is by keeping young people confused and uninformed about what is happening in their society, and that the gangs are one method of doing just that. He believes that the gangs are used by the bigger criminals to do their “dirty work”, such as moving drugs and arms, robbing cars, and eliminating enemies. The gang members receive small return for their services, but the bigger criminals, who work in collaboration with the police and the military, earn large profits.

Mostly the young gang members get paid off in drugs, which they use to muster their courage to kill, rape, rob and generally create havoc. They also receive arms and other ‘rich people stuff’ (such as expensive clothes,

³⁷ Affidavit, paragraph 25.

³⁸ Affidavit, paragraphs 22 and 23.

jewelry, bicycles, and the like) to make them think they are getting a good deal, but they are being used and abused. The connection between the gangs and the authorities is evident in the way that some of the *mareros* are arrested for serious crimes one day and the next day they are walking the streets again. Then these same criminals get rid of their gang assistants when they are no longer useful. They kill them by inciting wars between the gangs or by promoting the famous “death squads”.³⁹

Enrique discussed his observations and opinions regarding the gang situation to everyone he could. He spoke to the children who were his age as well as the younger ones in the orphanage, to the man who ran the boys’ section of the orphanage, to the overseer of all of Hogar Amistad, to his peers in the technical school he attended, and later to the people in Barrio Centroamericana where he lived. Several children in the orphanage who were younger than him, however, could not resist the pressure and joined the gangs. Once they became *mareros*, they always gave Enrique a hard time and told their fellow *mareros* that Enrique had spoken out against the gangs and had encouraged other people not to join. This presented an additional problem for Enrique.

Heading North

With gang violence threatening him daily, Enrique knew that to survive, he would have to travel north. In January of 1999 he left Honduras, crossed into Guatemala and entered Mexico. His plan had been to travel to the United States to be free of the gangs and to be able to earn money for his family. He was in Mexico for one month when he was caught by Mexican immigration authorities. Enrique was returned to the Mexico-Guatemala border. From there he went back to Honduras. After his return from Mexico, Enrique was constantly watched, threatened, and robbed by the gangs. Each time he left and returned from the barrio, as well as each time he got off and on the bus for work, Enrique was forced to pay a *renta* of five *lempiras* (approximately US\$0.30). Every morning when he woke up, Enrique had to calculate whether he had enough money to pay off the gangs so that he could go to work.⁴⁰

In January of 2001 Enrique was forced once again to leave Honduras in order to escape the gang violence, and believes that it was pure luck that he had survived to that point. He entered Mexico in January 2001 and traveled on top of a train as far as Chiapas, where he stayed for six months. For Central Americans who are illegally in Mexico, the two main methods of traveling north are by riding in a bus or the on top of a train. Those taking the bus must have enough money to pay not only the fare, but bribes as well, and must carefully get off the bus before each formal checkpoint and get on after. The majority

³⁹ Affidavit, paragraph 29.

⁴⁰ Affidavit, paragraphs 37 and 45.

of Central Americans cannot afford this luxury. These people, including men, women, and children, risk the train option. They must jump off and on the moving train before each and after each train stop. “A migrant knows that if he doesn’t run fast enough while jumping onto a moving train, he can be jerked forward, lose his grip, and be pulled under the wheels”.⁴¹ Enrique witnessed many terrible accidents en route to Chiapas and did not want to die in such a manner. For this reason, Enrique’s plan was to work in Chiapas in order to earn enough money so that he would not have to continue the trip traveling on the top of trains.⁴² The danger of train riding does not end there, however. Central American gangs, affiliates of the same gangs in El Progreso, monopolize the illegal train riding business.⁴³ Their presence is a source of additional fear to the migrants who they rob, beat, sexually assault, and kill. They also create fear in the lives of Chiapas locals. Therefore, Enrique faced threats not only from the gangs, but from the intolerant locals who could have easily confused Enrique with a *marero*.⁴⁴

Enrique worked for six months in Chiapas, however, and still was still not able to earn enough money to pay for his onward journey towards the US border. It soon became evident to him that if he wanted to continue northward, he would have to use the train method. Fearing that he would not survive such a trip, Enrique chose to return to El Progreso, in spite of the danger, for one last goodbye. When he returned to El Progreso Honduras, Enrique found that the gang situation had worsened. He only went out to see his mother and sisters. In July of 2001, after one week, Enrique left Honduras for the last time. He made it as far as San Luis Potosi, Mexico, where he intended to stay one week. He had an uncle in the United States who had said that he would send a “coyote” (an agent paid by illegal immigrants to help them cross from Mexico to the United States) for him, but never did. Enrique remained in San Luis Potosi from August 2001 to May 2002, staying with various friends whom he had met there. He worked and earned some money, but not very much, because he did not have legal work authorization.⁴⁵

Finally Enrique was able to pay a coyote to take him, together with eight others, including a pregnant woman, across the border. In the early morning hours on May 22, 2002, they swam across the Rio Grande, and entered the United States. They were chased several times by immigration authorities and in the process dropped all additional items

⁴¹ Sonia Nazario, “The Boy Left Behind.” *Los Angeles Times* (September 29-October 7 2002): 6.

⁴² *Affidavit*, paragraph 46.

⁴³ Nazario, “The Boy Left Behind,” 10.

⁴⁴ Personal communication with the applicant in preparation of this case (2002).

⁴⁵ *Affidavit*, paragraphs 46-48.

including their food and water supply. The coyotes had no intention of continuing the journey without the supplies and so abandoned those who had not already been caught, which included Enrique and two other men. The three men continued to run and hide from the authorities for a couple of days. Not even knowing where they were, by May 25, the three were in poor shape, and knew that without water they could not survive much longer. The blisters on Enrique's feet were so severe that he could barely walk, and they essentially allowed themselves to be caught on May 25, 2002. All were incarcerated by the Immigration and Naturalization Service⁴⁶.

Enrique feared that if he was returned to Honduras after being out of the country for so long (and once the gangs found out that he had been in the United States), there would be unbearable pressure put on him to join a gang at last. If he refused, his life would be in danger, particularly because of his anti-gang activism.⁴⁷ Enrique believed that if the United States knew what he faced in Honduras, then the authorities might not send him back.

Case Construction and Analysis

The United States political asylum law is found in section 208 of the Immigration and Nationality Act (INA), enacted in 1952. To apply for asylum the applicant must be physically present in the United States, or at a port of entry. Those who fear persecution but are not physically in the United States must apply for refugee status under INA 207.⁴⁸ Both asylum and refugee applicants are adjudicated under the same legal standard.⁴⁹ An asylum applicant must satisfy the definition of a refugee⁵⁰ as recorded in INA 101 (a) (42). U.S. immigration law on asylum follows closely international refugee law. At the

⁴⁶ In 2003, the Immigration and Naturalization Service changed its name to The Bureau of Citizenship and Immigration Services under The Department of Homeland Security.

⁴⁷ *Affidavit*, paragraph 50.

⁴⁸ Immigrant Legal Resource Center. *A Guide for Immigration Advocates* (1999), 13-14.

⁴⁹ Immigration and Naturalization Service. *U.S. Asylum and Refugee Policy* (29 October 1998), 1. <http://www.immigration.gov/text/publicaffairs/factsheets/asylum.htm> (accessed October 28, 2004)

⁵⁰ Siskind, Susser, Haas, and Devine. *The ABC's of Immigration- Grounds for Asylum and Refugee* (11 April 2001), 1. <http://www.visalaw.com/01apr2/11apr201.html> (accessed October 28, 2004).

international level, refugee status is governed by the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.⁵¹

According to Article 1A of the 1951 Convention... the term “refugee” applies to any person who:

As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The 1967 Protocol Relating to the Status of Refugees differs from this definition only in that it removes the geographic (Eastern Europe) and timeline (pre-1951) limitations of the earlier convention.⁵² In 1968, the U.S. became a party to the U.N. Protocol Relating to the Status of Refugees. Further, in 1980 the United States rewrote its basic immigration law in order to provide refugees with the same rights to asylum that they have under international law.⁵³

Enrique claims to be eligible for asylum owing to a well founded fear of being persecuted by reason of social group membership and also political opinion. His social group is essentially young people who are orphaned or otherwise do not have the protection of families. These youth, who would usually turn to the streets and gangs for a sense of livelihood and protection, are targeted by gangs for harm and recruitment. The government was not able to control or deal with gang activity, and such young people, including homeless and orphans, are subject to targeting by outraged civilians and by death squads.⁵⁴

⁵¹ Please note that these statutes were in effect at the time that this case was constructed and can be held as certain no later than May of 2003.

⁵² Office of the United Nations High Commissioner for Refugees. *Handbook on Procedures for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (September 1979).

⁵³ Immigrant Legal Resource Center. *A Guide for Immigration Advocates* (1999), 14, 4.

⁵⁴ Amnesty International, “Honduras- No more empty promises- Investigate murders of children and youth”

Enrique's claimed social group membership, however, is not a social group typically described in conjunction with international refugee law, and therefore requires particular attention and consideration. Articles 77 of the Office of The High Commissioner for Refugees' Handbook on Procedures and Criteria for Determining Refugee Status (1979), also known as the UNHCR Handbook, states that a "particular social group" normally comprises persons of similar background, habits or social status. That appears simple enough, but paragraph 78 goes on to say that "membership of a particular social group may be at the root of persecution because there is no confidence in the group's loyalty to the government or because the political outlook, antecedents or economic activity of its members, or the very existence of the social group as such, is held to be an obstacle to the Government's policies."⁵⁵ Although Enrique voiced his own political opinion, his social group is not politically motivated. In addition, Enrique's social group is not the victim of direct government persecution, but rather by a group that the government cannot control. Many women internationally claiming refugee status face a similar challenge, as a result of their abuse frequently occurring in the domestic domain, and are fighting for protection under the law.

There is a theoretical distinction in international refugee law between conduct that can be attributed to the state, and for which the state will be held responsible by the international community, and the conduct of private persons that does not implicate the international obligations of the state. In regard to this distinction, a decision on whether an individual faces a risk of 'persecution' must also assess the state's ability and willingness to respond effectively to that risk. In order to constitute persecution, violations of a woman's human rights must be at the hands of the state or a force that the state is unwilling or unable to control. The state may be said to have failed in its duty to protect when it is actively involved in the persecution or when it offers assistance to, or condones, persecution through a non-state agent.⁵⁶

Although Enrique's social group is obviously different from those of the many women seeking refugee status, we must ask that the immigration judge consider these same grounds for Enrique's case. The immigration judge later stated that,

⁵⁵ Office of the United Nations High Commissioner for Refugees. *Handbook on Procedures for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*

⁵⁶ Heaven Crawley, "Women and Refugee Status in the U.K.," *Engendering Forced Migration*, ed. Doreen Indra (New York: Berghan Books, 1999).

The respondent is to some extent within a class of people who have been targeted for harm including forced recruitment and also extortion from various gangs in Honduras. The respondent also to some extent claimed to be different from the large number of men and orphanage children who have been the victims of such crimes in so far as he has spoken about his opposition to these gangs and tried to encourage other young people in similar situations to himself not to join gangs and resist them and has been vocal in support of other avenues for orphans to find a better life in Honduras.⁵⁷

In order to describe more accurately the situation in Honduras and Enrique's efforts, we submitted to the court a documentary film called *Hogar Amistad*.⁵⁸ The film describes the situation that youth in Honduras face and the work of the orphanage in trying to give the children an alternative to a life to the streets. The film briefly tells the story of Enrique's life, and captures his studies and work at the Instituto Tecnico Loyola. "In general, the video depicts a very, very difficult life faced by many young people in Honduras due to poverty and being a street person".⁵⁹

Three and a half years passed between Enrique's initial departure from Honduras and his arrival into the United States. Although most of this delay was due to no fault of his own, he did on one occasion return voluntarily from Mexico to Honduras. I knew that this would be a point of debate, as those fleeing from a country due to fear ordinarily do not voluntarily return to that country. However, this is also a point for which the surrounding circumstances of Enrique's case must be taken into consideration. Enrique's detailed affidavit and equally detailed testimony during the hearing made it clear that he had played a parental role in his sisters' lives and the risk of riding on top of the train was too great not to return to see his sisters for what could have very well been the last time.

Enrique was forced to fight his battles with the gangs by himself. Neither the police in El Progreso nor the national government provided assistance. In fact, they were an additional source of fear in Enrique's life. The police are so outnumbered, corrupt, and ineffective, that Enrique and others like him often fail to report incidents for fear of retaliation. No one knows exactly who is inside of the death squad SUVs protected from the gaze of onlookers by the dark tinted windows. If you are young, alone, on the streets in a poor neighborhood, however, all that you know is to take cover. Enrique told me that he used to hold his breath at the sight of one of these vehicles as if that would somehow

⁵⁷ Order of the Immigration Judge, 5 May 2003.

⁵⁸ John Decker, "Hogar Amistad," 1998.

⁵⁹ Order of the Immigration Judge, 5 May 2003.

protect him from being shot. Even if the murderers hidden behind the tinted windows are not connected to the police or military, it is the government's job to protect the youth from these indiscriminate violent acts.⁶⁰

During the main asylum hearing, witness testimony reinforced not only Enrique's solid character but the government's inability to protect him. John Wagner, Enrique's Jesuit friend, testified in court about his knowledge of Enrique since 1994, Enrique's hard work and dedication, his caring for his mother and sisters, his upright and honest character, and his opposition to the mentality of gangs. Wagner testified that there was ongoing gang warfare in Enrique's neighborhood, and that El Progreso was one of the most dangerous areas in Honduras. He said that he advised Enrique against going to the authorities due to the danger of retaliation. Additionally, he said that the police are known to be ineffective and understaffed.⁶¹

At the end of the hearing the judge asked Enrique's attorney to create a brief, essentially a written closing argument, and to attach any additional evidence if necessary. In the brief, the attorney reiterated our argument. He wrote that Enrique meets the definition of a person who should be granted asylum, that he is a member of a class, of a particular social group, and additionally has openly expressed his political opinion about how gangs adversely affect poor and working class young men and women.

In the closing argument Enrique's attorney wanted to highlight the scope of the phrase "well founded fear of persecution" and "social group", that the treatment that Enrique received from the gangs was indeed persecution, and that such treatment was tolerated by the authorities, thereby bringing Enrique under the mandate of the refugee definition. There are several striking references from the UNHCR Handbook, within the brief, that highly support Enrique's claim. The following comes under the Characteristics of the Persecuted section, and is quoted from Articles 52 and 53⁶²:

52...The subjective character of fear of persecution requires an evaluation of the opinions and feelings of the person concerned. It is also in the light of such opinions and feelings that any actual or anticipated measures against him must necessarily be viewed. Due to variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary.

⁶⁰ Amnesty International, "Honduras-Zero Tolerance... for Impunity-Extrajudicial Killings of Children and Youth since 1998," AI Index AMR 37/001/2003 (25 February 2003), <http://web.amnesty.org/library/index/ENGAMR370012003>. (accessed October 28, 2004).

⁶¹ John Wagner, Witness Testimony, 22 January 2003.

⁶² Enrique's attorney underlined sections of the articles for emphasis.

53. In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on “cumulative grounds”. Needless to say, it is not possible to lay down a general rule as to what cumulative reasons can give rise to a valid claim to refugee status. This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context.

Relevant to the concept of “all the circumstances,” the *UNHCR Handbook* provides in Article 39:

The expression “owing to well-founded fear of being persecuted” for the reasons stated by indicating a specific motive automatically makes all other reasons for escape irrelevant to the definition. It rules out such persons as victims of famine or natural disaster, unless they also have well-founded fear of persecution for one of the reasons stated. Such other motives may not, however, be altogether irrelevant to the process of determining refugee status, since all the circumstances need to be taken into account for a proper understanding of the applicant’s case.

Enrique’s attorney drew from the rulings of the BIA (Board of Immigration Appeals) in order to show the inclusiveness of Enrique’s social group under the legal standard, even if his social group had not been described previously. The BIA has defined membership in a particular social group as persons who hold “an immutable characteristic or common trait such as sex, color, kinship or in some cases shared past experiences such as land ownership or military service.” *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985). The BIA in *Acosta* elaborated:⁶³

The particular kind of group characteristic that will qualify under this construction remains to be determined on a case-by-case basis. However, whatever the common characteristic that defines the group, it must be one that the members either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences. Only when this is the case does the mere fact of group membership become

⁶³ *Memorandum in Support of Asylum*. Submitted by respondent’s attorney on 21 February 2003.

something comparable to the other four grounds of persecution under the Act, namely, something that either is beyond the power of an individual to change or that is so fundamental to his identity or conscience that it ought not be required to be changed. By construing “persecution on account of membership in a particular social group” in this manner, we preserve the concept that refuge is restricted to individuals who are either unable by their own actions, or as a matter of conscience should not be required, to avoid persecution.

We claim that Enrique faced persecution not at the hands of the State, but rather, that the State was unable or unwilling to control the actions of the persecutors. The *UNHCR Handbook* provides evidence of the validity of such persecution. Under the subsection of the brief, Persecution by Those Whom the Government is Unable or Unwilling to Control, Article 65 states that:

Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbours. *Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.*

In response to Enrique’s brief, the Department of Homeland Security submitted their closing arguments. As expected, the Bureau of Citizenship and Immigration Services (BCIS) argued in its brief that the respondent’s voluntary, if brief, return to Honduras weakened his claim that he had a basis to fear harm in that country. The BCIS argued that he could relocate within Honduras, that he had not established anything other than being a victim of crime, and had not established that his fear is other than being a victim of extortion and brutality by the criminal gangs. They argued that Enrique had never been harmed or threatened to be harmed on account of one of the five reasons listed in the statute, and finally that he had not established that the government could not protect him.⁶⁴

Not knowing whether they would have the opportunity to testify, we submitted the affidavits of the two expert witnesses, whom our attorney had previously proffered in the brief. We hoped to strengthen our case and address the government’s objections through addressing the points of concern. Witness 2 is the director of Casa Alianza Honduras, the

⁶⁴ Department of Homeland Security, *Closing Arguments*, (12 March 2003).

Latin America division of Covenant House dedicated to the rights of children. He stated in his affidavit that the number of young people being executed in Honduras increased by 31% from 2000 to 2002, with 23% of all these executions being carried out by gang members, that the government's policies are ineffectual, and that at the age of 23 Enrique is not too old to be targeted for gang recruitment.⁶⁵

The third witness supported these points in his affidavit. He is a Jesuit researcher of gangs in Central America, with special attention to the town of El Progreso, and co-author of the book *Maras y Pandillas de Centroamerica* (Youth gangs of Central America). He stated in his affidavit that Enrique could not relocate from El Progreso to any other place in Honduras without encountering gang violence and recruitment because the gangs have a national presence. He also told the story of how a Jesuit organization tried to relocate within Honduras some young men who were being pursued by a gang. Within one month of these young men being hidden in a remote mountain setting they were found by their pursuers. This witness was prepared to state that of all Central American countries, Honduras stands out as the one where gangs have a highly developed network and are able to communicate from place to place with speed and ease, thus making it easy for them to track down their targets.⁶⁶

Enrique could not have moved to another area of Honduras in order to escape the violence. It would have been impractical in reality for a youth with no money and no connections to move to another area. It is true that El Progreso is a particularly dangerous area. However, the type of poor neighborhood that Enrique would be forced to live in would most likely be equally as dangerous. Not having a visible family left him more vulnerable in El Progreso. The *mareros* that came to El Progreso from other cities and definitely did not know Enrique were the most dangerous for him. All of Enrique's extended family and friends live in El Progreso, and moving to another poor barrio alone with no family and no ties in another city would probably be a death sentence for someone like Enrique.⁶⁷

Findings and Conclusion

The day that the judge delivered her decision was an emotional rollercoaster for all of us, as she carefully and concisely reiterated the points of the case, the government's objections, the courts questions, and gave her final ruling. She began: "The respondent in these proceedings in order to qualify for asylum/withholding must establish evidence that

⁶⁵ Witness 2, *Affidavit in Support of Asylum Application of Respondent*. Submitted by respondent's attorney on 25 April 2003).

⁶⁶ Witness 3, *Affidavit in Support of Asylum Application of Respondent*. Submitted by respondent's attorney on 25 May 2003).

⁶⁷ Witness 3, *Affidavit*, 25 May 2003.

is detailed, consistent, and credible that he either has suffered persecution in the past or that he has a reason to fear persecution in the future on account of his race, religion, nationality, membership in a particular social group, or political opinion.” The court found that Enrique testified in a credible manner, and that he does belong to a particular class, consisting of “young people orphaned, or living in orphanages, living without the protection of government or any other sufficiently strong societal organization.” The court noted that youth in Honduras are targeted by gangs, death squads, and the government itself. The court also noted that these gangs do not have any political purpose and nowhere did Enrique testify that these gangs have a political motivation. “The gangs were essentially criminal gangs acting at the behest of organized crime in Honduras.”⁶⁸

While the previous comment unnerved us slightly, we were reassured that at least our message regarding Enrique’s character reached the judge as she stated,

The respondent did consider joining the gangs at various times but did not want to stray from his good values, the hard work he had already engaged in studying, and also his responsibilities to his younger siblings. Additionally, he believed that the gangs themselves were corrupt, that society did not want the children. He tried to convince other children to leave the gangs. What made him strong were the needs of his younger sisters and the importance of education.⁶⁹

The judge stated that it appeared that El Progreso was a particularly violent and gang occupied city in Honduras. One of the government’s objections was that Enrique could have moved to another area of Honduras. However, the court found that due to largely economic reasons Enrique could not have traveled otherwise to find a safe haven in Honduras. He did not have help from family and he had no way to get a job. Additionally, considering the circumstances of the case, the court found his desire to be close to his mother and support her to be understandable for humanitarian reasons.⁷⁰

Several questions remained before the court. Primarily, was membership in this social group really the type of social group intended when they created the statute? Now that Enrique is older is he still a member of the described social group? Would Enrique be more at risk due to his outspokenness? Finally, it appeared that the year and a half in Mexico disrupted Enrique’s flight from Honduras. However, the court found that it did not appear that Enrique had permanently settled nor did he find safety there, moving from house to house and having been threatened on several occasions.⁷¹

⁶⁸ Order of the Immigration Judge, 5 May 2003.

⁶⁹ Order of the Immigration Judge. 5 May 2003.

⁷⁰ Order of the Immigration Judge. 5 May 2003.

⁷¹ Order of the Immigration Judge. 5 May 2003.

To some extent the court doubted that Enrique at 23 years of age is still a member to this social group.

Nevertheless, I do believe that the respondent has established that the type of harm inflicted upon him throughout his years at the orphanage and in his working years in Progreso does fall within the scope of persecution as defined in the act. The respondent was a member of a group which was targeted pretty much by every aspect of society in Honduras and it is only through the intervention of religious organizations and other charitable groups that the respondent ever found a safe place or obtained an education. In the court's view, for humanitarian reasons such a person should not be permanently subjected to living on the outskirts of society, let alone be returned to a country which has so little value for human life and do nothing on a governmental basis to try to protect children.

The judge continued:

The respondent appears to be able to at this time as he was throughout his life to withstand temptation to join a gang, largely to fight off the rivalries inflicted, and perhaps eventually would become old enough that he would no longer be the target of such harm. However, given the particular circumstances of his case, including at a very young age being able to speak out about what he perceived as being inequities, to some extent the court believes that asylum should be granted simply as a manner of humanitarian relief and in the proper exercise of this court's discretion. At this point returning the respondent to his country would subject him to a risk of harm, a harm previously inflicted upon him, even if it would no longer be persecution. At the time the court does believe that it was persecution, not that the group was seeking to target him for their own political motivation, but that they were trying to force him to become a member of their group or otherwise support their group, and that they did not do that for other than his own initial vulnerability and then his own personal strength. Accordingly, although the court notes that it's a stretch, I do find that the respondent has established eligibility for asylum, in so far as a reasonable person in his circumstances would have a basis subjectively to fear harm, having suffered harm in the past.⁷²

We onlookers in the courtroom were in tears, and so relieved. Just like that, Enrique Gonzales was granted political asylum (in the first circuit) in the United States on

⁷² Order of the Immigration Judge, 5 May 2003.

May 5, 2003.⁷³ The Department of Homeland Security reserved the right to appeal the decision but has not. This case is significant in that it is one of the few times if any that social group has been described in such a manner and accepted as a valid basis for asylum. In addition, Honduras is a country from which a minimal amount of people are granted asylum in the United States. Consequently, constructing this case was challenging for us because we did not have the opportunity to draw on other similar cases in which the applicant was granted asylum.

Enrique has truly come a long way since his initial entrance into the United States. To begin, he has taught himself English and is currently living in New Jersey and working for a construction company. Enrique plans on opening his own business here in the United States and to someday return to Central America and open a home and school for street youth. As a result of his attentive nature, sense of humor, and incredible work ethic, Enrique is embraced by all those who have the opportunity to get to know him.

⁷³ Order of the Immigration Judge. 5 May 2003.