

ESCAPING THE SILENCE: IDENTIFYING ASYLUM PATHWAYS FOR ENVIRONMENTAL ACTIVISTS BASED ON DOMESTIC VIOLENCE PRECEDENT

CHASE FORD*

ABSTRACT

Around the world, people are protesting against climate change and related environmental issues. This protest is welcomed in some areas, while activism can be deadly in others. When activists can no longer safely protest in their home country, they need a safe, legal means of escape. In the United States, asylum is one such means. Asylum grants protection for someone persecuted on account of their race, nationality, religion, political opinion, or membership in a particular social group. These grounds are not statutorily defined, so the burden has fallen on immigration advocates to think and test asylum arguments in court. Notably, advocates have successfully expanded the applicability of asylum to include survivors of domestic violence.

Others in the field have written extensively about asylum for victims of climate change. As described in this article, this research utilizes cases like in New Zealand to expand the concept of harm. However, there has been less research on asylum for activists who protest environmental issues and are persecuted for doing so. This article argues for expanding the asylum framework for environmental activists by utilizing the domestic violence precedent and through a case study of the Yaqui. State and non-state actors have deprived the Yaqui of water rights for over a century. The argument focuses on political opinion and particular social group asylum while providing an overview of potential ideas on the other three grounds. It concludes by demonstrating that asylum opportunities are the backbone of productive environmental activism.

TABLE OF CONTENTS

INTRODUCTION	111
------------------------	-----

* Chase Ford, J.D. and Master of Environmental Law and Policy Candidate, 2024, Vermont Law and Graduate School; B.A. Political Science and B.A. Environmental Studies and Philosophy, *magna cum laude*, 2017, University of Missouri-Kansas City. I am grateful for Professor Jill Martin Diaz's unparalleled guidance and my family's unwavering support. © 2023, Chase Ford.

I.	THE SILENCE: OUTLINING THE LEGAL FRAMEWORK AND PRESENT TREATMENT OF ASYLUM SEEKERS	113
A.	<i>An Overview of the Immigration and Nationality Act's (INA) Asylum Requirements</i>	113
B.	<i>Reasons for Seeking Asylum: Distinguishing Climate Migrants from Environmental Activists</i>	114
C.	<i>Establishing the Case Study: Spotlighting Environmental Activists in Mexico</i>	117
II.	THE YAQUI AND THEIR PERSECUTION UNDER THE IMMIGRATION AND NATIONALITY ACT	119
A.	<i>The Yaqui: A Historic Conflict over Water Rights</i>	119
B.	<i>Yaqui Environmental Activists Have Suffered Persecution</i>	122
III.	YAQUI ENVIRONMENTAL ACTIVISTS' QUALIFICATIONS AS A PARTICULAR SOCIAL GROUP	125
A.	<i>The Basis for Social Groups under the INA</i>	125
B.	<i>Administrative Politics, Particular Social Groups, and Domestic Violence</i>	126
C.	<i>Defining Yaqui Environmental Activists as a Social Group</i>	127
D.	<i>Extrapolating the Case of the Yaqui to Other Environmental Activists</i>	131
IV.	THE SILENCING OF THE YAQUI'S ENVIRONMENTAL ACTIVISM ARISES TO A POLITICAL OPINION	131
A.	<i>The Basis for Political Opinions under the INA</i>	132
B.	<i>Comparing Environmentalism to the Manifestation of Feminist Ideologies as Political Opinions</i>	133
C.	<i>The Sonoran Government and Drug Cartels have Persecuted the Yaqui because of their Political Opinions</i>	134
D.	<i>Environmentalism as a Viable Political Opinion</i>	137
V.	AN OVERVIEW OF OTHER ASYLUM AVENUES FOR THE YAQUI	137
A.	<i>Indigenous Identity Protections: Asylum Based on Race & Nationality</i>	137

B.	<i>Acknowledging the Spiritual Significance of the Yaqui River Through Religious Asylum</i>	139
C.	<i>The Applicability of Race, Nationality, and Religion Asylum Claims to Other Environmental Activist Groups</i>	140
VI.	ESCAPING THE SILENCE: CONCLUDING THOUGHTS	140

INTRODUCTION

“I am the Lorax. I speak for the trees.”¹ “I am Greta Thunberg, I speak for my and future generations.”² “I am Adenike Oladosu, I speak for Lake Chad.”³ “We are Selvame del Tren. We speak against the Mayan Train project.”⁴ Around the globe, activists are channeling the Lorax’s words by speaking up against environmental degradation and on behalf of nature. Nevertheless, governments, corporations, and illegal organizations are silencing their voices. In 2021, 358 human rights defenders lost their lives advocating for the global movement.⁵ Fifty-nine percent of those killed worked in land, environmental, and Indigenous rights; their activities disrupted the economic interests of corporations and individuals in mining, logging, and other extractive operations.⁶ Without adequate legal protections, activism has become a dangerous profession.

One crucial protection for activists is asylum. Asylum prevents the removal of an individual from a country of haven to a country where they fear persecution or harm. It protects individuals against their persecutors retaliating legally or violently in their home country.⁷ Asylum, though, is difficult to achieve.⁸ An applicant seeking asylum must show that they are unable or unwilling to return to their home country because of past persecution⁹ or a well-founded fear of future persecution “on account of race, religion, nationality, membership in a particular social group, or political opinion.”¹⁰ While persecution based on race or religion is more tangible to imagine, persecution based on environmental degradation is more challenging to place into one

1. DR. SEUSS, *THE LORAX* (Random House, 1971) (The following are author’s interpretations and summaries of the activist’s message through the lens of the classic Dr. Suess book).

2. Daniel Kraemer, *Greta Thunberg: Who is the climate campaigner and what are her aims?*, BBC NEWS (Nov. 5, 2021), <https://perma.cc/3PL8-99A6>.

3. Tife Sansui, *Lake Chad is Drying Up. Meet the Nigerian Activist Fighting to Save the Lake and its People.*, GLOBAL CITIZEN (Nov. 8, 2021), <https://perma.cc/A9F6-LXTZ>.

4. Kylie Madry & Cassandra Garrison, *Activists say Mexico not enforcing environmental laws related to Mayan Train project*, REUTERS (Jul. 21, 2022, 8:01PM), <https://perma.cc/9CD6-FZZ8>.

5. Karen McVeigh, *More rights defenders murdered in 2021, with 138 activists killed just in Colombia*, THE GUARDIAN (Mar. 2, 2022, 1:00 PM), <https://perma.cc/9SLJ-935H>.

6. *Id.*

7. *What is asylum?*, U.N. HIGH COMM’R FOR REFUGEES, <https://perma.cc/W3N7-3HWR> (last visited Dec. 31, 2022).

8. *Navas v. I.N.S.*, 217 F.3d 646, 655 (9th Cir. 2000).

9. 8 C.F.R. § 1208.13(b)(iii)(A)(2023).

10. Immigration and Nationality Act § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A).

asylum category. For example, a group of environmental activists facing persecution could categorize themselves as a particular social group or qualify their environmentalist ideologies as a political opinion. These pathways are more abstract and more suitable for addressing an environmental activist's asylum claim.

Furthermore, because asylum occurs after a person has left their home country, asylum is often viewed as a last resort.¹¹ Like a flight attendant informing the passengers of the plane's exits before takeoff, activists need certainty to formulate an escape plan before they face retaliation. Even if the activist does not want to seek asylum, the option to apply for asylum should still exist.¹²

As migrants have begun seeking refugee status because of climate change and environmental degradation, the United States immigration system should explore asylum options for environmental activists. These activists tend to protest environmental degradation caused by specific actors, not the general conception of climate change.¹³ Deprivation of land rights, local government corruption, and third-party violence challenge environmental activists, whose primary goal is to protect the environment and maintain autonomy over their land. In Mexico, state officials committed 40% of attacks against environmental defenders.¹⁴ If these forms of persecution continue, environmental activists may need to flee and will face the high bar for asylum pleadings.

There may be hope for environmental activists. Survivors of domestic violence have met the burden for asylum by expanding the application of "membership in a particular social group"¹⁵ and political opinion. While the legal precedent for particular social groups has become the subject of administrative politics,¹⁶ the legal arguments for domestic violence asylum may apply to other social groups. Likewise, survivors of domestic violence have argued that leaving an abusive relationship manifests feminist ideologies, which constitute political opinions that cause them to face persecution and that their governments cannot or will not address the persecution.¹⁷ By comparing the

11. *A last resort? National Inquiry into Children in Immigration Detention*, AUSTL. HUM. RTS. & EQUAL OPPORTUNITY COMM'N (April 2004).

12. For more resources on asylum see *Refugees, Asylum Seekers and Migrants*, AMNESTY INT'L, <https://perma.cc/8XZN-863B> (last visited Dec. 31, 2022).

13. See Renee Skelton, Vernice Miller & Courtney Lindwall, *The Environmental Justice Movement*, NAT. RES. DEF. COUNCIL (Aug. 22, 2023), <https://perma.cc/AP9Y-4G9W> (outlining the history and motivations of the environmental justice movement).

14. Nina Lakhani, *Mexico's deadly toll of environment and land defenders catalogued in report*, THE GUARDIAN (Mar. 20, 2020, 6:00PM), <https://perma.cc/ZUD5-GQAV>.

15. Harvard L. Rev. Ass'n, *Asylum Law—Membership in A Particular Social Group—Board of Immigration Appeals Holds That Guatemalan Woman Fleeing Domestic Violence Meets Threshold Asylum Requirement—Matter of A-R-C-G-*, 26 I. & N. Dec. 388 (B.I.A. 2014), 128 HARV. L. REV. 2090, 2090 (2015).

16. Harvard L. Rev. Ass'n, *Matter of A-B-: Attorney General Garland Vacates Matter of A-B-*, 135 HARV. L. REV. 1174, 1174 (2022).

17. *Rodriguez Tornes v. Garland*, 993 F.3d 743, 753 (9th Cir. 2021).

precedent in other asylum areas, immigration advocates can experiment with legal arguments to protect environmental activists.

This Note explores asylum avenues for environmental activists by comparing environmental activist asylum to domestic violence asylum through a case study of the Yaqui in Mexico. Section I explains the persecution requirements under the Immigration and Nationality Act (INA), provides background on asylum, and discusses the threats environmental activists face in Mexico. Section II identifies the Yaqui tribe as the Note's case study and defines the persecution Yaqui environmental activists are experiencing. Section III applies the domestic violence asylum framework to identify Yaqui environmental activists as members of a particular social group and discusses how other environmental activists may also qualify. Section IV applies the same framework to define environmentalism, both as an ideology and specifically the Yaqui's environmental activism, as political opinions. Section V briefly introduces other possible grounds for asylum—race, nationality, and religion—and assesses their respective likelihood of asylum success. This Note concludes by summarizing how environmental activists, including the Yaqui, should consider potential asylum claims in case they need to flee their land and how doing so strengthens their environmental activism strategies.

I. THE SILENCE: OUTLINING THE LEGAL FRAMEWORK AND PRESENT TREATMENT OF ASYLUM SEEKERS

The silencing of environmental activists harms not only activists themselves but also their larger goal of protecting the planet and its resources. To understand how the asylum framework can give voice to these activists, one must first explore how the framework works and the current landscape of environmental activism. The following sub-sections of Part I will establish the asylum and persecution requirements under the Immigration and Nationality Act. It will then distinguish climate migrants, those fleeing from environmental degradation, from environmental activists, and those who protest environmental degradation. Lastly, it will provide information on violence against environmental activists in Mexico. Eventually, this Note applies the asylum framework to Yaqui environmental activists, an Indigenous tribe in Mexico, to understand how asylum is a crucial component of fervent activism.

A. *An Overview of the Immigration and Nationality Act's (INA) Asylum Requirements*

The Immigration and Nationality Act provides the statutory framework for asylum claims. An Asylum seeker must prove: (1) persecutory harm or well-founded fear of persecutory harm; (2) persecution was on account of a protected ground; (3) a nexus between the persecution and the protected ground;

and (4) a failure of state protection.¹⁸ Under the INA, the Attorney General may grant asylum to an applicant who is unable or unwilling to return to their home country because of persecution (or a well-founded fear of persecution). The protected grounds are race, religion, nationality, membership in a particular social group, or political opinion.¹⁹ The protected ground must have been at least one “central reason” for persecution.²⁰ A “central reason” is defined as the fundamental reason for the persecutors’ decision to act.²¹

Persecution is defined in two ways. First, persecution can be defined as “a threat to the life or freedom of, or the infliction of suffering or harm upon those who differ in a way regarded as offensive.”²² It can also be the harming and suffering inflicted upon an individual to punish them for possessing a belief or characteristic a persecutor (either a government or persons a government is unwilling or unable to control) sought to overcome.²³ Persecution may be caused by more than one central reason, and an asylum applicant does not need to prove which reason was dominant.²⁴ Once an applicant demonstrates the existence of past persecution, there is a rebuttable presumption of a well-founded fear of persecution.²⁵

For environmental activists, persecution could occur under both definitions. Activists could be physically, mentally, or economically threatened because they are protesting an action that could cause environmental degradation. They could also be punished because they are environmentalists. A persecutor could hold contrary environmental views and act against an activist in response.

B. *Reasons for Seeking Asylum: Distinguishing Climate Migrants from Environmental Activists*

Environmental activism comes in many forms. Typically, one may think of controversial protests like throwing tomato soup on a Van Gogh to demonstrate the irrelevance of fine art in the face of climate change.²⁶ This form of activism is direct and sparks debate; however, what happens to those who cannot engage in activism because of the conditions in their community?

18. Anne Weis, Note, *Fleeing for Their Lives: Domestic Violence Asylum and Matter of A-B-*, 108 CALIF. L. REV. 1319, 1331 (2020); see also *Rodriguez Tornes*, 993 F.3d at 751–52 (outlining how persecution may be committed by the government or by forces that the government was unable or unwilling to control).

19. Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42) (2021).

20. *Id.* § 1158(b)(1)(B)(i).

21. *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2009).

22. *Matter of Acosta*, 19 I. & N. Dec. 211, 222 (B.I.A. 1985).

23. *Id.*; see also *Matter of Kasinga*, 21 I. & N. Dec. 357, 365 (B.I.A. 1996) (outlining how governmental and non-governmental actors can be persecutors).

24. *Parussimova*, 555 F.3d at 741.

25. *Rodriguez Tornes v. Garland*, 993 F.3d 743, 751 (9th Cir. 2021) (quoting *Singh v. Whitaker*, 914 F.3d 654, 659 (9th Cir. 2019)).

26. Damien Gayle, *Just Stop Oil activists throw soup at Van Gogh's Sunflowers*, THE GUARDIAN (Oct. 16, 2023, 1:28 PM), <https://perma.cc/W8SB-78JA>.

Enter the need for asylum. Asylum protects individuals against their persecutors retaliating legally or killing activists in their home country.²⁷ Applicants seeking asylum must show they are unable or unwilling to return to their home country because of past persecution²⁸ or a well-founded fear of persecution “on account of race, religion, nationality, membership in a particular social group, or political opinion.”²⁹ Someone may seek asylum for a variety of reasons. For this Note’s purpose, environment-driven asylum is viewed in two categories: (a) an applicant seeking asylum because the environmental conditions in the applicant’s home country are unsustainable and (b) because state and non-state actors threaten an applicant’s sovereignty over their environmental resources.

For the former, those seeking protection immigration status out of fear of climate change have generally been unsuccessful.³⁰ Currently, the United States does not extend international protection to individuals fleeing the impacts of climate change under its existing international human rights obligations.³¹ The United States is not alone in this stance. For example, in New Zealand, a Kiribati citizen sought refugee status after fearing that rising sea water levels and the associated environmental degradation would force the inhabitants of Kiribati (including the applicant) to leave their islands.³² The Supreme Court of New Zealand declined the applicant because he did not face “serious harm” if he returned to Kiribati, and there was no evidence that the Kiribati government was not taking steps to protect its citizens from environmental degradation.³³ Countries are reluctant to recognize climate migration due to the lack of redressability options to address climate change.³⁴

Regarding the latter category, the Biden administration has acknowledged that climate activists, or environmental defenders, who are persecuted for speaking out against government inaction on climate change may have a plausible claim to refugee status.³⁵ The threats facing environmental defenders³⁶ are most likely to target Indigenous communities, where the struggles

27. See *What is asylum?*, *supra* note 7.

28. 8 C.F.R. § 1208.13(b)(iii)(A) (2023).

29. Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42)(A) (2021).

30. See Julia Toscano, *Climate Change Displacement and Forced Migration: An International Crisis*, 6 ARIZ. J. ENV’T. L. & POL’Y 457, 488 (2015) (discussing the difficulties of creating a legal framework that addresses the concerns of climate change-induced refugees).

31. THE WHITE HOUSE, REPORT ON THE IMPACT OF CLIMATE CHANGE ON MIGRATION 19 (2021).

32. *Teitota v. The Chief Exec. of the Ministry of Bus., Innovation, and Emp.* [2015] NZSC 107 at [5] (N.Z.).

33. *Id.* at 12; see also Bobby Yu, *The Sinking Nation of Kiribati: The Lonely Stand Against Statelessness and Displacement from Rising Oceans*, 3 ARIZ. J. ENV’T. L. & POL’Y 1, 1 (2013) (discussing a lack of international legal protections for those seeking refugee status from natural disasters).

34. The U.S. may designate nationals of a foreign state for Temporary Protected Status (“TPS”) in the U.S. due to conditions in the foreign state that temporarily prevent that country’s nationals from returning safely, including environmental disasters. THE WHITE HOUSE, *supra* note 31, at 18. TPS provides limited protections and is not the focus of this Note, but it is still relevant to mention this form of environmental immigration protection. For more information on TPS see *Temporary Protected Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/WJJ3-84GE> (last visited Oct. 16, 2023).

35. THE WHITE HOUSE, *supra* note 31, at 17.

36. See *id.* (discussing the interplay between climate change, natural disasters, and violence).

for Indigenous recognition and autonomy are often inseparable from environmental and resource claims.³⁷ The main motivations for Indigenous people are often to protect their territory, culture, and ecology against threats like colonization, land encroachment, large-scale resource projects, and illegal logging and mining.³⁸ The persecution of Indigenous activists not only constitutes abuses against traditional human rights (e.g., right to life and peaceful assembly) but also against more broadly accepted civil and political rights, such as the right to a healthy environment and Indigenous rights to free and informed consent in matters involving their people.³⁹ Killings of Indigenous activists are only the “tip of the iceberg;” as many more are harassed, unlawfully and lawfully arrested, and sued for defamation, amongst other intimidation mechanisms.⁴⁰ Further, rampant inequalities, systematic deprivation, institutional racism, biased and corrupt criminal justice systems, and a lack of essential services are all forms of structural violence that impact Indigenous activists.⁴¹ All of these stressors revolve around a person’s environmental and land rights.

A history of colonization and genocide has degraded Indigenous rights.⁴² Indigenous peoples often have deep, spiritual, cultural, social, and economic connections with their lands, territories, and resources, which are fundamental to their identity and existence.⁴³ Around 20% of the earth’s territory is Indigenous lands and contains 80% of the world’s remaining biodiversity.⁴⁴ There is a growing movement to advance Indigenous peoples’ collective rights to lands, territories, and resources.⁴⁵ However, in many countries, the collective rights of Indigenous peoples are not recognized, and even where Indigenous peoples have obtained legal protection or property rights to their lands and resources, a lack of proper enforcement mechanisms effectively denies Indigenous peoples their fundamental rights.⁴⁶ Without full recognition and implementation of their rights to their lands, territories, and

37. DAVID V. CARRUTHERS, ENVIRONMENTAL JUSTICE IN LATIN AMERICA: PROBLEMS, PROMISE, AND PRACTICE 10 (2008).

38. Phillippe Le Billon & Päivi Lujala, *Environmental Defenders: Killings, Perpetrators, and Drivers of Violence*, in ENVIRONMENTAL DEFENDERS: DEADLY STRUGGLES FOR LIFE AND TERRITORY 65 (Mary Menton and Phillippe Le Billon, eds., 2021) [hereinafter Lujala].

39. MARY MENTON & PHILLIPE LE BILLON, ENVIRONMENTAL DEFENDERS: DEADLY STRUGGLES FOR LIFE AND TERRITORY 2 (Mary Menton and Phillippe Le Billon, eds., 2021).

40. Lujala, *supra* note 38, at 67; *see, e.g.*, Republic of Ecuador v. Chevron Corp., 638 F.3d 384, 401 (2d Cir. 2011) (affirming dismissal of Ecuadorian environmental activist’s claims against an oil company that allegedly caused environmental devastation in the Ecuadorian rainforest).

41. Mary Menton, Grettel Navas, & Philippe Le Billon, *Atmospheres of Violence: On Defenders’ Intersecting Experiences of Violence*, in ENVIRONMENTAL DEFENDERS: DEADLY STRUGGLES FOR LIFE AND TERRITORY 42 (Mary Menton and Phillippe Le Billon, eds., 2021).

42. *Human Rights*, U.N. DEP’T OF ECON. & SOC. AFFS., <https://perma.cc/TTN9-U8T6> (last visited Oct. 16, 2023).

43. *Indigenous people’s collective rights to lands, territories and resources*, U.N. DEP’T OF PUB. INFO., <https://perma.cc/378D-AUYA> (last visited Oct. 16, 2023).

44. *Id.*

45. *Id.*

46. *Id.*

resources, Indigenous peoples continue to be victims of systematic and environmental oppression.⁴⁷

Asylum is contrary for Indigenous groups whose mission is to maintain sovereignty and cultural independence on their land.⁴⁸ Because the core component of asylum is the legal claim that an individual cannot return to their country of origin because of past persecution or a well-founded fear of future persecution,⁴⁹ it is essential to appreciate the mission of Indigenous activists, especially in light of this philosophical dilemma. Acknowledging that seeking asylum is a *difficult* and *personal* choice, it is also important to recognize that asylum is never the ideal solution. Asylum is a bandage to cover systematic wounds of oppression and violence.⁵⁰ It represents one avenue of legal protection from international persecution. Though a treatment and not a cure, asylum rights ought to be protected for all groups, including Indigenous peoples. Without a robust asylum framework, environmental activists in dire emergencies lack a crucial immigration pathway.

C. *Establishing the Case Study: Spotlighting Environmental Activists in Mexico*

This Note examines the applicability of asylum to environmental activists by utilizing Mexico as a case study. Mexico was selected because many Latin American popular movements have fused environmental dimensions into community struggles for social justice.⁵¹ Around 15% of Mexico's population identifies as Indigenous.⁵² Notably, the Mexican Constitution recognizes the existence of Indigenous communities⁵³ and the right to a healthy environment.⁵⁴ Indigenous rights have been a powerful catalyst for mobilization as native communities battle the forces that threaten to fragment them, displace them, and drive them toward cultural disintegration.⁵⁵ They are critical actors in attempts to stop or slow down land transformations for agro-industrial and mining purposes.⁵⁶ Yet, at least 54 environmental and land activists were killed in Mexico in 2021, making it the deadliest country for

47. *Id.*

48. G.A. Res. 61/295 United Nations Declaration on the Rights of Indigenous Peoples, Article 10 (Sept. 13, 2007).

49. *Rodriguez Tornos v. Garland*, 993 F.3d 743, 751 (9th Cir. 2021).

50. Carlos Yescas, *Hidden in Plain Sight: Indigenous Migrants, The Movements, and Their Challenges*, MIGRATION POL'Y INST. (Mar. 31, 2010), <https://perma.cc/WL3M-VUM2>.

51. CARRUTHERS, *supra* note 37, at 2.

52. Oscar Lopez, *A town torn apart: Mexico's indigenous communities fight for autonomy*, REUTERS (Jan. 2, 2020, 5:10am), <https://perma.cc/PV8R-X9TF>.

53. Constitución Política de los Estados Unidos Mexicanos [CP] Article 2 ¶ 5, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014.

54. *Id.* Article 4 ¶ 5.

55. CARRUTHERS, *supra* note 37, at 10.

56. Louisa Prause & Phillipe Le Billon, *Land defenders and struggles against agro-industrial and mining projects*, in ENVIRONMENTAL DEFENDERS: DEADLY STRUGGLES FOR LIFE AND TERRITORY 136 (Mary Menton and Phillipe Le Billon, eds., 2021).

environmental activists worldwide.⁵⁷ This raises the stakes for Indigenous people engaged in environmental activism.⁵⁸

Corrupt local governments and drug cartels pose one of the biggest threats to Indigenous groups.⁵⁹ Criminal organizations and illegal business entrepreneurs commit murder and intimidate activists to advance their interests among poaching gangs, illegal loggers, and miners.⁶⁰ The anonymity and impunity of perpetrators often result from the killing methods, participation, and cover-ups by authorities, corruption or pressure on the judicial system, fears of reprisal against whistle-blowers, and a lack of investigations.⁶¹

Because violence against environmental activists disproportionately impacts Indigenous groups, some Indigenous groups in Mexico have fought back. For example, the Purépecha in Cherán became a self-ruling Indigenous community after a civil uprising in 2011.⁶² Corruption, exploitation, and violence were the norm prior to the uprising.⁶³ Organized crime participated in illegal logging and timber thefts,⁶⁴ clearing 50,000 acres of forest over the course of a decade.⁶⁵ Gunmen carrying military-style weapons who guarded the bandit woodcutters would kidnap and shoot village activists.⁶⁶ Allegedly, the local politicians not only turned a blind eye to drug trafficking and extortion but financed their campaigns with illegal logging and attempted to seize control of common lands.⁶⁷ In response, the women of Cherán led a revolt against illegal logging and corruption.⁶⁸ The women took illegal loggers hostage, seized and burned their vehicles, and kicked out the mayor.⁶⁹ Since then, Cherán has been a functional, independent, and constitutionally permissible community for over a decade,⁷⁰ as Mexico's Constitution recognizes the existence of Indigenous communities.⁷¹

57. Oscar Lopez, *Mexico Named Deadliest Country for Environmental Activists*, N.Y. TIMES (Sept. 29, 2022), <https://perma.cc/X9YB-MZKS>.

58. See Lujala, *supra* note 38, at 71–72 (finding that a larger Indigenous population in a country is positively related to more killings).

59. See Stephanie Eberhardt, *The Lacey Act Amendments and United States' Policing of International Trade*, 35 Hous. J. INT'L L. 397, 408 (2013) (discussing the role of corrupt governments in the rise of illegal logging); see also *id.* (identifying organized crime as a major player in the illegal logging industry).

60. Lopez, *supra* note 57 (arguing that drug cartels fuel a cycle of violence in Mexico, with more than 35,000 people dying from homicides in 2021); Lujala, *supra* note 38, at 70 (discussing why criminal organizations intimidate activists).

61. *Id.* at 69.

62. David Agren, *The Mexican indigenous community that ran politicians out of town*, THE GUARDIAN (Apr. 3, 2018, 2:15 PM), <https://perma.cc/P7FZ-QAM2>.

63. *Id.*

64. Anne-Marie O'Connor & William Booth, *In Mexico, forests fall prey to crime mafias*, THE WASH. POST (Jul. 6, 2011), <https://perma.cc/R3H4-462T>.

65. Romina Cenisio, *How a Rebellion Planted Seeds of Revival in Rural Mexico*, ATLAS OBSCURA (Nov. 30, 2021), <https://perma.cc/75UU-UX73>.

66. O'Connor & Booth, *supra* note 64.

67. Agren, *supra* note 62.

68. Cenisio, *supra* note 65.

69. *Id.*

70. Andalusia Knoll Solof, *After long fight for self-government, indigenous town of Cherán, Mexico ushers in new council*, NBC NEWS (Sep. 4, 2018, 1:53 PM), <https://perma.cc/92CZ-8LZK>.

71. Constitución Política de los Estados Unidos Mexicanos [CONSTITUTION] art. 2 (A) (MEX.).

Not all Indigenous groups have been able to repel violent environmental persecutors to the same extent as the Purépecha. As discussed in the next section and throughout this Note, the Yaqui have faced environmental persecution from state and non-state actors for over a century. The unique and severe persecution of Yaqui environmental activists provides a factual foundation to argue for expanding asylum claims for environmental activists.

II. THE YAQUI AND THEIR PERSECUTION UNDER THE IMMIGRATION AND NATIONALITY ACT

The following subsections of Part II will detail the cultural, religious, environmental, and economic significance of the Yaqui River to the Yaqui people. It then summarizes the century-long conflict the Yaqui have endured to ensure their water rights and how state and non-state actors have legally and violently responded. Lastly, it analyzes how the deprivation of water rights qualifies as persecution under the INA, which is the first element to an asylum claim.

A. *The Yaqui: A Historic Conflict over Water Rights*

Located in the state of Sonora, Mexico, the Yaqui Tribe is an Indigenous nation made up of eight *pueblos* (towns).⁷² Sonora is located along the United States border and divides the Yaqui between Mexico and Arizona.⁷³ A core geographical feature of the Yaqui is the Yaqui River,⁷⁴ an enduring feature inseparable from the Yaqui identity that carries territorial, ancestral, and symbolic significance.⁷⁵ Additionally, the Yaqui rely on water from the river for domestic consumption and agricultural use.⁷⁶ Despite the Yaqui River's significance to the Yaqui people, the community has faced many challenges from the Mexican government regarding land and water rights.⁷⁷ Part of this struggle has been the issue of upholding a 1938 declaration from President Lázaro Cardenas to restore the Yaquis territory and grant them a right to 50% of the water in the La Angostura reservoir on the northern end of the Yaqui River.⁷⁸ To this day, the Mexican government has not respected their water rights.⁷⁹ As Luna Romero, a spokesman for the Yaqui, emphasized, "Without the Yaqui River there are no Yaqui people."⁸⁰

72. Nicolás Pineda Pablos, *Who Gets What with the Independencia Aqueduct in Sonora, Mexico*, 59 J. OF THE SW. 227, 237 (2017). [hereinafter Pablos].

73. Raquel Padilla Ramos & José Luis Moctezuma Zamarrón, *The Yaquis, a historical struggle for water*, 9 WATER HIST. 29, 30 (2017) [hereinafter Ramos].

74. *Id.* at 39.

75. *Id.*

76. *Id.* at 30.

77. *See id.* at 35–37 (outlining the history of the Yaqui's water rights).

78. *Id.* at 30.

79. *Id.*

80. Liz Mineo, 'In eye of hurricane', THE HARV. GAZETTE (Mar. 22, 2023), <https://perma.cc/2TSP-CWQR/>.

In 2010, the Sonora governor announced the Independencia aqueduct.⁸¹ The project consisted of a 145-kilometer (approximately 87 miles), 48-inch-diameter pipe with the capacity to transport up to 75 million cubic meters of water annually.⁸² The aqueduct would redirect water away from the Yaqui River to Hermosillo,⁸³ which is opposite the Yaqui Valley.⁸⁴ With the construction of the Independencia aqueduct, the Yaqui Tribe has even less access to river water.⁸⁵ The change in water flow reflects a shift in the regional axis of power from its old hub, the agro-industrial Yaqui Valley, to urban and industrial Hermosillo.⁸⁶ Mexican Government media campaigns support this power shift by portraying the Yaqui Valley as “water-rich” and “lush,” contrasting it with the “water-scarce” Hermosillo.⁸⁷ State officials further justified the aqueduct’s construction by saying the Yaqui are only 40,000 people, while there are 800,000 people in Hermosillo.⁸⁸ Rising temperatures, increased prevalence of droughts, and reduced precipitation in the region intensified the need for water.⁸⁹

In response to the aqueduct’s announcement, the Yaqui went to court.⁹⁰ The Yaqui Tribe sought federal protection against the aqueduct’s construction⁹¹ for neglecting their right to prior consultation and dismissing their historical water rights.⁹² The Unitary Agrarian Tribunal of District 35 responded that August by ordering the precautionary suspension of the construction.⁹³ However, the state government ignored the order and continued the open bidding process to begin the construction of the aqueduct.⁹⁴

Traditional authorities of the town of Vicam filed another suit the following year, challenging the project’s environmental impact statement.⁹⁵ The plaintiffs based their argument on the procedural and substantive features detailed in Mexico’s General Law of Ecological Balance and Environmental Protection and Article 7 of the International Labor Organization Convention 169, which requires that Mexico ensures Indigenous people are directly involved

81. See Pablos, *supra* note 72, at 230 (discussing the political motivations for constructing the Independencia Aqueduct).

82. *Id.* at 232.

83. Hermosillo is the capital of Sonora. *Id.* at 228.

84. *Id.* at 231.

85. *Id.* at 236–37.

86. Lucero Radonic, *Environmental Violence, Water Rights, and (Un) Due Process in Northwestern Mexico*, 42 *LATIN AM. PERSP.* 27, 35 (2015) [hereinafter Radonic I].

87. *Id.* at 36.

88. Mineo, *supra* note 80.

89. Nathaniel Flicker, *The Yaqui Tribe’s Fight for Survival: A Story of Water Rights and Resistance*, MEDIUM (May 7, 2018), <https://perma.cc/5NFA-G2MK>.

90. Pablos, *supra* note 72, at 238.

91. *Id.*

92. Radonic I, *supra* note 86, at 37.

93. Pablos, *supra* note 72, at 238.

94. *Id.*

95. *Id.* at 238–39.

in decisions that impact the economic development of their resources.⁹⁶ In May 2011, the Tenth Judicial District judge in Sonora ruled in favor of the Yaqui Tribe and granted the suspension of the aqueduct construction.⁹⁷ Yet, the Sonoran government ignored the court's ruling and continued construction.⁹⁸

Despite the Sonoran government's disobedience, the Yaqui persisted with their legal efforts. In May 2012, the Fourth District Court of the State of Sinaloa declared the Environmental Impact Assessment void and granted the Yaqui Tribe a right to audience.⁹⁹ The National Supreme Court of Justice accepted the Fourth District Court's case for review in October 2012 and upheld the lower court's decision in May 2013.¹⁰⁰ The National Supreme Court of Justice then issued a ruling clarification that confirmed the Environmental Impact Assessment void and granted the Yaqui Tribe the right to prior and informed consent based on the 1940 decree.¹⁰¹ Finally, the Yaqui filed another amparo lawsuit with the Eighth District Court of the State of Sonora in 2014 against water concessions for the aqueduct.¹⁰² The Eighth District Court issued an injunction suspending the aqueduct's construction.¹⁰³ The Yaqui ultimately went to court and won a total of seven times.¹⁰⁴ They also engaged in non-legal activism, namely by blocking the International Mexico-Nogales Highway in 2011, which they continue to intermittently block.¹⁰⁵ Even with these efforts, the aqueduct was finished and has been siphoning water away from the Yaqui Valley since 2013.¹⁰⁶

Recently, some actors have worked to remedy the Yaqui's concerns. President Andrés Manuel López Obrador officially apologized to the Yaqui people, acknowledging the historical persecution of the Yaqui.¹⁰⁷ A part of this apology was implementing a \$100 million aqueduct project to provide potable water to the eight Yaqui towns.¹⁰⁸ Additionally, in 2020, there was a

96. Radonic I, *supra* note 86, at 38.

97. Pablos, *supra* note 72, at 239.

98. Lucero Radonic, *Through the aqueduct and the courts: An analysis of the human right to water and indigenous water rights in Northwestern Mexico*, 84 GEOFORUM 151, 156 (2017) [hereinafter Radonic II].

99. *Id.* at 155.

100. *Id.*

101. *Id.*

102. *Id.* at 156.

103. *Id.*

104. Gabriela Soto Laveaga, *A deadly battle over control of the Yaqui river will affect us all*, WASH. POST (Jun. 27, 2021, 6:00 AM), <https://perma.cc/K236-V3Y5>; *see also* Radonic I, *supra* note 86, at 40 (discussing efforts from Mexican authorities to discredit Yaqui demands and resource rights).

105. Pablos, *supra* note 72, at 239; *see also* Associated Press, *Crisis over Mexican Indigenous blockade after protestor dies*, ASSOCIATED PRESS (Feb. 23, 2021), <https://perma.cc/88TQ-73EP> (reporting conflicts between Yaqui members and truckers after the former instituted highway blockades).

106. Laveaga, *supra* note 104.

107. Kendal Blust, *Sonora is making headway on aqueduct to provide water to Yaqui towns*, FRONTERAS (Aug. 11, 2022, 3:32 PM), <https://perma.cc/WQA4-8NKF>.

108. *Id.*

promise to set up a multiagency Justice Commission to examine enduring water and land claims.¹⁰⁹

However, the Yaqui still suffer persecution by state and non-state actors. Yaqui water activists have been jailed, killed, or have disappeared in a new wave of violence.¹¹⁰ Five bodies of missing Yaqui men were discovered just days before President Obrador's apology.¹¹¹ More notably, Tomás Rojo, a leader in the Yaqui community, was kidnapped and allegedly killed by a local drug gang.¹¹² Some reports say drug cartels wanted the money the Yaquis earned by collecting tolls at informal highway checkpoints,¹¹³ but other Yaqui community members believe Rojo was killed by the powerful interests that stand to profit from the Yaquis' land and water rights in the area.¹¹⁴ Another leader, Luis Urbano Domínguez Mendoza, was shot and killed while leaving a bank in northern Sonora; the police detained no suspects and have not reported any progress in the investigation.¹¹⁵ Deaths like these have become the norm in the Yaqui Valley. The Yaqui people find themselves locked in a storm of Mexican drug cartels, water-hungry lithium mines, and a judicial system that has been ineffective at stopping state government action.¹¹⁶

B. *Yaqui Environmental Activists Have Suffered Persecution*

The violence and lack of judicial legitimacy Yaqui environmental activists have suffered at the hands of state and non-state actors rises to the level of persecution. Under the first definition of persecution, non-state actors that the Mexican government cannot control have threatened Yaqui environmental activists' lives.¹¹⁷ At least seven Yaqui people, including community activists Tomás Rojo and Luis Urbano Domínguez Mendoza, were killed by unknown actors, presumably drug cartels.¹¹⁸ The Mexican government has a conflicting track record regarding violence by non-state actors: Mexican law

109. Laveaga, *supra* note 104.

110. *Id.*

111. Associated Press, *Mexico confirms deaths of 5 Yaqui Indigenous men*, AZ CENTRAL (Sep. 27, 2021, 8:33 PM), <https://perma.cc/P3KX-LSJM>.

112. Mark Stevenson, *Mexico is world's deadliest spot for environmental activists*, ASSOCIATED PRESS (Sep. 29, 2022), <https://perma.cc/U3FQ-LPTA>.

113. *Id.*

114. *Id.*

115. Melissa Galbraith, *Defender of natural resources of Yaqui tribe shot to death in Mexico*, GLOBE LIVE MEDIA (Jun. 12, 2021), <https://perma.cc/FWX6-JC35>.

116. Stevenson, *supra* note 112.

117. *See Nabalwala v. Gonzales*, 481 F.3d 1115, 1118 (8th Cir. 2007) (holding that the Immigration Judge failed to consider whether the Ugandan government was unable or unwilling to control the applicant's family after they arranged for assailants to forcibly rape to stop her for being a lesbian); *see also* Shane Dizon and Pooja Dadhanian, § 10:150. *Gender-based asylum claims—Victims of domestic violence*, in IMMIGR. L. SERV. § 10:150 (Shane Dizon and Pooja Dadhanian, 2d ed. 2023) (discussing how different circuits have managed the inability and unwillingness to protect requirement).

118. *See* Section II.A.

enforcement agencies have long fought drug cartels¹¹⁹ while also colluding with them for independent political and financial gain.¹²⁰ Due to this, Yaqui activists have a foundational persecution claim based on violence from non-state actors.

Establishing the Yaqui's environmental persecution resulting from the Independencia aqueduct is more difficult. However, understanding this claim is essential to crafting asylum claims for environmental activists. At the heart of the Yaqui's identity is water rights. Water from the Yaqui River is a means to subsistence and self-governance for the Yaqui people, not just a means for agriculture.¹²¹ The Yaqui River does not flow continuously, nor does it cover the Yaqui's needs.¹²² In 2017, around 9.9% of the Yaqui lacked water, 56.3% lacked drainage to wastewater, and 30.9% of homes had electricity, potable water, and drainage.¹²³ The Independencia aqueduct created another obstacle in a long history of water inequality. Before the aqueduct's construction, the Yaqui's irrigated land was already less than a tenth of that on the left, non-Yaqui bank of the river, and it received much less water than the Yaqui are legally allotted.¹²⁴ The aqueduct, which transports 75 million cubic meters of water a year,¹²⁵ redirected even more water away from the Yaqui River to the Mexican state of Sonora.¹²⁶ Water politics in Sonora have worsened the inequality of access to environmental resources and highlighted the fissures among targeted populations.¹²⁷

The Yaqui continue to challenge the invasion and various groups that are undermining their water rights. The Yaqui went to court and won seven times to suspend the aqueduct's construction and validate their constitutional right to prior consultation.¹²⁸ César Cota, a land and water activist, told the Associated Press: "The water doesn't speak, the rock doesn't speak, the mountains don't speak, the sea doesn't speak. But we do speak, and we want to keep speaking for them."¹²⁹ The Yaqui's inability to fully access the Yaqui River violates the government's historical promises and threatens their existence as Indigenous people.¹³⁰ In response, the Sonoran government claimed their own right to water.¹³¹ Yet water intake in Sonora remains among the

119. See *Mexico's Long War: Drugs, Crime, and the Cartels*, COUNCIL FOR FOREIGN RELS. (Sept. 7, 2022), <https://perma.cc/W7AF-54RN> (discussing the impact of Mexico's drug trade and the Mexican government's efforts to combat drug cartels).

120. Jacob JiHyong Kim, *Mexican Drug Cartel Influence in Government, Society, and Culture* 16 (2014) (M.A. thesis, UCLA) (ProQuest).

121. Radonic I, *supra* note 86, at 39.

122. Ramos, *supra* note 73, at 37.

123. Pablos, *supra* note 72, at 238.

124. *Id.* at 237.

125. *Id.* at 232.

126. *Id.* at 231.

127. *Id.* at 241.

128. Laveaga, *supra* note 104; see generally Section II.A.

129. Associated Press, *Mexico, the deadliest place for land defenders*, YOUTUBE (Sep. 28, 2022), <https://perma.cc/LN8L-QL3Y>.

130. Ramos, *supra* note 73, at 30.

131. Radonic I, *supra* note 86, at 38–39.

highest in Mexico.¹³² By building the Independencia aqueduct, ignoring judicial orders, and engaging in a political smear campaign, the Sonoran government persecuted the Yaqui. These actions fall under the second definition of persecution. The Sonoran government inflicted harm on the Yaqui for possessing a characteristic (as explored in the next section) that the government sought to overcome. Succeeding under this claim would open the door for protection for other environmental activists who could make use of a new precedent.¹³³ Defining the characteristics of the harm and tying it to the nexus is the next step in establishing the Yaqui's asylum claim.¹³⁴

While the Yaqui have a strong claim, there is a potential wrench in the Yaqui's claim: the formal apology from President Obrador about the historical persecution of the Yaqui.¹³⁵ This apology may deflate the nexus claim, which requires that the Mexican government is unwilling to protect Yaqui environmental activists. In considering a government's response, courts review various factors, including, but not limited to, police investigations and prosecutions against the persecutors, the degree of protection offered to the applicant after the prosecution, and whether the government made any concessions.¹³⁶ Further, a government's willingness to protect does not equate to its ability to protect.¹³⁷ President Obrador's apology, though a possible concession in that it acknowledges the Yaqui's persecution, does ignore that the Sonoran government and drug cartels are acting against the Yaqui; nor does it change the fact that President Obrador has not ordered the Sonoran government to stop their water projects.¹³⁸ The fears the Yaqui face are organized and consistent, especially in light of the Yaqui's century-long conflict over water rights.¹³⁹ Because they have met the elements of persecution, Yaqui

132. *Id.* at 39.

133. *See* Toscano-Cabrales v. U.S. Att'y Gen., No. 05-12356, 181 F.App'x 810, 813 (11th Cir. May 18, 2006) (finding that the asylum applicant did not have a well-founded fear of future persecution after she was targeted for voicing her concern for the environmental damage caused by guerrilla attacks on the oil industry).

134. *See, e.g.,* Ali v. Ashcroft, 394 F.3d 780, 786 (9th Cir. 2005) (finding that the asylum applicant was gang-raped at least partly because of their Midgan clan membership).

135. Kendal Blust, *Sonora is making headway on aqueduct to provide water to Yaqui towns*, FRONTERAS (Aug. 11, 2022, 3:32 PM), <https://perma.cc/GGK3-DFLY>.

136. *K.H. v. Barr*, 920 F.3d 470, 476–77 (6th Cir. 2019).

137. *See* Garcia v. Att'y Gen. of U.S., 665 F.3d 496, 503 (3d Cir. 2012) (finding Guatemala's efforts to relocate an asylum applicant, a civil witness of gang violence, did not constitute protecting the applicant from future persecution).

138. Stevenson, *supra* note 112; *see, e.g.,* Juan Antonio v. Barr, 959 F.3d 778 (6th Cir. 2020) (concluding that the Guatemalan government was unable to control the asylum applicant's abuser when the police ignored the applicant's requests for help, even though a State Department report stated that Guatemala had taken steps to curb domestic violence).

139. Mineo, *supra* note 80; *see, e.g.,* Bolanos-Hernandez v. I.N.S., 767 F.2d 1277, 1287 (9th Cir. 1984) (finding that a Salvadoran applicant had a well-founded fear of persecution by local guerillas because they are a "politically motivated group that frequently engages in terrorist tactics directed at those who refuse to join its armed struggle"); *Matter of Kasinga*, 21 I. & N. Dec. 357, 365 (B.I.A. 1996) (holding that female genital mutilation is a form of persecution); *Matter of A-T-*, 25 I. & N. Dec. 4, 11 (B.I.A. 2009) (remanding to allow a Mali woman that underwent female genital mutilation to define herself as a member of a particular social group).

environmental activists could qualify under at least two protected grounds: membership in a particular social group and political opinion.

III. YAQUI ENVIRONMENTAL ACTIVISTS' QUALIFICATIONS AS A PARTICULAR SOCIAL GROUP

The first asylum ground protects members of a particular social group. The following subsections of Part III explain how immigration courts have defined this phrase. It then explores how political changes in the Executive Branch have expanded and narrowed particular social groups within the domestic violence context. By examining the domestic violence precedent, Part III applies the particular social group framework to Yaqui environmental activists and extrapolates the applied framework to environmental activism broadly.

A. *The Basis for Social Groups under the INA*

The INA and its associated regulations do not define “particular social group.”¹⁴⁰ Instead, the Board of Immigration Appeals (BIA) has ruled that to establish a nexus to the protected ground of “membership in a particular social group,” an applicant must show that the group is: (1) comprised of individuals with a common immutable characteristic; (2) defined with particularity; and (3) socially distinct.¹⁴¹ The requirement for immutable characteristics is that the characteristic cannot be changed, or the group members should not be required to change to avoid persecution.¹⁴² Particularity requires that a social group have characteristics that “provide a clear benchmark for determining who falls within the group. . . . The group must also be discrete and have definable boundaries—it must not be amorphous, overbroad, diffuse, or subjective.”¹⁴³ Social distinction requires “evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.”¹⁴⁴ In short, particular social groups reflect that people manifest a “plethora of different life-styles, varying interests, diverse cultures, and contrary political leanings.”¹⁴⁵

140. *Canales-Rivera v. Barr*, 948 F.3d 649, 654 (4th Cir. 2020).

141. *Id.*

142. *Matter of W-G-R-*, 26 I. & N. Dec. 208, 213 (B.I.A. 2014).

143. IRA J. KURZBAN, *KURZBAN'S IMMIGRATION LAW SOURCEBOOK*, 810 (17th ed. 2020) (e-book) (citations omitted).

144. *Matter of A-R-C-G-*, 26 I. & N. Dec. 388, 393–94 (B.I.A. 2014) (quoting *Matter of W-G-R-*, 26 I. & N. Dec. at 217).

145. Daniel J. Smith, *Political Asylum—Well-Founded Fear of Persecution*, 13 AM. JUR. 3D PROOF OF FACTS § 9 (1991).

B. *Administrative Politics, Particular Social Groups, and Domestic Violence*

Domestic violence survivors have long sought asylum from persecution, specifically as members of a social group comprised of “married women. . . who are unable to leave their relationship.”¹⁴⁶ While this designation was initially successful in *Matter of A-R-C-G-*,¹⁴⁷ changes in administration have affected its status as proper law. In 2018, Attorney General Sessions overruled *Matter of A-R-C-G-* in *Matter of A-B-*.¹⁴⁸ Acting Attorney General Rosen affirmed this ruling in early 2021.¹⁴⁹ However, some courts narrowly read the holding of *Matter of A-B-* to offer asylum to survivors of family and gang violence through a case-by-case analysis.¹⁵⁰ The door for more general domestic violence asylum claims reopened when Attorney General Garland overruled *Matter of A-B-* and *Matter of A-B- II* in June 2021.¹⁵¹ Following the complexity of agency action, the ruling in *Matter of A-R-C-G-* is once again the controlling precedent.¹⁵²

Gender identity and roles contextualized by culture are central to domestic violence survivors’ arguments for asylum. The BIA has held that “sex” is an innate characteristic that could link the members of a “particular social group.”¹⁵³ Marital status can also be immutable when the individual cannot leave the relationship.¹⁵⁴ The ability of those in abusive relationships to change their relationship status may be informed by cultural and societal expectations on gender and subordination, such as if a domestic violence victim will always be deemed a partner of their ex, regardless of whether the victim escaped the relationship.¹⁵⁵ In deciding this issue, the immigration judge will assess a range of factors, like whether the dissolution of a marriage could be contrary to religious, moral, cultural, and legal constraints.¹⁵⁶ In the case of *A-R-C-G-*, the BIA found it significant that the applicant sought protection from her spouse’s abuse and that the police refused to assist her because they would not interfere in a marital relationship.¹⁵⁷ Additionally, an applicant must typically present evidence, such as documented country conditions, law

146. *Matter of A-R-C-G-*, 26 I. & N. Dec. at 392.

147. *Id.* at 388–89.

148. *Matter of A-B-*, 27 I. & N. Dec. 316, 316 (Att’y Gen. 2018) (recognizing that “married women in Guatemala who are unable to leave their relationship” can constitute a cognizable particular social group depending on the facts and evidence in an individual case).

149. *Matter of A-B-*, 28 I. & N. Dec. 199, 199 (Att’y Gen. 2021).

150. *See Weis, supra* note 18, at 1350–53 (discussing the implications of *Matter of A-B-*).

151. *Matter of A-B-*, 28 I. & N. Dec. 307, 307 (Att’y Gen. 2021).

152. *See also Matter of L-E-A-*, 28 I. & N. Dec. 304 (Att’y Gen. 2021) (overruling *Matter of L-E-A-*, 27 I. & N. Dec. 581 (Att’y Gen. 2019), which overruled *Matter of L-E-A-*, 27 I. & N. Dec. 40 (B.I.A. 2017), a case that qualified a father’s immediate family as a particular social group).

153. *Fatin v. I.N.S.*, 12 F.3d 1233, 1240 (3d Cir. 1993); *see also Nabalwala v. Gonzales*, 481 F.3d 1115, 1117 (8th Cir. 2007) (holding that “homosexuals” are a social group under the INA).

154. *Matter of A-R-C-G-*, 26 I. & N. Dec. 388, 392–93 (B.I.A. 2014).

155. *Id.* at 393.

156. *Id.*

157. *Id.*

enforcement statistics, and potentially their own past experiences, to demonstrate that the immutable characteristic of the “inability to leave their relationship” is socially distinct within the country in question.¹⁵⁸ Depending on the facts and evidence in an individual case, a court may grant particular social group asylum to domestic violence survivors if the survivor classifies their abuse as a characteristic shared by others.¹⁵⁹

C. *Defining Yaqui Environmental Activists as a Social Group*

One central reason Yaqui environmental activists suffer persecution is their membership in a particular social group, a protected ground. However, defining the social group of ‘Yaqui environmental activists’ is challenging because advocates and applicants often have an expansive view of social groups, while the BIA tends to view it in a restrictive manner.¹⁶⁰ The BIA’s interpretation of social group status seems broad on paper,¹⁶¹ but it has raised the bar for asylum seekers and advocates to successfully establish social group claims.¹⁶² Advocates must test and challenge the applicability of the particular social group elements to understand which social groups are and are not permitted. The domestic violence precedent is groundbreaking because it established that a particular social group could exist based on persecution from a private actor. This is crucial for the argument favoring asylum for environmental activists because the persecutors are often public and private actors. Here, Yaqui environmental activists can identify themselves as the following social group: environmental activists who are members of the Yaqui challenging the environmental degradation of their ancestral lands.

The Yaqui environmental activists group satisfies the three-prong particular social group test. First, Yaqui environmental activists share several common immutable characteristics. A member of a particular social group may suffer significant harm if asked to give up their group affiliation, either because “it would be virtually impossible to do so or because the basis of affiliation is fundamental to the members’ identities or consciences.”¹⁶³ Just as one’s gender, sexuality, and reproductive organs may be immutable, so is one’s ethnic and cultural identity;¹⁶⁴ thus, being Yaqui is immutable and cannot be changed.¹⁶⁵ Further, the

158. *Id.* at 394–95.

159. *Id.* at 388; *but see* *Jaco v. Garland*, 24 F.4th 395, 407 (5th Cir. 2021) (holding that Honduran women unable to leave their domestic relationships did not constitute a particular social group).

160. Smith, *supra* note 145, § 9; *see also* *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 229–32 (B.I.A. 2014) (discussing the origins and evolution of social group claims).

161. *See Matter of M-E-V-G-*, 26 I. & N. Dec. at 234 (clarifying the current test for social group claims).

162. *Particular Social Group Practice Advisory: Applying for Asylum Based on Membership in a Particular Social Group*, NAT’L IMMIGRANT JUST. CTR. 6–7 (July 2021).

163. *Matter of M-E-V-G-*, 26 I. & N. Dec. at 237–38.

164. *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985).

165. John P. Schmal, *Tracing Your Indigenous Roots in Sonora: A Challenge and an Adventure*, INDIGENOUS MEXICO (Sept. 15, 2019), <https://perma.cc/Y5BY-8PM9> (discussing how Spaniards and African enslaved people led to the diverse ethnic makeup of the Yaqui).

BIA has recognized that “the shared characteristic . . . might be a shared experience such as former military or land ownership.”¹⁶⁶ As an Indigenous group, land ownership is central to the Yaqui’s identity.¹⁶⁷

Yaqui territory is essential to the Yaqui’s language, food sovereignty, and livelihoods.¹⁶⁸ Yaqui territory is also the source of their deities and beliefs.¹⁶⁹ The Yaqui have retained ownership of the Yaqui Valley for centuries,¹⁷⁰ and their ownership should not be changed because of the fear of persecution. Further, like domestic violence survivors, the Yaqui have a shared experience of disempowerment by external forces: “Criminal gangs, like the armed forces before them, enjoy unprecedented levels of power and use violence against women to intimidate and control.”¹⁷¹ The driver of domestic violence is impunity, as law enforcement often exempts abusers from punishment.¹⁷² Impunity also drives violence against Indigenous environmental activists. This shared experience resides in cultural norms of power.

Second, the group is defined with particularity, which the immigration court analyzes in the context of the society where the asylum claim arises.¹⁷³ Particularity provides definable boundaries to establish whether someone with the identified immutable characteristics is a social group member.¹⁷⁴ In the domestic violence context, characteristics like “married,” “women,” and “unable to leave the relationship” can be combined to create a group with discrete and definable boundaries.¹⁷⁵ Societal expectations about gender and subordination especially inform the latter term and legal constraints regarding divorce and separation.¹⁷⁶ Additionally, some courts have added “Indigenous” to the working domestic violence social group definition.¹⁷⁷

Here, being Yaqui provides one definable boundary, as society may differentiate members of the Yaqui from other groups based on skin color, language, and cultural practices.¹⁷⁸ Building upon this, the construction of the Independencia Aqueduct highlights that the Yaqui are perceived and treated differently. In 2010, the Sonora government launched a media campaign

166. *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985).

167. *See, e.g., Cordoba*, 726 F.3d 1106 (9th Cir. 2013) (remanding to allow two asylum applicants to identify as a social group of wealthy landownerships).

168. Guadalupe Pastrana, *The Yaqui Tribe: An Indigenous Nation in Resistance*, CULTURAL SURVIVAL (Dec. 2, 2021), <https://perma.cc/75WT-K34K>.

169. *Id.*

170. *See* Section II.A.

171. Weis, *supra* note 18, at 1328.

172. *Id.* at 1329 (discussing low rates of domestic violence investigations in Honduras, El Salvador, and Guatemala).

173. *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 238 (B.I.A. 2014).

174. *Id.* at 239; *see, e.g., Escobar v. Gonzales*, 417 F.3d 363, 368 (3d Cir. 2005) (finding the characteristics of poverty, homelessness, and youth to be “too vague and all encompassing” to set perimeters for a protected group within the scope of the INA).

175. *Matter of A-R-C-G-*, 26 I. & N. Dec. 388, 393 (B.I.A. 2014).

176. *Id.*

177. *Juan Antonio v. Barr*, 959 F.3d 778, 789 (6th Cir. 2020) (recognizing that “married (Indigenous) women in Guatemala who are unable to leave their relationships” as a cognizable particular social group).

178. Schmal, *supra* note 165.

endorsing the message “Sonora is one land confronted by two worlds.”¹⁷⁹ Residents of Sonora are led to believe that the Yaqui are inefficient water managers compared to the state government.¹⁸⁰ This treatment is analogous to the societal and legal expectations placed on domestic violence survivors, as both groups are demonized by their surrounding societies. Further, participating in environmental activism distinguishes members of the Yaqui from one another. Though members of the Yaqui may share similar cultural values and political beliefs regarding water rights and other environmental issues, that does not mean every member of the Yaqui engages in activism. Notably, Yaqui environmental activists cannot be a social group circularly defined by the fact that it suffers persecution, which would disqualify the group as a particular social group.¹⁸¹

Third, the group is socially distinct. This requirement builds upon the particularity requirement and considers whether those with a common immutable characteristic are set apart from others within the society in some significant way.¹⁸² A viable particular social group should be “perceived within the given society as a sufficiently distinct group.”¹⁸³ A particular social group does not need to be ocularly visible to be socially distinct.¹⁸⁴ When analyzing social distinction in domestic violence cases, the courts may consider whether the society recognizes the need to offer protection to victims of domestic violence, including whether the country has criminal laws designed to protect domestic abuse victims and if the government effectively enforces those laws.¹⁸⁵ Additionally, the courts analyze the questioned society’s perception of domestic violence survivors by considering whether the home country has a “machismo and family violence” culture.¹⁸⁶

There is an overlap in why the proposed particular social group of Yaqui environmental activists is particularized and socially distinct.¹⁸⁷ Though the Mexican Constitution recognizes Indigenous peoples’ rights to social, economic, cultural, and political preservation,¹⁸⁸ Indigenous people in Mexico face self-determination and political participation issues.¹⁸⁹ The Yaqui are no exception. The geographic location of the Yaqui physically separates them

179. Radonic I, *supra* note 86, at 36.

180. *Id.*

181. *Rreshpja v. Gonzales*, 420 F.3d 551, 556 (6th Cir. 2005).

182. *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 238 (B.I.A. 2014).

183. *Id.*

184. *See, e.g.*, *Matter of Kasinga*, 21 I. & N. Dec. 357, 365–66 (B.I.A. 1996) (determining that young tribal women opposed to female genital mutilation constitute a particular social group).

185. *Matter of A-R-C-G-*, 26 I. & N. Dec. 388, 394 (B.I.A. 2014).

186. *Id.*

187. *See Matter of W-G-R-*, 26 I. & N. Dec. 208, 214 (B.I.A. 2014) (noting overlap between the particularity and social distinction requirements because both consider the societal context specific to the asylum claim).

188. Constitución Política de los Estados Unidos Mexicanos [CONSTITUTION] Oct. 2, 2014, art. 2, (A) (MEX.).

189. Victoria Tauli-Corpuz, *Mexico must end pattern of discrimination against indigenous peoples – UN expert*, OFF. OF THE HIGH COMM’R FOR HUM. RTS. (Nov. 20, 2017), <https://perma.cc/J2L2-KCS9> t; compare with *Matter of A-R-C-G-*, 26 I. & N. at 394 (finding enforcement of Guatemalan anti-domestic

from other members of society. The Yaqui River Valley resides in a different part of the Yaqui River compared to the capital of Hermosillo.¹⁹⁰ Activists have sought greater water rights over the Yaqui River for over a century.¹⁹¹ The community recognizes who the leaders in the water rights movements are, especially considering two of the most well-known activists were killed.¹⁹² Ownership over the Yaqui River is fundamental to the Yaqui's identity, as the region knows the economic and cultural value the river brings to the Yaqui.¹⁹³ Society is able to recognize a Yaqui activist through their occupation, religious practice and by witnessing them engage in an environmental protest. Due to this, members of society may perceive them differently. Therefore, "environmental activists who are members of the Yaqui challenging environmental degradation of their ancestral lands" could likely suffice as a particular social group.

Establishing the nexus requirement, which ties the persecution to the particular social group, can be difficult. The applicant has the burden to demonstrate the government's inability or unwillingness to protect the applicant.¹⁹⁴ An applicant may not always seek governmental assistance for one reason or another, but this may impact their asylum claim. For example, in *Velasquez-Gaspar*, the Ninth Circuit upheld a denial of asylum to an Indigenous Guatemalan applicant who did not report the abuse from her ex-boyfriend to the police.¹⁹⁵ The evidence supported the conclusion that the Guatemalan government could have protected her if she had reported the abuse.¹⁹⁶ Unlike in *Velasquez-Gaspar*, the Yaqui sought government assistance and the Mexican courts ruled in their favor seven times.¹⁹⁷ Also, the relevant political authorities ignored the Yaqui when they brought their complaints forward.¹⁹⁸ Advocates could prove that the Mexican government is unwilling to protect Yaqui environmental activists, as the Sonoran government has repeatedly disregarded the federal judiciary's authority.

violence laws can be problematic because the National Civilian Police "often failed to respond to requests for assistance related to domestic violence.") (citations omitted).

190. Ramos, *supra* note 73, at 29.

191. *Id.* at 35.

192. Galbraith, *supra* note 115.

193. Ramos, *supra* note 73, at 30 (referring to the Mayos and their namesake river and both the importance and impacts of river ownership and how this is analogous to the Yaqui)

194. Matter of M-E-V-G-, 26 I. & N. Dec. 227, 252 (B.I.A. 2014).

195. *Velasquez-Gaspar v. Barr*, 976 F.3d 1062, 1065 (9th Cir. 2020).

196. *See id.* at 1064; *but see* *Rahimzadeh v. Holder*, 613 F.3d 916, 921 (9th Cir. 2010) ("The reporting of private persecution to the authorities is not, however, an essential requirement for establishing government unwillingness or inability to control attackers").

197. Laveaga, *supra* note 104.

198. Pablos, *supra* note 72, at 239; *see, e.g.*, *In re S-A-*, 22 I. & N. Dec. 1328, 1335 (B.I.A. 2000) (finding that even if the applicant, a Moroccan woman, requested protection from the government from her father's abuse, the authorities would have been "unable or unwilling to control her father's conduct").

D. *Extrapolating the Case of the Yaqui to Other Environmental Activists*

Due to the restrictive three-prong test for particular social groups, the framework established for Yaqui environmental activists may be inapplicable to other groups. However, the changes in administrative rulings regarding domestic violence-based particular social groups demonstrate how the courts may extend asylum protection to one group and not another. The decision depends on the applicant's circumstances, the country in question, and the current Attorney General's interpretation of the law.¹⁹⁹

The test for establishing a particular social group should not diminish hope for environmental activists. Vague terms make for strict rules and creative arguments, which force asylum applicants and advocates to think creatively about how environmentalism satisfies the particular social group test. The strongest argument is that one's environment is central to their identity, whether for cultural, religious, aesthetic, or economic reasons. When human activity threatens one's surrounding environment, it equates to persecution against that person. That person should not separate themselves from the environment, regardless of the basis of the attachment or its significance to the person. This argument is strengthened when the applicant can contextualize their activism by tying in other aspects of their identity, such as geographic location. From there, the activist would need to define the boundaries of their environmentalist social group and demonstrate that the group is socially distinct. It may be challenging to achieve, but particular social groups provide environmental activists seeking asylum with a catch-all option if they do not qualify under the other four enumerated protected grounds.

IV. THE SILENCING OF THE YAQUI'S ENVIRONMENTAL ACTIVISM ARISES TO A POLITICAL OPINION

The second asylum ground protects individuals persecuted on account of their political opinion. Like with particular social groups, the meaning of this phrase is defined through immigration case law and not the INA. The following subsections of Part IV discuss the basis for political opinions and explores how immigration courts have characterized feminism and resisting violence against women as political opinions. This exploration draws legal comparisons of feminism to environmentalism and analyzes these comparisons within the context of Yaqui's environmental activism. It then aims to contextualize environmentalism broadly to expand the common understanding of political opinions.

199. Compare Matter of A-R-C-G-, 26 I. & N. Dec. 388, 388 (B.I.A. 2014) (holding the applicant's proposed social group of "married women in Guatemala who are unable to leave their relationship" to be cognizable), with *Amezcu-Preciado v. United States Att'y Gen.*, 943 F.3d 1337, 1345 (11th Cir. 2019) (holding the applicant's proposed social group of "Mexican women who are unable to leave their domestic relationships because they fear physical or psychological abuse by their spouse or domestic partner" to be not cognizable).

A. *The Basis for Political Opinions under the INA*

The United National High Commissioner for Refugees (UNCHR) defines a “political opinion” as “any opinion on any matter in which the machinery of State, society, or policy may be engaged.”²⁰⁰ The word “political” is not necessary to express a political view. Instead, political opinion encompasses more than electoral and formal political ideology and actions.²⁰¹ The United States immigration system adopts a similar view of political opinion, referring to it as a category of attitudes that people may have on matters that concern their state, government, or society.²⁰² Words and actions can, therefore, express political opinions.

An asylum applicant can establish political opinion in three ways. First, to demonstrate persecution on account of one’s affirmative expression of a political opinion, the applicant must show that (1) they held (or that their persecutors believed that they held) a political opinion and (2) that their persecutors persecuted them because of that political opinion.²⁰³ Second, an applicant can show that holding political neutrality is hazardous.²⁰⁴ Third, a political opinion can be imputed or attributed to the applicant by their persecutors.²⁰⁵ This means that the persecutors target someone or a group of people by associating them with another that holds the political opinion.²⁰⁶

Persecution on account of political opinion, which an applicant can display through direct or circumstantial evidence,²⁰⁷ has been interpreted by the judicial system. The Supreme Court interpreted the ordinary meaning of the phrase “persecution on account of . . . political opinion” as persecution on account of the victim’s political opinion, not the persecutor’s.²⁰⁸ Nevertheless, the Ninth Circuit ruled that persecution does not have to be solely on account of the victim’s political opinion.²⁰⁹ When an applicant establishes that persecution exists, the burden shifts to the Department of Homeland Security (“DHS”) to show by a preponderance of the evidence that the country’s conditions have changed to such an extent that the applicant no longer has a well-founded fear that persecution would continue if they were to return.²¹⁰

200. UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status 89 (2019), <https://perma.cc/H64E-ZU53>.

201. IRA J. KURZBAN, *supra* note 143, at 805.

202. *See* I.N.S. v. Elias-Zacarias, 502 U.S. 478, 482 (1992) (finding that political opinion refers to the victim’s political opinion, not the persecutor’s).

203. Rodriguez-Tornes v. Garland, 993 F.3d 743, 752 (9th Cir. 2021).

204. Sangha v. I.N.S., 103 F.3d 1482, 1488 (9th Cir. 1997).

205. *Id.* at 1489.

206. This Note focuses on expressed political opinion; however, imputed political opinion could be established if the Mexican government or relevant non-state actors treated all Yaqui people as activists deserving of suppression by virtue of being Yaqui.

207. Zhang v. Gonzales, 426 F.3d 540, 545 (2d Cir. 2005).

208. I.N.S. v. Elias-Zacarias, 502 U.S. 478, 482 (1992) (emphasis removed) (holding that the refusal to join a guerrilla group out of fear of government retaliation does not constitute a political opinion).

209. Navas v. I.N.S., 217 F.3d 646, 661 (9th Cir. 2000) (quoting Borja v. I.N.S., 175 F.3d 732, 734 (9th Cir. 1999) (citations omitted)).

210. *Id.* at 657 (citing 8 C.F.R. § 208.13(b)(1)(i)).

B. *Comparing Environmentalism to the Manifestation of Feminist Ideologies as Political Opinions*

Feminists and domestic violence survivors have expanded the applicability of political opinion asylum, like with particular social groups. Asylum seekers have argued that the manifestation of feminist ideologies transcends into political opinions; in *Fatin v. I.N.S.*, an Iranian woman sought asylum because if she returned to Iran, the government would persecute her under “gender-specific laws and repressive social norms” that she would disobey because of her feminist political opinion.²¹¹ Though the Third Circuit rejected her asylum appeal for not establishing that Iranian feminists are generally subjected to treatment harsh enough to qualify as “persecution,” it did recognize that feminism qualifies under the statutory definition of political opinion.²¹²

Unlike in *Fatin*, domestic violence survivors have successfully received political opinion asylum. In *Matter of D-V-*, the Board of Immigration Appeals found that a 27-year-old married female activist of a pro-Aristide church group who was gang-raped and beaten in her home by soldiers established a well-founded fear of persecution in Haiti.²¹³ The evidence reflected that her attackers, who knew her by name and membership, targeted her because of her political and religious opinion and would likely do it again if she returned to Haiti.²¹⁴ While the court did not explicitly state feminism, seeking asylum from gang rapists manifests feminist ideologies.

Additionally, in *Rodriguez-Tornes v. Garland*, a Mexican woman was granted asylum after suffering a lifetime of severe abuse from her mother, her estranged husband, and her partner for, in their eyes, being insufficiently subservient to men.²¹⁵ The Ninth Circuit found that the men beat, burned, raped, and strangled her because she sought an “equal perch in the social hierarchy.”²¹⁶ The woman established that the men persecuted her because she expressed her feminist political opinion that she was their equal.²¹⁷ While identifying oneself as a feminist may not rise to political opinion asylum, suffering from persecution after expressing one’s feminist beliefs does. Expressing feminist ideologies can challenge the social hierarchy of one’s country and culture, which may question the ruling regime’s legitimacy because one has presented an opinion about equality.

211. *Fatin v. I.N.S.*, 12 F.3d 1233, 1243 (3d Cir. 1993).

212. *Id.* at 1242.

213. *In re D-V-*, 21 I. & N. Dec. 77, 77 (B.I.A. 1993).

214. *Id.* at 80.

215. *Rodriguez-Tornes v. Garland*, 993 F.3d 743, 748 (9th Cir. 2021).

216. *Id.* at 753.

217. *See id.*

C. *The Sonoran Government and Drug Cartels have Persecuted the Yaqui because of their Political Opinions*

Another central reason for the persecution Yaqui environmental activists have suffered is on account of political opinion, which is a protected ground. The Yaqui's political opinion is grounded in their opposition to the Independencia aqueduct and protests for water rights and environmental protection. Opposition to corruption and extortion has a political dimension when it transcends "mere self-protection and represents a challenge to the legitimacy or authority of the ruling regime."²¹⁸ Here, the Yaqui continually challenged the authority of the Sonoran government over their water rights.²¹⁹

Comparatively, domestic violence survivors have sought asylum because their feminist opinions and membership in social and ethnic groups manifest into political opinions.²²⁰ Resisting corruption and abuse of power—including non-governmental—can be an expression of a political opinion.²²¹ When someone refuses to submit to violent advances from persecutors, for example, they form a political opinion through resisting and taking a stance against a culture of male domination.²²² Notably, an assertion of feminism is not enough; the applicant must demonstrate they were persecuted for holding those feminist ideologies.²²³

Can an Asylum seeker then assert protection on political grounds through manifesting other socio-political ideologies? Certainly, environmentalism constitutes a political opinion under the UNHCR definition, both internationally and specifically for the Yaqui, and arguably so under United States law. Environmental protection and degradation involve the mechanisms of the state and its policy. Internationally, the desire to improve and protect the quality of the natural environment by regulating environmentally harmful human activities has sparked political reform, protests, and behavioral changes.²²⁴ Political candidates may identify themselves as members of a "green party" or advocate for more economic support for fossil fuel companies.²²⁵ In short, the environment and politics are intertwined.

The Yaqui's environmental activism are political actions that constitutes political opinions. The Second Circuit reasoned that union activities and student organizations are vehicles for political expression in countries where the

218. Zhang v. Gonzales, 426 F.3d 540, 547–48 (2d Cir. 2005).

219. See Section II.A.

220. Ali v. Ashcroft, 394 F.3d 780, 786 (9th Cir. 2005) (finding that militia gang-raped the Midgan asylum applicant at least partly because of the applicant's son's employment by the Siad Barre administration).

221. Hernandez-Chacon v. Barr, 948 F.3d 94, 103 (2d Cir. 2020).

222. *Id.* at 104.

223. See Jabr v. Holder, 711 F.3d 835, 840 (6th Cir. 2013) (holding a member of Fatah's refusal to join the Palestinian Islamic Jihad and communication that he was politically opposed to the group was a political action).

224. Elaine Kamarck, *The challenging politics of climate change*, BROOKINGS INST. (Sept. 23, 2019), <https://perma.cc/7JVB-TG8H>.

225. *Id.*

standard of living is low, and the government suppresses civil liberties and commits widespread human rights violations.²²⁶ Yaqui environmental activists are more than a union or a student organization; they are a united group of Indigenous people challenging the historic deprivation of their water rights. The Yaqui's activism, and in turn, their political opinions, can be divided into two categories: traditional forms of activism and legal activism.

First, the Yaqui protested the construction of the aqueduct pursuant to their rights under the Mexican Constitution, which recognizes the freedoms of speech²²⁷ and assembly.²²⁸ The Yaqui employed persuasion and protest tactics such as public speeches, petitions, communications through forums, symbols, media, networks, and marches and caravans.²²⁹ Notably, the May 2015 caravan gathered more than 100 social organizations, including ethnic organizations, NGOs, academics, and other social sectors that shared similar struggles for equal access to water.²³⁰ Additionally, the Yaqui use nonviolent intervention methods, such as blockades, that have significant economic repercussions on sectors like mining, agro-export, and transport in Sonora, further publicizing their environmental messages.²³¹ These actions transcend self-protection and challenge the Sonoran government's authority.

Second, the Yaqui's legal efforts to halt the aqueduct's construction also rise to political opinions. The National Supreme Court of Justice permits 'amparos', or lawsuits attacking the law's unconstitutionality, in the absence of any administrative act of enforcement or judicial act of application.²³² Amparos enable an individual to request the suspension of any act that deprives personal liberties and any official actions prohibited by Article 22 of the federal constitution.²³³ Amparos are important to prevent criminal injustice and obtain injunctive relief.²³⁴ When the Yaqui filed suit against the Sonoran government over the Independencia Aqueduct, they did so under an amparo.²³⁵ The Yaqui plaintiffs argued that halting construction would allow for the reinstatement of water rights and prior consultation before any radical environmental transformation was undertaken in the Yaqui River basin.²³⁶ Utilizing an amparo represents a legitimate challenge to the Sonoran

226. *Osorio v. I.N.S.*, 18 F.3d 1017, 1030 (2d Cir. 1994); *see also Grava v. I.N.S.*, 205 F.3d 1177, 1181 (9th Cir. 2020) (finding that whistleblowing against government officials may constitute political activity).

227. Constitución Política de los Estados Unidos Mexicanos [CONSTITUTION] Feb. 5, 1917, art. 7 ¶ 1 (MEX.).

228. *Id.* at art. 9 ¶ 1.

229. Esperanza Hernández Delgado, *The Civil Resistance of Yaqui and Guarijio in Sonora, Mexico: Meanings, Scope and Challenges*, in *CIVIL RESISTANCE AND VIOLENT CONFLICT IN LATIN AMERICA 31* (Cécile Mouly & Esperanza Hernández Delgado, eds., 2019).

230. *Id.*

231. *Id.*

232. Bruce Zagaris, *The Amparo Process in Mexico*, 6 U.S.-MEX. L. J. 61, 61 (1998).

233. *Id.*

234. *Id.* at 69.

235. Radonic I, *supra* note 86, at 38.

236. *Id.*

government because the Yaqui's arguments are centered on a violation of constitutional and environmental rights.²³⁷

As established, it is not enough for Yaqui environmental activists to hold a political opinion; they must have been persecuted *on account of* said opinion.²³⁸ In assessing the political opinion of Yaqui environmental activists, the nature of their persecution and the persecutor's laws must be considered.²³⁹ The United States will not grant asylum if the applicant's fear is based on prosecution and punishment under the law generally instead of punishment specifically for holding the political opinion.²⁴⁰ The existence of protectionary laws does not preclude political opinion persecution.²⁴¹ For example, the Second Circuit articulated that law enforcement systems in El Salvador that typically protect women lack the resources or desire to address the brutal treatment of women, and the Salvadoran justice system "favors aggressors and assassins" and "punish[es] victims of gender violence."²⁴²

The persecution of Yaqui environmental activists is in reaction to the Yaqui's political opinions and activism opposing the aqueduct's construction.²⁴³ The Sonoran government engaged in a media campaign against the Yaqui, portraying them as inefficient water managers monopolizing a resource desperately needed by the people of Hermosillo.²⁴⁴ The International Mexico-Nogales Highway's initial blockade was forcibly removed,²⁴⁵ with violent incidents ongoing.²⁴⁶ The Yaqui exhausted their legal options—they went to court seven times and won each time.²⁴⁷ The National Supreme Court of Justice ruled that the Yaqui have the right to consultation because water extractions could impact surface flow, affecting their 1940 water rights.²⁴⁸ Nevertheless, the Sonoran government disobeyed the injunctions every

237. The Yaqui also filed a petition of admissibility to the Inter-American Commission on Human Rights ("IACHR") against the State of Mexico, alleging numerous violations of the American Convention on Human Rights and similar treaties. *Yaqui People v. Mexico*, Inter-Am. Comm'n H.R., Report No. 48/15, OEA/Ser.L/V/II.155, doc 28 ¶ 1 (2015). The IACHR granted the petition of admissibility for several of the claims under the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man. *Id.* ¶ 67.

238. Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42)(B) (2021).

239. UNCHR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, UNCHR ¶ 86 (2019).

240. *Id.* (noting that the person must have a fear of persecution and not merely a fear of punishment under the law).

241. *Hernandez-Chacon v. Barr*, 948 F.3d 94, 103 (2d Cir. 2020).

242. *Id.* (alterations in original) (citations omitted).

243. Laveaga, *supra* note 104; *see, e.g., Mihalev v. Ashcroft*, 388 F.3d 722, 727 (9th Cir. 2004) (finding that the multiple arrests and beatings of the asylum applicant by police was motivated by anti-"Gypsy" sentiment); *Kebede v. Ashcroft*, 366 F.3d 808, 812 (9th Cir. 2004) (holding that a soldier raped applicant because of the applicant's family's position in the previous Ethiopian government).

244. Radonic I, *supra* note 86, at 36.

245. Pablos, *supra* note 72, at 239.

246. Susy Buchanan, *Yaquis continue highway and rail blockades in Sonora*, MEX. NEWS DAILY (Aug 15, 2020), <https://perma.cc/ZB9U-3DEN>.

247. Laveaga, *supra* note 104.

248. Radonic II, *supra* note 98.

time.²⁴⁹ Constitutional protections of protest and amparos mean little if the judiciary has no legitimacy. Additionally, two tribal leaders were accused of a crime, apprehended, and put to jail in September 2014.²⁵⁰ More recently, the death of Tomás Rojo and other innocent Yaqui men by drug cartels highlighted that the Mexican government is unwilling to defend them. The Yaqui demonstrate a clear example of persecution based on environmental political opinions.

D. *Environmentalism as a Viable Political Opinion*

Environmental activists may seek asylum because their activism constitutes a political opinion. To succeed, the manifestation of environmentalism must reasonably challenge the authority of the ruling political regime, and the persecuting parties must punish the activists for their specific environmental opinions. Environmentalists could base their political opinion on resource rights, environmental protection, and land access—any opinion or action that values the environment. In the case of water rights, the right is derived from the right to life and property and is related to the right to human dignity.²⁵¹ Water advocacy is usually associated with a cry against the commodification of water by marginalized people challenging the status quo.²⁵² Activists challenging state-sponsored anti-environmental projects and persecution would likely have the greatest success establishing persecution on account of political opinion.

V. AN OVERVIEW OF OTHER ASYLUM AVENUES FOR THE YAQUI

This Note has focused on articulating arguments for environmental-based particular social groups and political opinions. However, it is important to mention the other three enumerated protected asylum grounds: race, nationality, and religion. Part V outlines and briefly analyzes each of these grounds within the Yaqui's context and considers if race, nationality, and religion are suitable asylum arguments to consider for other environmental activist groups.

A. *Indigenous Identity Protections: Asylum Based on Race & Nationality*

Discrimination based on race is regarded as one of the most striking violations of human rights and represents an important element in determining the existence of persecution.²⁵³ Race-based asylum claims require that the

249. Laveaga, *supra* note 104; *see also* Radonic II, *supra* note 98, at 156 (discussing the public outcry in Hermosillo after the 2014 hearing in which the state government described the Yaqui as selfish and dangerous).

250. Pablos, *supra* note 72, at 239.

251. Radonic II, *supra* note 98, at 157.

252. *Id.*

253. UNCHR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, UNCHR ¶ 68 (2019); *see e.g.*, *Damaize-Job v. I.N.S.*, 787 F.2d

applicant prove that members of their race are treated worse than the general population.²⁵⁴ Put another way, persecution on account of race can occur when a person suffers harm because their race differs from their persecutor's race, and the persecutor regards the racial differences as offensive.²⁵⁵

Nationality is another possible asylum ground for the Yaqui, though it is similar to race-based claims.²⁵⁶ It is not understood as only citizenship but also refers to membership in an ethnic or linguistic group.²⁵⁷ Admittedly, it is difficult to distinguish between persecution on account of nationality and persecution based on political opinion when a conflict between national groups is combined with political movements.²⁵⁸ Examples of historic persecution based on nationality include: the Albanians in Yugoslavia; Kurds in Iraq, Iran, and Turkey;²⁵⁹ the Tamils in Sri Lanka; the Tutsi in Rwanda; and the Bosnians in the Balkans.²⁶⁰

In the Yaqui's case, persecution on account of race or nationality is less applicable compared to other asylum avenues. The Yaqui articulate their opposition efforts as defenses over water and their territory.²⁶¹ Their water claims concern collective rights and a degree of political autonomy from the nation-state.²⁶² The persecution of the Yaqui has been motivated not necessarily by their race or nationality, but more so by the water dispute. Nevertheless, the persecution standard requires that the enumerated ground is at least one central reason for the persecution.²⁶³ Perhaps a constitutional argument based on the Mexican Constitution recognizing and protecting Indigenous peoples' right to self-determination and autonomy can be made.²⁶⁴ The environmental and humanitarian persecution the Yaqui have experienced by state and non-state actors amounts to persecution on account of nationality as the persecutors violate the Yaqui's right to autonomy. Further, during the 2011 lawsuit, state authorities supporting the aqueduct sought to deprive the Yaqui of their legal standing, though it was unsuccessful.²⁶⁵ The debate of Indigenous legal standing could be evidence of racial and ethnic animus. More sociological

1332, 1337 (9th Cir. 1986) (holding a Miskito Indian from Nicaragua established a well-founded fear of persecution on account of race as the Sandinista government severely persecuted members of his Indigenous group).

254. Smith, *supra* note 145, § 6.

255. *Surita v. I.N.S.*, 95 F.3d 814, 820 (9th Cir. 1996); *see also id.* at 819 (holding applicant was persecuted because of race when they were robbed by ethnic Fijians 10 to 15 times because the applicant is Indo-Fijian).

256. Smith, *supra* note 145, § 8.

257. UNCHR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, UNCHR ¶ 74 (2019).

258. *Id.* ¶ 75.

259. RICHARD A. BOSWELL, *ESSENTIALS OF IMMIGRATION LAW* 100 (5th ed. 2020).

260. T. ALEXANDER ALEINIKOFF, DAVID MARTIN, HIROSHI MOTOMURA, MARYELLEN FULLERTON, JULIET STUMPF, & PRATHEEPAN GULASEKARAM, *IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 772 (9th ed. 2020).

261. *Radonic II*, *supra* note 98, at 157.

262. *Id.*

263. *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2009).

264. *Constitución Política de los Estados Unidos Mexicanos* [CONSTITUTION], art. 7 ¶ 1 (MEX.).

265. *Radonic I*, *supra* note 86, at 40.

evidence is needed on how the Yaqui people are colorized and racialized in Mexican society. Suppose the evidence suggests that the Mexican government and relevant non-state actors find the racial and ethnic differences offensive. In that case, persecution on account of race could become a viable argument. In short, race and nationality are potential legal arguments for the Yaqui, though more research and evidence are necessary to bolster them.

B. *Acknowledging the Spiritual Significance of the Yaqui River Through Religious Asylum*

The Yaqui may also qualify for asylum on the grounds of religious persecution.²⁶⁶ Persecution on account of religion may assume various forms: prohibition of membership in a religious community; of worship in private or in public; of religious instruction; or severe measures of discrimination imposed on persons because they practice their religion or belong to a religious community.²⁶⁷ The Yaqui suffered deprivation of water rights that negatively impacted their ability to exercise their religious beliefs.

Yaqui history says that the Yaqui came out of the Yaqui River, and that their mythical ancestors, the Surems, inhabit the river.²⁶⁸ Due to this, the Yaqui consider the Yaqui River an enduring feature inseparable from other features (such as mountains, towns, farmlands, and coasts) that constitute their territory.²⁶⁹ The Yaqui River has multiple references to the symbols, myths, and legends associated with Yaqui culture.²⁷⁰ Ecological features like flowers, cottonwood trees, and reeds, which all survive alongside the river, are associated with Yaqui rituals.²⁷¹ Each June, the Yaqui celebrate the San Juan festival, an important religious ritual that marks the beginning of the first summer rains, by gathering along and bathing in the river.²⁷²

Yaqui activists may argue that the Independencia Aqueduct is an attack on their religious and cultural practices involving the Yaqui River. While the Yaqui hold religious beliefs tied to environmental beliefs, and those beliefs have been eroded by the construction of the Independencia Aqueduct, the Sonoran government likely did not persecute the Yaqui on account of those religious beliefs. Religious animus needs to be at least one central reason to

266. See, e.g., *In re S-A-*, 22 I. & N. Dec. 1328, 1328 (B.I.A. 2000) (holding a woman with liberal Muslim beliefs established persecution at the hands of her father on account of her religious beliefs, but not under a particular social group because her father's orthodox Muslim views concerning the proper role of women in Moroccan society differed from her own).

267. UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, UNHCR ¶ 72 (2019); see also *Kossov v. I.N.S.*, 132 F.3d 405, 409 (7th Cir. 1998) (Rovner, C. J., concurring) (discussing how an applicant established past persecution when government agents beat her until she miscarried, detained and interrogated, fired from two jobs, had bank accounts mysteriously closed, and lost her business and home on account of governmental disapproval of her Evangelical Christian beliefs).

268. Mineo, *supra* note 80.

269. Ramos, *supra* note 73, at 39.

270. *Id.* (explaining various Yaqui myths involving the Yaqui River).

271. *Id.* at 39–41.

272. Pablos, *supra* note 72, at 238.

demonstrate persecution.²⁷³ To strengthen the religious persecution claim, more evidence is needed on whether the Yaqui's traditions honor different religious beliefs and practices than the Catholic majority in Mexico and if the majority finds it offensive. Demonstrating this could provide an underlying motivation to degrade the Yaqui's water rights and access.²⁷⁴

C. *The Applicability of Race, Nationality, and Religion Asylum Claims to Other Environmental Activist Groups*

Like the suggested arguments for defining environmental activists as members of a particular social group, arguments based on race, nationality, and religion are context-specific. These three grounds focus on who the people are, where they live, and their spiritual beliefs. Persecution on account of these grounds focuses on the person themselves; actors persecute them because of an immutable part of their identity. Comparatively, particular social groups and political opinion grant a broader platform for environmental activists to receive asylum because of their activism and environmental beliefs. Admittedly, there is a fine line between these distinctions. However, all five enumerated asylum grounds could be available to environmental activists with the right factual circumstances and legal arguments.

VI. ESCAPING THE SILENCE: CONCLUDING THOUGHTS

Environmental activism is growing, and so is its opposition. When an activist faces insurmountable persecution, asylum should be ready and accessible. The ripcord of asylum-seeking is a necessary component of fervent environmental activism; it shields a person fleeing their land after fighting to protect it. Immigration advocates should uplift those seeking asylum by assessing the legal boundaries of the applicable immigration regime. For example, advocates for domestic violence victims seeking asylum have expanded the possibilities of who and what the INA can define as "membership in a particular social group" and political opinion. Other advocates should do the same for other categories of Asylum seekers, including environmental advocates.

This Note has evaluated this theory by applying asylum law to Indigenous Yaqui environmental activists. State and non-state actors have oppressed and

273. *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2009); *see e.g.*, *Sumolang v. Holder*, 723 F.3d 1080, 1084 (9th Cir. 2013) (holding parent of child suffered persecution when the child died at a hospital after the doctor refused to treat the child because of the parent's Christian religion in Indonesia).

274. Stepping outside the immigration context, the Supreme Court has consistently ruled against Indigenous tribes in the U.S. who have tried invoking the First Amendment's Free Exercise Clause to protect their rights. *See, e.g.*, *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 441-42 (1988) (holding the Free Exercise Clause does not prohibit the federal government from permitting timber harvesting in a portion of a national forest that has traditionally been used for religious purposes by members of three American Indian tribes in northwestern California). Noting that the Free Exercise Clause and immigration protections exist in two different legal spheres, it is perhaps relevant to highlight how the Supreme Court has treated Indigenous tribes in the United States.

persecuted the Yaqui for centuries. The Yaqui are just one example of state and non-state actors silencing environmental activists for protecting their lands and advocating on behalf of the environment. Therefore, it is crucial to protect environmental activists by granting a legal means of escape and protection when persecution becomes too dangerous. Legal advocates can argue that environmental activists are members of a particular social group, and that the manifestation of environmentalist ideologies constitutes political opinions. Additionally, depending on the racial, ethnic, and religious identities of the activists seeking protection, more asylum grounds may open. By doing so, we will hear the voices of the silenced and listen to the modern Lorax.