

No. 18-2100

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

JACELYS MIGUELINA DE PENA-PANIAGUA,
Petitioner,

v.

WILLIAM P. BARR, U.S. Attorney General,
Respondent.

ON PETITION FOR REVIEW OF AN ORDER OF THE BOARD OF
IMMIGRATION APPEALS

**BRIEF OF *AMICUS CURIAE* THE HARVARD IMMIGRATION AND
REFUGEE CLINICAL PROGRAM IN SUPPORT OF
PETITIONER AND REVERSAL**

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INTEREST OF *AMICUS CURIAE*

The Harvard Immigration and Refugee Clinical Program (“HIRC”) at Harvard Law School has been a leader in the field of refugee and asylum law for over 30 years.¹ The Clinic has an interest in the appropriate application and development of U.S. asylum and immigration law, so that claims for asylum protection and other immigration relief receive fair and full consideration under existing standards of law.

HIRC has worked with thousands of immigrants and refugees from around the world since its founding in 1984. It combines representation of individual applicants for asylum and related relief with the development of theories, policy, and national advocacy.

HIRC attorneys are recognized experts in asylum law, including asylum cases involving gender. HIRC has been engaged by the Justice Department in the training of immigration judges, asylum officers, and supervisors on issues related to asylum law. HIRC was central to the drafting of the historic U.S. Gender Asylum Guidelines, which were adopted by the federal government, and has played a key role in promoting appropriate and fair treatment of women in interpretation of U.S.

¹ No party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money that was intended to fund the preparation or submission of this brief. No person, other than *amicus* and its counsel, contributed money that was intended to fund the preparation or submission of this brief.

asylum law. In addition HIRC has represented hundreds of women applying for asylum protection.

HIRC has filed briefs as *amicus curiae* in many cases before the U.S. Supreme Court, the federal courts of appeals, the Board of Immigration Appeals, and various international tribunals. *Amicus* regards the issues in this case as especially important. It is concerned that the protective function of U.S. refugee law (as well as the United States' treaty obligations) will be undermined by an erroneous interpretation of the "Particular Social Group" ground of 8 U.S.C. § 1101(a)(42)(A) that fails to take into account the vulnerabilities women face because they are women. The source of *amicus*' authority to file is the motion for leave to which this brief is attached.

INTRODUCTION AND SUMMARY OF ARGUMENT

In its decision in this case, the Board of Immigration Appeals ("Board") found that none of Petitioner's proposed particular social groups—"Dominican women abused and viewed as property by their romantic partners, who are unable to escape or seek protection by virtue of their gender"; "Dominican women viewed as property and unable to leave a domestic relationship"; and "Dominican women unable to leave a domestic relationship"—were cognizable in light of the Attorney General's recent decision in *Matter of A-B-*, 27 I. & N. Dec. 316 (A.G. 2018). That was a

misunderstanding of *Matter of A-B-*, as well as longstanding Board, federal court, and international precedent.

Matter of A-B- did not overrule the Board’s seminal decision in *Matter of Acosta*, in which it determined that a particular social group may be composed of individuals sharing a common immutable characteristic, including gender. *See Matter of Acosta*, 19 I. & N. Dec. 211, 233 (BIA 1985). Rather, the Attorney General favorably cited *Acosta* for its holding that “persecution . . . directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic” constitutes “persecution on account of membership in a particular social group.” *Matter of A-B-*, 27 I. & N. Dec. at 328. This endorsement is hardly surprising: *Acosta*’s holding is faithful to the Immigration and Nationality Act, 8 U.S.C. §§ 1101-1178 (“INA”), as illuminated through the *ejusdem generis* canon; it has been accepted by U.S. courts and agencies and adopted by other state signatories to the United Nations Convention relating to the Status of Refugees; and its reasoning has been endorsed by the United Nations High Commissioner for Refugees (“UNHCR”) and scholars in the field.

Critically, recognizing that gender alone may define a particular social group does not mean that all women around the globe are entitled to asylum. The other elements of the refugee definition—*i.e.*, the requirement that an applicant show past persecution or a well-founded fear of future persecution, as well as a nexus to her

protected status—play an important limiting role in gender-based asylum cases, as they do in cases where persecution is based on other immutable characteristics such as race or religion. As the Tenth Circuit has explained, “the focus with respect to [gender-based] claims should be not on whether either gender constitutes a social group (which both certainly do) but on whether the members of that group are sufficiently likely to be persecuted that one could say that they are persecuted ‘on account of’ their membership.” *Niang v. Gonzales* 422 F.3d 1187, 1199–1200 (2005).

In this case, Petitioner’s proposed particular social group included “Dominican women.” Rather than mechanically applying *A-B*’s rejection of social groups centering on domestic violence (which *amicus* agrees is wrong for myriad reasons), the Board should have recognized that Petitioner proposed a cognizable particular social group under *Acosta* (reaffirmed in *A-B*), as well as more recent Board decisions applying the additional requirements of “particularity” and “social distinction.” *See, e.g., Matter of M-E-V-G-*, 26 I. & N Dec. 227 (BIA 2014). In failing to do so, the Board overlooked the possibility the many national and international bodies that have embraced *Acosta* have recognized: Gender-based violence may necessitate protection under the Refugee Convention. This Court should correct that error and direct the Board to consider whether Petitioner proposed a cognizable particular social group made up of “Dominican women.”

ARGUMENT

MEMBERSHIP IN A COGNIZABLE PARTICULAR SOCIAL GROUP MAY BE SHOWN BASED ON GENDER ALONE

1. The Conclusion That Gender Is Sufficient To Establish Membership In A Particular Social Group Is Faithful To The INA, As Recognized In *Acosta*

The INA defines the term “refugee.” 8 U.S.C. § 1101(a)(42). Pursuant to the statute, in order to qualify as a refugee, an applicant must demonstrate “a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” *Id.* § 1101(a)(42)(A).

According to the Board’s longstanding analysis, the meaning of particular social group is discerned by resort to commonly used canons of statutory construction—specifically *ejusdem generis*. That doctrine, the Board explained in *Acosta* (and has repeated frequently), “holds that general words used in an enumeration with specific words should be construed in a manner consistent with the specific words.” *Acosta*, 19 I. & N. Dec. at 233. Looking to the surrounding words in the list of grounds for persecution, the Board found that each “describes persecution aimed at an immutable characteristic . . . that either is beyond the power of an individual to change or is so fundamental to individual identity or conscience that it ought not be required to be changed.” *Id.* Based on that understanding, the Board determined that “membership in a particular social group” should be read to encompass “persecution that is directed toward an individual who is a member of a

group of persons all of whom share *a common, immutable characteristic.*” *Id.* (emphasis added); *see also id.* (noting that “whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences”).

Gender is an immutable characteristic. Like race or religion, gender is entrenched, central to identity, and something a person cannot or should not be required to change. Gender is also a universal fact of life, listed on birth certificates, marriage certificates, and death certificates the world over. Indeed, the Board recognized the obvious fact that gender is common and immutable in *Acosta*, including “sex” among a short list of exemplary characteristics or traits that would satisfy its definition of particular social group. “The shared characteristic” that could identify a particular social group for purposes of establishing refugee status, the Board declared, “might be sex, color, or kinship ties.” *Id.*

The Attorney General’s decision in *Matter of A-B-* did not overrule *Acosta*; rather, it favorably cited *Acosta*’s conclusion that persecution on account of membership in a particular social group is “persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic.” *Matter of A-B-*, 27 I. & N. Dec. at 328. Accordingly,

Acosta's conclusion that gender alone is sufficient to constitute a particular social group remains binding law.

2. *Acosta* Has Been Accepted By Courts, U.S. Agencies, and International Bodies

A. *Acosta forms the basis of established precedent in nearly every circuit and was used in guidelines developed by the U.S. government for adjudicating asylum claims*

Acosta's framework—reaffirmed in *Matter of A-B*—has been accepted by federal courts of appeals across the country. See, e.g., *Scatambuli v. Holder*, 558 F.3d 53, 59 n.2 (1st Cir. 2009) (recognizing that First Circuit “case law . . . adopted the ‘immutable or fundamental’ characteristic test set forth in *Acosta*”). In 1993, then-Judge Alito of the Third Circuit cited *Acosta* approvingly in *Fatin v. INS*, 12 F.3d 1233, 1240 (3d Cir. 1993). Because *Acosta* “specifically mentioned ‘sex’ as an innate characteristic that could link the members of a ‘particular social group,’” Judge Alito found that *Fatin* had satisfied that requirement “to the extent that . . . [she] suggest[ed] that she would be persecuted . . . simply because she is a woman.” 12 F.3d at 1240. Similarly, in *Niang v. Gonzales*, the Tenth Circuit “[a]ppl[ied] the *Acosta* definition” to find that “the female members of a tribe” qualified as a particular social group, observing that “[b]oth gender and tribal membership are immutable characteristics.” 422 F.3d at 1199; see also *Ngengwe v. Mukasey*, 543 F.3d 1029, 1034 (8th Cir. 2008) (“Cameroonian widows” is a cognizable particular social group).

Also reasoning from *Acosta*, the Ninth Circuit observed in *Mohammed v. Gonzales* that “the recognition that girls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group is simply a logical application . . . [of the conclusion that] a ‘particular social group’ is one united by . . . an innate characteristic[.]” 400 F.3d 785, 797 (9th Cir. 2005); *see also Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010) (remanding BIA’s decision that “women in Guatemala” could not constitute PSG because it was “inconsistent with . . . *Acosta*”). Likewise, in *Cece v. Holder*, the Seventh Circuit found that, “in light of . . . *Acosta*,” the applicant “established that she belongs to a cognizable social group” consisting of “young woman living alone in Albania” because “the attributes are immutable or fundamental.” 733 F.3d 662, 677 (7th Cir. 2013). And, in *Hassan v. Gonzales*, the Eighth Circuit recognized the particular social group “Somali women” based on the applicant’s “possession of the immutable trait of being female.” 484 F.3d 513, 513 (8th Cir. 2007). *See also Ahmed v. Holder*, 611 F.3d 90, 96 (1st Cir. 2010) (“Gender—a common, immutable characteristic—can be a component of a viable ‘social group’ definition.”).

Acosta also forms the basis of guidelines the federal government issued in 1995 regarding “asylum claims by women.” *See generally* Memorandum from Phyllis Coven, INS Office of International Affairs, to All INS Asylum Officers and HQASM Coordinators 9 (May 26, 1995). Citing *Fatin*, in which the “court regarded

gender, *either alone or as part of a combination*, as a characteristic that could define a particular social group within the meaning of the INA,” these U.S. Guidelines described that decision as consistent “with the statement of the Board in *Acosta* that ‘sex’ might be the sort of shared characteristic that could define a particular social group.” *Id.* (emphasis added) (citing *Fatin*, 12 F.3d at 1240); *see also In re Matter of Fauyiza Kasinga*, 21 I. & N. Dec. 357, 377 (BIA 1996) (Rosenberg, concurring) (“Our recognition of a particular social group based upon tribal affiliation and gender is also in harmony with the guidelines for adjudicating women’s asylum claims issued by [INS].”).

B. Other state signatories to the U.N. Convention have also adopted Acosta’s framework

The INA follows the articulation of the five enumerated grounds found in the 1951 United Nations Convention relating to the Status of Refugees. *See* Convention relating to the Status of Refugees, *adopted* Jul. 28, 1951, *entered into force* Apr. 22, 1954, 189 U.N.T.S. 137; *see also INS v. Cardoza-Fonseca*, 480 U.S. 421, 437 (1987) (noting that “one of Congress’ primary purposes [in passing the Refugee Act of 1980] was to bring United States refugee law into conformance with the [1967 Protocol relating to the Status of Refugees]” (internal quotation marks omitted)).²

² The United States is a signatory to the 1967 Protocol relating to the Status of Refugees, which incorporated most of the provisions of the 1951 Convention, while removing certain temporal and geographical limitations. *See* Protocol relating to the

Given that “the definition of ‘refugee’ that Congress adopted is virtually identical to the one prescribed by Article 1(2) of the Convention,” *Cardoza-Fonseca*, 480 U.S. at 437, the views of other state signatories to the Convention are relevant to the proper interpretation of the INA. *See Negusie v. Holder*, 555 U.S. 511, 537 (2009) (“When we interpret treaties, we consider the interpretations of the courts of other nations, and we should do the same when Congress asks us to interpret a statute in light of a treaty’s language.”) (Stevens, J., concurring in part and dissenting in part).

Among other Convention signatories, the *Acosta* framework and the consequent conclusion that gender may define a particular social group is well established. Eight years after the Board decided *Acosta*, the Supreme Court of Canada relied upon it in the seminal decision *Canada (Attorney General) v. Ward*, finding that particular social group “would embrace individuals fearing persecution on such bases as gender,” an “immutable characteristic.” [1993] 2 S.C.R. 689, 75, 79 (Can., S.C.C.). Following *Ward*, the Canadian courts have recognized particular social groups composed of “Haitian women,” *Josile v. Canada (Minister of Citizenship & Immigration)*, [2011] 382 FTR 188 (Can. FC, Jan. 17, 2011), at [10], [28]-[30], and “women in the [Democratic Republic of the Congo],” *Kn v. Canada (Minister of Citizenship & Immigration)*, (2011) 391 FTR 108 (Can. FC, June 13,

Status of Refugees, *adopted* Jan. 31, 1967, *entered into force* Oct. 4, 1967, 606 UNTS 267.

2011), at [30], among others similar categories. See JAMES C. HATHAWAY & MICHELLE FOSTER, *THE LAW OF REFUGEE STATUS* § 5.9.1 (2d ed. 2014) (collecting these and other cases).

In 1999, the United Kingdom House of Lords similarly relied on the Board's *Acosta* decision to recognize "women in Pakistan" as a particular social group, observing that its conclusion was "neither novel nor heterodox," but "simply logical application of the seminal reasoning in *Acosta*." *Islam & Shah v. Sec'y of State Home Dep't*, [1999] 2 AC 629, 644-45 (U.K.). In 2006, the House of Lords affirmed its conclusion that gender alone may fall within the definition of a particular social group when considering the case of a woman fleeing the threat of female genital mutilation. "[W]omen in Sierra Leone," Lord Cornhill wrote, "are a group of persons sharing a common characteristic which, without a fundamental change in social mores is unchangeable, namely a position of social inferiority compared with men." *Fornah (FC) v. Sec'y of State for Home Dep't*, [2006] UKHL 46, para. 31. Baroness Hale opined that the question whether the applicant had established her membership in a particular social group was "blindingly obvious," and observed that "the world has woken up to the fact that women as a sex may be persecuted in ways which are different from the ways in which men are persecuted and that they may be persecuted because of the inferior status accorded to their gender in their home society." *Id.* paras. 83-86.

Echoing that sentiment (and relying on *Fornah*), the tribunals of New Zealand and Australia have noted that “it is indisputable that sex and gender can be the defining characteristic of a social group and that ‘women’ may be a particular social group.” *Refugee Appeal No. 76044* para. 92 (NZ RSAA, 2008); *accord Minister for Immigration & Multicultural Affairs v. Khawar* (2002) 76 A.L.J.R. 667 (Aust.) (tribunal could find that “women in Pakistan” constitute a particular social group).

C. Guidelines issued by the UNHCR and parties to the U.N. Convention acknowledge that gender may establish membership in a particular social group

Further support for the view that gender alone may establish membership in a particular social group comes from the United Nations High Commissioner for Refugees. As part of its supervisory responsibilities, the UNHCR provides interpretive guidance on the provisions of the 1951 Convention and 1967 Protocol relating to the Status of Refugees. U.S. courts have recognized that materials issued by the UNHCR constitute “persuasive authority in interpreting the scope of refugee status under domestic asylum law.” *Miguel-Miguel v. Gonzales*, 500 F.3d 941, 949 (9th Cir. 2007); *see also Cardoza-Fonseca*, 480 U.S. at 439 n.22 (noting that UNHCR material “provides significant guidance” in the interpretation of the Convention, upon which U.S. asylum law is based); *Mohammed*, 400 F.3d at 798 (UNHCR “provides significant guidance for issues of refugee law”). Most recently, the Federal District Court for the District of Columbia emphasized “the language in

the [Refugee] Act should be read consistently with the United Nations' interpretations of the refugee standards." *Grace v. Whitaker*, 344 F. Supp.3d 96, 124 (D.D.C. 2018).

In 2002, the UNHCR issued Guidelines on "Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees." U.N. Doc. HCR/GIP/02/01 (May 7, 2002) ("UNHCR Gender-Related Persecution Guidelines"). Following *Acosta's ejusdem generis* analysis, the UNHCR explained:

[A] particular social group is a group of persons who share a common characteristic . . . [that] will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.

Id.

"It follows," the UNHCR continued, "that sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics." *Id.* The "characteristics" of women "also identify them as a group in society, subjecting them to different treatment and standards in some countries." *Id.* In Guidelines specifically considering membership in a particular social group, the UNHCR explained that "women may constitute a particular social group under certain circumstances based on the common characteristic of sex, whether or not they associate with one another based on that shared characteristic." Guidelines on International Protection:

Membership of a Particular Social Group within the context of Article 1(A)(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, U.N. Doc. HCR/GIP/02/02 at 4 (May 7, 2002); *see also Mohammed*, 400 F.3d at 798 (quoting UNHCR Guidelines).

Even before the UNHCR issued these interpretive aids, several signatories to the U.N. Convention and Protocol produced their own Guidelines on gender-related claims (including the United States, as described above). Canada issued gender-related Guidelines in 1993. *See Immigration & Refugee Board of Canada, Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act* (Mar. 9, 1993). The Canadian Guidelines (subsequently updated) explain that gender is the type of innate characteristic that may define a particular social group. *See Immigration & Refugee Board of Canada, Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act* (Nov. 13, 1996). Australia was also among the first to issue gender guidelines, producing a version in 1996 that included the statement: “[G]ender . . . may be a significant factor in recognising a particular social group [W]hilst being a broad category, women nonetheless have both immutable characteristics and shared common social characteristics which may make them cognizable as a group and which may attract persecution.” *Australian Department of Immigration and*

Multicultural Affairs, Refugee and Humanitarian Visa Applicants: Guidelines on Gender Issues for Decision Makers § 4.33 (July 1996). The United Kingdom followed in 2000, issuing Guidelines providing that “[p]articular social groups can be identified by reference to innate or unchangeable characteristics or characteristics that a woman should not be expected to change,” including “gender.” *Immigration Appellate Authority of the United Kingdom*, Asylum Gender Guidelines 41 (Nov. 2000).³

3. Gender Meets The Criteria The Board Has Added To Define A Particular Social Group Since *Acosta*

In recent years, the Board has “expanded the [particular social group] analysis beyond the *Acosta* test,” identifying additional criteria required to establish a cognizable group. *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 232 (BIA 2014); *see also Scatambuli*, 558 F.3d at 59-60 (recognizing extension of particular social group analysis beyond *Acosta* framework). Specifically, the Board has opined that the group must be “particular” and “socially distinct.” *Matter of M-E-V-G-*, 26 I. & N. Dec. at 228. With respect to particularity, the Board has stressed that the group “must be defined by characteristics that provide a clear benchmark for determining who

³ Scholars agree that gender can be the basis for membership in a particular social group. *See, e.g.*, DEBORAH ANKER, LAW OF ASYLUM IN THE UNITED STATES § 5.45 (2017 ed.); HATHAWAY & FOSTER, *supra*, § 5.9.1; Michelle Foster, *Why Are We Not There Yet: The Particular Challenge of Particular Social Group*, GENDER AND REFUGEE LAW 35 (2014).

falls within [it].” *Id.* at 229. With respect to social distinction, the Board has held that the applicant must offer evidence that “society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.” *Matter of W-G-R-*, 26 I. & N. Dec. 208, 217 (BIA 2014).

Dominican women are “recognized in the society in question as a discrete class of persons.” *See Matter of M-E-V-G-*, 26 I. & N. at 249. There are well established benchmarks for determining who is a woman and who is not, and the Dominican government (as well as society writ large) frequently makes such determinations. For example, gender is listed on Dominican birth certificates, including Petitioner’s. *See* A.R. 199. Petitioner’s gender is also referenced in medical certificates and a public ministry letter, both of which appear in the record. AR 223, 227. As these documents demonstrate, gender is not “broad to the point of indeterminacy,” but discrete and discernable within the society in question. *Cf. Perez-Rabanales v. Sessions*, 881 F.3d 61, 66 (1st Cir. 2018). Although the category covers a large group of persons, “Dominican women” has well defined boundaries and therefore meets the particularity requirement established by the Board. *See Matter of S-E-G-*, 24 I. & N. Dec 579, 585-86 (BIA 2008).

“Dominican women” also satisfies the social distinction requirement. Dominican laws and government agencies are directed at addressing the needs of women *as a class*, however unsuccessfully. *See* A.R. 235 (Dominican Republic

2016 Human Rights Reports, United States Department of State: “Despite government efforts to improve the situation, violence against women was pervasive. . . . NGOs stated that while adequate laws were in place to punish gender-based violence, the judicial system did not adequately enforce those laws.”). For example, a proffered report notes that “violence against women has increased, as has femicide, and legislation introduced has proved ineffectual in some cases. Even though there is the National Plan of Gender Equality . . . this has not been implemented due to the lack of necessary budget allocations in each institution.” A.R. 240 (Women’s Rights Violations in the Dominican Republic, Latin American Bureau, March 27, 2013). The same report explains that “women are still traditionally seen as domestic care providers, whose place is at home and not in the workforce,” and “[d]espite the Law against Domestic Violence being in force[,] . . . violence against women and girls continues to rise.” A.R. 241. These reports demonstrate unequivocally that Dominican society (and law) actively view and treat women as a discrete group. *See Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013) (noting that legislation addressing a specific group is among the best “evidence that a society recognizes a particular class of individuals as uniquely vulnerable”).

Indeed, in several post-*Matter of A-B-* decisions, immigration judges have recognized that women as a group can satisfy the particularity and social distinction requirements based on similar records. In one case, Assistant Chief Immigration

Judge Deepali Nadkarni found that “women in Honduras” met all three criteria for defining a particular social group. *See* Add. 23-27 (*Matter of —*, immigration judge decision (Deepali Nadkarni), Arlington, VA (2018) at 6-10). ACIJ Nadkarni noted that gender is immutable, as required under *Acosta*, and is particular because it has definable boundaries recognizable by Honduran society. *Id.* She further found that reports by the State Department and United Nations bodies showing marginalization, discrimination, and pervasive violence against women, as well as impunity for perpetrators, demonstrated that women are “set apart, or distinct, from other persons within [Honduras] in some significant way,” thus satisfying the social distinction requirement. Add. 24 (quoting *Matter of M-E-V-G-*, 26 I. & N. at 238-39). Employing similar reasoning, another immigration judge concluded that “Mexican females” are a cognizable social group. *See* Add. 39 (*Matter of —*, immigration judge decision (Miriam Hayward), San Francisco, CA (Sep. 13, 2018) at 10). And in yet another case, Board Member Anne J. Greer—the same Board member who authored the decision below—reversed an immigration judge’s holding that “young women in Honduras . . . lacked particularity solely because it was too large of a group.” Add. 16-17 (*Matter of H-A-C-S-*, B.I.A. decision, Orlando, FL (May 22, 2018) at 2-3); *see also* Add. 25 (*Matter of —*, immigration judge decision (ACIJ Deepali Nadkarni), Arlington, VA (2018) at 8 (noting “the Board has routinely recognized large groups as defined with particularity”)).

4. The Board Should Have Considered Whether Petitioner Proposed a Cognizable Social Group Composed of “Dominican Women”

Among other characterizations, Petitioner alleged that she was persecuted on account of her membership in the particular social group “Dominican women abused and viewed as property by their romantic partners, who are unable to escape or seek protection by virtue of their gender.” Implied within that proposed group is the particular social group “Dominican women.” Accordingly, any analysis by the agency should necessarily have considered the role of women in Dominican society. *Silvestre-Mendoza v. Sessions*, 729 F. App’x 597, 598 (9th Cir. 2018) (remanding because “the BIA should have considered whether ‘Guatemalan women’ is a particular social group [where] ‘Guatemalan women’ subsumes ‘young Guatemalan females who have suffered violence due to female gender’”).

Because her gender is “the gravamen of [Petitioner’s] persecution claim,” and record evidence demonstrates that Dominican society views women as a discrete class, the Board “should have considered whether ‘[Dominican] women’ is a particular social group.” *Id.* At a minimum, the Board should have remanded Petitioner’s case to permit the immigration judge to make that determination in the first instance. The Board has followed that approach in several cases post-dating *Matter of A-B-*. See, e.g., Add. 3-4 (*Matter of M-D-A-*, B.I.A. decision, Los Angeles, CA (Feb. 14, 2019) at 2-3 (remanding for further consideration of whether “women in El Salvador” constituted a particular social group)); Add. 7-8 (*Matter of S-R-P-O*,

B.I.A. decision, Tucson, AZ (Dec. 20, 2018) at 2-3 (remanding for further consideration of whether “Mexican women” is a valid particular social group)); Add. 12-13 (*Matter of X-G-C-D-*, B.I.A. decision, Seattle, WA (Dec. 11, 2018) at 2-3 (same)). Petitioner should be afforded the same treatment.

CONCLUSION

This Court should direct the Board to consider whether Petitioner is a member of a cognizable particular social group made up of “Dominican women.”

Dated: April 18, 2019

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CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B), and 1st Circuit Rule 29(a)(5), the attached brief is double spaced, uses a proportionately spaced typeface of 14 points or more, and contains a total of 4,633 words, based on the word count program in Microsoft Word.

Dated: April 18, 2019

/s/ John Willshire Carrera
John Willshire Carrera
(Bar No. 7892)

Attorney for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2019, I electronically filed this amicus brief with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the CM/ECF system, which will automatically send an email notification of such filing to the attorneys of record who are registered CM/ECF users.

Dated: April 18, 2019

/s/ John Willshire Carrera
John Willshire Carrera
(Bar No. 7892)

Attorney for Amicus Curiae

ADDENDUM

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U.S. Department of Justice

Executive Office for Immigration Review

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Name: A [REDACTED], M [REDACTED] D... A [REDACTED]-053
Riders: [REDACTED]

Date of this notice: 2/14/2019

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
O'Connor, Blair

for or
User team: Docket

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A handwritten signature, likely of Donna Carr, is located in the bottom right corner of the page.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Files: A [REDACTED]-053 – Los Angeles, CA
[REDACTED]
[REDACTED]

Date: **FEB 14 2019**

In re: M [REDACTED] D [REDACTED] A [REDACTED]
[REDACTED]
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Eloy A. Aguirre, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The lead respondent, a native and citizen of El Salvador, appeals from the Immigration Judge's September 14, 2017, decision denying her application for asylum and withholding of removal, and her request for protection under the Convention Against Torture.¹ See sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. §§ 1208.13, 1208.16-18. The record will be remanded to the Immigration Judge for further proceedings consistent with this opinion.

The respondent's removability is undisputed. Therefore, the issue on appeal is whether the Immigration Judge properly denied her applications for asylum, withholding of removal, and protection under the Convention Against Torture. In support of those applications, the respondent credibly testified that she suffered abuse at the hands of a step grandmother, and the sons of a family friend that she lived with from the age of 7 years until she married at the age of 22 (IJ at 3-4; Tr. at 29-46). Her husband physically and mentally abused her (IJ at 4-5; Tr. at 48-61). After her husband died in 2015, gang members came to her house to continue the extortion that they began with her husband, threatening the lives of her and her children if she did not pay the \$10,000 they claimed was owed to them by her husband (IJ at 5; Tr. at 66-70). Based on the foregoing facts, the respondent argues that she suffered past persecution and has a well-founded fear of persecution in El Salvador on account of her membership in the particular social groups she defines as "the family of her deceased husband" and "women in El Salvador" (IJ at 6-7; Respondent's Br. at 6-10).²

¹ The respondent's children are derivatives of her asylum application. Hereinafter references to "the respondent" will refer to the adult respondent.

² The respondent on appeal does not challenge the Immigration Judge's determinations that she did not establish that the proposed particular social group defined as "domestic familial relationships in the homes in which she lived as a child" is cognizable under the Act, and that she did not establish membership in the group she defines as "married El Salvadoran women who could not leave their domestic relationship" (IJ at 6-9).

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This Board must defer to the Immigration Judge's factual findings, including findings as to the credibility of testimony, unless they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

First, even assuming that the respondent established membership in a legally cognizable particular social group defined by her husband's family, the Immigration Judge correctly determined that the single threat she received from gang members about the monies her husband owed them was not sufficiently egregious to constitute past persecution (IJ at 10). *See Hoxha v. Ashcroft*, 319 F.3d 1179, 1182 (9th Cir. 2003) (unfulfilled threats "constitute[d] harassment rather than persecution"); *Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000) ("Threats standing alone constitute past persecution in only a small category of cases, and 'only when the threats are so menacing as to cause significant actual suffering or harm.'") (citing *Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997)). The respondent's appellate arguments to the contrary do not persuade us that the Immigration Judge's decision was erroneous in this respect (Respondents' Br. at 4-6).³

Moreover, we agree with the Immigration Judge that the respondent's fear of future persecution on account of her particular social group, defined as "the family of her deceased husband," is not objectively reasonable (IJ at 11-12). The Immigration Judge found, without clear error, that there is no evidence that the gang members have made any inquiries about the respondent since her departure, and that the respondent's mother and son remain in El Salvador (IJ at 12). On appeal, the respondent has not identified clear error in those findings. *See Mondaca-Vega v. Lynch*, 808 F.3d 413, 426 (9th Cir. 2015) (en banc) (determining that a finding is not clearly erroneous unless, based on the entire evidence, the reviewing court is "left with the definite and firm conviction that a mistake has been committed" (quoting *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573-74 (1985))).

The Immigration Judge also found that the respondent did not establish that the particular social group defined as "women in El Salvador" was cognizable under the Act (IJ at 7-8). To establish that this group is cognizable under the asylum and withholding of removal statutes, the respondent must prove that the group is: "(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within [Salvadoran] society...." *Matter of A-B-*, 27 I&N Dec. 316, 319 (A.G. 2018) (quoting *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)); *see also Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff'd in pertinent part and vacated and remanded in part on other grounds sub nom. by Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016), *cert. denied sub nom. Reyes v. Sessions*, 138 S. Ct. 736 (2018).

The Immigration Judge found that, although "women in El Salvador" satisfies the foregoing immutability requirement, it lacks "particularity" as it does not have defining characteristics and it would "entail more than 50 percent of the population of a particular country" (IJ at 7-8). The

³ We note that the cases the respondent relies upon to argue that death threats made in the presence of weapons can constitute past persecution involve significantly more egregious facts than those present in her case. *See Respondents' Br.* at 5 (citing *Boer-Sedano v. Gonzales*, 418 F.3d 1082 (9th Cir. 2005); *Ruano v. Ashcroft*, 301 F.3d 1155 (9th Cir. 2002)).

A [REDACTED]-053 et al.

Immigration Judge also found there is insufficient evidence that Salvadoran society perceives women as a socially distinct group (IJ at 8). However, in rejecting the respondent's proposed social group as too broad to satisfy the particularity requirement, the Immigration Judge failed to recognize the Ninth Circuit's decision in *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010), and its rejection of the "notion that a persecuted group may simply represent too large a portion of a population to allow its members to qualify for asylum." See also *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) ("[T]he recognition that girls or women of a particular clan or nationality[,] or even in some circumstances females in general[,] may constitute a social group is simply a logical application of our law.") (internal parentheses omitted).

As the requirements of particularity and social distinction involve fact-finding that we cannot do in the first instance, remand to the Immigration Judge is necessary. See 8 C.F.R. § 1003.1(d)(3)(iv); *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008). In evaluating the particularity and social distinction of the claimed group of "women in El Salvador," the Immigration Judge should consider *Perdomo v. Holder* and similar Ninth Circuit cases. See *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (en banc). *Accord Ticas-Guillen v. Whitaker*, 744 F. App'x 410 (9th Cir. Nov. 30, 2018). Remand will allow the Immigration Judge to conduct additional fact-finding that may be necessary for the required "evidence-based inquiry" as to whether the social group of women in El Salvador meets the requirements of particularity and whether Salvadoran society recognizes the respondent's proposed social group. See *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014). If the respondent's proposed social group is found to be cognizable under the Act, the Immigration Judge should consider whether the respondent has demonstrated a nexus between her particular social group and the past harm she suffered or future harm she fears. We express no opinion regarding the ultimate outcome of the respondent's case.⁴

Accordingly, the following order is entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.


FOR THE BOARD

⁴ Our present order contemplates further consideration of the respondent's applications for asylum and withholding of removal. To avoid piecemeal review, we reserve judgment at this time with respect to the respondent's eligibility for protection under the Convention Against Torture.



U.S. Department of Justice

Executive Office for Immigration Review

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Name: P [REDACTED] O [REDACTED], S [REDACTED] R [REDACTED] A [REDACTED]-056

Date of this notice: 12/20/2018

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Crossett, John P.
Wendtland, Linda S.
Greer, Anne J.

Case: A1
User team: Docket

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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A [REDACTED]-056 – Tucson, AZ

Date: DEC 20 2018

In re: S [REDACTED] R [REDACTED] P [REDACTED] O [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rachel Wilson, Esquire

ON BEHALF OF DHS: Gilda M. Terrazas
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's decision dated August 2, 2017, denying her applications for asylum, withholding of removal, and protection under the Convention Against Torture. Sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A) and 1231(b)(3)(A); 8 C.F.R. §§ 1208.13(b)(1), 1208.16(a), 1208.18. The Department of Homeland Security has submitted a brief in opposition to the appeal. The record will be remanded to the Immigration Judge for further proceedings consistent with this opinion.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent's removability is undisputed. Therefore, the issue on appeal is whether the Immigration Judge properly denied her applications for asylum, withholding of removal, and protection under the Convention Against Torture. In support of those applications, the respondent credibly testified that on August 18, 2016, she was abducted and blindfolded in Mexico by unknown individuals, and then held for 2 or 3 days in an unknown location where she was repeatedly raped (IJ at 2-3, 9; Tr. at 124, 127-34). The respondent further testified that immediately following this incident, she went to a hospital where she obtained medical treatment for her injuries, and also went to the police, but a report was not filed because the respondent believes that the authorities were not taking her seriously (IJ at 3; Tr. at 139-43).

Based on the foregoing facts, the respondent argues that she suffered past persecution in Mexico, and also has a well-founded fear of future persecution there, on account of her membership in either of two "particular social groups," which she defines as "Mexican women" and "Mexican women who are victims or potential victims of gender-motivated violence." Although the Immigration Judge agreed with the respondent that the harm she experienced in Mexico was severe enough to rise to the level of past "persecution" (IJ at 13), he determined that the respondent was not eligible for asylum or withholding of removal because neither of her claimed "particular social groups" was cognizable (IJ at 11-13). The respondent challenges that determination on appeal (Respondent's Br. at 4-7).

A-056

As previously stated, the respondent asserts that she belongs to two particular social groups, comprised of “Mexican women” and “Mexican women who are victims or potential victims of gender-motivated violence.” To establish that these groups are cognizable under the asylum and withholding of removal statutes, the respondent must prove that the groups are: “(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within [Mexican] society....” *Matter of A-B-*, 27 I&N Dec. 316, 319 (A.G. 2018) (quoting *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)); see also *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff’d in pertinent part and vacated and remanded in part on other grounds sub nom. Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016), *cert. denied sub nom. Reyes v. Sessions*, 138 S. Ct. 736 (2018).

The Immigration Judge found that although “Mexican women” satisfies the foregoing immutability and social distinction requirements, it lacks “particularity” because it defines a “demographic unit” of great diversity rather than a discrete group, and is “exceedingly broad because it would conceivably include a majority of the population of Mexico” (IJ at 12). The Immigration Judge also found that the group “Mexican women who are victims or potential victims of gender-motivated violence” is not cognizable because it is circular (IJ at 12-13).

We agree with the Immigration Judge’s decision as it relates to “Mexican women who are victims or potential victims of gender-motivated violence.” To be cognizable, a particular social group must exist independently of the harm claimed by its members. *Matter of A-B-*, 27 I&N Dec. at 317, 334-35; *Matter of W-G-R-*, 26 I&N Dec. at 215; *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007). The respondent’s alternative group does not satisfy that requirement because it is defined by reference to the persecution (i.e., “gender-motivated violence”) its members claim to suffer (or fear).

Following the Immigration Judge’s decision and during the pendency of this appeal, the Attorney General issued a precedential decision in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), clarifying the criteria required to establish an asylum claim based on membership in a particular social group. In light of this intervening precedent decision, we will remand the record to allow the Immigration Judge to supplement his decision and reconsider the respondent’s asylum and withholding of removal claims insofar as they are based on her claimed membership in a particular social group comprised of “Mexican women.” In evaluating the “particularity” of the claimed group, the Immigration Judge should consider *Matter of A-B-* as well as pertinent portions of *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1093–94 (9th Cir. 2013), and *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010). *Accord Ticas-Guillen v. Whitaker*, --- F. App’x ---, No. 16-72981 (9th Cir. Nov. 30, 2018), *available at* 2018 WL 6266766. On remand, the Immigration Judge should also consider whether the respondent has demonstrated a nexus between her proposed particular social group and the past harm she suffered or future harm she fears and whether the Mexican government was (or will be) unable or unwilling to control her persecutors. See *Matter of A-B-*, 27 I&N Dec. at 320, 343-44; see also *Ochoa v. Gonzales*, 406 F.3d 1166, 1170 (9th Cir. 2005) (explaining that asylum and withholding of removal require proof of persecution

A [REDACTED]-056

by a “government official or persons the government is unable or unwilling to control”). We express no opinion regarding the ultimate outcome of the respondent’s case.¹

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD

¹ Our present order contemplates further consideration of the respondent’s applications for asylum and withholding of removal. To avoid piecemeal review, we reserve judgment at this time with respect to the respondent’s eligibility for protection under the Convention Against Torture.



U.S. Department of Justice

Executive Office for Immigration Review

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Name: C [REDACTED] -D [REDACTED], X [REDACTED] Q [REDACTED]... A [REDACTED] -474

Date of this notice: 12/11/2018

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Greer, Anne J.
O'Connor, Blair
Crossett, John P.

Userteam: Docket

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A handwritten signature in black ink, appearing to be "J. Carr".

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A █████ -474 - Seattle, WA

Date:

DEC 11 2018

In re: X █████ Q █████ C █████ -D █████

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James J. Stratton, Esquire

ON BEHALF OF DHS: Mark Hardy
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Mexico, appeals from the decision of the Immigration Judge, dated August 16, 2017, denying her applications for asylum and withholding of removal pursuant to sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and protection under the Convention Against Torture. *See* 8 C.F.R. §§ 1208.16-.18. The Department of Homeland Security has submitted a brief in opposition to the appeal. The record will be remanded.

We review the findings of fact made by the Immigration Judge, including determinations as to credibility and the likelihood of future events, for clear error. 8 C.F.R. § 1003.1(d)(3)(i); *see also Ridore v. Holder*, 696 F.3d 907 (9th Cir. 2012); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent's removability is undisputed. Therefore, the issue on appeal is whether the Immigration Judge properly denied her applications for asylum, withholding of removal, and protection under the Convention Against Torture. The respondent claims that she experienced two types of harm prior to departing Mexico. First, she claims that she was sexually abused on five occasions (IJ at 4-5). The respondent testified that she was twice assaulted by her uncle as a child, once by her manager at her place of employment, and once by a romantic partner of her mother, and lastly by another uncle just prior to leaving Mexico (IJ at 4-5). The respondent claims that she experienced this harm on account of her membership in a particular social group of "women in Mexico." Second, she claims to have been extorted by a criminal gang in relation to her employment at a furniture store (IJ at 3-4). The respondent asserts that she experienced this harm on account of her membership in a particular social group of "imputed business owners." She fears she will be subjected to additional harm if she returns to Mexico. The respondent also asserts that she is eligible for protection under the Convention Against Torture.

The Immigration Judge concluded that the respondent did not establish eligibility for asylum or withholding of removal under the Act because she did not establish a nexus between the harm she experienced and fears and a ground protected under the Act (IJ at 5-6). With regard to protection under the Convention Against Torture, the Immigration Judge concluded that the

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respondent did not establish that any public official has or will acquiesce in the harm she experienced and fears in Mexico (IJ at 6).

As previously stated, the respondent asserts that she belongs to two particular social groups, comprised of “women in Mexico” and “imputed business owners.” To establish that these groups are cognizable under the asylum and withholding of removal statutes, the respondent must prove that the groups are: “(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within [Mexican] society....” *Matter of A-B-*, 27 I&N Dec. 316, 319 (A.G. 2018) (quoting *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)); see also *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff’d in pertinent part and vacated and remanded in part on other grounds sub nom. Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016), *cert. denied sub nom. Reyes v. Sessions*, 138 S. Ct. 736 (2018).

We first affirm, as not clearly erroneous, the Immigration Judge’s determination that, even assuming “imputed business owners” is a cognizable particular social group, the respondent has not established a nexus between the harm she experienced and fears and that membership (IJ at 5). See *Matter of N M-*, 25 I&N 526, 529 (BIA 2011) (holding that the motive of a persecutor is a finding of fact to be determined by the Immigration Judge and reviewed for clear error); see also *Ayala v. Holder*, 640 F.3d 1095, 1097 (9th Cir. 2011) (even if membership in a particular social group is established, an applicant must still show that “persecution was or will be on account of his membership in such group”). The respondent’s statement on appeal does not convince us of clear error in the Immigration Judge’s finding that the perpetrators of the extortion and other related crimes were motivated by a desire to obtain money, rather than a desire to overcome a protected characteristic, such as membership in the particular social group of “imputed business owners” or any other basis protected under the Act. See *Ayala v. Sessions*, 855 F.3d 1012, 1020-21 (9th Cir. 2017) (noting that extortion qualifies as past persecution only when the extortion is motivated by a protected ground); *Zetino v. Holder*, 622 F.3d 1007 (9th Cir. 2010) (“An alien’s desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground”); see also *Matter of M-E-V-G-*, 26 I&N Dec. at 235 (“[A]sylum and refugee laws do not protect people from general conditions of strife, such as crime and other societal afflictions.”).

However, we conclude that remand is warranted for additional consideration of the respondent’s claim based on her asserted membership in the particular social group of “women in Mexico.” Specifically, we conclude that remand is warranted for the Immigration Judge to (1) determine whether “women in Mexico” is a cognizable particular social group under the pertinent legal authority in light of the record presented here;¹ (2) determine whether the record establishes

¹ Following the Immigration Judge’s decision and during the pendency of this appeal, the Attorney General issued a precedential decision in *Matter of A-B-*, 27 I&N Dec. 316, clarifying the criteria required to establish an asylum claim based on membership in a particular social group. Moreover, the Immigration Judge should specifically apply the analytical framework set forth by the Board in *Matter of M-E-V-G-*, 26 I&N Dec. 227 and *Matter of W-G-R-*, 26 I&N Dec. 208, and reaffirmed in *Matter of A-B-*. Finally, the Immigration Judge should also consider the guidance provided in *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010) (holding Guatemalan women may

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that the harm the respondent experienced and fears has a nexus to her actual (or assumed) membership in the social group of “women in Mexico;”² (3) make sufficient findings of fact regarding the nature of the sexual abuse (and other gender-based harm) the respondent claims to have experienced in Mexico and assess whether this harm is of sufficient severity to constitute persecution; and (4) consider whether the respondent has demonstrated the Mexican government was or is unable or unwilling to control the people who have harmed or may harm her. *See Matter of A-B-*, 27 I&N Dec. at 320, 343-44; *see also Ochoa v. Gonzales*, 406 F.3d 1166, 1170 (9th Cir. 2005) (explaining that asylum and withholding of removal require proof of persecution by a “government official or persons the government is unable or unwilling to control”).

We also conclude that the Immigration Judge’s consideration of the respondent’s application for protection under the Convention Against Torture is insufficient and legally incorrect. The Immigration Judge concluded that the respondent did not establish eligibility for protection under the Convention Against Torture solely on the basis that she did not show that the government of Mexico would acquiesce in the harm she fears by private actors (IJ at 6). 8 C.F.R. §§ 1208.18(a)(1), (7).

In arriving at this conclusion, the Immigration Judge relied on two factors. First, the Immigration Judge noted that there is no evidence that collusion between government officials and private actors engaging in extortion schemes is a government policy (IJ at 6). Second, the Immigration Judge reasoned that the fact that local police refused to investigate the respondent’s report of being sexually assaulted does not establish that the entire government acquiesces to this harm (IJ at 6).

Both aspects of the Immigration Judge’s analysis are legally incorrect. An applicant for protection under the Convention Against Torture does not need to establish that a government official who engages in torture or acquiesces to torture is doing so in furtherance of official governmental policy. *Barajas-Romero v. Lynch*, 846 F.3d at 360-65. Additionally, an applicant for protection under the Convention Against Torture does not need to show that the entire foreign government would consent to or acquiesce in her torture. *Tapia-Madrigal v. Holder*, 716 F.3d 499, 509-10 (9th Cir. 2013).

In light of the foregoing, we conclude that remand for additional consideration of the respondent’s application for protection under the Convention Against Torture is warranted. In the remanded proceedings, the Immigration Judge should: (1) clearly articulate what harm, if any, the respondent is likely to experience upon her return to Mexico; (2) how likely the respondent is to

constitute a cognizable social group). *Accord Ticas-Guillen v. Whitaker*, No. 16-72981, -- F. App’x – (9th Cir., Nov. 30, 2018), *available at* 2018 WL 6266766.

² In considering this issue, the Immigration Judge should apply the appropriate standard applicable to the respective forms of relief. *See Parussimova v. Mukasey*, 555 F.3d 734, 740 41 (9th Cir. 2009) (stating that the REAL ID Act requires that a protected ground represent “one central reason” for an asylum applicant’s persecution); *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017) (holding that a ground protected under the Act must be “a reason” for the persecution in order to establish a nexus for purposes of withholding of removal under section 241(b)(3) of the Act).

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experience such harm; (3) whether the respondent could avoid being harmed by internally relocating in Mexico; (4) whether any harm the respondent is likely to experience is “torture” as a matter of law; and (5) whether any public official would commit or acquiesce to the harm under the pertinent legal standards. 8 C.F.R. §§ 1208.16(b)(2), 1208.18(a); *see also Ridore v. Holder*, 696 F.3d 907 (9th Cir. 2012) (holding that what is likely to happen to an alien upon removal is a question of fact but whether that harm is torture is a question of law). We express no opinion on the ultimate outcome of these proceedings.

Accordingly, the following order will be entered.

ORDER: The record is remanded for further proceeding consistent with the forgoing opinion and for the issuance of a new decision.



FOR THE BOARD

Immigrant & Refugee Appellate Center, LLC | www.irac.net



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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DHS/ICE Office of Chief Counsel - ORL
3535 Lawton Road, Suite 100
Orlando, FL 32803

Name: C [REDACTED]-S [REDACTED], H [REDACTED] A [REDACTED]... A [REDACTED]-247

Date of this notice: 5/22/2018

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Greer, Anne J.

SchwarzA
Userteam: Docket

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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A-247 – Orlando, FL

Date:

MAY 22 2018

In re: H-A-C-S-

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ariatna Villegas Vazquez, Esquire

ON BEHALF OF DHS: M. Diane Checchio
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's decision dated September 7, 2017, denying her applications for asylum and withholding of removal pursuant to sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and protection under the Convention Against Torture. *See* 8 C.F.R. §§ 1208.16-.18. The Department of Homeland Security ("DHS") opposes the appeal. The record will be remanded.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, *de novo*. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent, a 20-year-old native and citizen of Honduras, was determined to be an unaccompanied alien child after entering the United States in May 2014. Her asylum application was initially considered by U.S. Citizenship and Immigration Services, but it was referred to the Immigration Judge on April 17, 2015.

The respondent fears that if she returns to Honduras, she will be harmed by a drug trafficker, [REDACTED], who raped and harassed her in 2013. When she was 15 years old, she was approached by four older men who told her that she was to go on a "date" with their boss, Mr. [REDACTED] (IJ at 3-4; Tr. at 21-23). After she refused, they threatened to kill her siblings and, after several more encounters, she agreed to meet Mr. [REDACTED] to protect her siblings (IJ at 4; Tr. at 24-25). After being picked up by three men and taken to various locations by Mr. [REDACTED] and his armed bodyguards, he raped her (IJ at 5; Tr. at 26-32). He also offered her cocaine and money, and asked her to work for him and be "his woman," all of which she refused (IJ at 5; Tr. at 32-33). After letting her go, he threatened to harm her if she told the police and she did not report the incident because she was afraid (IJ at 5-6; Tr. at 34). That same day, she noticed she was being followed by a man carrying a knife (IJ at 6; Tr. at 34-35). Approximately 3 months later, she began a romantic relationship with another man and became pregnant (IJ at 6; Tr. at 38). She continued to see Mr. [REDACTED] at various times, including on her way to her prenatal appointments, when he asked if he was the father of her child (IJ at 6-7; Tr. at 38, 40). He again asked her to be "his woman" and work for him, and she refused (IJ at 7; Tr. at 40). She left for the United States soon after.

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We will remand the record for additional fact finding and analysis regarding whether the respondent experienced past persecution, or has a well-founded fear of future persecution, on account of a protected ground. Under the REAL ID Act, the respondent must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for her persecution. *See* section 208(b)(1)(B)(i) of the Act; *see also* *Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010). The respondent argues that she is a member of a particular social group consisting of “young women in Honduras” (IJ at 8; Tr. at 55).

An applicant for asylum or withholding of removal based on membership in a particular social group must establish that the group is: (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff’d in part and vacated and remanded in part on other grounds*, by *Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016), *cert. denied sub nom. Reyes v. Sessions*, 138 S. Ct. 736 (2018); *see also* *Gonzalez v. U.S. Att’y Gen.*, 820 F.3d 399, 404-05 (11th Cir. 2016) (deferring to this Board’s interpretation of “particular social group”). To satisfy the particularity requirement, a group must be discrete and have definable boundaries. *See Matter of W-G-R-*, *supra*, at 214. Social distinction (formerly known as social visibility) means that the group must be perceived as a group by society, regardless of whether society can identify the members of the group by sight. *Id.* at 216-17. To demonstrate social distinction, an applicant must provide evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. *Id.* at 217 (“Although the society in question need not be able to easily identify who is a member of the group, it must be commonly recognized that the shared characteristic is one that defines the group.”). In addition to establishing the existence of a cognizable particular social group, the applicant for asylum or withholding of removal must also demonstrate a nexus between the persecution and his or her membership in the specified social group. *Id.* at 223.

The Immigration Judge concluded that the respondent’s proposed particular social group lacked particularity solely because it was too large of a group, consisting of a major segment of the population (IJ at 8-9). However, we have stated that, in assessing particularity, the focus is “whether the group is discrete or is, instead, amorphous,” and that “[s]ocietal considerations will necessarily play a factor in that determination.” *Matter of W-G-R-*, 26 I&N Dec. at 214; *see also* *Matter of M-E-V-G-*, 26 I&N Dec. at 241 (“Societal considerations have a significant impact on whether a proposed group describes a collection of people with appropriately defined boundaries and is sufficiently ‘particular.’”). Additionally, the Immigration Judge found that the respondent’s particular social group lacked social distinction, but made no findings based on the country conditions evidence regarding whether Honduran society perceives, considers, or recognizes “young women in Honduras” to be a distinct group (IJ at 9; Exhs. 3, 4). *See Matter of M-E-V-G-*, 26 I&N Dec. at 241 (“Similarly, societal considerations influence whether the people of a given society would perceive a proposed group as sufficiently separate or distinct to meet the ‘social distinction’ test.”).

Given our precedent, which requires analysis of particularity and social distinction in the context of the society in question, we conclude that a remand is necessary for the Immigration Judge address the requirements particularity and social distinction with reference to the relevant

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country conditions evidence in the record (Exhs. 3, 4). The parties may supplement the record on remand. If, on remand, the Immigration Judge determines that the respondent's proposed social group is legally cognizable, the Immigration Judge will determine whether the respondent has shown that her membership in this group was or will be at least one central reason for her persecution. *See* section 208(b)(1)(B)(i) of the Act; *see also* *Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010).

Finally, while the Immigration Judge stated that there was no "real evidence" in this case to show a clear likelihood that the respondent more likely than not be tortured with the consent or acquiescence of a public official, he did not make any findings regarding the voluminous country conditions evidence regarding sexual and other violence against women in Honduras (particularly by organized crime) and the Honduran government's response to this violence (Exhs. 3, 4). On remand, the Immigration Judge will conduct additional fact finding and analysis with regard to the respondent's eligibility for protection under the Convention Against Torture. We express no opinion as to the ultimate result in this case.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Arlington Immigration Court
1901 South Bell Street, Suite 200
Arlington, VA 22202**

IN THE MATTERS OF:

[REDACTED],

Lead Respondent;

[REDACTED],

Rider Respondent;

[REDACTED],

Rider Respondent.

IN REMOVAL PROCEEDINGS

File No.: A [REDACTED]

File No.: A [REDACTED]

File No.: A [REDACTED]

CHARGE:

Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or "Act"), as amended, as an immigrant present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS:

Asylum, pursuant to INA § 208; withholding of removal, pursuant to INA § 241(b)(3); and protection under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("Convention Against Torture" or "CAT"), pursuant to 8 C.F.R. §§ 1208.16-.18 (2018).

APPEARANCES

ON BEHALF OF THE RESPONDENTS:

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ON BEHALF OF THE DHS:

[REDACTED], Esq.

Assistant Chief Counsel

U.S. Department of Homeland Security

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DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

The respondents are citizens and nationals of Honduras. Exhs. 1-1B. They entered the United States at or near [REDACTED], on or about [REDACTED]. Exhs. 1-1B. On

In the Matters of [REDACTED]

A [REDACTED]

[REDACTED], the Department of Homeland Security ("DHS") served the respondents with Notices to Appear ("NTA"), charging them with inadmissibility pursuant to section 212(a)(6)(A)(i) of the Act. *See* Exhs. 1-1B. At a master calendar hearing on [REDACTED], the respondents, through counsel, admitted the factual allegations in their respective NTAs and conceded inadmissibility as charged. Accordingly, the Court finds inadmissibility has been established. *See* 8 C.F.R. § 1240.10(c).

On [REDACTED], the respondent filed an Application for Asylum and for Withholding of Removal ("Form I-589"), seeking asylum and withholding of removal under the Act and protection under the CAT. *See* Exh. 2. The rider respondents were listed as a derivative applicants on the respondent's Form I-589. *See id.* The Court heard the merits of the respondent's applications for relief on [REDACTED]. For the following reasons, the Court grants the respondents' applications for asylum.

II. SUMMARY OF THE EVIDENCE

A. Documentary Evidence

- Exhibit 1: NTA for the respondent, served on [REDACTED], filed [REDACTED];
- Exhibit 1A: NTA for the rider respondent, [REDACTED], served on [REDACTED], filed [REDACTED];
- Exhibit 1B: NTA for the rider respondent, [REDACTED], served on [REDACTED], filed [REDACTED];
- Exhibit 2: Form I-589 for the respondent, including rider respondents as derivative applicants, filed [REDACTED];
- Exhibit 3: The respondent's exhibits in support of the respondent's Form I-589, including Tabs A-Q, filed [REDACTED].

B. Testimonial Evidence

The Court heard testimony from the respondent on [REDACTED]. The testimony provided in support of the respondent's applications, although considered by the Court in its entirety, is not fully repeated herein, as it is part of the record. Rather, the claims raised during the testimony are summarized below to the extent they are relevant to the Court's subsequent analysis.

[REDACTED]

In the Matters of [REDACTED]

A [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In the Matters of [REDACTED]

A [REDACTED]

III. LAW, ANALYSIS, AND FINDINGS

A. Credibility and Corroboration

The provisions of the REAL ID Act of 2005 govern cases in which the applicant filed for relief on or after May 11, 2005. *See Matter of S-B-*, 24 I&N Dec. 42, 44 (BIA 2006). The applicant has the burden of proof in any application for relief. INA § 240(c)(4)(A). Her credibility is important and may be determinative. Generally, to be credible, testimony must be detailed, plausible, and consistent; it should satisfactorily explain any material discrepancies or omissions. INA § 240(c)(4)(C). In making a credibility determination, the Immigration Judge considers the totality of the circumstances and all relevant factors. *Id.*; *See also Matter of J-Y-C-*, 24 I&N Dec. 260, 262 (BIA 2007). The Court may base a credibility determination on the witness' demeanor, candor, or responsiveness, and the inherent plausibility of her account. INA § 240(c)(4)(C). Other factors include the consistency between written and oral statements, without regard to whether an inconsistency goes to the heart of the applicant's claim. *Id.*; *J-Y-C-*, 24 I&N Dec. at 263-66. An applicant's own testimony, without corroborating evidence, may be sufficient proof to support a fear-based application if that testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for her fear of persecution. *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987); 8 C.F.R. § 1208.13(a).

Considering the totality of the circumstances and all relevant factors, the Court finds the respondent credible. Her testimony was candid, detailed, and internally consistent. Additionally,

In the Matters of [REDACTED]
[REDACTED];
A [REDACTED]

her account of what happened in Honduras is plausible and consistent with record evidence. *See* Exh. 2 (Form I-589); 3, Tab D ([REDACTED]'s birth certificate listing [REDACTED] as the father), Tab E (police complaint filed by the respondent), Tab F (Honduran newspaper article documenting [REDACTED]'s escape from prison). Moreover, the DHS conceded that the respondent testified credibly. Accordingly, the Court finds the respondent credible.

B. Asylum

An applicant for asylum must demonstrate that she is a "refugee" within the meaning of INA § 101(a)(42). *See* INA § 208(a). To satisfy the "refugee" definition, the applicant must demonstrate a reasonable probability either that she suffered past persecution or that she has a well-founded fear of future persecution in her country of origin on account of one of the five statutory grounds—race, religion, nationality, membership in a particular social group, or political opinion. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987); 8 C.F.R. § 1208.13(a). The applicant must show that she fears persecution by the government or an agent that the government is unwilling or unable to control. *See Matter of A-B-*, 27 I&N Dec. 316, 317 (A.G. 2018); *Matter of S-A-*, 22 I. & N. Dec. 1328, 1335 (BIA 2000). The applicant also must demonstrate that one of the five statutory asylum grounds was or will be at least one central reason for her persecution. INA § 208(b)(1)(B)(i); *A-B-*, 27 I&N Dec. at 317. Finally, in addition to establishing statutory eligibility, the applicant must demonstrate that a grant of asylum is warranted in the exercise of discretion. INA § 208(b)(1)(A); 8 C.F.R. § 1208.14(a).

1. One Year Deadline

As a threshold issue, the respondent must show by clear and convincing evidence that she applied for asylum within one year of her last arrival to the United States or that she qualifies for an exception to the one-year deadline. 8 C.F.R. § 1208.4(a)(2). Here, the DHS conceded that the Respondent filed her application within one year of her last arrival to the United States. *See* Exhs. 1; 2. The Court therefore finds the respondent's application timely filed.

2. Past Persecution

To establish a claim for asylum, the applicant must show the harm she suffered or fears she will suffer rises to the level of persecution. Persecution entails harm or suffering inflicted upon an individual to punish her for possessing a belief or characteristic the persecutor seeks to overcome. *See Acosta*, 19 I&N Dec. at 222-23. Persecution includes the "threat of death, torture, or injury to one's person or freedom." *Cordova v. Holder*, 759 F.3d 332, 337 (4th Cir. 2014); *see also Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) ("[W]e have expressly held that 'the threat of death qualifies as persecution.'" (quoting *Crespin-Valladares*, 632 F.3d at 126).

a. Past Harm

The DHS conceded that the respondent suffered harm rising to the level of persecution, and the Court finds that the respondent has demonstrated that she suffered past persecution. *See Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) ("Persecution involves the threat of death,

In the Matters of [REDACTED]

A [REDACTED]

torture, or injury to one's person or freedom.") (internal quotations omitted); *see also Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1998) (noting that court must consider events cumulatively).

b. Government Unable or Unwilling to Control

The DHS also conceded that the Honduran police was unable or unwilling to protect the respondent from [REDACTED] and [REDACTED]. Accordingly, the Court finds that the respondent established she suffered harm at the hands of individuals from whom the Honduran government is *unwilling* or *unable* to protect her. *See A-B-*, 27 I&N Dec. at 330 (stating that the applicant "bears the burden of showing that . . . [her] home government was 'unable or unwilling to control' the persecutors") (quoting *Matter of W-G-R-*, 26 I&N Dec. 208, 224 & n.8 (BIA 2014)); *see also Acosta*, 19 I&N Dec. at 222; *Mulyani v. Holder*, 771 F.3d 190, 197-98 (4th Cir. 2014).

3. Nexus to a Protected Ground

The respondent must, through direct or circumstantial evidence, prove that a protected ground was or would be "at least one central reason" for the persecution. *Matter of C-T-L-*, 25 I&N Dec. 341, 348 (BIA 2010); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 213 (BIA 2007). The protected ground need not be the sole reason for persecution, but it must have been more than an "incidental, tangential, superficial, or subordinate" reason. *Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 247 (4th Cir. 2017).

c. Women in Honduras

The Court finds that "women in Honduras" are members of a cognizable particular social group. The Board of Immigration Appeals ("Board" or "BIA") has instructed that the phrase "membership in a particular social group" is "not meant to be a 'catch all' that applies to all persons fearing persecution." *Matter of M-E-V-G-*, 26 I&N Dec. 227, 234-35 (BIA 2014). For a particular social group to be legally cognizable under the Act and thus, constitute a protected ground, the group must be (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. *See A-B-*, 27 I&N Dec. at 317; *W-G-R-*, 26 I&N Dec. 208; *Matter of C-A-*, 23 I&N Dec. 951, 959-61 (BIA 2006); *Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008)). The Court determines whether a proposed-particular social group is legally cognizable on a case-by-case basis. *M-E-V-G-*, 26 I&N Dec. at 231; *Acosta*, 19 I&N Dec. at 233. The shared characteristic "must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." *See M-E-V-G-*, 26 I&N Dec. at 231; *see also Acosta*, 19 I&N Dec. at 233. A group is socially distinct if the society in question perceives or recognizes the proposed group as a group. *M-E-V-G-*, 26 I&N Dec. at 238. A group is particularly defined if it is "discrete," has "definable boundaries," and is not "amorphous, overbroad, diffuse, or subjective," and "provide[s] a clear benchmark for determining who falls within the group." *Id.* at 239. Additionally, the group must exist "independently of the alleged underlying harm." *A-B-*, 27 I&N Dec. at 317.

In the Matters of [REDACTED]
[REDACTED];
A [REDACTED]

First, the respondent's particular social group is comprised of members sharing a common immutable characteristic. Members of the group all share "a characteristic that . . . so fundamental to individual identity or conscience that it ought not to be required to be changed"—their sex. *Acosta*, 19 I&N Dec. at 233. A person's sex is fundamental to his or her identity, making it an immutable characteristic as it is generally unchangeable, and is certainly a characteristic that one should not be required to change. The Board went so far as to state as much in *Acosta*, concluding that one's "sex" is a "shared characteristic" on which particular social group membership can be based. *Id.* (stating that "[t]he shared characteristic might be an innate one such as sex, color, [or] kinship ties").

Second, the respondent's particular social group is socially distinct within the society in question. In *M-E-V-G-*, the Board explained that "[a] viable particular social group should be perceived within the given society as a sufficiently distinct group," and that "[t]he members of a particular social group will generally understand their own affiliation with the grouping, as will other people in the particular society." 26 I&N Dec. 227, 238; *see also W-G-R-*, 26 I&N Dec. 208, 217 (BIA 2014) (stating that "social distinction exists where the relevant society perceives, considers, or recognizes the group as a distinct social group"). Through her testimony and documentary evidence, the respondent has established that Honduran society perceives women as sufficiently distinct from society as a whole to qualify as a particular social group. The respondent submitted the 2016 State Department Human Rights Report on Honduras, which states that "[v]iolence against women and impunity for perpetrators continued to be a serious problem" and that "[r]ape was a serious and pervasive societal problem." Exh. 3, Tab G at 41. The report also states that the "UN special rapporteur on violence against women expressed concern that most women in [Honduras] remained marginalized, discriminated against, and at high risk of being subjected to human rights violations." *Id.* at 43. The report further states that the Honduran government "did not effectively enforce" laws governing sexual harassment. *Id.* Finally, the report states that, although women and men have the same legal rights in many respects in Honduras, "many women did not fully enjoy such rights." *Id.* at 44.

The rest of the respondent's country conditions documentation are consistent with the State Department's report. For example, the respondent submitted a 2015 *Irish Times* article, which notes that "Honduras is rapidly becoming one of the most dangerous places on Earth for women" as "the number of violent deaths of women increased by 263.4 per cent" between 2005 and 2013. Exh. 3, Tab J at 134. The other news articles report similar statistics, documenting the pervasive violence against women in Honduras. *Id.*, Tab I (describing the endemic violence against women in Honduras), Tab K (noting that girlfriends and female relatives are considered "valuable possessions" and are targeted for revenge killings); Tab L ("In Honduras, 471 women were killed in 2015—one every 16 hours."). Taken as a whole, the respondent's evidence establishes that cultural and legal norms in Honduras permit widespread violence and discrimination against women. Through this evidence, the respondent has shown that women in Honduras "are set apart, or distinct, from other persons within [Honduras] in some significant way," and are therefore socially distinct. *M-E-V-G-*, 26 I&N Dec. at 238.

Third, the respondent's particular social group is defined with particularity. The Board has explained a group is particularly defined if it has "definable boundaries," and is not "amorphous, overbroad, diffuse, or subjective." *M-E-V-G-*, 26 I&N Dec. at 238-39. Further, "[a] particular

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social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group,” and “be discrete and have definable boundaries.” *Id.* at 239; *see also W-G-R-*, 26 I&N Dec. at 214. The particularity requirement “clarifies the point . . . that not every ‘immutable characteristic’ is sufficiently precise enough to define a particular social group.” *M-E-V-G-*, 26 I&N Dec. at 239; *see also W-G-R-*, 26 I&N Dec. at 213. The Fourth Circuit similarly explained particularity as the need for a particular social group to “have identifiable boundaries.” *Temu v. Holder*, 740 F.3d 887, 895 (4th Cir. 2014); *see also Zelaya v. Holder*, 668 F.3d 159, 165 (4th Cir. 2012) (stating that a particular social group must “be defined with sufficient particularity to avoid indeterminacy”).

The particular social group of “women in Honduras” is defined with particularity. The boundaries of the group are precise, clearly delineated, and identifiable: women are members and men are not. *See M-E-V-G-*, 26 I&N Dec. at 239; *W-G-R-*, 26 I&N Dec. at 213-14; *Temu*, 740 F.3d at 895; *Zelaya*, 668 F.3d at 165. There is a clear benchmark for determining whether a person in Honduras is a member of the group: whether that person is a woman. *See M-E-V-G-*, 26 I&N Dec. at 238-39; *W-G-R-*, 26 I&N Dec. at 213-14. In *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007), the Board ruled that “affluent Guatemalans” are not members of a cognizable particular social group, holding that “[t]he terms ‘wealthy’ and ‘affluent’ standing alone are too amorphous to provide an adequate benchmark for determining group membership.” Here, by contrast, the term “woman” is not too amorphous to provide such an adequate benchmark, as, in the vast majority of cases, a person either is a woman or is not. In *Temu*, 740 F.3d at 895, the Fourth Circuit commented that the group in *Matter of A-M-E- & J-G-U-*, “affluent Guatemalans,” was not defined with particularity “because the group changes dramatically based on who defines it.” The court stated that “[a]ffluent might include the wealthiest 1% of Guatemalans, or it might include the wealthiest 20%,” and that the group therefore “lacked boundaries that are fixed enough to qualify as a particular social group.” *Id.* The group of “women in Honduras” does not change based on who defines it, and it therefore has boundaries that are fixed enough to meet the particularity requirement.

The particular social group of “women in Honduras” is defined with particularity even though it is large. In *Matter of S-E-G-*, 24 I&N Dec. 579, 585 (BIA 2008), the Board stated, “While the size of the group may be an important factor in determining whether the group can be so recognized, the key question is whether the proposed definition is sufficiently particular or is too amorphous . . . to create a benchmark for determining group membership.” 24 I&N Dec. 579, 585 (BIA 2008) (quotations omitted). Therefore, the “key question” relates not to the size of the group but to whether the group’s definition provides an adequate benchmark for determining which people are members and which people are not. In the respondent’s case, as discussed above, the group’s definition provides such an adequate benchmarks: women are members and men are not.

In addition, the Board has routinely recognized large groups as defined with particularity. Most obviously, the Board has long held that gay and lesbian people in various countries can qualify as members of particular social groups. *See Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990) (recognizing “homosexuals . . . in Cuba” as members of a particular social group). The Board recently affirmed that “homosexuals in Cuba” are members of a cognizable particular social group because, among other things, the group is defined with particularity. *See*

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M-E-V-G-, 26 I&N Dec. at 245; *W-G-R-*, 26 I&N Dec. at 219. The Board has never found, in a precedent decision, that a group of gay and lesbian people in a given country is not defined with particularity, even though such groups are sizable. Likewise, the Board has recognized that particular social group membership can be based on clan membership. In particular, in *Matter of H-*, 21 I&N Dec. 337, 343 (BIA 1996), the Board found that members of the Marehan subclan in Somalia are members of a particular social group. The Board later affirmed that the group of “members of the Marehan subclan” is defined with particularity, simply noting that the group is “easily definable.” See *W-G-R-*, 26 I&N Dec. at 219 (stating that the group of “members of the Marehan subclan” is “easily definable and therefore sufficiently particular”).

In *Matter of W-G-R-*, 26 I&N Dec. at 221, the Board found that the proposed group of “former members of the Mara 18 gang in El Salvador who have renounced their gang membership” was not defined with particularity. The Board supported this conclusion by finding “[t]he group as defined lacks particularity because it is too diffuse, as well as being too broad and subjective. As described, the group could include persons of any age, sex, or background.” *Id.* However, the Board’s decision in *Matter of W-G-R-* does not support a finding that the group of “women in Honduras” is not defined with particularity. The Board’s conclusion in *Matter of W-G-R-* that the group in that case was not defined with particularity was based on its finding that the group’s “boundaries” were “not adequately defined” because the respondent had not established that society in El Salvador would “generally agree on who is included” in the group of former gang members. *Id.* at 221. By contrast, the group in this case—women in Honduras—has well-defined boundaries. “[M]embers of society” in Honduras would “generally agree on who [are] included in the group”—women—and who are excluded—men. The boundaries of the group of “women in Honduras” are precise, finite, and objective. Further, the group is not based on some “former association” with an organization, as was the proposed group in *W-G-R-*. Instead, it is based on one’s biological identity, which has a clear and well-defined boundary.

It could be argued that the Board’s decision in *Matter of W-G-R-* stands for the proposition that a group cannot be defined with particularity if it is internally diverse. After all, in ruling that the proposed group of “former members of the Mara 18 gang in El Salvador who have renounced their gang membership” is not defined with particularity, the Board, as noted above, stated that the group “could include persons of any age, sex, or background.” *Id.* at 221. In the Board’s words, the group could include “a person who joined the gang many years ago at a young age but disavowed his membership shortly after initiation without having engaged in any criminal or other gang-related activities” as well as “a long-term, hardened gang member with an extensive criminal record who only recently left the gang.” *Id.* If one accepts the premise that a group cannot be defined with particularity if it is internally diverse, then it could be further argued that the group of “women in Honduras” is not defined with particularity. That group is highly diverse, as it encompasses, for example, women of different ages, races, and levels of education.

However, imposing a requirement that a group cannot be internally diverse to be defined with particularity would run counter to other Board precedent decisions, and would preclude the recognition of particular social groups that are currently commonly accepted. In *Matter of C-A-*, 23 I&N Dec. at 957, the Board stated that it did not “require an element of ‘cohesiveness’ or homogeneity among group members.” See also *S-E-G-*, 24 I&N Dec. at 586 n. 3. A policy that an internally diverse group cannot be defined with particularity would preclude particular social

* In the Matters of [REDACTED]

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groups based on sexual orientation. As noted above, the Board has long recognized, and continues to recognize, particular social groups of gay and lesbian people in various countries. *See Toboso-Alfonso*, 20 I&N Dec. at 822-23; *see also M-E-V-G-*, 26 I&N Dec. at 245, (affirming that “homosexuals in Cuba” are members of a cognizable particular social group because, among other things, the group is defined with particularity); *W-G-R-*, 26 I&N Dec. at 219 (affirming that “homosexuals in Cuba” “had sufficient particularity because it was discrete and readily definable”). Groups composed of gay and lesbian people in particular countries are extremely diverse; such a group would include young people and old people, rich people and poor people, people in same-sex romantic relationships and people not in such relationships, people living in cities and people living in rural areas, and so on. Such a policy would also likely preclude particular social groups based on clan membership, as a clan would, in all likelihood, include people from a variety of backgrounds and walks of life. *See H-*, 21 I&N Dec. at 343 (finding that members of the Marehan subclan in Somalia are members of a particular social group); *see also W-G-R-*, 26 I&N Dec. at 219 (affirming that the group in *Matter of H-* is defined with particularity as it is “easily definable”). For the same reason, such a policy would also likely preclude particular social groups based on ethnicity, such as “Filipino[s] of mixed Filipino-Chinese ancestry,” recognized by the Board as a particular social group in *Matter of V-T-S-*, 21 I&N Dec. 792, 798 (BIA 1997). *See also W-G-R-*, 26 I&N Dec. at 219 (stating that the group of “Filipino[s] of mixed Filipino-Chinese ancestry” is defined with particularity as it “ha[s] clear boundaries, and its characteristics ha[ve] commonly accepted definitions”).

Additionally, the respondent’s particular social group exists independent of the harm its members suffer. *See A-B-*, 316 at 334 (“To be cognizable, a particular social group *must* ‘exist independently’ of the harm asserted in an application for asylum or statutory withholding of removal.”) (emphasis in the original) (citing *M-E-V-G-*, 26 I&N Dec. at 236 n.11, 243). The harm the members suffer does not create any of the characteristics they share; rather, very clearly, as discussed below, the characteristics of the members give rise to the harm. Honduran society treats women separately from the rest of society apart from any abuse the women suffer on account of their membership in this particular social group. Finally, the respondent is a member of her particular social group. She is a Honduran woman. For the foregoing reasons, the respondent has established her membership in a cognizable particular social group. The Court must now analyze if the persecution she suffered was on account of her membership in this group.

d. On Account Of

For the respondent to establish that her persecution was on account of a protected ground, she must show the protected ground was “at least one central reason” she was persecuted. *J-B-N- & S-M-*, 24 I&N Dec. at 214; INA § 208(b)(1). The protected ground, however, need not be “the central reason or even a dominant central reason” for [the] persecution.” *Crespin-Valladares*, 632 F.3d at 127; *see also Oliva v. Lynch*, 807 F.3d 53, 59 (4th Cir. 2015) (“[A] protected ground must be ‘at least one central reason for the feared persecution’ but need not be the only reason.”). Nevertheless, the protected ground cannot be incidental, tangential, superficial, or subordinate to a non-protected reason for harm. *Oliva*, 807 F.3d at 59 (quoting *J-B-N- & S-M-*, 24 I&N Dec. at 214). The persecutors’ motivations are a question of fact, and may be established through testimonial evidence. *Matter of S-P-*, 21 I&N Dec. 486, 490 (BIA 1996).

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The respondent has demonstrated that her status as a woman was at least one central reason for the harm that [REDACTED] and [REDACTED] inflicted on her. She submitted sufficient circumstantial evidence of [REDACTED] and [REDACTED] motives to establish that her status as a woman was one central reason for the harm she suffered. See *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (stating that “the [asylum] statute makes motive critical,” and that an applicant “must [therefore] provide some evidence of it, direct or circumstantial”) (stating that “we do not require” “direct proof of [a] persecutor’s motives”). [REDACTED]

[REDACTED] The Court therefore finds that the respondent’s membership in the particular social group of “women in Honduras” is “at least one central reason” for the persecution she suffered. *J-B-N- & S-M-*, 24 I&N Dec. at 214.

4. *Presumption of Future Persecution*

Because the respondent established that she experienced past persecution on account of her membership in a protected class at the hands of actors the Honduran government was unable or unwilling to control, she benefits from a rebuttable presumption of future persecution. 8 C.F.R. § 1208.16(b)(1). To overcome this presumption, the DHS bears the burden of demonstrating, by a preponderance of the evidence, that (1) there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in her country of nationality on account of a protected ground; or (2) the applicant could avoid future persecution by relocating to another part of her country of nationality and under the circumstances, it would be reasonable to expect her to do so. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B); see also 8 C.F.R. § 1208.13(b)(3)(ii) (where past persecution is established, internal relocation is presumptively unreasonable); see also *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008) (remanding a case for failing to shift the burden of proof to the DHS that, by a preponderance of the evidence, relocation was reasonable). The DHS provided no evidence nor made any meaningful attempt to rebut this presumption. Accordingly, the Court finds that the presumption that the respondent has a well-founded fear of future persecution on account of her membership in a particular social group remains unrebutted.

5. *Discretion*

After an applicant establishes her statutory eligibility for asylum, the Court may exercise its discretion to grant or deny asylum. 8 C.F.R. § 1208.14(a); see also INA § 208(b)(1)(A); *Cardoza-Fonseca*, 480 U.S. at 427-28; *Pula*, 19 I&N Dec. at 473. A decision to deny asylum as a matter of discretion should be based on the totality of the circumstances. See *Pula*, 19 I&N Dec. at 473. The Fourth Circuit has recognized that discretionary denials of asylum are “exceedingly rare” and require “egregious negative activity by the applicant.” *Zuh v. Mukasey*, 547 F.3d 504, 507 (4th Cir. 2008). The Court is not required to “analyze or even list every factor,” but must

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A [REDACTED]

demonstrate it has "reviewed the record and balanced the *relevant* factors and must discuss the positive or adverse factors" supporting the decision. *Id.* at 511 (citing *Casalena v. INS*, 984 F.2d 105, 107 (4th Cir. 1993) and *Matter of Marin*, 16 I&N Dec. 581, 585 (BIA 1978)) (emphasis in original).

The Court finds that the respondent merits a favorable exercise of discretion. She suffered past persecution and has a well-founded fear of persecution in Honduras on account of a protected ground. She has no known criminal record in the United States or elsewhere. The only negative factor in the respondent's case is her entry without inspection. *See* Exh. 1. Thus, after considering the totality of the circumstances, the Court will grant her request for asylum in the exercise of discretion.

IV. CONCLUSION

The respondent established that she suffered past persecution on account of her membership in a legally-cognizable particular social group. Additionally, the DHS did not rebut the presumption of future persecution. Moreover, the respondent established that she warrants a favorable exercise of the Court's discretion. Accordingly, the Court grants her application for asylum. For the same reason, the Court grants the rider respondents' derivative applications for asylum. Therefore, the Court does not reach the respondent's applications for withholding of removal under the Act and protection under the CAT. Accordingly, the Court enters the following orders.

ORDERS

It Is Ordered that:

The respondent's application for asylum under INA § 208 be **GRANTED**.

It Is Further Ordered that:

The rider respondents' derivative application for asylum pursuant to 8 C.F.R. § 1208.21 be **GRANTED**.

[REDACTED] 2018
Date

Deepali Nadkarni
Deepali Nadkarni¹
Immigration Judge

APPEAL RIGHTS: Both parties have the right to appeal the decision in this case. Any appeal is due at the Board of Immigration Appeals on or before thirty (30) calendar days from the date of service of this decision.

¹ The Immigration Judge formerly assigned to this case has since retired and is unable to complete this case. Pursuant to 8 C.F.R. § 1240.1(b), the signing Immigration Judge has reviewed the record of proceeding and familiarized herself with the record.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SAN FRANCISCO, CALIFORNIA

Matter of

Date: Sept. 13, 2018

File Number:

Respondent

In Removal Proceedings

Charge: Section 212(a)(7)(A)(i)(I), of the Immigration and Nationality Act, as amended, as an immigrant who, at the time of application for admission, was not in possession of a valid entry document as required by the Act

Applications: Asylum, Withholding of Removal, and Protection under the Convention Against Torture

On Behalf of Respondent:

Kelly Engel Wells
Dolores Street Community Services
938 Valencia Street
San Francisco, California 94110

On Behalf of DHS:

Susan Phan
Office of the Chief Counsel
100 Montgomery Street, Suite 200
San Francisco, California 94104

DECISION OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

On December 13, 2017, the Department of Homeland Security ("DHS") initiated these removal proceedings against Respondent, _____, by filing a Notice to Appear ("NTA") with the San Francisco, California, Immigration Court. Exh. 1. The NTA alleges that Respondent is a native and citizen of Mexico, who applied for admission into the United States at the Nogales, Arizona, Port of Entry on July 10, 2017, and did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document. *Id.* Based on these allegations, DHS charged Respondent with removability under the Immigration and Nationality Act ("INA" or "Act") § 212(a)(7)(A)(i)(I), as amended, as an immigrant who, at the time of application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document as required by the Act. *Id.*

On _____, Respondent admitted the factual allegations in the NTA and conceded the charge of removability but declined to designate a country of removal. Based on her admissions and concession, the Court sustained the charge of removability and directed

Mexico as the country of removal, should removal become necessary. 8 C.F.R. § 1240.10(c), (f). On 2018, Respondent filed a Form I-589, Application for Asylum and for Withholding of Removal ("Form I-589"), applying for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). Exh. 3A.

II. EVIDENCE PRESENTED

The Court has thoroughly reviewed the evidence in the record, even if not explicitly mentioned in this decision. The evidence of record consists of the testimony of Respondent and the following exhibits:

- Exhibit 1: NTA;
- Exhibit 2: Form I-213, Record of Deportable/Inadmissible Alien;
- Exhibit 3: Letters in support of Respondent's Form I-589;
- Exhibit 3A: Form I-589;
- Exhibit 4: 2016 United States Department of State Human Rights Report for Mexico;
- Exhibit 5: Respondent's documentation in support of her Form I-589;
- Exhibit 6: Respondent's amendments to her Form I-589;
- Exhibit 7: Respondent's supplemental documentation;
- Exhibit 8: Respondent's additional supplemental documentation; and
- Exhibit 9: Respondent's additional supplemental documentation.

A. Respondent's Testimony and Declaration

Respondent testified before the Court on August 23, 2018, and submitted two declarations in support of her applications for relief. Exhs. 5 at Tab B, 9 at Tab B. The Court summarizes Respondent's testimony and declarations together below.

1. Background.

Respondent was born on _____, in _____ Mexico. She grew up in Morelos, Mexico with her parents and five siblings. Respondent studied art education and worked as a teacher.

2. Abuse by: _____

From the age of 5, until the age of 22, Respondent's mother, _____, physically and mentally abused Respondent on a daily basis. Beginning when Respondent was approximately five years old, her mother forced her to complete the duties of a servant, including sweeping, mopping, and washing clothing, to teach Respondent how to be a good housewife. Respondent testified that her mother also beat her to make her strong and to prepare her to be a good wife, teaching her how to tolerate a beating by her future husband. She beat Respondent with a belt, cables from a washing machine, a broomstick, and a kitchen spoon. On one occasion, when Respondent told her father about the abuse, Respondent's mother beat her so severely that she was unable to sit or leave her bed the following day. Respondent also testified that her mother taught her that women always needed to obey their husbands and that

once Respondent was married, Respondent would need to ask him for permission to do anything because he was in charge. She also taught Respondent that the husband is the "superior being who can do no wrong," and if a husband beats his wife, it is her fault.

Respondent also testified that when she was nine or ten years old, she was raped during a robbery of her family's home. She told her mother who committed the robbery but not that she was raped; her mother called her a "liar and blamed [Respondent] for not alerting her to the robbery."

3. Abuse by

In 1989, Respondent met her husband, _____ ("Mr. B"). They married in _____ Mexico on _____, 1993. They have one child, _____ ("Ms. R."), born on _____, 1993.

Approximately three months after they married, Mr. B _____ began consistently beating Respondent. On the first occasion, while on a trip to the United States, he slapped her twice across the face and punched her mouth, breaking her two front teeth. When they returned to Mexico, Mr. B _____ continued to abuse her, often after consuming alcohol. Respondent testified that Mr. B _____ abused her because "he felt wounded in his machismo" and told her "you're not going to step on me. I'm the man and you're going to do what I say." She believes he beat her because she was a woman and believed that she was his equal with a right to her own opinions and ideas.

Respondent also testified that on two occasions, Mr. B _____ burned her with cigarettes, leaving permanent scars. During the first incident, in the middle of the night, Mr. B _____ burned Respondent's arm with a cigarette while she slept, demanding that she cook for him. She refused, but he insisted that she must cook for him because it was her job. He dragged her by her hair to the kitchen, stating, "A woman's only job was to shut up and obey her husband." Respondent continued to refuse to cook for him, and in response, Mr. B _____ slapped her. In the second incident, Mr. B _____ burned Respondent's face with a cigarette because she continued to work, despite his orders to quit her job, thus, explicitly disobeying Mr. B _____ and continuing to express that she had a right to work. Respondent testified that he burned her to show her that they were not equals, he was in charge, and to impress these principles upon her since he believed she did not understand them.

Eventually, Respondent quit her job. However, Mr. B _____ abandoned her approximately six months after they married; Respondent and her daughter lived with Respondent's family. Mr. B _____ and Respondent remain married because Respondent's family is Catholic, and her family would disown her if they divorced.

4. Abuse by

In January 1995, Respondent entered the United States and began living in Phoenix, Arizona. Approximately two months later, she met _____ ("Mr. H"), and they began a relationship in May 1995. They have three United States citizen

children together, born 1997, and born 2004. Shortly after beginning their relationship, Respondent and Mr. H began living together, and Mr. H beat Respondent for the first time because he believed she was having an affair with his friend. However, he did not harm Respondent again until approximately two years later.

Respondent testified that from approximately 1998 until 2016, Mr. H consistently abused her; he also used drugs and abused alcohol often. He beat, raped, and strangled her over the course of their relationship. Mr. H raped her approximately five times per month and beat her approximately three times per month. Respondent testified that she bears physical scars from multiple incidents of his abuse. On one occasion, when Respondent refused to give Mr. H money or sex, he hit her, broke a beer bottle, cut her leg with the bottle, and then raped her. On other occasions when Respondent rejected his sexual advances, Mr. H stated that Respondent was "his woman and had to have sex with him whenever he wanted" before raping Respondent. Mr. H stated that Respondent needed to have sex with him whenever he wanted because she was a woman and thus, "his slave" and required to obey him. On another occasion, in 2004, Respondent entered their home and told Mr. H that his friends should leave. Mr. H warned Respondent that she was not to speak when entering the room and beat Respondent so severely she had a vaginal hemorrhage.

Mr. H often ordered Respondent to quit her job and beat her when he was jealous of her male supervisors. He also demanded she only work with other women and dress as he desired. Respondent testified that when she wore an outfit Mr. H did not approve of, he ripped it off of her. Mr. H also frequently bit Respondent, leaving marks on her neck and arms to show that she was "[his] woman" because others "need[ed] to know it." Respondent also testified that if she resisted due to her belief that they were equal partners, Mr. H harmed her.

Respondent attempted to end her relationship with Mr. H numerous times; however, he refused to leave and would beat and rape her to emphasize his refusal. She believed he mistreated her because she was the mother of his children and he believed he had the power and could do whatever he wanted. In 2015, Respondent moved into a house without Mr. H. Yet, Mr. H found opportunities to physically harm Respondent, often utilizing their children to have contact with her.

In the spring of 2017, Mr. H was removed to his native Guatemala. Shortly thereafter, Respondent was subsequently removed to Mexico, and she returned to her parents' home. She fled Mexico approximately two weeks later because she received menacing phone calls from Mr. H.

5. Criminal History

In 2007, Respondent was arrested for criminal impersonation. She testified that when she went to the Department of Motor Vehicles to renew her Arizona identification, the clerk informed her that a social security number was required for the renewal application. When

Respondent expressed that she did not have a social security number, the clerk threatened to call the police; Respondent became fearful and wrote down a random number. She was ultimately convicted and sentenced to one year of probation.

6. Fear of Returning to Mexico

Respondent fears that if she returns to Mexico, she will be persecuted by both Mr. B and Mr. H.

Respondent testified that approximately two years ago, Mr. B called her requesting information regarding her whereabouts. He expressed his desire to rekindle their relationship, but Respondent refused and told him to leave her alone. Thereafter, Respondent changed her phone number. However, Mr. B continued to contact Respondent through Facebook messages, again seeking information on her whereabouts. Respondent deleted her account to prevent Mr. B from contacting her. Yet, Respondent testified that she heard from her daughter that Mr. B visited her and was aggressive; he threatened to take "revenge" against Respondent for rejecting him and having relationships with other men.

Respondent testified that approximately one week after she was removed to Mexico, Mr. H called her on her cell phone and told Respondent he planned to locate her. Respondent believes Mr. H could find her in Mexico because his entire family resides in Chiapas, Mexico. During a second phone call, Mr. H stated that he already confirmed that Respondent was residing at her parents' home in Mexico, and he would be "coming for [Respondent]." Despite Respondent's repeated pleas to Mr. H to leave her alone, he continued to attempt to acquire information about Respondent's whereabouts through their children. She fled to the United States after she continued to feel fear and distress from Mr. H's menacing phone calls. Respondent testified that if Mr. H harmed her in Mexico she would attempt to report him to the police, but she did not believe they would help her. She believed that he would be able to locate her through their children.

B. Documentary Evidence

Respondent submitted a copy of her marriage certificate to the Court. Exh. 9 at 1. Respondent also submitted her psychological evaluation by Dr. Jane Christmas, a licensed clinical psychologist; Dr. Christmas diagnosed Respondent with post-traumatic stress disorder and major depressive disorder. *Id.* at 7-24. Respondent also submitted letters of support from community members. *See* Exh. 3.

Respondent submitted declarations from her daughter, Ms. R, and her son, [redacted], in which they described the abuse Respondent suffered by both of their fathers. Exh. 5 at 20-25. [redacted] stated that Mr. H called him after Respondent was removed to Mexico seeking information on her location. *Id.* at 21. Ms. R stated that Mr. B is very aggressive and angry with Respondent because she had a relationship with another man. *Id.* at 23. She also stated that both Mr. B and Mr. H are seeking information on Respondent's whereabouts. *Id.* at 23-24. Respondent also submitted a copy of text messages Mr. H sent to Ms. R seeking information regarding Respondent's location. *Id.*

at 39. The record also includes photographic evidence of the injuries Respondent sustained from the abuse by Mr. H. *Id.* at 29–38.

Respondent submitted a letter from Adriana Prieto-Mendoza, a Mexican attorney; Ms. Prieto-Mendoza stated that Mr. H would be able to obtain permanent residency in Mexico because his children with Respondent are Mexican citizens and included copies of Mexican law to support her statement. Exh. 7 at 30–54.

Finally, Respondent submitted documentation of her criminal convictions. *Id.* at Tab A. The record evinces that in 2007, Respondent was convicted of criminal impersonation and was sentenced to one year of probation, and she was convicted of shoplifting and sentenced to pay a fine. *Id.* at 3–25. In 2017, Respondent was convicted for illegal entry in violation of 8 U.S.C. § 1325(a)(2) and sentenced to 150 days of confinement. *Id.* at 27–29.

C. Country Conditions Evidence

Respondent submitted extensive documentary evidence regarding country conditions in Mexico. *See* Exhs. 5 at Tabs G–OO, 7 Tabs D–M. DHS also submitted country conditions evidence. Exh. 4. The Court has comprehensively reviewed all country conditions evidence in the record and discusses the relevant information in the analysis below.

III. ANALYSIS

A. Credibility

A respondent has the burden of proof to establish she is eligible for relief, which she may establish through credible testimony. *See* INA § 240(c)(4). In making a credibility finding under the REAL ID Act, the Court may base its credibility determination on the demeanor, candor, or responsiveness of the applicant; the inherent plausibility of her account; the consistency between her written and oral statements; the internal consistency of each such statement; the internal consistency of such statements with other evidence of record; any inaccuracies or falsehoods in such statements; or any other relevant factor. *Id.*

The Court analyzed Respondent's testimony for consistency, detail, specificity, and persuasiveness. Overall, Respondent testified in a consistent, believable, and forthright manner, and DHS conceded that Respondent was credible. Considering the totality of the circumstances, the Court finds that Respondent testified credibly and accords her testimony full evidentiary weight. *Id.*

B. Asylum

To qualify for a grant of asylum, an applicant bears the burden of demonstrating that she meets the statutory definition of a refugee. INA § 208(b)(1)(B)(i). The Act defines the term "refugee" as any person who is outside her country of nationality who is unable or unwilling to return to, and is unable or unwilling to avail herself of the protection of that country because of

past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A).

Respondent argues she is eligible for asylum relief based on the past persecution she suffered at the hands of her mother and her husband and based on an independent well-founded fear of harm by her ex-partner.¹ The Court analyzes Respondent's claims for relief below.

I. Past Persecution

To establish past persecution, an applicant must show that she experienced harm that (1) rises to the level of persecution, (2) was on account of a protected ground, and (3) was committed by the government or forces the government is unable or unwilling to control. *Navas v. INS*, 217 F.3d 646, 655–56 (9th Cir. 2000).

a. *Harm Rising to the Level Necessary to Establish Persecution*

“Persecution” is “the infliction of suffering or harm upon those who differ . . . in a way regarded as offensive.” *Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997). Physical violence, such as rape, torture, assault, and beatings, “has consistently been treated as persecution.” *Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000). In assessing whether an applicant has suffered past persecution, the Court may not consider each individual incident in isolation but must instead evaluate the cumulative effect of the abuse the applicant suffered. *See Krutova v. Gonzales*, 416 F.3d 1080, 1084 (9th Cir. 2005).

While living in Mexico, Respondent experienced harm by her mother and her husband, Mr. B. *See* Exhs. 5 at Tab B, 9. The Court addresses the harm Respondent suffered by each in turn.

As an initial matter, the Court notes that Respondent was a child at the time of the harm she suffered by her mother, and “age can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted . . .” *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045 (9th Cir. 2007) (internal quotation marks omitted). The Court must assess the alleged persecution from the child’s perspective, as the “harm a child fears or has suffered . . . may be relatively less than that of an adult and still qualify as persecution.” *Id.* By its common usage, “child abuse” encompasses “any form of cruelty to a child’s physical, moral, or mental well-being.” *Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991, 996 (BIA 1999) (internal quotation marks omitted); *see also Velizquez-Herrera v. Gonzales*, 446 F.3d 781, 782 (9th Cir. 2006). From the age of 5 until the age of 22, Respondent’s mother physically harmed Respondent on a daily basis. She beat Respondent with a belt, cables from a washing machine, a broomstick, and a kitchen spoon. On one occasion, Respondent’s mother beat her so severely that she was unable to sit or leave her bed the following day. In addition, Respondent’s mother forced her to perform all of the duties of a servant at home, which imposed psychological harm upon Respondent. Considered cumulatively, the Court finds that the physical and mental

¹ The Court does not analyze whether the harm Respondent experienced by Mr. B constitutes past persecution because it occurred in the United States and not in the country of prospective return. *See* INA § 101(a)(42)(A).

abuse of Respondent by her mother constitutes harm rising to the level of persecution. *See Krotova*, 416 F.3d at 1084; *Chand*, 222 F.3d at 1073.

Next, the Court considers the harm Respondent suffered by her husband, Mr. B. Respondent testified that after they married, Mr. B. consistently physically and psychologically abused Respondent during their marriage. He frequently beat her, pulled her hair, slapped her, and on two occasions, burned her with a cigarette, once on her face, leaving permanent scars. He abused her for months before he left her and moved away. The Court finds the harm Respondent suffered by Mr. B. rises to the level of persecution. *See Krotova*, 416 F.3d at 1084; *Chand*, 222 F.3d at 1073.

b. On Account of a Protected Ground

In addition to showing harm rising to the level of persecution, an applicant must show that the persecution was on account of one or more of the protected grounds enumerated in the Act: race, religion, nationality, political opinion, or membership in a particular social group. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b)(1).

Respondent asserts that she was persecuted on account of her membership in numerous particular social groups,² including “women in Mexico.” The Court understands Respondent’s proposed social group to constitute the particular social group “Mexican females.” Accordingly, the Court adopts this refined formulation of the particular social group and addresses each of the three requirements to determine the group’s cognizability under the INA below. Respondent also asserts that she was harmed on account of her political opinions, including: (1) that women have the right to pursue a career; (2) men and women have equal rights; and (3) husbands and wives have equal status. The Court understands each of these three political opinions to constitute a feminist political opinion and analyzes the protected ground as such. The Court analyzes each protected ground in turn.

i. Particular Social Group

A “particular social group” must be (1) composed of members who share a common immutable characteristic; (2) defined with particularity; and (3) socially distinct within the society in question. *See Matter of A-B-*, 27 I&N Dec. 316, 319 (AG 2018) (citing *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)). “To be cognizable, a particular social group must ‘exist independently’ of the harm asserted in an application for asylum or statutory withholding of removal.” *Id.* (quoting *M-E-V-G-*, 26 I&N Dec. at 236 n.11, 243). The Board of Immigration Appeals (“Board”) stated that “[s]ocial groups based on innate characteristics such as sex or family relationship are generally easily recognizable and understood by others to constitute social groups.” *Matter of C-A-*, 23 I&N Dec. 951, 959 (BIA 2006); *see Matter of Acosta*, 19

² Respondent proposed additional particular social groups related to her claim for past persecution including: (1) “direct descendants of _____” (2) “female children of _____” (3) “women and girls in Mexico;” and (4) “married women in Mexico.” Further, Respondent also proposed additional particular social groups for her claim of well-founded fear of persecution including: (5) “married women in Mexico who are unable to leave their relationship;” (6) “mothers of the children of _____;” and (7) “women in Mexico who are unable to leave their relationship with the father of their children.” However, the Court does not address their cognizability at this time.

I&N Dec. 211, 233 (BIA 1985).

First, common and immutable characteristics are those attributes that members of the group “either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *Acosta*, 19 I&N Dec. at 233 (listing sex, color, kinship, and shared past experiences as prototypical examples of an immutable characteristic). Respondent’s social group, “Mexican females,” satisfies the immutability requirement because it is defined by gender and nationality, two innate characteristics that are fundamental to an individual’s identity. *Id.*; see also *Perdomo v. Holder*, 611 F.3d 662, 667 (9th Cir. 2010) (reiterating that “women in a particular country, regardless of ethnicity or clan membership, could form a particular social group”); *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) (“[G]irls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group . . .”).

Second, to be cognizable, the proposed social groups must be sufficiently particular. *M-E-V-G-*, 26 I&N Dec. at 239 (“A particular social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group.”) (citation omitted); see also *Henríquez-Rivas v. Holder*, 707 F.3d 1081, 1091 (9th Cir. 2013) (en banc). The “particularity” requirement addresses the outer limits of the group’s boundaries and requires a determination as to whether the group is sufficiently discrete without being “amorphous, overbroad, diffuse, or subjective;” “not every ‘immutable characteristic’ is sufficiently precise to define a particular social group.” *A-B-*, 27 I&N Dec. at 335 (quoting *M-E-V-G-*, 26 I&N Dec. at 239). Here, the group is sufficiently particular because the membership is limited to a discrete section of Mexican society—female citizens of Mexico—and is thus distinguishable from the rest of society. See *Perdomo*, 611 F.3d at 667, 669 (rejecting the notion that a persecuted group could represent too large a portion of the population to constitute a particular social group); *M-E-V-G-*, 26 I&N Dec. at 239.

Finally, Respondent must demonstrate that the group is socially distinct within Mexico. To establish social distinction, an applicant must show that members of the social group are “set apart, or distinct, from other persons within the society in some significant way,” *M-E-V-G-*, 26 I&N Dec. at 238, and that they are “perceived as a group by society.” *Matter of W-G-R-*, 26 I&N Dec. 208, 216 (BIA 2014) (emphasis in original). The Board clarified that “a group’s recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor.” *A-B-*, 27 I&N Dec. at 330 (quoting *M-E-V-G-*, 26 I&N Dec. at 242). Legislation passed to protect a specific group can be evidence that the society in question views members of the particular group as distinct. See *Henríquez-Rivas*, 707 F.3d at 1092. Yet, “a social group may not be defined exclusively by the fact that its members have been subjected to harm.” *A-B-*, 27 I&N Dec. at 331 (citing *M-E-V-G-*, 26 I&N Dec. at 238). “[S]ocial groups must be classes recognizable by society at large” rather than “a victim of a particular abuser in highly individualized circumstances.” *Id.* at 336 (citing *W-G-R-*, 26 I&N Dec. at 217 (providing that “[t]o have the ‘social distinction’ necessary to establish a particular social group, there must be evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group”)).

The Court finds the evidence in the record demonstrates that Mexican society views members of the particular social group “Mexican females” to be distinct. *See id.* Notably, country conditions documentation in the record evinces that violence committed against Mexican females is “pandemic,” including femicide and domestic violence. Exh. 5 at 80, 255, 280. The 2017 United States Department of State Human Rights Report for Mexico (“2017 HR Report”) identified that federal law criminalizes femicide and rape, however, impunity for all crimes remained high. *Id.* at 42, 67. Indeed, Respondent’s home state of Morelos is tied for the highest number of rape and femicides. Exh. 7 at 73. Furthermore, in 2015 and 2016, the federal government began utilizing a “gender alert” mechanism to direct local authorities to “take immediate action to combat violence against women by granting victims legal, health, and psychological services and speeding investigations of unsolved cases.” Exh. 5 at 100. The government issued a “gender alert” for Morelos, and a federal agency worked to set in place measures for the security and prevention of violence for women. *Id.*; Exh. 7 at 83. The existence of these efforts demonstrates the government’s recognition of the need for specialized protection for Mexican females and, thus, that Mexican females are viewed as a distinct group from the general population in Mexico. *See Henriquez-Rivas*, 707 F.3d at 1092; *Silvestre-Mendoza v. Sessions*, No. 15-71961, 2018 WL 3237505 (9th Cir. July 3, 2018) (unpublished) (the Ninth Circuit remanded to the BIA to consider whether “Guatemalan women” constituted a particular social group because the record appeared to support that it may be “socially distinct”).³

Accordingly, the Court finds that Respondent’s particular social group “Mexican females” is cognizable under the Act. Furthermore, the Court finds that Respondent is a member of the particular social group.

ii. Particular Social Group Nexus

“Applicants must also show that their membership in the particular social group was a central reason for their persecution.” *A-B-*, 27 I&N Dec. at 319; INA § 208(b)(1)(B)(i). A “central reason” is a “reason of primary importance to the persecutors, one that is essential to their decision to act. In other words, a motive is a ‘central reason’ if the persecutor would not have harmed the applicant if such motive did not exist.” *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2008). The applicant may provide either direct or circumstantial evidence to establish that the persecutor was or would be motivated by the applicant’s actual or imputed status or belief. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). Proof of motivation may consist of statements made by the persecutor to the victim. *See Sinha v. Holder*, 564 F.3d 1015, 1021–22 (9th Cir. 2009) (providing that attackers’ abusive language showed they were motivated at least in part by a protected ground).

Here, Respondent provided sufficient direct and circumstantial evidence to establish that her membership in the social group of “Mexican females” was at least one central reason for the persecution she suffered by her mother and her husband. Although Respondent’s mother is also a member of the particular social group “Mexican females,” a person may be persecuted by members of her own social group. As the Ninth Circuit explained, “[t]hat a person shares an identity with a persecutor does not . . . foreclose a claim of persecution on account of a protected ground.” *Maini v. INS*, 212 F.3d 1167, 1175 (9th Cir. 2000). Respondent’s mother consistently

³ Although unpublished decisions are not precedential, they serve as persuasive authority.

beat her, reasoning she was preparing Respondent for her life with her future husband. Exh. 5 at 5. She told Respondent that women needed to obey their husbands, and she beat Respondent because Respondent was female and needed to prepare to be a good wife. *Id.* at 4. Viewing the evidence of record in its totality, and, in particular, her mother's statements, the Court finds that Respondent's membership in her particular social group was at least "one central reason" for her persecution by her mother. INA § 208(b)(1)(B)(i); *Parussimova*, 555 F.3d at 741.

Similarly, Respondent testified that Mr. B frequently abused her because she was a Mexican woman. On one occasion, he awoke Respondent in the middle of the night, intentionally burned her with a cigarette, and demanded that she cook him food, dragging her by the hair to the kitchen and stating that "a woman's only job was to shut up and obey her husband." Exh. 5 at 5. During another occasion of abuse, Mr. B threw Respondent to the floor and said, "You're not going to step on me. I'm the man and you're going to do what I say." *Id.* The record supports that many individuals in Mexico have an endemic perception that women are inferior to men. *See generally id.* The record also includes the declaration of Nancy K. D. Lemon, an expert on domestic violence, in which she opined "gender is one of the main motivating factors, if not the primary factor, for domestic violence. In other words, the socially or culturally constructed and defined identities, roles, and responsibility that are assigned to women, as distinct from those assigned to men, are at the root of domestic violence." *Id.* at 118. In particular, Mr. B's statements in the context of Mexican society are strong evidence that if Respondent were not a woman, he would not have harmed her in this manner. Further, a report from Mexico's interior department, the National Women's Institute, and UN Women stated, "Violence against women and girls . . . is perpetrated, in most cases, to conserve and reproduce the submission and subordination of them derived from relationships of power." *Id.* at 253. As such, in the totality of the circumstances, the Court finds that Respondent's membership in the particular social group "Mexican females" was "at least one central reason" for her persecution by Mr. B. INA § 208(b)(1)(B)(i); *Parussimova*, 555 F.3d at 741.

iii. Political Opinion

To establish that past persecution is on account of political opinion, an asylum applicant must meet two requirements. First, the applicant must demonstrate that she held, or that her persecutors believed she held, a political opinion. *Ahmed v. Keisler*, 504 F.3d 1183, 1192 (9th Cir. 2007). Second, the applicant must show that she was persecuted "because of" this actual or imputed political opinion. *Id.* The Ninth Circuit held that "[a] political opinion encompasses more than electoral politics or formal political ideology or action." *Id.* The factual circumstances of the case alone may at times be sufficient to demonstrate that the persecution was committed on account of a political opinion. *Nayas*, 217 F.3d at 657.

Respondent asserts that Mr. B and her mother also persecuted her on account of her feminist political opinion. Respondent expressed her belief in the equality of men and women, including equality in opinions, worth, and support; she also believes that as a woman, she has the right to work. The Court finds Respondent's views constitute a political opinion. *See Ahmed*, 504 F.3d at 1192; *see also Fatin v. INS*, 12 F.3d 1233, 1242 (3d Cir. 1993) (stating there is "little doubt that feminism qualifies as a political opinion within the meaning of the relevant statutes").

Next, the Court considers whether Respondent's political opinion was one central reason for the persecution she suffered by her mother and Mr. B. See INA § 208(b)(1)(B)(i); *Navas*, 217 F.3d at 656. Respondent testified that her mother abused her to teach her that women needed to obey their husbands and that husbands were in charge. Respondent also testified that her mother admitted to physically abusing Respondent because she would "answer back." The record indicates that Respondent's mother was not primarily motivated to harm Respondent because of her political opinion. See *Parussimova*, 555 F.3d at 741. Therefore, the Court finds that Respondent's political opinion was not one central reason for the persecution she suffered by her mother. See INA § 208(b)(1)(B)(i). However, the Court finds that Respondent's feminist political opinion was "a reason" for the persecution because Respondent's mother disagreed with Respondent's political opinion and abused Respondent, in part, for disagreeing with her. See INA § 241(b)(3)(A); see *Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017) (nexus standard for withholding of removal is the protected ground must have been "a reason" for the persecution).

However, the evidence in the record demonstrates that Respondent's feminist political opinion was one central reason for the persecution by Mr. B. Respondent testified that Mr. B. burned her with a cigarette because she refused to quit her job and disobeyed his instruction to quit. Mr. B. also burned her face with a cigarette to show her that they were not equals, he was in charge, and to impress these principles upon her since he believed she did not understand them. She also testified that he beat her because she believed she had the right to her own opinions and ideas; specifically, Mr. B. beat her when she expressed her opinion that she had a right to work or she refused to cook for him. Based on Mr. B.'s actions and statements, the Court finds that Respondent's political opinion was at least one central reason for the persecution by Mr. B. See INA § 208(b)(1)(B)(i); *Parussimova*, 555 F.3d at 741. Therefore, the Court finds that Mr. B. persecuted Respondent on account of her feminist political opinion. See *Ahmed*, 504 F.3d at 1192.

c. Government Unable or Unwilling to Control Persecutor

Finally, the applicant must demonstrate that the persecution she experienced was inflicted by the government or forces the government was unable or unwilling to control. *Navas*, 217 F.3d at 655–56. Prior unheeded requests for authorities' assistance or showing that a country's laws or customs deprive victims of meaningful recourse to protection may establish governmental inability or unwillingness to protect. See *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073–74 (9th Cir. 2017) (en banc) (providing that where "ample evidence demonstrates that reporting [persecution to police] would have been futile and dangerous," applicants are not required to report their persecutors"); *Afriyie v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010) (holding that "the authorities' response (or lack thereof)" to reports of persecution provides "powerful evidence with respect to the government's willingness or ability to protect" the applicant and noting that authorities' willingness to take a report does not establish they can provide protection). Yet, applicants "must show not just that the crime has gone unpunished, but that the government is unwilling or unable to prevent it." *A-B-*, 27 I&N Dec. at 338. The Ninth Circuit also recognizes that there are significant barriers for children to report abuse. *Bringas-Rodriguez*, 850 F.3d at 1071.

Respondent testified that she did not report the abuse she suffered by her mother or Mr. B to the police because she believed it would be futile and that the police would not help her. *See id.* at 1073–74. Specifically, Respondent mentioned a friend who reported severe abuse by her husband to the police; however, the police merely told Respondent's friend to "stop gossiping," instructed Respondent's friend to return to her house to do her "duties," and blamed Respondent's friend for the abuse because she was not doing her chores. *See Afritye*, 613 F.3d at 931.

The country conditions evidence in the record overwhelmingly establishes that any efforts by Respondent to report the abuse by Mr. B would have been futile. Although "[t]he fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime," here, the record supports Respondent's testimony and indicates that the Mexican government is unable or unwilling to control Respondent's persecutors. *A-B-*, 27 I&N Dec. at 337. The 2017 HR Report states that impunity for human rights abuses in Mexico remained a problem, "with extremely low rates of prosecution for all forms of crimes." Exh. 5 at 42. Morelos, Respondent's home state, has the fourth highest murder rate in the country and ranks in the top two for rape. Exh. 7 at 94. Relatedly, police and military were involved in serious human rights abuses and benefitted from the trend of impunity. Exh. 5 at 80, 88. A 2016 report found that nearly one in ten of Mexico's police officers are unfit for service, and the country faces serious issues of police corruption on both the federal and local level with federal counter corruption efforts continually failing. *Id.* at 308, 312–17.

Furthermore, "Mexican laws do not adequately protect women and girls against domestic and sexual violence." *Id.* at 269. Although federal laws address domestic violence, federal law does not criminalize spousal abuse, and the "[s]tate and municipal laws addressing domestic violence largely failed to meet the required federal standards and often were unenforced." *Id.* at 67. Violence against women and domestic violence continue to be some of the most serious human rights abuses in Mexico, with approximately two-thirds of women in Mexico having experienced gender-based violence during their lives. *Id.* at 80, 198. Although the federal government has issued some "gender alerts" to focus efforts on assisting women victims of domestic violence, there has not yet been a noticeable impact. *Id.* at 101, 202. In addition, often, domestic violence victims did not report abuses due to fear of spousal reprisal, stigma, and societal beliefs that abuse did not merit a complaint. *Id.* at 100.

Additionally, in protective services, including police services, bias against women leads to inadequate investigations of abuse, resulting in impunity for abusers. *Id.* at 185–86, 202. In fact, investigations regarding femicide cases revealed that 70% of femicides were committed by intimate partners, and "the majority of [victims] had sought help from government authorities, but that nothing had been done because this type of violence was considered to be a private matter." *Id.* at 187; *see also id.* at 297. Further, the Mexican government admitted its role in gender issues in the country, citing their "culture deeply rooted in stereotypes, based on the underlying assumption that women are inferior." *Id.* at 187–88. There "has not been success in changing the cultural patterns that devalue women and consider them disposable." *Id.* at 251.

Finally, despite efforts on the federal level to combat gendered violence, criminal investigations continue to be ineffective. *See id.* at 192. A common response from police is to not take a report of abuse seriously, similar to the response experienced by Respondent's friend. *Id.* Common responses by police include attempts to convince women not to file a complaint, or in the case where authorities do respond, they negotiate a "reconciliation" between the victim and the abuser. *Id.* Police treat domestic violence reporting as though it was the "normal state of affairs." *Id.* at 258 (internal quotation marks omitted). In addition, Mexican law enforcement authorities are not equipped to respond quickly or to effectively enforce protective orders. *Id.* at 193. The record indicates that "cases of violence against women are not properly investigated, adjudicated or sanctioned." *Id.* at 257.

In light of the evidence in the record, the Court finds that Respondent has shown that reporting the persecution to the authorities would have been futile or would have subjected her to further abuse. *See Bringas-Rodriguez*, 850 F.3d at 1073-74. Thus, the Court finds that Respondent met her burden to show that the government either condoned the actions of private actors or demonstrated a complete helplessness to protect victims like Respondent. *See A-B*, 27 I&N Dec. at 337.

Although the Attorney General stated in *A-B* that "[g]enerally, claims by aliens pertaining to domestic violence . . . perpetrated by non-governmental actors will not qualify for asylum," the Attorney General did not foreclose this possibility, and the Court finds that in this particular case, Respondent established that she was persecuted on account of her membership in the particular social group "Mexican females" and her feminist political opinion by actors the Mexican government was unable or unwilling to control. *A-B*, 27 I&N Dec. at 320; *see* INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b).

2. Well-Founded Fear of Future Persecution

Because Respondent has demonstrated that she suffered past persecution in Mexico on account of a protected ground by actors that the government is unable or unwilling to control, she is entitled to a presumption that she has a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). DHS may overcome this presumption by showing, by a preponderance of the evidence, that (1) there has been a fundamental change in circumstances such that Respondent no longer has a well-founded fear of persecution in Mexico, or (2) Respondent could avoid future persecution by relocating to another part of the country. *See* 8 C.F.R. § 1208.13(b)(1)(i).

a. Fundamental Change in Circumstances

The evidence indicates that Respondent no longer has a well-founded fear of persecution by her mother on account of her particular social group of "Mexican females." Respondent's mother abused her during the time she resided at home with her parents. Now, however, Respondent is no longer a child and does not live in her parents' home. Given these facts, Respondent's circumstances have fundamentally changed such that her mother does not remain a

danger to her, and the Court finds that Respondent no longer has a well-founded fear of persecution by her mother on account of a protected ground. 8 C.F.R. § 1208.13(b)(1)(i)(A).

However, Mr. B has continued to contact and harass Respondent, including as recently as two years ago. Mr. B and Respondent's daughter, Ms. R, stated in her declaration that her father continues to ask about Respondent and is angry because Respondent was in a relationship with another man. Exh. 5 at 23. DHS did not present evidence to indicate a fundamental change in circumstances regarding Mr. B. See 8 C.F.R. § 1208.13(b)(1)(i). Therefore, the Court concludes that DHS failed to meet its burden to show that there has been a fundamental change in circumstances such that Respondent no longer has a well-founded fear of persecution by Mr. B on account of a protected ground. 8 C.F.R. § 1208.13(b)(1)(i)(A).

b. Internal Relocation

In a case in which the applicant has demonstrated past persecution, DHS bears the burden of proving by a preponderance of the evidence that the applicant could avoid future persecution by relocating to another part of the applicant's country of nationality and it would be reasonable to expect the applicant to do so. 8 C.F.R. § 1208.13(b)(1)(ii); see also *A-B-*, 27 I&N Dec. at 344-45 (The Court "must consider, consistent with the regulations, whether internal relocation in [the applicant's] home country presents a reasonable alternative before granting asylum."). Generalized information about country conditions is not sufficient to rebut the presumption of a well-founded fear of future persecution. *Molina-Estrada v. INS*, 293 F.3d 1089, 1096 (9th Cir. 2002). Rather, DHS must introduce evidence that rebuts the applicant's specific grounds for fearing future persecution on an individualized basis. *Id.*

Here, Respondent testified that her entire family lives on the same piece of land as her parents' home. In addition, Respondent remains married to Mr. B. As recently as two years ago, Mr. B called Respondent seeking information regarding her location; he expressed that he wanted her to live with him again. She refused and changed her phone number. However, Mr. B continued to send her messages through Facebook asking about her whereabouts. Further, DHS has not introduced individualized evidence demonstrating that Respondent could avoid future persecution by relocating to another part of the country. See *Gonzales-Hernandez v. Ashcroft*, 336 F.3d 995, 997-98 (9th Cir. 2003) (holding that the government must introduce evidence that, on an individualized basis, rebuts the applicant's specific grounds for fearing future persecution). Accordingly, the Court finds that DHS failed to meet its burden to show that Respondent could relocate within Mexico and thus, DHS failed to rebut Respondent's presumption of a well-founded fear of future persecution by Mr. B both on account of her particular social group membership and her political opinion. *Id.*; 8 C.F.R. § 1208.13(b)(1)(ii). Therefore, the Court finds Respondent is statutorily eligible for asylum. See INA § 208(b)(1)(A).

c. Independent Well-Founded Fear

In the alternative, even in the absence of past persecution, an applicant may be eligible for asylum based on a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). An applicant has a well-founded fear of persecution if (1) she fears persecution in the country of

nationality on account of race, religion, nationality, membership in a particular social group, or political opinion, (2) there is a reasonable possibility of suffering such persecution if she were to return to that country; and (3) she is unable or unwilling to return to, or avail herself of the protection of that country because of such fear. See 8 C.F.R. § 1208.13(b)(2)(i). To demonstrate a well-founded fear, the applicant need not prove that persecution is more likely than not; even a ten-percent chance of persecution is sufficient to establish that persecution is a reasonable possibility. *Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987)).

i. Subjectively Genuine and Objectively Reasonable Fear

A well-founded fear of future persecution must be both subjectively genuine and objectively reasonable. *Ahmed*, 504 F.3d at 1191. The subjective test is satisfied by credible testimony that the applicant genuinely fears persecution on account of a statutorily protected ground that is perpetrated by the government or by forces the government is unable or unwilling to control. *Rusak v. Holder*, 734 F.3d 894, 896 (9th Cir. 2013). The objective component requires “credible, direct, and specific evidence” that the applicant risks persecution in her home country. *Id.*

In the instant case, Respondent credibly testified that she fears her ex-partner, Mr. H , will locate her and physically harm or kill her in Mexico. A respondent’s credible testimony of fear of harm satisfies the subjective prong for a well-founded fear of persecution. See *id.* Accordingly, the Court finds that Respondent established that her fear is subjectively genuine. See *id.*

Next, the Court considers whether Respondent established through “credible, direct, and specific evidence” that her fear of returning to Mexico is objectively reasonable. See *id.* First, Respondent testified at length regarding the atrocious abuse she endured from 1998 until 2016 during her relationship with Mr. H in the United States. Over the course of their relationship, he consistently beat, raped, strangled, and psychologically abused her. Respondent testified that Mr. H raped her approximately five times per month and beat her approximately three times per month. The record also includes photographic evidence of the injuries Respondent sustained from the abuse by Mr. H . Exh. 5 at 29–38.

In addition, Ms. R stated in her declaration that Mr. H contacted her and her siblings seeking information regarding Respondent’s location and stated that he was in Chiapas, Mexico. Exh. 5 at 24; see also Exh. 5 at 39 (text messages from Mr. H seeking Respondent’s address in Mexico). Furthermore, the record reflects that Mr. H will have the ability, if he is not already present in Mexico, to enter Mexico and find and harm Respondent. Mr. H , as the father of three Mexican citizen children, could self-petition for permanent residency in Mexico, placing him in a position to have access to finding and harming Respondent. See Exh. 7 at Tab B–C. Additionally, Mr. H repeatedly beat and raped Respondent when she resisted reconciling with him or attempted to leave him in the past. Therefore, because Mr. H has expressed that he will attempt to find Respondent, it is likely that if Respondent again resists Mr. H , she is at a high risk of harm by him. Considering the totality of the circumstances, the Court finds that Respondent’s fear of future

harm by Mr. H is objectively reasonable, and she faces a chance greater than ten percent of persecution occurring upon her return to Mexico. *Al-Harbi*, 242 F.3d at 888.

iii. On Account of a Protected Ground

Respondent asserts that she will suffer persecution by Mr. H on account of her membership in the particular social group "Mexican females" and on account of her feminist political opinion. As discussed *supra*, the Court finds Respondent's proposed social group of "Mexican females" to be cognizable and that Respondent is a member of the group. In addition, the Court finds that Respondent holds a feminist political opinion, as discussed *supra*. Accordingly, the Court considers whether either protected ground would be one central reason for the persecution she would face in Mexico. INA § 208(b)(1)(B)(i).

The Court finds that Respondent's membership in the particular social group "Mexican females" would be at least "one central reason" for her future persecution. *Id.* Respondent has an objectively reasonable fear of persecution by Mr. H, particularly due to the abuse she suffered in the past. For example, on one occasion when Respondent rejected his sexual advances, Mr. H stated that Respondent was "his woman and had to have sex with him whenever he wanted," and thereafter raped Respondent. Exh. 5 at 8. On other occasions, Mr. H stated that Respondent needed to have sex with him whenever he wanted because she was a woman and thus, "his slave." *Id.* at 15. Mr. H also frequently bit Respondent, leaving marks on her neck and arms to show that she was "[his] woman" because others "need[ed] to know it." *Id.* at 9. These statements establish that Mr. H frequently harmed Respondent in the past because she was a woman, and the Court finds that her membership in her particular social group "Mexican females" would be at least one central reason for her future persecution. *See* INA § 208(b)(1)(B)(i).

The Court also finds that Respondent's feminist political opinion would be one central reason for her future persecution, particularly because of her past experiences, which form the basis of her objectively reasonable fear of persecution. *Id.* Respondent testified that Mr. H frequently beat and raped her when she resisted his domination of her as the male head of the household. *See* Exh. 5 at 9-10. On one occasion, Mr. H beat Respondent so badly that she had a vaginal hemorrhage because she entered their home and told Mr. H that his friends should leave; he warned Respondent that she was not permitted to speak when entering the room. He also beat Respondent when she expressed her own opinions, justifying the abuse by stating that she was not allowed to have her own opinions or a say. Mr. H also exerted his dominance and control over Respondent by demanding she only work with other women and dress as he desired. If she resisted due to her belief that they were equal partners, Mr. H harmed her. Because Respondent's feminist opinion was a focus of Mr. H's abuse in the past, the Court finds that her feminist political opinion would be one central reason for her future persecution. *See* INA § 208(b)(1)(B)(i).

Therefore, the Court finds Respondent would face future persecution on account of both her membership in the particular social group "Mexican females" and her feminist political opinion. *See id.*

iv. Government Unable or Unwilling to Control

Respondent must also establish that the persecution she would suffer will be inflicted by forces the government is unable or unwilling to control. *See Navas*, 217 F.3d at 655–56. The Court finds for the same reasons articulated in Section III.B.1.c. *supra*, the Mexican government would be unable or unwilling to control Mr. H. In addition, the Court notes that Respondent testified that if Mr. H. found her in Mexico and persecuted her, she would try to report it to the police, but she believed it would be futile. She believed the lack of police protection would result in impunity for Mr. H., giving him more power to abuse her in any manner he desired. Accordingly, the Court finds that Respondent met her burden to establish that the persecution she would suffer would be inflicted by actors the government is unable or unwilling to control. *See Navas*, 217 F.3d at 655–56.

v. Internal Relocation

If the applicant failed to demonstrate past persecution, to establish a well-founded fear of persecution, it is the applicant's burden to show that she could not avoid persecution by relocating to another part of the country and it would not be reasonable to expect her to do so. *See A-B-*, 27 I&N Dec. at 344–45; 8 C.F.R. § 1208.13(b)(2)(ii).

Here, Respondent established that she could not avoid persecution by relocating to another part of the country. *See* 8 C.F.R. § 1208.13(b)(2)(ii). Respondent testified that although she believed Mr. H. was removed to his native Guatemala, she believes he is presently in Mexico because his entire family resides in Mexico. Further, Ms. R. stated in her declaration that she spoke with Mr. H. and he stated in was in Chiapas and persists in seeking information regarding Respondent from her. Exh. 5 at 24.

In addition, Respondent stated that approximately one week after she was removed to Mexico, Mr. H. called her on her cell phone and told Respondent he was going to find her. During a second phone call, Mr. H. stated that he already confirmed that Respondent was residing at her parents' home in Mexico, and he would be "coming for [Respondent]." Despite Respondent's repeated pleas to Mr. H. to leave her alone, he continued to attempt to acquire information about Respondent's whereabouts through their children. Respondent fled to the United States after she continued to receive menacing phone calls from Mr. H. Respondent believes Mr. H. would be able to locate her anywhere in Mexico through their children or through their children's school documentation. *See also* Exh. 5 at 194–96 (abusers continue to have a right to obtain information about their children, making it relatively easy for an abuser to locate a woman fleeing his abuse). Indeed, their son stated in his declaration that Mr. H. contacted him seeking information regarding Respondent's location. *Id.* at 21. In addition, as previously noted, Respondent's entire family lives on the same piece of land as her parents' home. Further, country conditions evidence evinces that violence against women is a nationwide problem. *See generally* Exhs. 5, 9.

Because Respondent has established that she is likely to face danger throughout Mexico on account of her membership in a particular social group or political opinion, the Court finds

that she has met her burden of establishing that she cannot internally relocate to avoid persecution and it would not be reasonable for her to do so. Therefore, the Court finds that Respondent established that she has a well-founded fear of persecution and is statutorily eligible for asylum. See INA §§ 101(a)(42)(A), 208(b)(2)(B).

3. Discretion

"Asylum is a discretionary form of relief from removal, and an applicant bears the burden of proving not only statutory eligibility for asylum but that she also merits asylum as a matter of discretion." *A-B-*, 27 I&N Dec. at 345 n.12; see also INA § 240(c)(4)(A)(ii). This determination requires a weighing of both the positive and negative factors presented in Respondent's case. *Kalubi v. Ashcroft*, 364 F.3d 1134, 1139-40 (9th Cir. 2004); *Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987) (*superseded in part by regulation on other grounds as stated in Andriasian v. INS*, 180 F.3d 1033, 1043-44, n.17 (9th Cir. 1999)). To determine whether an asylum applicant merits relief in the exercise of the Court's discretion, the Court must consider the totality of the circumstances including the severity of the past persecution suffered and the likelihood of future persecution. *Gulla v. Gonzales*, 498 F.3d 911, 916 (9th Cir. 2007); *Kalubi*, 364 F.3d at 1138. "[D]iscretionary factors should be carefully evaluated in light of the unusually harsh consequences which may befall an alien who has established a well-founded fear of persecution; the danger of persecution should generally outweigh all but the most egregious of adverse factors." *Pula*, 19 I&N Dec. at 474. Factors to consider include the applicant's age, health, and ties to the United States, among others. *Id.*

Here, Respondent has many positive equities. Respondent has lived in the United States for approximately 28 years. She is the primary wage earner for her family, has a consistent work history, and owns her own business. Respondent has three United States citizen children, two of whom live in the United States. She actively participates in her children's education. See Exh. 3. Furthermore, Respondent suffered severe past persecution and has a high likelihood of suffering severe persecution should she be removed to Mexico. Additionally, she continues to suffer from post-traumatic stress disorder and major depressive disorder due to the abuse and harm she experienced throughout her life. See Exh. 9 at Tab C. She testified that should she be granted asylum, she would like to continue working on her business and raising her children.

These positive equities must be weighed against Respondent's negative equities; namely, her criminal history. In 2007, Respondent was convicted of criminal impersonation and was sentenced to one year of probation. Exh. 7 at 6-25. Respondent testified that when she attempted to renew her Arizona identification, she was instructed to include a social security number and she wrote down a random number. Respondent was also convicted of shoplifting and sentenced to pay a fine in 2007. *Id.* at 3-4. Finally, in 2017, Respondent was convicted for illegal entry and sentenced to 150 days of confinement. *Id.* at 27-29. While the Court does not condone Respondent's actions, her convictions are for relatively minor and nonviolent crimes. Respondent did not display an intent to defraud anyone, and Respondent's conviction for illegal entry was committed in the context of her attempt to flee Mexico.

Therefore, after carefully reviewing the entire record and weighing the equities in this case, the Court finds that Respondent warrants a favorable exercise of discretion, and the Court grants Respondent asylum in the exercise of discretion. *See A-B*, 27 I&N Dec. at 345 n.12.

C. Alternative Finding: Withholding of Removal

Withholding of removal requires an applicant to establish that his life or freedom would be threatened in the country of removal because of her race, religion, nationality, membership in a particular social group, or political opinion. INA § 241(b)(3)(A); *see Barajas-Romero*, 846 F.3d at 360 (explaining that the nexus requirement for withholding of removal includes weaker motives than the “one central reason” asylum standard). An applicant may prove eligibility for withholding of removal either (1) by establishing a presumption of future persecution based on past persecution that DHS does not rebut, or (2) through an independent showing of a clear probability of future persecution. *INS v. Stevic*, 467 U.S. 407, 429–30 (1984); 8 C.F.R. §§ 1208.16(b)(1)–(2). The Supreme Court defined “clear probability of persecution” to mean that it is “more likely than not” the applicant would be subject to persecution on account of a protected ground if returned to the proposed country of removal. *Cardoza-Fonseca*, 480 U.S. at 429.

For the same reasons elucidated above, considering the entire record, the Court also finds Respondent is statutorily eligible for withholding of removal because it is more likely than not that her life or freedom would be threatened in the future in Mexico because of a protected ground. *See* INA § 241(b)(3)(A); 8 C.F.R. § 1208.16(b)(2). Accordingly, the Court grants Respondent withholding of removal in the alternative.

D. Alternative Finding: Protection Under the Convention Against Torture

Protection under the CAT is mandatory relief if the requirements are met. 8 C.F.R. § 1208.16(c). The applicant bears the burden of establishing that it is more likely than not she would be tortured by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity if removed to Mexico. *Id.*; *Zheng v. Asheroft*, 332 F.3d 1186, 1194 (9th Cir. 2003). Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as intimidation, coercion, punishment, or discrimination, by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity, including willful blindness. 8 C.F.R. § 1208.18(a)(1). The Ninth Circuit held that the applicant need only show “awareness” and “willful blindness” on the part of government officials. *Zheng*, 332 F.3d at 1197. Under the Ninth Circuit’s interpretation, “[i]t is enough that public officials could have inferred the alleged torture was taking place, remained willfully blind to it, or simply stood by because of their inability or unwillingness to oppose it.” *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1060 (9th Cir. 2006).

The Court must consider all evidence relevant to the likelihood of future torture, including, but not limited to: past torture inflicted upon the applicant; evidence that she could relocate to another part of Mexico where it is unlikely she will be tortured; gross, flagrant, or mass violations of human rights; and other relevant information regarding conditions in Mexico.

See 8 C.F.R. § 1208.16(c)(3).

Respondent believes Mr. B. or Mr. H. will rape or kill her if she returns to Mexico. The evidence in the record corroborates Respondent's fear of torture. First, Respondent credibly testified that she experienced torture in the past by both men. See *Edu v. Holder*, 624 F.3d 1137, 1145 (9th Cir. 2010) (quoting *Nuru v. Gonzales*, 404 F.3d 1207, 1218 (9th Cir. 2005) (the existence of past torture "is ordinarily the principal factor on which [the court must] rely")). Mr. B. beat her numerous times, and he burned her with a cigarette on two occasions. In addition, Mr. H. repeatedly raped and beat Respondent. The Court is satisfied that both Mr. B. and Mr. H. intentionally inflicted severe pain and suffering upon Respondent that rises to the level of torture. See 8 C.F.R. § 1208.18(a)(1).

Moreover, Respondent continues to suffer the effects of the torture today. See *Mohammed v. Gonzales*, 400 F.3d 785, 802 (9th Cir. 2005) (stating that evidence of past torture that causes "permanent and continuing harm" may be sufficient to establish eligibility for CAT relief). Respondent suffers from post-traumatic stress disorder and major depressive disorder due to the abuse and harm she experienced throughout her life. See Exh. 9 at Tab C. She continues to think about the abuse she experienced every day and suffers from frequent nightmares of her former partners trying to kill her. *Id.*

Additionally, Mexican females continue to have limited, if any, means to escape violence, particularly in family relationships. Exh. 5 at 181. Mexico continues to display "deep and persistent insensitivity to gender issues," causing widespread gender-based violence throughout society, as well as in domestic relationships. *Id.* The Court previously found that Respondent could not relocate to avoid harm from either Mr. B. or Mr. H. If women attempt to move elsewhere in the country, they are unprotected and there are no guarantees for their safety. *Id.* Based on the combination of all of the above factors, the Court finds that Respondent would not be able to safely relocate in Mexico, contributing to the likelihood that she would more likely than not be tortured if returned to Mexico.

Respondent has also demonstrated that it is more likely than not that she will be tortured with the consent or acquiescence of the Mexican government. See 8 C.F.R. § 1208.18(a)(1). The country-conditions documentation indicates that the Mexican government has made attempts to curb violence against women; for example, it has enacted the gender alert systems intended to protect women. See Exh. 5 at 202. However, the record indicates that the government's actions have had no effect on the current situation in Mexico and laws protecting women are not enforced effectively. *Id.* The Mexican legal system is unresponsive and ineffective, and as discussed above, justice officials are unwilling or unable to protect women from gender-related harms in their homes and elsewhere, despite recent efforts to improve this problem. *Id.* at 181. This is reflected in the few prosecutions or convictions for femicides. *Id.* at 202.

Not only is the Mexican government ineffective in protecting women from sexual violence and torture, but the record contains evidence that the government is aware of and "willfully blind" to such treatment. The Mexican government admitted the country's difficult adjustment from its mentality that women are inferior. *Id.* at 187-88. As previously noted, police often do not seriously consider reports of abuse and commonly negotiate a reconciliation

with abusers, placing the woman reporting the abuse at risk of future harm; police treat domestic violence, including incidents of torture by a partner, as the "normal state of affairs." *See id.* at 192, 258. This culture of violence against women, combined with high levels of impunity for gender-based violence, sufficiently demonstrate a pattern of acquiescence by government officials to the type of violence women like Respondent face. *See id.* at 251, 253.

Based on this evidence, the Court finds that Respondent has established that it is more likely than not that she will be tortured with the acquiescence of the Mexican government upon her return. 8 C.F.R. § 1208.16(c). Accordingly, the Court grants Respondent protection under CAT in the alternative.

IV. CONCLUSION

The Court finds that Respondent suffered past persecution and has a well-founded fear of persecution on account of her membership in a particular social group and her political opinion. The Court also finds that the Mexican government is unable or unwilling to protect Respondent and that she cannot internally relocate within Mexico. Thus, she is statutorily eligible for asylum, and the Court grants her application in the exercise of its discretion. Finally, the Court finds that Respondent is statutorily eligible for withholding of removal under INA § 241(b)(3) and protection under CAT, and the Court would grant Respondent's applications for such relief in the alternative.

In light of the foregoing, the following order⁴ shall enter:

ORDER

IT IS HEREBY ORDERED that Respondent's application for asylum under INA § 208(a) be and hereby is **GRANTED**.


 Miriam Hayward
 Immigration Judge

⁴ Pursuant to 8 CFR § 1003.47(i), a copy of the post order instructions and information on the orientation on benefits available to asylees is attached to this decision and hereby served on the parties.