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

No. 18-72833
Agency File No. 205-256-857

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**SANTOS MAUDILIA DIAZ-REYNOSO,**
*Petitioner*,

*v.*

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

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

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# BRIEF OF *AMICUS CURIAE* THE HARVARD IMMIGRATION AND REFUGEE CLINICAL PROGRAM

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## RULE 26.1 DISCLOSURE STATEMENT

The Harvard Immigration and Refugee Clinical Program ("HIRC") is a clinical program at Harvard Law School. No publicly-held entity owns an interest of ten percent or more in HIRC, and it does not have any members who have issued shares or debt securities to the public.

Dated: February 25, 2020

Respectfully submitted,

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## INTEREST OF AMICUS CURIAE

The Harvard Immigration and Refugee Clinical Program ("HIRC") submits this brief pursuant to Federal Rules of Appellate Procedure, Rule 29(a) and Circuit Rule 29-3.[1] HIRC has been a leader in the field of refugee and asylum law for over 30 years and has a direct interest and extensive expertise in the proper development and application of immigration and asylum law, so that claims for protection receive fair and full consideration under existing standards of law.

HIRC is dedicated to the representation of individuals applying for asylum and related protections, as well as the representation of individuals in immigration proceedings who have survived domestic violence and other crimes and are defending themselves against forced removal. 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 appellate litigation and policy advocacy.

[1] Petitioner consents to this filing and Respondent opposes this filing. Amicus states that no counsel for the party authored this brief in whole or in part, and no party, party's counsel, or person or entity other than Amicus and their counsel contributed money that was intended to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

HIRC attorneys are recognized experts in asylum law, including asylum cases involving gender. HIRC was central to the drafting of the historic U.S. Gender Asylum Guidelines, which were adopted by the federal government, and HIRC has filed briefs as amicus curiae in cases before the U.S. Supreme Court, the federal courts of appeals, the Board of Immigration Appeals, and various international tribunals.

Among HIRC's clients are victims of human rights abuses from all over the world, including women applying for refugee protection. Accordingly, HIRC has a direct interest in the outcome of this action and respectfully submits this brief in support of the Petitioner.

## INTRODUCTION

*Matter of A-B-*, 27 I. & N. Dec. 316 (A.G. 2018), did not overrule the seminal decision *Matter of Acosta*, in which the Board explicitly recognized "sex" as a quintessential example of a cognizable particular social group ("PSG"). *See Matter of Acosta*, 19 I. & N. Dec. 211, 233 (BIA 1985). Indeed, since *A-B-*, this Court and the Board itself have repeatedly reaffirmed that gender alone can constitute a cognizable social group, depending on the evidence presented in a given case. Immigration judges across the country have also time and again

recognized gender as a basis for asylum or withholding of removal post-*A-B-* and have granted gender-based claims for protection.

In *A-B-*, the Attorney General favorably cited *Acosta*, highlighting 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." *A-B-*, 27 I. & N. Dec. at 328. This endorsement is hardly surprising: *Acosta*'s conclusion that gender alone can constitute a cognizable PSG is faithful to the Immigration and Nationality Act ("INA") and to the *ejusdem generis* canon of statutory interpretation. Gender-based particular social groups, including those defined by gender alone, "are not defined exclusively by the fact [their] members have been subjected to harm," and are therefore not impermissibly circular. *See Matter of A-M-E- & J-G-U-*, 24 I. & N. Dec. 69, 74 (BIA 2007). Such groups also satisfy the additional requirements of particularity and social distinction announced in more recent Board decisions since *Acosta*. *See, e.g.*, *Matter of M-E-V-G-*, 26 I. & N. Dec. 227 (BIA 2014) (noting that social group determinations are made on a case-by-case basis).

Thus, in failing to recognize that Petitioner is a member of a cognizable particular social group under *Acosta* and those decisions, the Board overlooked what

courts have long recognized both nationally and internationally: the Refugee Convention provides protection to victims of gender-based violence.[2]

Accordingly, the Court should vacate the Board's decision.

## ARGUMENT

### I. MEMBERSHIP IN A COGNIZABLE PARTICULAR SOCIAL GROUP MAY BE ESTABLISHED BASED ON GENDER ALONE

Following *Matter of A-B-*, this Court, the Board, and immigration judges have all repeatedly recognized that gender alone can form the basis of a cognizable PSG. In *Silvestre-Mendoza v. Sessions*, for example, this Court recognized "Guatemalan women" as cognizable, emphasizing that gender was "the gravamen of [the petitioner's] complaint." *Silvestre-Mendoza v. Sessions*, 729 F. App'x 597, 598 (9th Cir. 2018); *see also Ticas-Guillen v. Whitaker*, 744 F. App'x 410 (9th Cir. 2018)

[2] Critically, demonstrating membership in a particular social group is by itself insufficient to qualify an applicant for protection. As is true in cases based on the other protected grounds (such as race or religion), the applicant must also demonstrate that she meets all elements of the refugee definition. *See* 8 U.S.C. § 1101(a)(42). This includes, *e.g.*, demonstrating the requisite nexus between a protected ground and her past persecution and/or feared future persecution. *See Niang v. Gonzales*, 422 F.3d 1187, 1199–1200 (10th Cir. 2005) (explaining the nexus element's limiting function).

(finding that "gender and nationality can form a particular social group"). So too here.

The Board and immigration judges across the country continue to recognize the cognizability of gender-based social groups, and have granted protection on that basis. *See*, *e.g.*, *A-C-A-A-*, (San Francisco Immigration Court, May 20, 2019) (unpublished) (citing *Matter of A-B-* and granting asylum based on membership in a cognizable PSG of "Salvadoran females"), Add. 75–77, 82;[3] *aff'd A-C-A-A-*, (BIA, Nov. 6, 2019) (unpublished), Add. 68; *T-S-M-*, (BIA, Apr. 16, 2019) (unpublished) ("[B]eing a woman is an immutable characteristic . . . as gender is fundamental to one's individual identity or conscience."), Add. 112; —, (Denver Immigration Court, Mar. 7, 2019) (unpublished) (finding "Mexican women" cognizable and granting asylum), Add. 33–34, 43; —, (San Francisco Immigration Court, Sept. 13, 2018) (unpublished) (finding "Mexican females" cognizable and granting asylum and, in the alternative, withholding of removal), Add. 51–53, 65; —, (Boston Immigration Court, June 18, 2019) (unpublished) (finding "Guatemalan women" cognizable and granting asylum), Add. 21–24, 27; *C-*, (Philadelphia Immigration

[3] All unpublished agency decisions cited here have been included in the Addendum.

Court, May 15, 2019) (unpublished) (same), Add. 96–99, 102; —, (Arlington Immigration Court, 2018) (unpublished) (finding "women in Honduras" cognizable and granting asylum), Add. 6–10, 12.

## II. THE CONCLUSION THAT GENDER ALONE IS SUFFICIENT TO ESTABLISH MEMBERSHIP IN A PARTICULAR SOCIAL GROUP IS FAITHFUL TO THE INA, AS RECOGNIZED IN *ACOSTA*

The recognition that gender alone is sufficient to establish membership in a cognizable PSG dates back to the Board's seminal 1985 decision in *Matter of Acosta*. In that case, the Board drew on the *ejusdem generis* canon of statutory construction, which "holds that general words used in an enumeration with specific words should be construed in a manner consistent with the specific words," in order to clarify the meaning of the "membership in a particular social group" ground for asylum. *Acosta*, 19 I. & N. Dec. at 233. Looking to the other four protected grounds—race, religion, nationality, and political opinion—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.* The Board then recognized that "[t]he shared characteristic" for purposes of establishing asylum eligibility "might be . . . sex, color, or kinship ties." *Id.*

Circuit courts of appeal have long accepted the *Acosta* framework and recognized gender as an immutable characteristic. Reasoning from *Acosta*, this Court observed 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[.]" *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005); *see also Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010) (remanding the Board's decision that "women in Guatemala" could not constitute a particular social group because it was "inconsistent with . . . *Acosta*").

In *Niang v. Gonzales*, the Tenth Circuit "[a]ppl[ied] the *Acosta* definition" to find that "female members of a tribe" qualified as a PSG, observing that "[b]oth gender and tribal membership are immutable characteristics." 422 F.3d 1187, 1199–1200 (10th Cir. 2005). And, in *Hassan v. Gonzales*, the Eighth Circuit recognized

the PSG "Somali women" based on the applicant's "possession of the immutable trait of being female." 484 F.3d 513, 518 (8th Cir. 2007).

As far back as 1993, then-Judge Alito of the Third Circuit cited *Acosta* approvingly in *Fatin v. INS*. 12 F.3d 1233, 1240 (3d Cir. 1993). In *Fatin*, the Third Circuit explained that because *Acosta* "specifically mentioned 'sex' as an innate characteristic that could link the members of a 'particular social group,'" Fatin had satisfied that requirement "to the extent that . . . [she] suggest[ed] that she would be persecuted . . . simply because she is a woman." *Id.*

*Acosta* also provided the framework for federal guidelines 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, *Consideration for Asylum Officers Adjudicating Asylum Claims from Women* 9 (May 26, 1995) (describing *Fatin* 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"); *see also Matter of 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].").

## III. GENDER MEETS THE CRITERIA THE BOARD HAS ADDED TO DEFINE MEMBERSHIP IN A PARTICULAR SOCIAL GROUP SINCE *ACOSTA*

In recent years, the Board "expanded the [particular social group] analysis beyond the *Acosta* test," by requiring that the social group also be "particular" and "socially distinct." *See Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 232 (BIA 2014). With respect to social distinction, the Board has explained that asylum seekers 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). With respect to particularity, the Board has emphasized that the group "must be defined by characteristics that provide a clear benchmark for determining who falls within [it]." *Id.* at 214. *See also Garay Reyes v. Lynch*, 842 F.3d 1125, 1135 (9th Cir. 2016) (according *Chevron* deference to these tests). As noted, immigration judges have in many cases found that social groups defined by gender satisfy these requirements. *See, e.g.*, —, (Arlington Immigration Court, 2018) (unpublished), Add. 6–10; —, (San Francisco Immigration Court, Sept. 13, 2018) (unpublished), Add. 51–53.

Gender meets the requirement of particularity. *See Perdomo*, 611 F.3d at 669 (determining that the group "women in Guatemala" can be sufficiently particular to

be cognizable). Women are "recognized in the society in question as a discrete class of persons." *See M-E-V-G-*, 26 I. & N. Dec. at 249. There are well-established benchmarks for determining who is a woman and who is not, and governments and societies as a whole frequently make such determinations. *Cf. id.*; *see also C-*, (Philadelphia Immigration Court, May 15, 2019) (unpublished) (explaining that gender meets the particularity requirement as follows: "the boundaries of the group are identifiable: women in Guatemala are members, while men are not."), Add. 97.

Although a PSG defined by gender may include a large number of persons, this Court has rightfully "rejected the notion that a persecuted group may simply represent too large a portion of the population to allow its members to qualify for asylum." *See Perdomo*, 611 F.3d at 669; *see also M-D-A-*, (BIA, Feb. 14, 2019) (unpublished) (rejecting notion that a persecuted group may be too large and remanding claim based on membership in "women in El Salvador"), Add. 105–06. A PSG defined by gender has well-defined boundaries and therefore meets the particularity requirement established by the Board. *See, e.g., Matter of S-E-G-*, 24 I. & N. Dec. 579, 585–86 (BIA 2008)

Finally, particular social groups defined by gender can satisfy the social distinction requirement. This Court has recognized that legislation addressing a

specific group constitutes "evidence that a society recognizes a particular class of individuals as uniquely vulnerable." *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013). Accordingly, immigration judges have credited (too often ineffective) laws addressing the needs of women as a class as evidence that establishes the social distinction of PSGs defined by gender. *See, e.g.*, —, (Denver Immigration Court, Mar. 7, 2019) (unpublished) ("The existence of laws that protect women in Mexico does not undermine this particular social group; rather, it emphasizes that Mexican society views women as a group and recognizes that it is a group in need of protection."), Add. 35–36; —, (Boston Immigration Court, June 18, 2019) (unpublished) (citing legislation aimed at targeting violence against women to find that Guatemalan society views women as a separate and distinct group), Add. 24.

Cultural and legal norms permitting widespread violence against women can also demonstrate that women are "set apart" in society and are therefore "socially distinct." *See* —, (Arlington Immigration Court, 2018) (unpublished) (finding that "women in Honduras" was socially distinct based on reports by the State Department and United Nations bodies showing marginalization, discrimination, and pervasive violence against women, as well as impunity for perpetrators), Add. 7–8; *see also*

—, (Denver Immigration Court, Mar. 7, 2019) (unpublished) (finding that evidence of violence towards women, strict gender roles, and gender inequality showed that "Mexican women" are a socially distinct group), Add. 35–36.

Particular social groups defined by gender are thusly cognizable. They are not impermissibly circular because they are not "defined exclusively by the fact that . . . members have been subjected to harm." *See A-M-E- & J-G-U-*, 24 I. & N. Dec. at 74. "The BIA may not rest its denial of asylum on the claim of an additional characteristic when the individual has asserted membership in a particular social group that the BIA has recognized as such." *See Cordoba v. Holder*, 726 F.3d 1106, 1117 (9th Cir. 2013). Both this Court and the Board have so recognized groups defined by gender. *Silvestre-Mendoza*, F. App'x at 598; *see also Y-M-L-*, (BIA, Sept. 10, 2019) (unpublished) (remanding for further consideration of claim based on membership in "Guatemalan women"), Add. 120–21; *A-C-A-A-*, (BIA, Nov. 6, 2019) (unpublished) (affirming asylum grant based on membership in "Salvadoran females"), Add. 68, 75; *M-D-A-*, (BIA, Feb. 14, 2019) (unpublished) (remanding for further consideration of whether "women in El Salvador" constituted a cognizable particular social group), Add. 105–06; *Y-V-P-*, (BIA, Nov. 6, 2019) (unpublished) (same), Add. 123; *S-R-P-O-*, (BIA, Dec. 20, 2018) (unpublished) (remanding for

further consideration of whether Mexican women constituted a cognizable particular social group), Add. 109–110 ; *X-Q-C-D-*, (BIA, Dec. 11, 2018) (unpublished) (same), Add. 117–18.

## IV. OTHER SIGNATORIES TO THE REFUGEE CONVENTION AND INTERNATIONAL BODIES HAVE ALSO RECOGNIZED GENDER ALONE AS A COGNIZABLE SOCIAL GROUP

Both the *Acosta* framework and the conclusion that gender alone may define a particular social group are firmly established within the jurisprudence of other signatories to the Refugee Convention and 1967 Protocol to the Convention.[4] The views of other signatories are directly relevant to the proper interpretation of the INA, given that "the definition of 'refugee' that Congress adopted is virtually identical to the one" in the Refugee Convention. *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

[4] 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 Status of Refugees, adopted Jan. 31, 1967, entered into force Oct. 4, 1967, 606 UNTS 267; Convention relating to the Status of Refugees, adopted July 28, 1951, entered into force Apr. 22, 1954, 189 UNTS 137.

omitted)); *see also 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)).

The Supreme Court of Canada, for example, relied upon *Acosta* in its 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.); *see also Josile v. Canada (Minister of Citizenship & Immigration)*, [2011] 382 FTR 188 (Can. FC, Jan. 17, 2011), at [10], [28]-[30] ("Haitian women"); *Kn v. Canada (Minister of Citizenship & Immigration)*, (2011) 391 FTR 108 (Can. FC, June 13, 2011), at [30] ("women in the [Democratic Republic of Congo]"), cited in JAMES C. HATHAWAY & MICHELLE FOSTER, THE LAW OF REFUGEE STATUS § 5.9.1 (2d ed. 2014) (collecting these and other cases). Canada also adopted gender asylum guidelines in 1993, updated in 1996, which recognized that gender is the type of innate characteristic that may define a particular social group. 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) (updated on Nov. 13, 1996).

The United Kingdom House of Lords similarly relied on *Acosta* 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.); *see Fornah (FC) v. Sec'y of State for Home Dep't*, [2006] UKHL 46, para. 31 (Lord Cornhill) (identifying "women in Sierra Leone" as "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"); *see also* Immigration Appellate Authority of the United Kingdom, *Asylum Gender Guidelines* 41 (Nov. 2000) ("Particular 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.").

Tribunals in New Zealand and Australia have similarly 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.) (recognizing "women in Pakistan" as a cognizable social group). Australia has also adopted guidelines recognizing that "whilst 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).

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 ("UNHCR"), which, as part of its supervisory responsibilities, provides interpretive guidance on the provisions of the 1951 Convention and 1967 Protocol relating to the Status of Refugees. In 2002, for example, UNHCR issued gender guidelines that adopted *Acosta*'s *ejusdem generis* analysis and found 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." *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); *see also* UNHCR, *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) ("[W]omen 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."). These materials 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 Grace v. Whitaker*, 344 F. Supp. 3d 96, 124 (D.D.C. 2018) (noting that "the language in the [Refugee] Act should be read consistently with the United Nations' interpretations of the refugee standards").

## V. APPLICANTS FOR RELIEF HAVE DEMONSTRATED THE REQUISITE NEXUS BETWEEN PERSECUTION AND MEMBERSHIP IN GENDER BASED GROUPS TO QUALIFY FOR PROTECTION.

Recognizing that gender alone may define a particular social group does not mean that all women around the globe are entitled to protection under the Refugee Act. The other elements of the refugee definition, including the requirement that an applicant demonstrate a legally sufficient nexus between her persecution and her protected status, play an important limiting role in gender-based claims. As the

Tenth Circuit explained in *Niang v. Gonzales*, "the focus with respect to [gender-based asylum] 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*, 422 F.3d at 1199–200.

Under the REAL ID Act, applicants for protection must show that their membership in a particular social group was "at least one central reason" for harm to qualify for asylum, or merely "a reason" for harm to qualify for withholding of removal. *Barajas-Romero v. Lynch,* 846 F.3d 351, 360 (9th Cir. 2017). Dicta in *Matter of A-B-* should not be read to alter the statute's clear and established meaning. *See Grace*, 344 F. Supp. at 131–32 (reiterating that the statutory "at least one central reason" standard continues to apply in asylum cases).

Thus, following Matter of *A-B-*, applicants for asylum and withholding of removal continue to prove to the satisfaction of both the Board and immigration judges the requisite nexus between their PSG membership and the persecution they have suffered or fear. *See, e.g.*, *A-C-A-A-*, (BIA, Nov. 6, 2019) (unpublished) (recognizing a Salvadoran applicant "established past persecution on account of her membership in a particular social group" defined by gender), Add. 68; —,

(Boston Immigration Court, June 18, 2019) (unpublished) (recognizing applicant's membership in PSG of "Guatemalan women" was at least one central reason for her persecution), Add. 24–25; —, (San Francisco Immigration Court, Sept. 13, 2018) (unpublished) (applicant demonstrated persecution was "on account of her membership in" a PSG of "Mexican females"), Add. 53–54.

## CONCLUSION

For the foregoing reasons *amicus curiae* agrees with Petitioner that the Board's decision was in error.

Dated: February 25, 2020 Respectfully submitted,

*/s/* Zachary A. Albun

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## CERTIFICATE OF COMPLIANCE

I, Zachary Albun, certify that this brief contains approximately 3,951 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6). I certify that this brief is an amicus brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3), which in this case is 7,000 words.

Dated: February 25, 2020

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## CERTIFICATE OF SERVICE

I, Zachary A. Albun, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 25, 2020

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## ADDENDUM

Please find enclosed the following unpublished decisions that are relevant to the issues under review:

**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:** | ) | **IN REMOVAL PROCEEDINGS** |
| [redacted], | ) | **File No.: A** [redacted] |
| Lead Respondent; | ) | |
| [redacted], | ) | **File No.: A** [redacted] |
| Rider Respondent; | ) | |
| [redacted], | ) | **File No.: A** [redacted] |
| Rider Respondent. | ) | |

**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

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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

[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]

[redacted]

[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,

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 (Honudran 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,

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.

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

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*

*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

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).

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] 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

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] 2008
Date

D Nadkarni
Deepali Nadkarni[1]
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
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS

| | | |
|---|---|---|
| **IN THE MATTER OF:** | ) | |
| [redacted] | ) | **In Removal Proceedings** |
| A[redacted] | ) | |
| **Respondent** | ) | |

**CHARGE:** Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or "Act"): Alien 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)
Withholding of Removal under the Convention Against Torture, pursuant to 8 C.F.R. § 1208.16

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**ON BEHALF OF DHS:**
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## DECISION OF THE IMMIGRATION COURT

### I. Procedural History

The Respondent, [redacted] is a native and citizen of Guatemala. Exh. 1. The U.S. Department of Homeland Security ("DHS") initiated removal proceedings against the Respondent on [redacted] by filing of a Notice to Appear ("NTA") with the [redacted] Immigration Court. *Id.* The NTA alleges that the Respondent: (1) is not a citizen or national of

the United States; (2) is a native and citizen of Guatemala; (3) arrived in the United States at or near an unknown place, on or about [redacted] and (4) was not then admitted or paroled after inspection by an Immigration Officer. *Id.* The NTA charges the Respondent as removable under INA § 212(a)(6)(A)(i). *Id.* [redacted], a change of venue was granted for the Boston Immigration Court ("Court"). Order of the Immigration Judge (IJ Eleazar Tovar [redacted]).

The Respondent conceded proper service of the NTA and waived a formal reading of the allegations. She admitted the allegations and conceded the charge of removability. She declined to designate a country of removal. Exh. 2. In lieu of removal, the Respondent indicated that she would apply for asylum, withholding of removal, withholding of removal under Article III of the U.N. Convention Against Torture ("CAT"). *Id.* The Respondent filed Form I-589, Application for Asylum and for Withholding of Removal, on [redacted]. Exh. 3. At a hearing on [redacted], the Respondent indicated that she was no longer seeking voluntary departure. On June 3, 2019, the Respondent filed a memorandum of law and supporting documents.

## II. Documentary Evidence

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|---|---|
| **Exhibit 1:** | Notice to Appear, filed [redacted]. |
| **Exhibit 2:** | Written Pleading, filed October 30, 2007. |
| **Exhibit 3:** | Form I-589, Application for Asylum and for Withholding of Removal, filed February 12, 2008. |
| **Exhibit 3A:** | Updated Form I-589, Application for Asylum and for Withholding of Removal, filed October 14, 2009. |
| **Exhibit 4:** | Respondent's Supplemental Supporting Documents, filed October 14, 2009. |
| **Exhibit 5:** | Respondent's Supplemental Supporting Documents, filed May 25, 2011. |
| **Exhibit 6:** | Respondent's Supplemental Supporting Documents, filed February 13, 2012. |
| **Exhibit 7:** | Respondent's Supplemental Supporting Documents, filed April 23, 2019. |

## III. Testimonial Evidence

On May 7, 2019, the Respondent testified in support of her applications for relief. Her partner, [redacted], also testified on her behalf. In lieu of testimony, the parties stipulated to the evaluation of Dr. [redacted], Ed.D., Licensed Clinical Psychologist. *See* Exh. 6 at 186.

## IV. Standards of Law

### A. Removability

A respondent who is charged with an inadmissibility ground must prove by clear and convincing evidence that she is lawfully in the United States pursuant to a prior admission, or that she is clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged. INA § 240(c)(2). The determination regarding removability shall be based only on evidence produced at the hearing. INA § 240(c)(1)(A).

### B. Credibility and Corroboration

In all applications for asylum, the Court must make a threshold determination of the alien's credibility. *See* INA § 208(b)(a)(B); *Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). The provisions of the REAL ID Act of 2005 apply to the Court's credibility analysis in applications filed after May 11, 2005. REAL ID Act § 101(h)(2) (codified at INA § 208 note). Considering the totality of the circumstances and all relevant factors, the Court may base a credibility determination on:

> the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor.

INA § 208(b)(1)(B)(iii).

An applicant's testimony may be sufficient to sustain her burden of proving eligibility for asylum or withholding of removal without corroboration as long as the Court is satisfied that the testimony is credible, persuasive, and refers to specific facts sufficient to demonstrate that she is a refugee. *See Jianli Chen v. Holder*, 703 F.3d 17, 21 (1st Cir. 2012). However, if the Court determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided. INA §§ 208(b)(1)(B)(ii), 240(c)(4)(B); *Balachandran v. Holder*, 566 F.3d 269, 273 (1st Cir. 2009). "[T]he weaker an alien's testimony, the greater the need for corroborative evidence." *Mukamusoni v. Ashcroft*, 390 F.3d 110, 122 (1st Cir. 2004) (quoting *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998)).

Unreasonable demands may not be placed on an applicant to present evidence to corroborate particular experiences, but "where it is reasonable to expect corroborating evidence

for certain alleged facts . . . such evidence should be provided." *Soeung v. Holder*, 677 F.3d 484, 487-88 (1st Cir. 2012) (quoting *Matter of S-M-J-*, 21 I&N Dec. 722, 725 (BIA 1997)). If such evidence is unavailable, the applicant must explain its unavailability, and the Court must ensure that the explanation is included in the record. *Id.* at 488. The absence of such corroboration can lead to a finding that an applicant has failed to meet her burden of proof. *See Guta-Tolossa v. Holder*, 674 F.3d 57, 62 (1st Cir. 2012) ("[A]n IJ can require corroboration whether or not she makes an explicit credibility finding . . . ."); *see also Matter of S-M-J-*, 21 I&N Dec. at 725.

An applicant's inconsistent statement may lead to an adverse credibility finding, regardless of whether the inconsistency goes to "the heart" of the claim. INA § 208(b)(1)(B)(iii); *see also Rivas-Mira v. Holder*, 556 F.3d 1, 4 (1st Cir. 2009). Credibility determinations must be "reasonable" and "take into consideration the individual circumstances of the applicant." *Lin v. Mukasey*, 521 F.3d 22, 27 n.3 (1st Cir. 2008) (quoting H.R. Rep. No. 109-72, at 167 (2005), *reprinted in* 2005 U.S.C.C.A.N. 240, 292). The Court must provide "specific and cogent reasons why an inconsistency, or a series of inconsistencies, render the alien's testimony not credible." *Jabri v. Holder*, 675 F.3d 20, 24 (1st Cir. 2012) (quoting *Stanciu v. Holder*, 659 F.3d 203, 206 (1st Cir. 2011)). The Court must also consider an applicant's corroborative evidence, as "the presence of corroboration may save an asylum application notwithstanding [an] alien's apparent lack of credibility." *Ahmed v. Holder*, 765 F.3d 96, 101 (1st Cir. 2014).

### C. Asylum Pursuant to Section 208 of the Act

#### 1. Statutory Eligibility

The Court may grant asylum to an applicant who proves that she is unwilling or unable to return to her country of nationality because of 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), 208(b)(1)(A)-(B); 8 C.F.R. § 1208.13(a); *see also Jutus v. Holder*, 723 F.3d 105, 110 (1st Cir. 2013).

##### a. Timeliness of Application

An asylum applicant must prove by clear and convincing evidence that her application was filed within one year of her arrival in the United States, or by April 1, 1997, whichever is later. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)(i)(A). An applicant who cannot meet this burden must prove to the satisfaction of the Court that a changed or extraordinary circumstance excuses her late filing. INA § 208(a)(2)(D); 8 C.F.R. § 1208.4(a)(4)-(5).

To prove an extraordinary circumstance, the applicant must establish that (1) she did not intentionally create the circumstances through her own action or inaction, (2) those circumstances were directly related to her failure to file the application within the one year period, and (3) the delay was reasonable under the circumstances. *Matter of Y-C-*, 23 I&N Dec. 286, 287 (BIA 2002). Possible examples of extraordinary circumstances include serious illness; mental, physical, or legal disability; ineffective assistance of counsel; maintenance of other lawful immigration status; or the death or serious illness of the applicant's representative or immediate family member. 8 C.F.R. § 1208.4(a)(5).

### b. Past Persecution

Persecution is "a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). Persecution does not encompass generally harsh conditions shared by many others in a country or the harm an individual may experience as a result of civil strife. *Maryam v. Gonzales*, 421 F.3d 60, 63 (1st Cir. 2005). Instead, to qualify as persecution, a person's experience must "rise above unpleasantness, harassment, and even basic suffering" and consist of systemic mistreatment rather than a series of isolated events. *Rebenko v. Holder*, 693 F.3d 87, 92 (1st Cir. 2012) (quoting *Nelson v. INS*, 232 F.3d 258, 263 (1st Cir. 2000)). The "severity, duration, and frequency of physical abuse" are relevant factors to this determination. *Topalli v. Gonzales*, 417 F.3d 128, 133 (1st Cir. 2005). The targeted abuse of an applicant's family may qualify as persecution of the applicant. *Precetaj v. Holder*, 649 F.3d 72, 76 (1st Cir. 2011) ("Two kidnappings, three beatings, and an aggravated rape of his children – specifically designed to send a message to [the respondent] – were clearly part of the persecution of him.").

### c. Well Founded Fear of Future Persecution

An applicant who has suffered past persecution on account of a protected ground is presumed to have a well-founded fear of future persecution on account of that same protected ground. 8 C.F.R. § 1208.13(b)(1). This presumption may only be rebutted if DHS establishes by a preponderance of the evidence that (1) the applicant can reasonably relocate within his country of origin or (2) there has been a "fundamental change in circumstances" in the country at issue, such that the applicant's fear is no longer well-founded. *Id.*

An applicant who has not suffered past persecution must demonstrate a subjectively genuine and objectively reasonable fear of future persecution. 8 C.F.R. § 1208.13(b)(2)(i); *see also Sunarto Ang v. Holder*, 723 F.3d 6, 10 (1st Cir. 2013). Generally, an individual's credible testimony that she fears persecution satisfies the subjective component of this inquiry. *See Cordero-Trejo v. INS*, 40 F.3d 482, 491 (1st Cir. 1994). An applicant satisfies the objectively reasonable component by either (1) producing "'credible, direct, and specific evidence' supporting a fear of *individualized* persecution in the future," or (2) "demonstrating 'a pattern or practice in his or her country of nationality . . . of persecution of a group of persons similarly situated to the applicant on account of' a protected ground." *Decky v. Holder*, 587 F.3d 104, 112 (1st Cir. 2009) (quoting *Guzmán v. INS*, 327 F.3d 11, 16 (1st Cir. 2003) & 8 C.F.R. § 1208.13(b)(2)(iii)(A)).

An applicant seeking asylum based on a well-founded fear of persecution by a non-government actor must also demonstrate that she could not avoid persecution by relocating to another part of her country of nationality. 8 C.F.R. § 1208.13(b)(2)(ii), (b)(3)(i). An applicant may meet this burden by showing either that she is unable to relocate safely or that, under all the circumstances, it would not be reasonable to expect him to do so. *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33-36 (BIA 2012); *see also* 8 C.F.R. § 1208.13(b)(2)(ii), (b)(3)(i).

### d. On Account of a Protected Ground

The applicant must establish that a statutorily protected ground—race, religion, nationality, membership in a particular social group, or political opinion—is "at least one central reason" for the applicant's past persecution or the future persecution that he or she fears. INA §§ 101(a)(42)(A), 208(b)(i); *see also Sugiarto*, 586 F.3d at 95; *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212-215 (BIA 2007). Persecution on account of any of the statutorily protected grounds refers to persecution motivated by the victim's traits, not the persecutor's. *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992).

Overall, an applicant for asylum or withholding of removal based on membership in a particular social group must establish that the proposed group: (1) is composed of members who share a common immutable characteristic; (2) is defined with particularity; and (3) is socially distinct within the society in question. *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014); *Matter of M-E-V-G-*, 26 I&N Dec. 222, 237 (BIA 2014). The shared characteristic may be innate or it may be a shared past experience. *Matter of Acosta*, 19 I&N Dec. at 233. However, it must be a characteristic that the members of the group cannot change or should not be required to change as a matter of conscience. *Id.* at 233-34. Particularity requires that the proposed group be "discrete and have definable boundaries – it must not be amorphous, overbroad, diffuse or subjective." *Matter of M-E-V-G-*, 26 I&N Dec. at 239. Social distinction (formerly known as social visibility) means that the group must be perceived as a distinct social group by society, regardless of whether society can identify the members of group by sight. *Matter of W-G-R-*, 26 I&N Dec. at 216-17 (renaming the "social visibility" element as "social distinction" to clarify that social visibility does not mean "ocular" visibility). 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. Social distinction may not be determined solely by the perception of an applicant's persecutors. *See id.* at 218; *Matter of M-E-V-G-*, 26 I&N Dec. at 242. A respondent may meet their burden by providing "some evidence" of her persecutors' motives. *Elias-Zacarias*, 502 U.S. at 483.

### e. Government Action

The applicant must also show that the persecution she faced or fears is a direct result of government action, government-supported action, or the government's unwillingness or inability to control private conduct. *Mendez-Barrera v. Holder*, 602 F.3d 21, 27 (1st Cir. 2010). "[V]iolence by private citizens . . . absent proof that the government is unwilling or unable to address it, is not persecution." *Butt v. Keisler*, 506 F.3d 86, 92 (1st Cir. 2007). "[A]n applicant seeking to establish persecution by a government based on violent conduct of a private actor must show more than 'difficulty . . . controlling' private behavior." *Ortiz-Araniba v. Keisler*, 505 F.3d 39, 42 (1st Cir. 2007) (internal quotation marks omitted) (quoting *Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005)); *see also Matter of McMullen*, 17 I&N Dec. 542, 546 (BIA 1980). This standard will not be met if the country's "inability to stop the problem is [in]distinguishable from any other government's struggles to combat a criminal element." *Burbiene v. Holder*, 568 F.3d 251, 255 (1st Cir. 2009); *see also Khan v. Holder*, 727 F.3d 1, 7 (1st Cir. 2013). However, a government's willingness to take on a persecutor does not necessarily establish its ability to protect citizens from that persecution. *Khattak v. Holder*, 704 F.3d 197, 206 (1st Cir. 2013).

### 2. Discretion

Statutory and regulatory eligibility for asylum does not compel a grant of asylum. 8 C.F.R. § 1208.14(a). An applicant for asylum must also prove that a favorable exercise of discretion is warranted. *Matter of F-P-R-*, 24 I&N Dec. 681, 685-86 (BIA 2008) (citing *Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987), *superseded by regulation on other grounds*). Factors that fall short of the grounds for mandatory denial may constitute discretionary considerations. *Matter of Pula*, 19 I&N Dec. at 473-74.

## D. Withholding of Removal Pursuant to Section 241(b)(3) of the Act

Section 241(b)(3) of the Act is a non-discretionary provision requiring the Court to withhold removal of an individual upon proof that her life or freedom would be threatened in the proposed country of removal on account of her race, religion, nationality, political opinion, or membership in a particular social group. 8 C.F.R. § 1208.16(b). If an applicant establishes that she suffered past persecution in the proposed country of removal on account of a protected ground, the Court shall presume that the applicant's life or freedom would be threatened in the future in the country of removal on account of the same ground. 8 C.F.R. § 1208.16(b)(1). This presumption may only be rebutted if DHS establishes by a preponderance of the evidence that either (1) there has been a fundamental change in circumstances such that the applicant's life or freedom would no longer be threatened on account of a protected ground, or (2) the applicant could avoid future threats to her life or freedom by relocating to another area within the proposed country of removal where it is reasonable to expect the applicant to do so. *Id.* An applicant who has not suffered past persecution is eligible for withholding of removal if she demonstrates that it is "more likely than not" that she would be persecuted in the future in the proposed country of removal on account of a protected ground. 8 C.F.R. § 1208.16(b)(2).

## E. Protection Under the Convention Against Torture

The CAT and implementing regulations mandate that no person shall be removed to a country where it is more likely than not that she will be subject to torture. *See* Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988); 8 C.F.R. §§ 1208.16-18; *see also Matter of G-K-*, 26 I&N Dec. 88, 93 (BIA 2013).

An applicant for withholding of removal under the CAT bears the burden of proof. 8 C.F.R. § 1208.16(c)(2). As with asylum adjudications, the applicant's testimony, if credible, may be sufficient to sustain the burden of proof without corroboration. *Id.*; *see also* INA § 240(c)(4)(C). However, an adverse credibility finding does not bar CAT relief. *Settenda v. Ashcroft*, 377 F.3d 89, 94-95 (1st Cir. 2004); *see also Matter of B-Y-*, 25 I&N Dec. 236, 245 (BIA 2010) (affirming the Immigration Judge's adverse credibility determination but remanding the record for consideration of the respondent's CAT application).

To establish a *prima facie* claim under the CAT, the "applicant must offer specific objective evidence showing that [s]he will be subject to: (1) an act causing severe physical or mental pain or suffering; (2) intentionally inflicted; (3) for a proscribed purpose; (4) by or at the instigation of

or with the consent or acquiescence of a public official who has custody or physical control of the victim; and (5) not arising from lawful sanctions." *Rashad v. Mukasey*, 554 F.3d 1, 6 (1st Cir. 2009) (quoting *Romilus v. Ashcroft*, 385 F.3d 1, 8 (1st Cir. 2004)) (internal quotations omitted). Acquiescence of a public official requires that the official have awareness of or remain willfully blind to the activity constituting torture, prior to its commission, and thereafter breach his or her legal responsibility to intervene to prevent such activity. *Mayorga-Vidal v. Holder*, 675 F.3d 9, 19-20 (1st Cir. 2012); *Matter of W-G-R-*, 26 I&N Dec. at 226 (citing *Zheng v. Ashcroft*, 332 F.3d 1186, 1196 (9th Cir. 2003)); 8 C.F.R. § 1208.18(a)(7).

In assessing whether the applicant has established a *prima facie* claim under the CAT, the Court must consider all evidence relevant to the possibility of future torture, including evidence that the applicant has suffered torture in the past; evidence that the applicant could relocate to a part of the country of removal where she is not likely to be tortured; evidence of gross, flagrant or mass violations of human rights within the country of removal; and other relevant country conditions information. 8 C.F.R. § 1208.16(c)(3). However, a pattern of human rights violations in the proposed country of removal is not sufficient to show that a particular person would be tortured; specific grounds must exist to indicate that the applicant will be personally at risk of torture. *Settenda*, 377 F.3d at 95-96; *Matter of J-E-*, 23 I&N Dec. 291, 303 (BIA 2002). There is no requirement, however, that the torture be on account of a protected ground or that the applicant prove the reason for the torture. *Rashad*, 554 F.3d at 6.

## V. Findings of Fact and Conclusions of Law

### A. Removability

The Court finds that the Respondent is removable from the United States. The Respondent admitted the allegations and conceded the charge under section 212(a)(6)(A)(i) of the Act, as an alien 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. Exh. 1; Exh. 2. Therefore, the Court finds that the Respondent is removable by evidence that is clear and convincing, and will proceed to consider her application for asylum, withholding of removal, protection under the CAT. The Court designates Guatemala as the country of removal.

### B. Credibility and Corroboration

Because the Respondent filed her applications for relief after May 11, 2005, the REAL ID Act applies to her case. Applying those standards and considering the totality of the circumstances, the Court finds credible the Respondent's testimony regarding her experience in Guatemala and her fear of return. *See* INA §§ 208(b)(1)(B)(iii), 240(c)(4)(B)-(C). Her testimony was sufficiently internally consistent and generally consistent with her written declarations, including the Respondent's account of the abuse she suffered at the hands of her husband, [redacted] Further, DHS did not express concern regarding the Respondent's credibility or corroboration of her claim. Considering the foregoing and the entirety of the record, the Court declines to make an overall adverse credibility finding against the Respondent. Accordingly, the Court finds that the Respondent provided credible testimony and sufficient corroboration of her claim. *See* INA § 208(b)(1)(B)(iii).

### C. Asylum Pursuant to Section 208 of the Act

#### 1. Statutory Eligibility

##### a. Timeliness of Application

On May 7, 2019, the parties stipulated that the Respondent timely filed her asylum application, pursuant to *Mendez Rojas v. Johnson,* 305 F.Supp.3d 1176 (W.D. Wash. Mar. 29, 2018). Thus, the Court will treat the application as timely filed.

##### b. Nexus

The Court finds that the Respondent belongs to the particular social group of "Guatemalan women," and that such group is cognizable under the law. To be cognizable under the law, 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. *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014); *Matter of M-E-V-G-*, 26 I&N Dec. 237, 237 (BIA 2014).

First, the Court finds that this social group is immutable, as it consists of two innate characteristics fundamental to an individual's identity. An immutable characteristic is one that the members of the group cannot change or should not be required to change as a matter of conscience. *Matter of Acosta*, 19 I&N Dec. at 233-34; *Matter of A-B-*, 27 I&N Dec. at 320 (reaffirming the common immutable characteristic standard set forth in *Matter of Acosta*). Both terms, "Guatemalan" and "women," or more generally, nationality and gender, are prototypical examples of immutable characteristics because one either cannot change or be required to change one's nationality or gender. *Matter of Acosta*, 19 I&N Dec. at 233; *Perez-Rabanales v. Sessions*, 881 F.3d 61, 66 (1st Cir. 2018) (gender constitutes an immutable characteristic for purposes of a particular social group). Furthermore, in *Matter of Acosta*, the Board of Immigration Appeals ("Board") specifically noted that "sex" is a "shared characteristic" on which particular social group membership can be based. *Matter of Acosta*, 19 I&N Dec. at 233. Therefore, the Court finds that the social group, "Guatemalan women" is comprised of immutable characteristics.

Second, the Court finds that the Respondent's particular social group is sufficiently particular. Particularity requires that the proposed group be "discrete and have definable boundaries – it must not be amorphous, overbroad, diffuse or subjective." *Matter of M-E-V-G-*, 26 I&N Dec. at 239; *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. at 189. These defining characteristics provide a clear benchmark for determining who falls within the group and who does not. *Matter of M-E-V-G-*, 26 I&N Dec. at 239. The definitional terms of the Respondent's social group are clearly defined and precise, as both gender and nationality have commonly understood meanings that are unlikely to change when defined by different individuals. *See Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007) (finding that the particular social group defined by "affluent Guatemalans" was not particular because "affluence is simply too subjective, inchoate, and variable."). Accordingly, Respondent's group is not amorphous because its defining terms provide an adequate benchmark – gender – for determining group membership.

The Respondent's proposed particular social group is large, however this is not fatal to finding the group cognizable. Though size is a factor to be considered in the analysis of particular social groups, the Board has routinely found large particular social groups to be cognizable. For example, in *Matter of S-E-G-*, the Board stated that 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 description is sufficiently 'particular' or is 'too amorphous . . . to create a benchmark for determining group membership.'" *Matter of S-E-G-*, 24 I&N Dec. 579, 584 (BIA 2008) (internal citations omitted). The Board and several circuits have employed such reasoning to affirm large social groups. For example, the Board has repeatedly found particular social groups based on sexual orientation to be cognizable, despite the fact that such groups may be vast in number. *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990) (recognizing "homosexuals . . . in Cuba" as members of a particular social group); *Matter of W-G-R-*, 26 I&N Dec. at 219 (affirming "homosexuals in Cuba" as a particular social group because, in part, it is defined with particularity). *Cf. Matter of H-*, 21 I&N Dec. 337, 342-43 (BIA 1996) (finding a Somali clan can constitute a particular social group); *see also Cece v. Holder*, 733 F.3d 662, 674-75 (7th Cir. 2011) (citing to *Matter of H-*, 21 I&N Dec. 337, and stating that the "breadth of the social group says nothing about the requirements for asylum"); *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007) (recognizing "Somali females" as a particular social group given the widespread practice of female genital mutilation); *Mohammed v. Gonzalez*, 400 F.3d 785, 797 (9th Cir. 2005) (finding "Somali females" to be a cognizable particular social group due to the 98% prevalence of female genital mutilation, and stating that "the recognition that girls or women of a particular clan or nationality . . . may constitute a social group is simply a logical application of our law"); *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2005) (rejecting the notion that "a persecuted group may simply represent too large a portion of a population to allow its members to qualify for asylum"). In these cases, and as explained by the Board in *Matter of S-E-G-*, the "key question" is not the group's size, but whether the definition provides an adequate benchmark for determining who is a member based on the record at hand. *Matter of S-E-G-*, 24 I&N Dec. at 584. The Court further notes that none of the other protected grounds contained in INA § 101(a)(42) are limited by size or prohibit diverse membership. For example, a nation may host millions of members of a particular religion, yet these individuals are not precluded from asylum if persecuted. Similarly, religious groups are composed of individuals with a wide variety of characteristics and experiences. Each protected ground is bound by an immutable characteristic. Thus, it follows that a proposed social group that establishes clear boundaries by way of its immutable characteristics is cognizable under the Act regardless of its size.

The Court finds that the Respondent's proffered particular social group, "Guatemalan women," is sufficiently particular. In the Respondent's case, the benchmark determinant is a combination of nationality and gender. The Court finds that the Respondent's social group is distinguishable from a similar social group struck down by the First Circuit in *Perez-Rabanales v. Sessions*. Therein, the First Circuit found that the proffered social group, "Guatemalan women who try to escape systemic and severe violence but who are unable to receive official protection," was insufficiently particular and was not socially distinct. *See Perez-Rabanales*, 881 F.3d at 67. The First Circuit reasoned that the "amorphous nature of this sprawling group precludes determinacy and renders the group insufficiently particular," and that the group "lacks any socially visible characteristics independent of the harm" suffered. *Id.* at 66-67. The Court finds that the Respondent's proffered group, "Guatemalan women" is more akin to those discussed above, and

particularly to the group accepted by the Eighth Circuit in *Hassan v. Gonzales*. *Hassan v. Gonzales*, 484 F.3d at 518. Given the widespread practice of female genital mutilation in Somalia, the Eighth Circuit recognized "Somali females" as a particular social group. The Eighth Circuit reasoned that "all Somali females have a well-founded fear of persecution based solely on gender given the prevalence of FGM," noting that "there is little question that genital mutilation occurs to a particular individual because she is a female. That is, possession of the immutable trait of being female is a motivating factor – if not a but-for cause – of the persecution." *Id.* (internal citation omitted); *see also Mohammed v. Gonzalez*, 400 F.3d at 797. Similarly, as discussed below, the nation-wide epidemic of violence against women in Guatemalan informs the recognition of the Respondent's social group and indicates that such violence occurs to a particular individual because she is a female. The Respondent's proffered group is thus distinguishable from that in *Perez-Rabanales*. It is neither amorphous nor sprawling, nor is it based on the harm feared.

The Court's analysis of sizeable and diverse groups is consistent with the Attorney General's decision in *Matter of A-B-*, which contains several statements, in dicta, cautioning against such groups. *Matter of A-B-*, 27 I&N Dec. 316. The decision suggests that social groups composed of "broad swaths of society" likely lack particularity, as they may be "too diffuse to be recognized as a particular social group." *Id.* at 335 (citing *Constanza v. Holder*, 647 F3d. 749, 754 (8th Cir. 2011)). For example, the Attorney General found that a group composed of "victims of gang violence" may not be sufficiently particular because members "often come from all segments of society, and they possess no distinguishing characteristic or concrete trait that would readily identify them as members of such a group." *Id.* This echoes the Board's decision in *Matter of W-G-R-*, which struck down a social group based on former gang membership because the respondent had not established that Salvadoran society would "generally agree on who is included" in the group. *Matter of W-G-R-*, 26 I&N Dec. at 221 (finding the proposed group lacked particularity "because it is too diffuse, as well as being too broad and subjective" as it "could include persons of any age, sex, or background"). In contrast, the Respondent's proffered social group possesses an objective, defining characteristic – gender – and is thus distinguished from the groups discussed in *Matter of A-B-* and *Matter of W-G-R-*. As explained below, and as supported by the facts on the record, this characteristic enables Guatemalan society to readily identify group members, despite the presence of other diverse characteristics. Finally, in *Matter of A-B-*, the Attorney General reiterated the necessity for a fact-based, case-by-case inquiry in the social group analysis – such as that undertaken here. This mandate cannot be reconciled with a broad prohibition against large, diverse social groups. *Matter of A-B-*, 27 I&N Dec. at 344; *W-Y-C- & H-O-B-*, 27 I&N Dec. at 189. Accordingly, the Respondent's proposed social group "Guatemalan women" meets the particularly requirement.

Third, the Court finds that the Respondent's proposed social group is socially distinct within Guatemalan society. Social distinction (formerly known as social visibility) means that the group must be perceived as a distinct social group by society, regardless of whether society can identify the members of group by sight. *Matter of W-G-R-*, 26 I&N Dec. at 216-17 (renaming the "social visibility" element as "social distinction" to clarify that social visibility does not mean "ocular" visibility). 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. The Board has further explained that the "members of a particular social group will generally understand their own affiliation with the grouping." *Matter*

*of M-E-V-G-*, 26 I&N Dec. at 238. Through the Respondent's testimony and documentary evidence, she has established that Guatemalan society perceives women as sufficiently distinct from society as a whole to qualify as a particular social group.

The Court finds that the Respondent's proposed social group is socially distinct within Guatemalan society. Through the Respondent's testimony and documentary evidence, she has established that Guatemalan society perceives women as sufficiently distinct from society as a whole to qualify as a particular social group. The country conditions evidence in the record supports the finding that women in Guatemala are seen as a distinct group within the society, notably in terms of the violence and danger that they face in the country. The 2018 Department of State Human Rights Report states that "[v]iolence against women, including sexual and domestic violence, remained serious problems." Exh. 7 at 311. Femicide remained a serious issue. *Id.* Moreover, the Guatemalan government has passed specific laws to combat the problem of gender-based violence, including penalties for femicide, development of specialized courts for violence against women, and the creation of a national alert system for missing women. *Id.* This evidence indicates that Guatemalan society views women as a separate and distinct group, and the Respondent's testimony shows that she affiliates herself with such group. *Matter of M-E-V-G-*, 26 I&N Dec. at 238.

Finally, the Court emphasizes that the Respondent's articulated social group is perceived by Guatemalan society independently from any group member's experienced persecution. Thus, the Respondent's articulated group is neither defined solely by the persecutor's perception nor by its persecution. *Matter of A-B-*, 27 I&N Dec. at 317 (holding that the social group must "exist independently of the alleged underlying harm"); *Perez-Rabanales v. Sessions*, 881 F.3d 61, 67 ("A sufficiently distinct social group must exist independent of the persecution claimed to have been suffered by the alien and must have existed before the alleged persecution began") (collecting cases). Here, recognizing the nation-wide epidemic of violence against women informs the recognition of the Respondent's social group as opposed to creating it. In other words, the persecution faced by women may act as the catalyst that causes Guatemalan society to meaningfully distinguish the group, but the defining immutable characteristic exists independently of that persecution. *Matter of M-E-V-G-*, 26 I&N Dec. at 243; *see also Matter of W-G-R-*, 26 I&N at 237 (clarifying that persecutor's perceptions may be relevant because it is indicative of whether society views the group as distinct). As such, the Respondent has shown that Guatemalan women are "set apart, or distinct, from other persons within [Guatemala] in some significant way." *Matter of M-E-V-G-*, 26 I&N Dec. at 238. Therefore, the Court finds that the Respondent's articulated social group meets the requirements for social distinction and is cognizable under the Act.

**c. Past Persecution on Account of a Protected Ground**

The Court finds that the harm the Respondent suffered in Guatemala rises to the level of persecution. The Respondent testified that as a teenager she moved to Guatemala City to work as a domestic worker. It was during her employment that she was first attacked and raped by [redacted], the son of the family where she worked. She was later forced to marry [redacted] by her mother and her employer. Throughout the course of their marriage, the Respondent was repeatedly raped and abused by [redacted]. When the Respondent started working outside the home, [redacted] threatened her, telling her there would be consequences if she did not stop. Exh. 4 at 5. He then

hired four men to attack and rob the Respondent when she was carrying money that belonged to her employer. [redacted] threats and abuse continued. The Respondent feared that he would kill her. The Court finds that the harm the Respondent suffered – being repeatedly and consistently abused and raped – rises to the level of past persecution. *Matter of A-T-*, 24 I&N Dec. 296, 304 (2007) (listing rape as an example of "common types of persecution" a woman might endure), *vacated and remanded on other grounds by Matter of A-T-*, 24 I&N Dec. 617 (A.G. 2008).

The Court finds that the Respondent's membership in a particular social group comprised of "Guatemalan women" was one central reason for the harm that she suffered in Guatemala. As previously detailed, the Respondent suffered harm rising to the level of persecution. INA § 208(b)(1)(B)(i); *see also Matter of J-B-N- & S-M-*, 24 I&N Dec. 208. [redacted] repeatedly raped the Respondent because he believed that he was entitled to sex with her by virtue of her womanhood. He told her she "needed to fulfill [her] role as his wife." When he threatened her for working outside the home he told her "he did not like his wife going to work." Further, at one point early in their marriage, the Respondent left for her father's house, but was forced to return to [redacted]. Her father told her "a wife needed to be with her husband." The Respondent "need not establish the exact motivation of a 'persecutor' where different reasons for actions are possible, [but] [s]he does bear the burden of establishing facts on which a reasonable person would fear that the danger arises on account of [her] . . . membership in a particular social group." *Matter of Fuentes*, 19 I&N Dec. 658, 658 (BIA 1988). The Court further notes that the motives for the Respondent's persecution at the hands of her husband are echoed in the record evidence, which evinces a culture of machismo and illustrates a patriarchal culture within Guatemala where men feel as though they can control women and oftentimes use violence as a means of exerting that control. A staggering number of women in Guatemala face gender related violence. Country conditions evidence that there is a high incidence of violence against women in Guatemala. *See generally* Exh 4 (evidencing a pattern and culture of violence against women in Guatemala). Taking all of this into consideration, the Court finds that under the circumstances, the Respondent has established that her membership in a particular social group comprised of "Guatemalan women" was at least one central reason for the harm she suffered.

**d. Government Action**

The Respondent claims that she was persecuted by a private individual. As such, she must demonstrate that "flight from her country [was] necessary because her home government [was] unwilling or unable to protect her." *Matter of A-B-*, 27 I&N Dec. at 317; *see also* 8 C.F.R. § 1208.13(b)(1); *Ivanov v. Holder*, 736 F.3d 5, 20 (1st Cir. 2013) (to constitute persecution, the harm must be the direct result of government action, government-supported action, or the government's unwillingness or inability to control private conduct) (quoting *Sok v. Mukasey*, 526 F.3d 48, 54 (1st Cir. 2008)). The government must be unable or unwilling to protect the Respondent.[1] *Rosales Justo v. Sessions*, 895 F.3d 154, 167 (1st Cir. 2018) (finding that the BIA

[1] In *Matter of A-B-*, the Attorney General reaffirmed the "unable or unwilling to control" standard, but also held that an asylum applicant must show that the government "condoned" the private actors or at least "demonstrated a complete helplessness to protect the victims." 27 I&N Dec. at 337 (citing *Galina v. INS*, 213 F.3d 955, 958 (7th Cir. 2000)). Thus, the Attorney General sets forth three different standards: "unable or unwilling to control," "condoned," and "complete helplessness." *Matter of A-B-*, 27 I&N Dec. at 337. This conflicting language leaves the Court with questions as to what standard to apply when adjudicating asylum applications. To resolve this issue, the Court has reviewed relevant Board and First Circuit precedent. It is clear from a review of First Circuit case law that "unable or

erred in conflating unable and unwilling). The Court finds that the Respondent has established that the Guatemalan government is unable to protect her.

The Respondent testified that she never reported the abuse to police because she did not think the police would protect her. The record illustrates that despite the existence of these laws and attempts by the Guatemalan government, it continues to be unable to protect women such as the Respondent. Police are insufficiently trained and the government does not effectively enforce the laws criminalizing rape, including spousal rape. Exh. 7 at 311. Although the government has taken steps to combat femicide and violence against women, femicide has remained a "significant problem" and "violence against women, including sexual and domestic violence" has remained a "serious problem[.]" *Id.* at 311-12. "There is widespread immunity for the perpetrators due to the failure of the government to adequately investigate and prosecute these crimes." *Id.* at 274. The passage of laws and other steps taken by the Guatemalan government to combat violence against women "show only the willingness of the government to enact laws, not the ability of the police [and society] to enforce the law." *Rosales Justo v. Sessions*, 895 F.3d 154, 167 (1st Cir. 2018) (internal citation omitted). Therefore, despite the evidence in the record regarding the Guatemalan government's efforts in combatting violence against women, the Court finds that the government is unable to protect the Respondent.

**e. Well Founded Fear of Future Persecution**

As the Respondent has established past persecution on account of a protected ground, she is presumed to have a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). DHS has not established by a preponderance of the evidence that the Respondent can reasonably relocate in Guatemala or that there has been a "fundamental change in circumstances" in the Guatemala, such that her fear is no longer well-founded. *Id.*

**2. Discretion**

As discussed above, the Respondent meets the definition of a refugee and is eligible for asylum. *See* INA §§ 101(a)(42), 208(b)(1)(B). However, the Respondent must also prove that she merits asylum in the exercise of discretion. 8 C.F.R. § 1208.14(a); *see also Matter of F-P-R-*, 24 I&N Dec. at 685-86 (citing *Matter of Pula*, 19 I&N Dec. at 473-74).

The Court also finds that the Respondent merits relief as a matter of discretion. *Pula*, 19 I&N Dec. at 473-74. As there appears to be no countervailing negative factors in her case, the Court will grant her application for asylum as a matter of discretion. *See Matter of H-*, 21 I&N Dec. at 348 ("[T]he danger of persecution should generally outweigh all but the most egregious of

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unwilling to control" is the governing standard in the First Circuit. *See e.g.*, *Rosales Justo*, 895 F.3d at 166-67. The Court could not find Board or First Circuit case that uses or interprets the term "complete helplessness" as used by the Attorney General in *Matter of A-B-*. Absent such controlling case law, the Court chooses to apply the "unable or unwilling to control" standard when analyzing the Respondent's asylum claim. This interpretation is consistent with the D.C. District Court's recent decision in *Grace v. Whitaker*, 344 F.Supp.3d 96, 130 (D.D.C. 2018) ("The "unwilling or unable" persecution standard was settled at the time the Refugee Act was codified, and therefore the Attorney General's "condoned" or "complete helplessness" standard is not a permissible construction of the persecution requirement.").

adverse factors.")(quoting *Matter of Pula*, 19 I&N Dec. at 474).

**D. Other Relief**

As the Respondent has demonstrated her eligibility for asylum pursuant to section 208 of the Act, the Court need not and will not reach Respondent's eligibility for withholding of removal or relief under the Convention Against Torture. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (government agencies are not required to make findings on issues which are unnecessary to the result); *see also Mogharrabi*, 19 I&N Dec. at 449. The applications are deemed moot.

Based on the foregoing, the following orders shall enter:

**ORDER**

**IT IS HEREBY ORDERED** that the Respondent's application for asylum pursuant to INA § 208 is **GRANTED**.

If either party elects to appeal this decision, the Notice of Appeal must be received by the Board of Immigration Appeals within thirty (30) days of this decision. 8 C.F.R. § 1003.38(a)-(b).

6/12/15
Date

**PAUL M. GAGNON**
United States Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1961 STOUT STREET, SUITE 3101
DENVER, COLORADO 80294

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| **In the Matters of:** | ) | |
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| | ) | |
| | ) | IN REMOVAL |
| | ) | PROCEEDINGS |
| **Respondents.** | ) | |
| | ) | |
| **File Nos.:** | ) | |
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**CHARGE**: Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA or the Act), as amended, in that at the time of application for admission, the alien 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.

**APPLICATIONS**: Asylum pursuant to INA § 208; Withholding of Removal pursuant to INA § 241(b)(3); Relief under the United Nations Convention Against Torture (CAT) pursuant to 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18.

**ON BEHALF OF RESPONDENT**:
Camila Palmer, Esquire
Elkind Alterman Harston, PC
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**ON BEHALF OF THE DEPARTMENT**:
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U.S. Department of Homeland Security
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## WRITTEN DECISION

### I. Facts and Procedural History

(Lead Respondent) is a thirty-two-year-old native and citizen of Mexico. Lead Respondent and her two daughters, and also party to these proceedings (collectively referred to as "Respondents"), applied for admission to the United States on at the port of entry. Exhibits 1, 1a, 1b (Notices to Appear) (NTAs). They did not

then possess valid entry documents. *Id.* Lead Respondent expressed fear of returning to Mexico, and on , an Asylum Officer (AO) interviewed her and found her fear credible. Exhibit 2 (Credible Fear Worksheet). Accordingly, the Department of Homeland Security (DHS or the Department) served Respondents with NTAs, charging them as inadmissible to the United States under section 212(a)(7)(A)(i)(I) of the Act. Exhibits 1, 1a, 1b. On , the Department filed Respondents' NTAs with the immigration court, which in turn served Respondents with Notices of Hearing on , thereby vesting jurisdiction with the Court and initiating removal proceedings. 8 C.F.R. § 1003.14; *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018).

On , Lead Respondent filed a Form I-589, Application for Asylum and for Withholding of Removal (I-589), listing her children as derivative applicants under section 208(3)(a) of the Act.[1] On Respondents, through counsel, admitted the allegations in their NTAs and conceded the charge of removability. The Court directed Mexico as the country of removal, should removal be necessary. Lead Respondent appeared for a merits hearing on , and testified in support of her application. Lead Respondent's mother, , also testified on Lead Respondent's behalf. The Department did not call any witnesses.

For the reasons set forth below, the Court grants Respondent's I-589 application.

## II. Documentary Evidence

The Record of Proceeding includes fifteen exhibits. The Court has given thorough consideration to all evidence submitted, regardless of whether that evidence is specifically named in this decision.

## III. Testimony

As the Court finds Lead Respondent and her mother credible, it presents their testimony here in narrative form.

### A. Lead Respondent's Testimony

Lead Respondent grew up in Mexico. In , she came to the United States to attend in . While in the United States, Lead Respondent had two children, though she did not marry their father. After Lead Respondent graduated she returned to Mexico with her children to study and college. However, she was forced to drop out when her son, who was less than year old at the time, became ill.

Around this time, in , Lead Respondent met and began a relationship with him. Initially, he was respectful, kind, and courteous with her and her children. On , Lead Respondent moved in with . Shortly thereafter, she learned she

[1] Respondent's daughters have not filed independent I-589s.

B. _____ Testimony

is Lead Respondent's mother. first learned that was abusing Lead Respondent when one of the women who cared for Lead Respondent's children told her. Lead Respondent had not told her about the abuse because she was afraid of , but eventually witnessed verbally and physically abuse Lead Respondent. also assaulted directly on one of the occasions when Lead Respondent tried to leave him. accompanied Lead Respondent to pack some clothes. On that occasion, took Lead Respondent's daughter, , out of arms. They called the police, but one of the local officers who responded to the call was cousin, so he did not do anything. spoke to the cousin, and threatened to call the non-local police if did not return . This prompted the cousin to speak with and tell him to return the because he had kidnapped her. confirmed that no one arrested or reprimanded

also explained that her daughter made many police reports, and confirmed that the police would not turn those reports over to her unless Lead Respondent collected them in person. stated that she never saw the police respond to any of Lead Respondent's complaints. After Lead Respondent left Mexico, called and told her that he wanted his daughters, and if Lead Respondent returned to Mexico, he would kill her.

## IV. Asylum

Asylum is a discretionary form of relief available to aliens physically present or arriving in the United States, who apply for relief in accordance with sections 208 or 235(b) of the Act. INA § 208(a)(1); *see INS v. Cardoza-Fonseca*, 480 U.S. 421, 444 (1987).

A. Timeliness – One Year Asylum Deadline

To be eligible for asylum, an applicant must demonstrate by clear and convincing evidence that she filed her asylum application within one year of her last entry into the United States. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)(i). Lead Respondent arrived in the United States on , and filed her asylum application on . Therefore, her application is timely.

B. Credibility and Corroboration

In all applications for asylum and withholding of removal, the Court must make a threshold determination of the applicant's credibility. INA §§ 208(b)(1)(B)(ii)-(iii), 241(b)(3)(C); *Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). The applicant's testimony, standing alone, may be sufficient to meet the burden of proof if it is credible, persuasive, and probative of facts sufficient to demonstrate that the applicant is a refugee. *Id.*; *see also* INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.13(a); *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989). Testimony is not credible if it is inconsistent, inherently improbable, or contradicts current country conditions. *Matter of S-M-J-*, 21 I&N Dec. 722, 729 (BIA 1997). The following factors

may be considered in assessing the applicant's credibility: demeanor, candor, responsiveness, inherent plausibility of the claim, the consistency between oral and written statements, the internal consistency of such statements, the consistency of such statements with evidence of record, and any inaccuracy or falsehood in such statements, regardless of whether it goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii); *Matter of J-Y-C-*, 24 I&N Dec. 260, 262 (BIA 2007); *Matter of S-B-*, 24 I&N Dec. 42, 43 n.1 (BIA 2006). In some cases, the applicant may be found credible even if she has trouble remembering specific facts or there is ambiguity regarding an aspect of her claim. *See, e.g.*, *Matter of B-*, 21 I&N Dec. 66, 70-71 (BIA 1995); *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998).

The Court finds that both Lead Respondent and testified credibly. Their testimony remained consistent during direct and cross-examination and conformed to the information provided in Lead Respondent's application for relief. Additionally, Lead Respondent's testimony was consistent with . Though Lead Respondent described an incident in her affidavit that she did not describe during her testimony, an occasion when hit her so hard she passed out and woke up undressed in the bed, this omission does not undermine her credibility considering how often beat her. *Matter of A-S-*, 21 I&N Dec. 1106, 1109-10 (BIA 1998) (minor and isolated discrepancies in the applicant's testimony are not necessarily fatal to credibility). Similarly, although there were some minor inconsistencies in dates between her testimony and her statements to the AO who interviewed her, they are not significant enough to make Lead Respondent not credible. The Court also had an opportunity to observe Lead Respondent's and demeanor and other nonverbal indicators, and their testimony appeared authentic and genuinely based in fact. Thus, upon careful consideration of the facts of record and the witnesses' testimony, the Court finds Lead Respondent and credible.

C. Refugee Status

An asylum applicant bears the burden of proving that she is a "refugee" as defined in section 101(a)(42) of the Act. INA § 208(b)(1); 8 C.F.R. § 1208.13(a). This requires the applicant to prove that she is outside her country of nationality and is unable or unwilling to return to or avail herself of that country's protection because she has suffered past persecution or has 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); *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 230 (BIA 2014).

1. *Past Persecution*

An applicant who can demonstrate that she suffered past persecution on account of a protected ground is entitled to the presumption that she has a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). An applicant alleging past persecution must establish that: (1) she suffered harm rising to the level of persecution; (2) the persecution was on account of a protected ground; and (3) the persecution was committed by the government or by a force the government is unable or unwilling to control. *Id.*

a. *Severity of Harm*

To qualify for asylum based on past persecution, an applicant must show that the harm she suffered rose to the level of persecution. 8 C.F.R. § 1208.13(b)(1). Persecution is a threat to life or freedom or the infliction of suffering or harm upon those who differ, in a way that is regarded as offensive. *Woldemeskel v. INS*, 257 F.3d 1185, 1188 (10th Cir. 2001); *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). In order for such acts to rise to the level of persecution, they must be "more than just restrictions or threats to life and liberty." *Woldemeskel*, 257 F.3d at 1188; *see also Hayrapetyan v. Mukasey*, 534 F.3d 1330, 1337 (10th Cir. 2008). In determining whether an applicant experienced harm constituting persecution, the Court considers incidents in the aggregate. *See Hayrapetyan*, 534 F.3d at 1337-38; *see also Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998).

The harm Lead Respondent experienced in Mexico consisted of threats, recurring physical and verbal assaults, and the kidnapping of her child. These incidents occurred throughout her relationship with , from . regularly threatened to take Lead Respondent's children away from her, and told her she could never leave him. He hit her face, pulled her by the hair, and pushed her onto the ground while she was pregnant, causing her to develop a blood clot on her uterus. On one occasion, her hit her in the face so badly that her wounds took a week to fade. On another occasion, he hit her so hard in her chest that she passed out and did not regain consciousness until the next morning, when she woke to find herself undressed in the bed. Finally, on at least two occasions, took one of Lead Respondent's daughters away from her and refused to return the child until persuaded to by others. On each of the three occasions that Lead Respondent attempted to escape , he tracked her down and forced her to return to their home in . also isolated Lead Respondent, preventing her from working or finishing her college degree, and physically and verbally abusing her when she left the house without his permission. He tried to separate her from her family members as well. He once beat up Lead Respondent's brother, and threatened her family members after she arrived in the United States.

The Court finds that the harm Lead Respondent experienced rises to the level of persecution. severely and repeatedly beat Lead Respondent, and refused to let her leave him. Further, he repeatedly threatened to take Lead Respondent's children away from her, and one time, he actually did. During the incident that caused Lead Respondent to flee Mexico, almost choked her to death. Had her daughter not intervened, might have succeeded in killing Lead Respondent. He repeatedly told her she could never leave him, and fulfilled this promise by finding her every time she tried to leave. s beatings caused so much damage that Lead Respondent's friends and family members noticed and encouraged her to leave him. However, he isolated her so successfully that she could not escape. His beatings were also accompanied by verbal abuse, as he regularly humiliated her and told her she was alone. In sum, while each incident alone might not have risen to persecution, when taken together, they easily meet this high threshold. *Hayrapetyan*, 534 F.3d 1330 (finding an asylum applicant's cumulative harm, which included threats and beatings, constituted past persecution). The Court, therefore, finds that the threats, beatings, and injuries inflicted on Lead Respondent rise to the level of persecution as contemplated under the Act.

b. *Protected Ground*

To establish past persecution, an asylum applicant must demonstrate that such persecution was "on account of" race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.16(b); *see Elias-Zacarias*, 502 U.S. 478.

Lead Respondent argues that she was persecuted in Mexico on account of her membership in five particular social groups: "Mexican women"; "Mexican mothers"; "Mexican women in a domestic relationship who are unable to leave the relationship"; "Mexican mothers in a domestic relationship unable to leave the relationship"; and "Mexican women who favor women's rights, equality, and autonomy." To establish persecution on account of membership in a particular social group, an applicant must demonstrate the existence of a cognizable particular social group, her membership therein, and a nexus between her persecution and her membership in that group. *Matter of W-G-R-*, 26 I&N Dec. 208, 223 (BIA 2014). To be cognizable, 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." *M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014); *see also Rivera Barrientos v. Holder*, 658 F.3d 1222, 1229 (10th Cir. 2011).

i. Mexican women

First, Lead Respondent argues that persecuted her on account of her membership in the particular social group defined as "Mexican women." The Board and the Tenth Circuit Court of Appeals have left open the question of whether "women" in a particular country, without any other defining characteristics, can constitute a particular social group. *See Lopez v. Sessions*, Nos. 17-9517 & 17-9531, 2018 WL 3730137 (10th Cir. Aug. 6, 2018) (unpublished) (McKay, J., dissenting) (asserting that Tenth Circuit case law has "left open the possibility that gender alone could be sufficient to satisfy the immigration standard [of a protected ground]").

In *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), *abrogated by Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018), the Attorney General breathed new life into the analysis of whether gender-based persecution among private individuals may serve as the foundation of a particular social group. *A-B-*, however, only considers gender-based persecution at the intersection of domestic violence, specifically where a man abuses a woman as part of a personal, often intimate, relationship. In doing so, it avoids addressing the most common form of gender-based asylum claims, where a woman faces persecution for no other reason besides her status as a woman, regardless of whether she is in an intimate relationship. Accordingly, while *A-B-* extrapolates on the viability of gender-based asylum claims between private parties in domestic relationships, it does not address whether societal, gender-based violence is alone sufficient for women in a particular country to constitute a cognizable social group under the Act. Moreover, *A-B-* does not and cannot change the ultimate inquiry in cases such as this: "[T]he focus with respect to such claims should not be 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. Gonzalez*, 422 F.3d 1187, 1199-200 (10th Cir. 2005) (quoting INA § 101(a)(42)(A)).

The unfortunate reality is that many countries marginalize women as second-class citizens. Sometimes this occurs through laws that grant men and women different rights, and in other instances religion or long-established cultural traditions relegate women to inferior social statuses. Where a society institutionalizes laws that permit violence against women or holds women and men in unequal standing, there is no reason why gender or sex should not align with the definition of a "refugee" and be treated as tantamount to the broad, protected classes of race, religion, and political opinion. In the years since 1951, when the Refugee Convention was drafted, significant developments in women's rights have reshaped the way women are treated in many parts of the world. In fact, most countries have taken steps to recognize and respond to the challenges women face in male-dominated societies. *See, e.g.*, United Nations Human Rights Commission, Convention on the Elimination of All Forms of Discrimination Against Women (1979) (committing to eliminate gender-based discrimination worldwide); Civil Rights Act of 1964, 42 U.S.C. § 2000e (1964) (prohibiting discrimination on the basis of sex in the United States). Indeed, if the Refugee Convention were drafted in more modern times, it likely would have recognized gender and sex as distinct classes as it did race, religion, nationality, and political opinion.

Nevertheless, even if "sex" or "gender" were codified as protected grounds, not all women would qualify as refugees, just as not all races, nationalities, or persons of a certain religious affiliation or political opinion are refugees. Most countries now recognize gender equality and condemn violence against women, by law if not in practice. Of course, there are some that do not, and the Court does not discount the possibility that "women" in certain countries, under certain situations, may constitute a cognizable social group without any additional defining characteristics. *See Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010) (acknowledging that "women in a particular country . . . could form a particular social group," irrespective of other defining features, to conclude that "all women in Guatemala" is a cognizable social group). As such, the ultimate determination of whether "women" in a particular country constitute a cognizable social group requires a country-specific, fact-intensive analysis. There are some countries in which women are parceled out as a whole, irrespective of other defining characteristics, and subjected to misogynistic laws or customs that undermine their rights and condone gender-based violence. *See, e.g.*, *Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005) (finding, based on country-specific circumstances in Somalia, that "Somalian females" constitutes a cognizable social group because persecution against women is "deeply imbedded in the culture throughout the nation and performed on approximately 98 percent of all females"); *Lopez*, 2018 WL 3730137, at *6 (McKay, J., dissenting) ("The record in this case strongly supports the conclusion that women in El Salvador face . . . persecution ['on account of' their membership in this particular, albeit large, social group.]").

Turning to the case at hand, the Court finds the social group defined as "Mexican women" cognizable. First, gender and nationality both constitute immutable characteristics that individuals cannot and should not be required to change. *See* INA § 101(a)(42) (listing nationality as a protected ground); *Acosta*, 19 I&N Dec. at 233 (listing sex as a paradigmatic example of a common, immutable characteristic).

Second, the group of Mexican women is sufficiently particular. A social group is particular if "the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons." *Matter of S-E-G-*, 24 I&N Dec. 579, 584 (BIA 2008). The terms used to describe the group must have commonly accepted definitions and defined boundaries within the society in which the group is a part, and may not be amorphous, overbroad, diffuse, or subjective. *M-E-V-G-*, 26 I&N Dec. at 239 (citing *Ochoa v. Gonzales*, 406 F.3d 1166, 1170-71 (9th Cir. 2005)). Though it is a large group, the term "women" has a commonly accepted definition in Mexico, as it does in most societies. In fact, Mexico has laws that apply specifically to women, suggesting that the term is discrete, and has legally definable boundaries. *See* Exhibit 6 at 26 (U.S. Dep't of State, *Mexico 2017 Human Rights Report*(2018)) (DOS Report) (stating that "[a]ccording to the law, the crime of femicide is the murder of a woman committed because of the victim's gender and is a federal offense punishable if convicted by 40 to 60 years in prison"). Moreover, women constitute a precise, albeit large, segment of society, and the term is neither vague nor amorphous.

Finally, the group composed of Mexican women is also socially distinct. To establish social distinction, there must be "evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group." *W-G-R-*, 26 I&N Dec. at 217. This inquiry must be individualized; whether a proposed group has the requisite social distinction "must be considered in the context of the country of concern and the persecution feared." *Id.* at 586-87. Both the Board and the Tenth Circuit have stated that women tend to be viewed as a group by society. *See Niang*, 422 F.3d at 1199-200; *M-E-V-G-*, 26 I&N Dec. at 246 ("Social groups based on innate characteristics such as sex . . . are generally easily recognizable and understood by others to constitute social groups." (quoting *Matter of C-A-*, 23 I&N Dec. 951, 959 (BIA 2006))). While such a large group may be diverse, this fact does not defeat Lead Respondent's claim that in Mexico, a woman's gender alone lands her in a category that determines her treatment. *See Niang*, 422 F.3d at 1199 (suggesting that a social group containing "half a nation's residents" may be cognizable depending on the circumstances of their persecution).

Indeed, Lead Respondent has presented abundant evidence describing how women are treated as a group based on their gender. *See* Exhibit 6 at 26 (DOS Report stating that federal law criminalizes rape, domestic violence, and femicide, but the laws were often unenforced and resources for women victims were lacking); Exhibit 13 at 60 (Human Rights Watch, *Mexico* (2017)) (HRW Report) ("Mexican laws do not adequately protect women and girls against domestic violence."); *id.* at 49 (Amnesty International, *Mexico 2017/2018*) (AI Report) ("Violence against women remained a major concern; new data showed that two third of women had experienced gender-based violence during their lives."). Mexican society ascribes specific roles to women and men based exclusively on their gender, indicating that gender is a recognizable trait used to define and identify individuals. Exhibit 13 at 35 (Committee on the Elimination of Discrimination against Women, *Alternative Report on Violence against Women in Ciudad Juarez, Chihuahua, Mexico* (July 2018) (CEDAW Report) (noting that patterns of violence against women in Mexico stem from "a culture of machismo and subordination of women" and "a culture of discrimination against women based in the erroneous conception of inferiority"). The existence of laws that protect women in Mexico does not undermine this particular social group; rather, it emphasizes that Mexican society views women as a group and

recognizes that it is a group in need of protection. *Cf. Hassan v. Gonzales*, 848 F.3d 513 (8th Cir. 2007) (concluding that "Somali females" is a cognizable social group, because of the overwhelming prevalence of institutionalized violence against Somalian women).

It is clear that Mexico is a country where women are broadly, as a group, subjected to persecution. Country conditions in Mexico demonstrate these circumstances. Gender-based violence is ubiquitous in Mexico. *See, e.g.*, Exhibit 6 at 26 (DOS Report stating that state laws in Mexico addressing domestic violence "largely failed to meet the required federal standards and often were unenforced" and stating that despite the existence of some shelters and justice centers, "the number of cases far surpassed institutional capacity"); Exhibit 13 at 52 (AI Report stating that "[g]ender-based violence against women and girls was widespread"); *id.* at 60 (HRW Report stating that "Mexican laws do not adequately protect women and girls against domestic and sexual violence" and noting that some laws "make the severity of punishments for some sexual offenses contingent upon the 'chastity' of the victim"). *See id.* Country condition reports illustrate universal inequality between Mexican men and women. *See, e.g.*, Exhibit 13 (multiple reports detailing endemic domestic violence and femicide, despite the laws on the books). Thus, as Lead Respondent has established that the group of "Mexican women" is immutable, particular, and socially distinct, the Court finds that it constitutes a cognizable particular social group.

ii. Mexican mothers

Lead Respondent claims that she is a member of a second social group: "Mexican others." The Court, however, concludes that this group is not cognizable. While the record contains evidence that women as a whole a considered a particular social group, the evidence does not support the contention that Mexican mothers are considered socially distinct. Moreover, country conditions suggest that violence against women is widespread throughout the country regardless of whether women have had children. *See generally* Exhibit 13. Indeed, the Record reflects no laws pertaining to mothers in particular, as opposed to women in general. *Id.* Therefore, the Court concludes that Mexican mothers is not a cognizable social group.

iii. Mexican women or mothers unable to leave domestic relationships

Lead Respondent's next proposed social groups are composed of both Mexican women and Mexican mothers who are in domestic relationships and unable to leave those domestic relationships. Domestic relationships can take many forms; thus, the group lacks the definable benchmarks necessary to satisfy the particularly requirement. Moreover, as with Mexican mothers, country conditions suggest that violence against women is widespread throughout the country regardless of whether women are in domestic relationships. *See generally* Exhibit 13. Thus, the evidence is insufficient to show that Mexican society views women unable to leave domestic relationships—or even women in domestic relationships—as a socially distinct group.

iv. Mexican women who believe in women's rights

Lead Respondent's fifth social group, "Mexican women who favor women's rights, equality, and autonomy," is also not cognizable. Like the previous social groups, this group is

not particular, as it lacks clear or definable benchmarks to determine its membership. *M-E-V-G-*, 26 I&N Dec. at 239. The terms "women's rights," "equality," and "autonomy" are all vague, subjective terms. Additionally, it is unclear what form "believ[ing] in" women's rights would take; it could mean anything from actively and publicly promoting the advancement of women to, as here, desiring to obtain a college degree and work outside the home. Additionally, individuals who believe in women's equality and autonomy may change the way they view those rights over time, and they may manifest their changing believes in different manners. Moreover, the group is not socially distinct, as the record contains insufficient evidence demonstrating whether Mexican society views women who believe in women's rights as socially distinct. *See generally* Exhibit 13. As this social group is neither particular nor socially distinct, it is not cognizable for asylum purposes.

c. *Nexus*

The Court has concluded that "Mexican women" constitutes a particular social group for asylum purposes. However, Lead Respondent must also establish a nexus between her membership in that group and persecution. The Court will find a nexus between an applicant's persecution and a protected ground if the protected ground is "at least one central reason" that motivated her persecutor to harm her. INA § 208(b)(1)(B)(i); *see also Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-12 (BIA 2007). The protected ground cannot play a minor role in the persecution, nor can it be "incidental, tangential, superficial, or subordinate to another reason for harm." *Karki v. Holder*, 715 F.3d 792, 800 (10th Cir. 2013) (citations omitted).

Here, Lead Respondent met her burden to show that persecuted her on account of her membership in the particular social group of "Mexican women." Lead Respondent's testimony demonstrates that behavior conforms to the predominant view of traditional gender roles in Mexico. As discussed above, a culture based on "machismo" and women's inferiority persists throughout Mexico, despite Mexico's apparent progress in enacting laws aimed at preventing and punishing domestic violence. *See* Exhibit 13 at 35 (CEDAW Report stating that the State of admitted that crimes against women are "influenced by a culture of discrimination against women based in the erroneous conception of inferiority"); *id.* at 52 (AI Report stating that two thirds of Mexican women above age fifteen have experienced gender-based violence); *id.* at 60 (HRW Report stating that in some cases, the severity of punishments for sexual offenses depends on the victim's "chastity"); *id.* at 141 (Nidia Bautista, *Justice for Lesvy: Indifference and Outrage in Response to Gender Violence in Mexico City*, North American Congress on Latin America (July 31, 2017)) (NACLA article) (describing the "pervasive government indifference toward violence against women in Mexico"); *id.* at 149 (Michelle Lara Olmos, *Ni una más: Femicides in Mexico*, Justice in Mexico (Apr. 4, 2018)) (citing a report concluding that "there has been little change to the overall cultural mindset, which marginalized women as 'disposable' and permeat[ed] gender-based violence, and ultimately, femicide").

At every step, actions were informed by Mexico's traditional culture of machismo, and its deep-seated view of gender relations and a woman's role in society. *Cf. A-B-*, 27 I&N Dec. at 339 (noting that an asylum applicant who's claim is based on domestic violence must show that her partner "attacked her because he was aware of, and hostile to," the particular

social group to which the applicant belonged). comments and conduct show that he viewed himself as the man of the house, and believed that he could treat Lead Respondent as subordinate and inferior. He did not bother to hide his beatings from either the neighbors, his own family, or Lead Respondent's family. Moreover, he prevented Lead Respondent from working and from completing her education, repeatedly telling her that there was no need for her to work or continue her education, as "that's why he's the man of the house." Lead Respondent stated that repeatedly humiliated her "to keep [her] in submission." In fact, he sabotaged her efforts to establish independence from him: he got her fired from her job by not letting her leave the car when he dropped her off, and he stopped paying the internet bill when she was trying to complete an online college degree. Moreover, refused to let Lead Respondent transport herself; he insisted on driving her anywhere she needed to go, including to her father's funeral. He would not even accept favors from Lead Respondent's parents, because he "wanted to be the man." also consistently told Lead Respondent that she could never leave him. However, he never imposed this treatment on any of Lead Respondent's children, supporting Lead Respondent's claim that beatings resulted specifically from his views on women rather than from anger or a general desire to control all members of his family. behavior demonstrates that he believed he and Lead Respondent both had specifically defined gender roles to fulfill, and he attempted to structure their life around those roles by beating her whenever she attempted to leave him, asserted her will, or violated her assigned gender role in any other way.

Lead Respondent's experience is exceptionally common throughout both Mexico and other Central American countries. *See* Exhibit 13 at 64-124 (United Nations High Commissioner for Refugees, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* (Oct. 2015)) (UNHCR Report) (describing accounts of women attempting to flee abusive, controlling men, and generally explaining that women bear the brunt of violence in the countries included in the report). The UNHCR Report states that "physical and sexual abuse was often accompanied by psychological abuse, including isolation, stalking, and threats to harm family members." *Id.* at 91. One Mexican woman stated that "a woman is worthless. It is as though your life is not worth anything," and another described being "beaten like a man" by her husband for several years and trying to flee repeatedly, but he always tracked her down. *Id.* at 83, 91. These experiences precisely mirror Lead Respondent's life with , and stem from common views on women and gender relations throughout Mexico and Central America as well.

Thus, in light of Lead Respondent's personal experiences and evidence in the Record pertaining to men's views of women and Mexico's patriarchal and machismo-based culture, the Court concludes that Lead Respondent has met her burden to show that her membership in the social group of Mexican women was one central reason for continuous harm.

d. *Government Involvement*

To establish past persecution, an applicant must also demonstrate that she suffered persecution by the government, or by forces the government is unable or unwilling to control. *Wiransane*, 366 F.3d at 893. Here, Lead Respondent suffered harm at the hands of her domestic partner. Thus, she must establish that the Mexican government was unable or unwilling to protect her, as "'[p]ersecution is something a *government* does,' either directly or indirectly by

being unwilling or unable to prevent private misconduct." *A-B-*, 27 I&N Dec. at 319 (quoting *Hor v. Gonzales*, 400 F.3d 482, 485 (7th Cir. 2005)). "An applicant seeking to establish persecution based on violent conduct of a private actor 'must show more than "difficulty . . . controlling" private behavior.'" *Id.* at 337 (quoting *Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005)). Additionally, "[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 . . . Applicants must show not just that the crime has gone unpunished, but that the government is unwilling or unable to prevent it." *Id.* at 337-38.

The Court concludes that Lead Respondent has met this high burden. First, Lead Respondent's testimony establishes that on not one, but multiple occasions, the police failed to intervene to help her. She testified that she called the police on several times, and her mother confirmed this. Sometimes, the police never responded to the call. Other times, the police showed up late, long after had already left the house. On those occasions, they instructed Lead Respondent to call them when returned; however, when she called them back, they never returned to her home or otherwise followed up with her. Moreover, on at least one occasion, Lead Respondent attempted to file a report with the police and they told her to return the next day "because [she] had come after office hours." She indicated that the police wanted to take pictures and have her visit with the doctor and the psychologist to evaluate her mental state and her injuries, which suggests that the police understood the extent of her pain and suffering but sent her away anyway. And though she "managed to make a report . . . it was never processed because they lack the personnel." The Court notes that Lead Respondent does not have any of the police reports she filed; however, Lead Respondent explained that the police refused to release the reports to her or anyone she authorized to retrieve the reports unless she appeared before them in person. This sort of bureaucratic obstructionism is consistent with a police system that is unwilling and unable to prevent violence against women. *See* Exhibit 13 at 89 (UNHCR Report noting, "Sometimes women were unable to report incidents and threats due to bureaucratic excuses").

DHS repeatedly emphasized the one occasion when kidnapped Lead Respondent's child, who was a baby at the time, and the police helped her. Specifically, kidnapped and ran away with her to his brother's house. Lead Respondent and her mother called the local police, and two officers responded to the call. However, one of the officers was cousin, and he initially refused to help Lead Respondent. Eventually, Lead Respondent's mother threatened to call the state police, which convinced cousin to tell to return the baby. This incident does not demonstrate that the government was willing and able to prevent abuse. Importantly, though was convinced to return the baby, he was not arrested, and the police took no report. Moreover, there is nothing to indicate that the police would have forced to return the child if he did not agree to do so willingly. It is even possible that gave in only because his cousin—a family member rather than an anonymous police officer—persuaded him to do so. Additionally, while the threat of calling the state police was effective in this one instance, nothing in the record speaks to what the state police would have done if they had been called. The Court is left with Lead Respondent's account that, despite many calls to the police, they only helped her on one occasion, and then, only because her mother threatened to involve an external police force. Thus, the police consistently failed to protect Lead Respondent from abuse. This systematic failure goes beyond a couple rogue

police officers' actions, and the Court will not speculate what a different police force might have done. *Cf. Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1078-80 (9th Cir. 2015) (concluding that torture committed by police officers in uniform were acting in an official capacity and it was not a defense that higher-up officials did not direct their torture and rape of a transgender woman); *Costa v. Holder*, 733 F.3d 13, 17-18 (1st Cir. 2013) (concluding that two rogue police officers do not constitute government action).

Even if the Court engaged in such speculation, however, evidence about country conditions in the Record confirms that Lead Respondent's experience is not unique. Instead, the evidence reveals a police force riddled with incompetence, lack of resources, and corruption, whose members reflect the broader cultural realities of machismo and women's inferiority. Such a police force thoroughly undermines the laws Mexico has enacted to protect women. For example, though the DOS Report confirms that federal law prohibits rape, including spousal rape, and that the crime of femicide carries strict penalties and is a crime in all states, "[f]ederal law does not criminalize spousal abuse." Exhibit 6 at 26. Human Rights Watch reported that "Mexican laws do not adequately protect women and girls against domestic and sexual violence," Exhibit 13 at 60, and Amnesty International reported that the system of "Alerts of gender-based violence against women" active in twelve states "were not shown to have reduced gender-based violence against women and girls," *id.* at 52. In fact, one report notes, "Women may be equal to men according to enacted legislation, but women do not enjoy the same protections because those laws are consistently not enforced in instances of transgressions of women." *Id.* at 48 (CEDAW Report); *see also id.* at 83 (UNHCR Report stating that despite Mexico's laws aimed at protecting women, reporting remains low due to "authorities' ineffective approach to victims, and a perception that cases will not be prosecuted").

Indeed, impunity for perpetrators of gender-based violence remains the norm. Exhibit 6 at 3 (DOS Report noting that the government itself "estimated that 94 percent of crimes were either unreported or not investigated and that underreporting of kidnapping may have been even higher"), 13 ("[I]mpunity, especially for human rights abuses, remained a serious problem. The frequency of prosecution for human rights abuse was extremely low."); Exhibit 13 at 52 (AI Report stating that most cases of gender-based violence "were inadequately investigated and perpetrators enjoyed impunity"); *id.* at 135 (Vice News article reporting, "Although Mexico has the toughest prison sentences against a person charged with femicide in Latin America . . . the prospect of a long sentence is apparently not a deterrent to end the femicide wave. After all, crimes are rarely if ever investigated and punished in the country. In 2013, 93.8 percent of crimes were not prosecuted in Mexico, according to the 2014 National Survey on Public Security perception."); *id.* at 141 (NACLA article describing the "pervasive government indifference toward violence against women in Mexico"); *id.* at 148 (Justice in Mexico article quoting a United Nations human rights representative saying that Mexico's lack of federal response to rising femicide rates reinforces a culture of gender-based violence and that "[i]mpunity is very high so you cannot see the deterrent effect of the [femicide] sanction").

Moreover, resources for women victims of domestic violence are inadequate, particularly in the state of . Exhibit 6 at 5 ("According to . . . the Center for Women's Human Rights . . was one of the states with the highest numbers of enforced disappearances . . . ."), 26 ("State and municipal laws addressing domestic violence largely failed to meet the

required federal standards and were often unenforced."); Exhibit 13 at 45 (CEDAW Report stating that despite an extremely large case load of open investigations into crimes against women, had dramatically insufficient staff and resources). Additionally, was one of the last states to enact laws prohibiting femicide, and still has not enacted the warning system meant to prevent such murders before they occur. Exhibit 13 at 43, 46 (CEDAW Report stating that "[t]he State of was the last to codify the crime of femicide," and that still "does not have an Alert for Gender-based Violence, although one exists on the federal level"); *id.* at 89 (UNHCR Report, "All of the women who said they reported persecution to the authorities in . . . Mexico stated that they received no protection or inadequate protection."); *id.* at 134 (Vice News article stating, "[T]he lack of comprehensive data on women killings in Mexico is chronic. For example, does not count women killings with extreme violence differently than other murders, as the state still lacks rules on the subject.")

The Court also notes that although the police did not directly harm Lead Respondent in this case, police still regularly abuse women in Mexico. *See* Exhibit 6 at 10 (DOS Report listing cases of sexual exploitation of female prisoners throughout Mexico), 13 (detailing a 2006 incident where police took forty seven women into custody and sexually tortured them), 14 (reporting "widespread use of arbitrary detention by security forces"); Exhibit 13 at 88 (UNHCR Report recounting that "10 percent of the women interviewed stated that the police or other authorities were the direct source of their harm"); *id.* at 144-45 (NACLA article, "With the militarization of Mexican cities and the impunity encouraged by the political system, women have been targets of abductions, murder, disappearances, torture, arbitrary detention and criminalization in alarming numbers in the last three decades.").

As abundant evidence in the Record reveals, despite recent advancements in legal protections, the de facto reality in Mexico still reflects a culture of discrimination and violence against women where police regularly fail or refuse to protect women, and even harm them directly. The Court cannot rely with blind faith on the existence of laws that protect women in name only while the evidence shows that officials continue to stand idly aside as women are abused and murdered with impunity. Thus, the Court finds that the Mexican government has proven unable or unwilling to protect Lead Respondent from abuse.

2. *Well-Founded Fear of Persecution*

An asylum applicant who has suffered past persecution is presumed to have a well-founded fear of future persecution on the same grounds. 8 C.F.R. § 1208.13(b)(1). DHS may rebut this presumption by demonstrating either that there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in her home country, or that the applicant could relocate to another part of the country to avoid future harm, and it would be reasonable to expect her to do so. 8 C.F.R. §§ 1208.13(b)(1)(i)(A)-(B); *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 31 (BIA 2012). DHS bears the burden of rebutting this

presumption by a preponderance of the evidence. 8 C.F.R. § 1208.13(b)(3)(ii); *Matter of D-I-M-*, 24 I&N Dec. 448, 450 (BIA 2008).

As Lead Respondent has demonstrated that she suffered past persecution on account of her membership in the particular social group of Mexican women, she is entitled to a presumption of future persecution. To rebut this presumption, DHS presented only the DOS Mexico Human Rights Report. Exhibit 6. Indeed, the DOS Report describes efforts Mexico has made in recent years to protect women. *Id.* at 4 (noting the special prosecutor for violence against women opened ten cases as of , 26 (describing various state and federal laws Mexico has enacted to protect women). However, as described at length above, these laws have failed to mitigate violence against women, which remains ubiquitous throughout the country. *See, e.g.*, Exhibit 13 at 148 (Justice in Mexico report stating that iad "the third highest number of femicides in Mexico's recorded history"). Moreover, Lead Respondent has presented evidence that as repeatedly attempted to contact her since she left Mexico. *See* Exhibit 13 at 10-23 (print-outs of attempts to contact Respondent through Facebook). Though she last heard from in , also repeatedly tried to contact her through her family members. Lead Respondent also credibly testified that attempted to enter the United States to find her. brother-in-law warned Lead Respondent about plans, and Immigration and Customs Enforcement informed Lead Respondent when it returned to Mexico after he attempted to enter the United States. Thus, the Court concludes that DHS has failed to demonstrate a fundamental change in circumstances regarding either the general treatment of women throughout Mexico, or specific plans to seek out and harm Lead Respondent.

DHS has presented no evidence regarding Lead Respondent's ability to relocate internally, and the Court concludes that it would not be reasonable for her to do so. Lead Respondent left and moved to a different city at least twice, and found her and forced her to return with him on both occasions. located Lead Respondent on these occasions because he knows where her family lives throughout Mexico. In fact, managed to locate Lead Respondent in the United States, which indicates that he has the incentive to track her down even far from home. While Lead Respondent might be able to relocate to a part of Mexico where she has no family, the Court finds that it would not be reasonable to expect her to do so. First, Lead Respondent has only a high school education, and never held a successful job in Mexico. Second, she would have no one to help her with her four children, two of whom are United States citizens, if she was forced to live far from her family. Finally, Lead Respondent explained that job as a truck driver means that he drives all over Mexico, and could search for her throughout the country. He used other people's social media posts to locate her at least twice, and could likely do so again. Thus, the Court finds that Lead Respondent could not safely relocate within Mexico.

In sum, DHS has not rebutted the presumption that Lead Respondent has a well-founded fear of persecution upon return to Mexico.

D. Conclusion

Lead Respondent timely filed for asylum under the Act. Further, the Court found that she established through credible evidence that she suffered harm rising to the level of persecution on account of her membership in the particular social group of Mexican women by an individual that the government was unable and unwilling to control. DHS failed to rebut the resulting presumption that Lead Respondent has a well-founded fear of persecution upon her return to Mexico, as it failed to show changed circumstances or that she could safely relocate within Mexico. Thus, the Court finds Lead Respondent eligible for asylum under section 208 of the Act. The Court further finds Lead Respondent merits a favorable exercise of discretion, and will therefore grant her application. As the Court grants Lead Respondent's request for asylum, her daughters' derivative claims are also granted.

## VI. Other Requested Relief

As the Court finds that Respondent is eligible for relief in the form of asylum under section 208 of the Act, it declines to analyze her eligibility for withholding of removal under section 241(b)(3) of the Act, and protection under the CAT.

Accordingly, the Court will enter the following orders:

## ORDERS

IT IS ORDERED that Respondents' applications for asylum pursuant to section 208 of the Act are GRANTED.

It is FURTHER ORDERED that Respondent's minor daughters, riders in this proceeding, shall be granted derivative relief pursuant to section 208 of the Act.

IT IS FURTHER ORDERED that appeal is RESERVED on behalf of both parties.

3/7/19
Date

Eileen R. Trujillo
Immigration Judge

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:
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On Behalf of DHS:
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## 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:

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|---|---|
| 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 egan 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 ourned 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 1996, 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. 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, , in which they described the abuse Respondent suffered by both of their fathers. Exh. 5 at 20–25. 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 Krotova 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 Velazquez-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. H 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 [redacted];" (2) "female children of [redacted];" (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 [redacted];" 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 Henriquez-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 Henriquez-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. *Navas*, 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 Afrlyie*, 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)(ii). 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 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. Ashcroft*, 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 order[4] 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.

**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*
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**Name: A[redacted]-A[redacted], A[redacted] C[redacted]...** **A[redacted]-222**

**Date of this notice: 11/6/2019**

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:
Liebowitz, Ellen C

Userteam: Docket

File: A[redacted]-222 – San Francisco, CA

Date: NOV - 6 2019

In re: A[redacted] C[redacted] A[redacted]-A[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jehan Marie Laner, Esquire

ON BEHALF OF DHS: Vincent D. Pellegrini
Assistant Chief Counsel

APPLICATION: Asylum

The Department of Homeland Security (DHS) appeals from the Immigration Judge's decision dated May 20, 2019, granting the respondent's application for asylum under section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A).[1] The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The DHS's appeal of the Immigration Judge's decision is limited to the Immigration Judge's positive credibility finding and determination that the respondent established the requisite nexus to a ground enumerated in the definition of refugee. *See* section 208(b)(1)(B)(i) of the Act; *Parussimova v. Mukasey*, 555 F.3d 734, 740 (9th Cir. 2009) ("[t]he REAL ID Act requires that a protected ground represent 'one central reason' for an asylum applicant's persecution"); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007). We review these findings for clear error, and do not conclude that there is clear error in either determination. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (observing that the motive of a persecutor is a finding of fact to be determined by the Immigration Judge and reviewed by the Board for clear error).

Specifically, we acknowledge the DHS's arguments regarding the respondent's credibility. While we may have reached a different result if we were the factfinders, we discern no clear error in the Immigration Judge's findings of fact supporting her positive credibility finding. *See Matter of A-B-*, 27 I&N Dec. 316, 341 (A.G. 2018) (the Board may find an Immigration Judge's factual findings to be clearly erroneous only if they are "illogical and implausible") (internal citations omitted); *see also Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.").

[1] The Immigration Judge did not reach the respondent's withholding of removal and Convention Against Torture claims.

Similarly, we discern no clear error in the Immigration Judge's determination that the respondent established persecution on account of her membership in a particular social group. *See Matter of A-B-*, 27 I&N Dec. at 341; *N-M-*, 25 I&N Dec. at 532.

Based on the foregoing, we will dismiss the DHS's appeal. Accordingly, the following orders will be entered.

ORDER: The DHS's appeal is dismissed.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

Ellen Kelbowich
FOR THE BOARD

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

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| In the matter of | Date: May 20, 2019 |
| A[redacted] C[redacted] A[redacted]-A[redacted], | File Number: A[redacted]-222 |
| Respondent | In Removal Proceedings |

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| Charge: | Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("Act"), as amended, as an immigrant who at the time of application for admission is not in possession of a valid entry document |
| Applications: | Asylum, Withholding of Removal, Protection under the Convention Against Torture |

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| On Behalf of the Respondent:<br>Jehan M. Laner<br>Pangea Legal Services<br>350 Sansome Street, Suite 650<br>San Francisco, California 94104 | On Behalf of the Department:<br>Vincent D. Pellegrini<br>Office of the Chief Counsel<br>630 Sansome Street, Room 1155<br>San Francisco, California 94104 |

## DECISION OF THE IMMIGRATION JUDGE

## I. PROCEDURAL HISTORY

These proceedings commenced on December 5, 2013, when the Department of Homeland Security ("the Department") filed a Notice to Appear, thereby placing the respondent, Aida Carolina ANDRADE-AMAYA, in removal proceedings and vesting jurisdiction with this Court. Exh. 1; 8 CFR § 1003.14(a). The Department alleges that the respondent is a native and citizen of El Salvador who entered the United States at or near Hidalgo, Texas, on November 16, 2012, who did not then possess a valid entry document, and who was not then admitted or paroled after inspection by an immigration officer. Exh. 1.

On April 24, 2018, the respondent admitted all factual allegations, conceded the charge of removability, and declined to designate a country of removal. Based on the respondent's admissions and concession, the Court sustained the charge of removability and directed El Salvador as the country of removal, should it become necessary. *See* 8 C.F.R. § 1240.10(f). On the same date, the respondent submitted a Form I-589, Application for Asylum and for Withholding of Removal ("Form I-589"), seeking asylum, withholding of removal, and protection under the Convention Against Torture. *See* Exh. 2. She asserts she will be harmed or tortured by her former partner, [redacted] ("Mr. [redacted] gang members, or the

Salvadoran police.[1]

## II. EVIDENCE PRESENTED

The evidence of record consists of the testimony of the respondent; nurse practitioner Suzzane Portnoy ("Ms. Portnoy"); Assistant Professor of Political Science, Dr. Mneesha Gellman ("Dr. Gellman"); Associate Professor of Cultural Anthropology, Dr. Miranda Hallett ("Dr. Hallett"); Margaret Thatcher Research Fellow, Dr. Theodore Bromund ("Dr. Bromund"); and the following exhibits:

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| Exhibit 1: | NTA; |
| Exhibit 2: | Form I-589; |
| Exhibit 3: | The respondent's notice of *Mendez Rojas* class membership and motion for order finding her asylum application timely filed; |
| Exhibit 4: | The respondent's renewed motion; |
| Exhibit 5: | Form I-213, Record of Deportable/Inadmissible Alien; |
| Exhibit 6: | The Department's submission of documents, including an Interpol Red Notice ("Red Notice") and arrest warrant for the respondent; |
| Exhibit 7: | The Department's submission of additional documents, including Form I-867A, Record of Sworn Statement in proceedings under Section 235(b)(1) of the Act, and Form I-870, Record of Determination/Credible Fear Worksheet; |
| Exhibit 8: | The respondent's motion for extension of time to file supporting documents; |
| Exhibit 8A: | IJ Order (Feb. 14, 2019) (granting the respondent's motion); |
| Exhibit 9: | The respondent's declaration; |
| Exhibit 10: | The respondent's motion for continuance; |
| Exhibit 10A: | IJ Order (Feb. 27, 2019) (denying the respondent's motion); |
| Exhibit 11: | The respondent's pre-hearing brief and statement of particular social groups; |
| Exhibit 12: | The respondent's amended Form I-589; |
| Exhibit 13: | The respondent's motion to permit telephonic testimony of expert witnesses; |
| Exhibit 13A: | IJ Order (Mar. 5, 2019) (denying the respondent's motion); |
| Exhibit 14: | The respondent's documents, Tabs A–EEE, in support of her Form I-589; |
| Exhibit 15: | The respondent's witness list; |
| Exhibit 16: | The Department's notice of previously filed documents with amended certificate of translation; |
| Exhibit 17: | 2018 U.S. Department of State Human Rights Report for El Salvador; and |
| Exhibit 18: | The respondent's additional documents in support of her Form I-589.[2] |

The Court has thoroughly reviewed the entire record, whether or not summarized in its decision. The Court incorporates relevant facts into the analysis below.

[1] For clarity, the Court refers to the respondent's former partner as "Mr. [redacted] notwithstanding his subsequent name change to Victor Salvador Corrales Benavides. *See* Exh. 9 at 11.

[2] Exhibit 18 was marked for identification purposes only.

## III. CREDIBILITY

A respondent bears the burden of establishing her eligibility for relief from removal and may satisfy this burden 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. *See* INA § 240(c)(4)(C).

The Court may make a credibility determination without regard to whether any inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim. *See id.* However, a credibility determination "must be assessed under a rule of reason," and the Court may not base an adverse credibility finding on mere trivial inconsistencies. *Shrestha v. Holder*, 590 F.3d 1034, 1043–44 (9th Cir. 2010). The Court must give the respondent an opportunity to explain any discrepancies and assess whether the applicant's explanation is reasonable. *Campos-Sanchez v. INS*, 164 F.3d 448, 450 (9th Cir. 1999) *superseded on other grounds as stated in Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014). If the respondent provides a reasonable and plausible explanation for the discrepancy, the Court must provide "a specific and cogent reason for rejecting it." *Rizk v. Holder*, 629 F.3d 1083, 1088 (9th Cir. 2011) (quoting *Soto-Olarte v. Holder*, 555 F.3d 1089, 1091–92 (9th Cir. 2009)). As set forth below, the Court has numerous concerns with various inconsistencies that bear directly on the heart of the respondent's claim.

First, the Court is troubled by pervasive inconsistencies between the respondent's testimony and the evidentiary record regarding the Salvadoran government's efforts to protect her from Mr. [redacted] The respondent's testimony became increasingly inconsistent when the Department confronted her with the asylum officer's notes from her Credible Fear Interview ("CFI") in December 2012. As one example, the respondent testified that Mr. [redacted] had never been arrested in connection to his abuse. However, in her CFI, she indicated that he had been arrested on August 28, 2012, due to his abuse. When confronted with her CFI testimony, she replied that she could not remember his arrest or perhaps she or the asylum officer were confused. The Court does not find this explanation sufficiently persuasive because the respondent did not otherwise assert encountering any communication difficulties with the asylum officer.

Second, the Court is concerned by the respondent's numerous inconsistencies and omissions on her applications regarding her criminal history in El Salvador. During direct examination, the respondent testified that she was arrested on two occasions in El Salvador. On the first occasion, her sister called the police after the respondent scolded her niece. The police held her for a few hours then released her. On the second occasion, police arrested the respondent after calling to report Mr. [redacted] abuse. The police detained her then released her later that day. When asked to explain why she told the asylum officer that she had never been arrested or detained, the respondent answered that she thought the arrests were not "official

arrests" because she was only detained for a few hours and no formal charges were filed. On redirect, the respondent added that she did not believe she was arrested because she was not handcuffed or detained in a cell; rather, the police required her to wait in the police station until they released her. The Court is troubled by the respondent's willingness to withhold information detrimental to her case. However, in the totality, the Court finds this explanation minimally sufficient.

In sum, the Court observed troubling inconsistencies between the respondent's testimony and documentary evidence, specifically with regard to the assistance rendered by the Salvadoran government and the respondent's criminal history. Nevertheless, the Court must consider these credibility concerns in light of the respondent's illiteracy, lack of education, and diagnoses of neurocognitive disorder due to traumatic brain injury and Post-traumatic Stress Disorder. *See* Exh. 14 at 15. Although the respondent appeared to consistently try to minimize or omit facts that she perceived as detrimental to her claim, in light of the totality of the circumstances, including the respondent's attempted explanations for her misrepresentations and inconsistencies, the Court finds that the respondent is marginally credible. Therefore, the Court declines to make an adverse credibility finding. *See* INA § 240(c)(4).

The Court also carefully listened to the telephonic testimony of Ms. Portnoy, Dr. Gellman, Dr. Hallett, and Dr. Bromund, assessing their testimony for consistency, detail, specificity, and persuasiveness. Considering the same factors, the Court finds that all four expert witnesses testified credibly and accords their testimony full evidentiary weight.

## IV. APPLICATIONS FOR RELIEF

The respondent bears the burden of establishing that she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. *See* INA § 240(c)(4)(A). If the evidence indicates that one or more grounds for mandatory denial of the application for relief apply, the applicant has the burden of proving by a preponderance of the evidence that such grounds do not apply. *See* 8 C.F.R. § 1240.8(d).

### A. Bars to Relief

1. One-Year Bar to Asylum

In order to qualify for asylum, a respondent must first demonstrate by clear and convincing evidence that she filed her application within one year after the date of her arrival in the United States. INA § 208(a)(2)(B). A joint stay agreement in *Rojas v. Johnson*, 305 F. Supp. 3d 1176 (W.D. Wash. Mar. 29, 2018), provides an exception to the one-year bar for certain class members. Under *Rojas*, Class A members are individuals who have been or will be released from the Department's custody after having been found to have a credible fear of persecution within the meaning of INA § 235(b)(1)(B)(v) and did not receive notice from the Department of the one-year deadline to file an asylum application. *See* 305 F. Supp. 3d at 1179. Additionally, Class A.II members are individuals who are in removal proceedings and who either have not applied for asylum, or applied for asylum one year after their last arrival. *See id.*

The Court finds that the respondent meets the definition of a *Rojas* Class A.II member. The respondent entered the United States on November 16, 2012. *See* Exh. 1. On December 17, 2012, she was interviewed by an asylum officer and was found to have a credible fear of persecution in El Salvador. Form I-870, Record of Determination/Credible Fear Worksheet. The respondent was released from the Department's custody but the Department did not notify her of the one-year filing deadline. The respondent filed a Form I-589 on April 24, 2018, while in removal proceedings and more than one year after her arrival to the United States. Accordingly, the Court finds that the respondent is a *Rojas* class member and, as such, accepts her asylum application as timely filed. 305 F. Supp. 3d at 1179.

2. Serious Nonpolitical Crime

A respondent found to have committed a serious non-political crime is statutorily ineligible for asylum, withholding of removal under the Act, and withholding of removal under the CAT. INA §§ 208(b)(2)(A)(iii), 241(b)(3)(B)(iii). A serious nonpolitical crime "is a crime that was not committed out of genuine political motives, was not directed toward the modification of the political organization or . . . structure of the state, and in which there is no direct, causal link between the crime committed and its alleged political purpose and object." *McMullen v. INS*, 788 F.2d 591, 595 (9th Cir. 1986) (internal punctuation and citation omitted), *overruled on other grounds by Barapind v. Enomoto*, 400 F.3d 744, 751 n.7 (9th Cir. 2005) (en banc).

The Court must determine whether (1) the offense is a serious nonpolitical crime, and (2) there are serious reasons for believing that the applicant committed the crime. *See Go v. Holder*, 640 F.3d 1047, 1052–53 (9th Cir. 2011). The Ninth Circuit has interpreted the "serious reasons to believe" standard as "tantamount to probable cause." *Silva-Pereira v. Lynch*, 827 F.3d 1176, 1188 (9th Cir. 2016). "[A] serious crime must be a capital crime or a very grave punishable act. Minor offenses punishable by moderate sentences are not within the serious nonpolitical crime ground of exclusion." *Matter of Frentescu*, 18 I&N Dec. 244, 246 (BIA 1982) (internal quotations omitted).

In *Matter of E-A-*, the Board clarified that offenses it considered serious were "not simply minor property offenses, but instead, involve a substantial risk of violence and harm to persons." 26 I&N Dec. 1, 5 n.3 (BIA 2012). The Court considers factors such as the applicant's description of the crime, the turpitudinous nature of the conduct, the value of any property involved, the length of sentence imposed and served, and the usual punishments imposed for comparable offenses in the United States. *See Matter of Ballester-Garcia*, 17 I&N Dec. 592, 595–96 (BIA 1980).

Here, a Red Notice alleges that the respondent committed three crimes in 2012. *See* Exh. 6 at 3. They include an aggravated burglary in July 2012, in which the respondent and two gang members allegedly broke into a school in Caserío Papalambre and stole seven bags of basic grains and eight bottles of oil; an aggravated robbery in August 2012, in which the respondent allegedly was involved in depriving individuals of cash, cell phones, and other valuables at gunpoint; and a second aggravated burglary "around the middle of the year" in 2012, in which an unspecified amount of bags of rice and beans were taken from a school in Cantón Mojones de

Santa Rosa de Lima. *See* Exh. 6 at 3. The Red Notice also asserts generally, without describing a specific offense, that the respondent collaborated "in the trafficking of weapons and drugs" and provided "support to the criminal activities" of the MS-13 gang. *See id.* The underlying Salvadoran arrest warrant, on which the Red Notice relies, states that respondent is an active member of the MS-13 gang who committed an aggravated robbery and two aggravated burglaries. *See id.* at 14. The arrest warrant does not contain any information regarding the date of the alleged crimes nor the extent of the respondent's alleged involvement in the crimes. *See id.*

After reviewing all documents, the Court does not find that the serious nonpolitical crime bar applies to the respondent. *See Silva-Pereira*, 827 F.3d at 1188. The respondent denied participating in any MS-13 activities, being a member of the gang, or committing any crimes. Further, the respondent presented the testimony of Dr. Bromund, who testified regarding his opinion that the Red Notice in this specific case is unreliable and invalid. *See* Exh. 14 at 782–785. However, Dr. Bromund admitted he had not reviewed the El Salvadoran arrest warrant, which the Court finds to be the more reliable representation as to why the respondent may be wanted in connection to certain crimes in El Salvador. Even without the Red Notice, the arrest warrant alone appears to be a reliable and official document issued by a court of law in El Salvador, indicating the respondent may be sought for criminal prosecution.

However, even assuming *arguendo* that the arrest warrant accurately describes crimes the respondent participated in, the Court finds that these crimes do not rise to the level of "serious." *See Frentescu*, 18 I&N Dec. at 246. To the contrary, the charges describe minor property offenses in which provisions and an unspecified amount of cash and valuables were taken. *See Ballester-Garcia*, 17 I&N Dec. at 595–96. While the aggravated robbery charge generally describes an offense where the victim was held at gunpoint, the charge does not indicate that any individuals were harmed or that the respondent personally held the victims at gunpoint. *See* Exh. 6 at 3. Further, the allegation that the respondent collaborated in drug and weapons trafficking is too generally defined to satisfy the probable cause standard. *See Silva-Pereira*, 827 F.3d at 1188. The respondent has not yet been arrested for these alleged offenses or been found guilty. Therefore, based on the foregoing, the Court finds that the respondent did not commit a serious nonpolitical crime. INA § 241(b)(3)(B)(iii). Therefore, the Court finds that the respondent is statutorily eligible to apply for asylum.

**B. Asylum**

To qualify for asylum, the applicant bears the burden of demonstrating that she meets the statutory definition of a "refugee." INA § 208(b)(1)(A). The Act defines a "refugee" as any person who is outside her country of nationality and who is unable or unwilling to return to, and is unable or unwilling to avail herself of the protection of, that country because of "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); 8 C.F.R. § 1208.13(b). Here, the respondent asserts that she suffered past persecution on account of her membership in a particular social group.

1. Past Persecution

In order to establish past persecution, the applicant must show "(1) an incident, or incidents, that rise to the level of persecution; (2) that is 'on account of' one of the statutorily-protected grounds; and (3) is committed by the government or by forces the government is either '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. *Li v. Ashcroft*, 356 F.3d 1153, 1158 (9th Cir. 2004) (en banc). Physical harm, including assaults, beatings, and torture, "has consistently been treated as persecution." *Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000). Persecution may also include psychological, emotional, or economic abuse. *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004). The Court notes that "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 citation 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.* The Court may not consider incidents of harm in isolation but instead must evaluate the cumulative effect of the harms the applicant suffered. *See Krotova v. Gonzales*, 416 F.3d 1080, 1084 (9th Cir. 2005).

The Court finds that the severe physical and psychological harm the respondent's parents inflicted on her rises to the level of persecution. For approximately nine years, the respondent suffered countless beatings in which the respondent's parents hit her repeatedly with their hands, branches, broomsticks, and whips, and threw objects, including plates, at her. During one of the most intense beatings, the respondent's father threw her on the floor and kicked her with his heavy work boots, resulting in bruising all over the respondent's legs. *See Chand*, 222 F.3d at 1073. In addition to physical abuse, her parents inflicted verbal and psychological abuse by frequently calling her derogatory names, forcing her to work from the age of six, and forbidding her to attend school. Considering this severe physical, verbal, and psychological abuse cumulatively, the Court finds that the respondent suffered harm rising to the level of past persecution. *See Hernandez-Ortiz*, 496 F.3d at 1045; *see also Krotova*, 416 F.3d at 1084.

*b. On Account of a Protected Ground: Particular Social Group*

In addition to showing harm rising to the level of persecution, a respondent must show that the persecution she suffered was on account of one or more of the protected grounds enumerated in the Act. INA § 101(a)(42)(A). 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.* at 334 (quoting *M-E-V-G-*, 26 I&N Dec. at 236 n.11, 243). Here, the respondent asserts that she was persecuted on account of her membership in numerous particular social groups relating to the respondent's status as a Salvadoran female. *See* Exh. 11. In light of the record evidence, the Court understands the essence of the

respondent's proposed groups as comprising the particular social group of "Salvadoran females."

i. Immutability

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." *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985) (listing sex, color, kinship, and shared past experiences as prototypical examples of an immutable characteristic). The Ninth Circuit has expressed that females in general may constitute a social group. *See Mohammad v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) ("[a]lthough we have not previously expressly recognized females as a social group, 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 our law."). Here, the respondent's social group, "Salvadoran females," satisfies the immutability requirement because it is defined by gender and nationality, innate characteristics that are fundamental to an individual's identity. *See 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").

ii. Particularity

Second, to be cognizable, the proposed social group must be sufficiently particular. *M-E-V-G-*, 26 I&N Dec. at 239 (citation omitted). 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." *Id.* However, "not every 'immutable characteristic' is sufficiently precise to define a particular social group." *Id.* In the instant case, the group is sufficiently particular because the membership is limited to a discrete section of Salvadoran society—only female citizens of El Salvador—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).

iii. Social Distinction

Finally, the respondent must demonstrate that the group is socially distinct within El Salvador. To establish social distinction, a respondent 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). 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 Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013). 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 330–31 (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).

The evidence of record establishes that Salvadoran society views members of the particular social group of "Salvadoran females" as socially distinct. *Id.* at 319. Indeed, country conditions evidence describes females as one of the most vulnerable and marginalized groups in El Salvador. *See* Exh. 17 at 1. The acceptance of gender-based violence is deeply entrenched in Salvadoran society. *See, e.g.*, Exh. 14 at 126. Salvadoran women are discriminated against throughout all sectors of society, including in educational and employment settings, political representation, religious organizations, law enforcement and the judiciary, and most notably, the home. *See, e.g.*, Exhs. 17 at 17; 14 at 126, 321. In particular, the social perception that men are superior to women is "reinforced at every stage" as boys transition to manhood, such that males are socialized to display "total control over one's household, especially its women and girls." Exh. 14 at 125.

Violence committed against Salvadoran females is pandemic and cuts across boundaries of class, age, and ethnicity. *See generally* Exh. 14 at 117–755. Gender-based violence against Salvadoran females takes many brutal forms, including gang violence, domestic violence, sexual violence, incest, human trafficking, and femicide. *See id.* In 2017, 469 women were reported killed in El Salvador, an estimated rate of one female killed every 16 hours. *See* Exh. 17; *see also* Exh. 14 at 201. Acknowledging the unique vulnerability of Salvadoran females, the Salvadoran government enacted the 2011 Special Comprehensive Law for a Violence-free Life for Women. *See* Exh. 17 at 209–210. Although this law has not effectively reduced rates of violence or impunity, it demonstrates the government's recognition of the need to provide additional protection to this specific group. *See id.*; *see also Henriquez-Rivas*, 707 F.3d at 1092.

In light of this evidence, the Court finds that Salvadoran society views Salvadoran females as a distinct group from the general population in El Salvador. *See Henriquez-Rivas*, 707 F.3d at 1092. Accordingly, the Court finds that the respondent's particular social group of "Salvadoran females" is cognizable under the Act. *A-B-*, 27 I&N Dec. at 319. Finally, the Court finds that the respondent, as a female of Salvadoran nationality, is a member of this particular social group.

*c. Nexus*

The respondent must also establish that her membership in the particular social group was "at least one central reason for [her] persecution." 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." *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2008). "In other words, a motive is a 'central reason' if the persecutor would not have harmed the applicant if such motive did not exist." *Id.* While the respondent need not show which reason was dominant, the protected ground "cannot be incidental, tangential, superficial, or subordinate" to another reason for harm; it need only be one central reason. *Id.* The applicant may provide either direct or circumstantial evidence to establish that the persecutor was 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).

The record is replete with indications that the respondent's parents inflicted physical, verbal, and psychological harm on the respondent because she was a Salvadoran female. Throughout her upbringing, her parents repeatedly made derogatory statements indicating that they believed they could treat the respondent however they wished because, as a female, the respondent must obey them. *See, e.g.*, Exh. 9 at 4–5 ("You're not the one who decides what to do. I am the man of this house, and I am in charge. You're my daughter and you have to do what I say!"); *see also id.* at 2 (describing how the respondent's mother forbid her from attending school because, as a female, she should clean and take care of the house). In the context of Salvadoran society, the respondent's parents' statements and actions are strong evidence that if the respondent were not a Salvadoran female, they would not have harmed her in this manner. *See Sinha*, 564 F. 3d at 1021–22; *Parussimova*, 555 F.3d at 741.

Moreover, the record indicates that the respondent's parents' violence against her is precisely the type of gender-based violence perpetrated in El Salvador due to the widely-shared belief that women are inferior to men. *See* Exh. 14 at 132 (observing that in El Salvador, "girls and women are viewed as the property of first their parents and then their husbands in an macho culture of male domination that is premised on the inferiority of women"). Considering the evidence in its totality, the Court finds that the respondent's membership in the particular social group of "Salvadoran females" was "at least one central reason" for her persecution by her parents. INA § 208(b)(1)(B)(i); *Parussimova*, 555 F.3d at 741.

*d. Government Unable or Unwilling to Control Persecutor*

Finally, a respondent 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). However, the 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." *A-B-*, 27 I&N Dec. at 337. Rather, applicants "must show not just that the crime has gone unpunished, but that the government is unwilling or unable to prevent it." *Id.* at 338.

In the present matter, the record indicates that the Salvadoran government is unable or unwilling to control the respondent's persecutors. After one particularly violent beating when the respondent was approximately twelve years old, neighbors called the police to report her mother's abuse. *See* Exh. 9 at 3–4. Notably, the police did not make any attempt to stop the

abuse. *See Afriyie*, 613 F.3d at 931. They talked briefly to the respondent's mother; however, they made no effort to ascertain the status of the respondent or to take any other measures to protect the respondent. *See id.* In addition, country conditions documents indicate that human rights abuses against children and females are pervasive throughout El Salvador. Child abuse in El Salvador remains a "serious and widespread problem[,]" and "more than half of households punished their children physically and psychologically." Exh. 17 at 17–18. Despite laws prohibiting child labor, such laws were not effectively enforced in the informal sector and many children frequently worked "despite the presence of law enforcement officials." *Id.* at 23–24. Furthermore, country conditions evidence overwhelmingly establishes that the Salvadoran government does not adequately protect females from gender-based violence, *see generally* Exh. 14 at 117–755, and that laws prohibiting gender-based violence "remained poorly enforced." Exh. 17 at 16. Indeed, in 2016 and 2017, "only 5 percent of the 6,326 reported crimes against women went to trial." *Id.*

In sum, the Court finds that the respondent suffered persecution by forces the government was unable or unwilling to control on account of her particular social group membership. *Navas*, 217 F.3d at 655–56. Therefore, the Court finds that the respondent suffered past persecution. *See* INA § 101(a)(42)(A).

2. Well-Founded Fear of Future Persecution

Because the respondent has demonstrated that she suffered past persecution in El Salvador, 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). The Department may overcome this presumption by showing, by a preponderance of the evidence, that (1) there has been a fundamental change in circumstances such that the respondent no longer has a well-founded fear of persecution in El Salvador, or (2) the respondent could avoid future persecution by relocating to another part of the country. *See* 8 C.F.R. § 1208.13(b)(1)(i). 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, the Department must introduce evidence that rebuts the applicant's specific grounds for fearing future persecution on an individualized basis. *Id.*

Here, the Court finds that there has been a fundamental change in the respondent's circumstances. Notably, her mother passed away in October 2018. Even though the respondent claims she still fears her father, she is now a 29-year-old woman and it is unclear whether the respondent's father would harm her if she returned. As the respondent testified, she was able to leave his household even while in El Salvador to avoid further harm, and there is no indication she would reside with him in the future. Accordingly, the Court finds that the respondent's circumstances have changed such that she no longer has a well-founded fear of persecution in El Salvador. *See* 8 C.F.R. § 1208.13(b)(1)(ii).

3. Humanitarian Asylum

The Court may grant humanitarian asylum to a victim of past persecution, even where the Department has rebutted the applicant's fear of future persecution, "if the asylum seeker

establishes (1) 'compelling reasons for being unwilling or unable to return to the country arising out of the severity of past persecution,' or (2) 'a reasonable possibility that he or she may suffer other serious harm upon removal to that country.'" *See Belishta v. Ashcroft*, 378 F.3d 1078, 1081 (9th Cir. 2004) (citing 8 C.F.R. § 1208.13(b)(1)(iii)(A)–(B)). In the instant matter, the respondent seeks humanitarian asylum on two separate bases. First, she requests protection due to the severe gender-based violence she suffered in El Salvador. Second, she asserts that she will face "other serious" harm from the Salvadoran police, Mr. [redacted] or the MS-13 gang up on her return to El Salvador.

*a. Severity of Past Persecution*

The Court finds that the respondent is not eligible for humanitarian asylum based on "compelling reasons" for being unable or unwilling to return to El Salvador out of the severity of past persecution. *See* 8 C.F.R. §1208.13(b)(1)(iii)(A). The Court does not diminish the abuse the respondent suffered as a child. Indeed, it is apparent that this abuse significantly affected her childhood and has had a lasting impact on her life. *See generally* Exh. 14 at 6–20. Nevertheless, the Court concludes that the abuse the respondent suffered as a child does not rise to the level of "atrocious past persecution" such that it would warrant a grant of humanitarian asylum. *Compare Hanna v. Keisler*, 506 F.3d 933, 939 (9th Cir. 2007) (finding past persecution insufficient for humanitarian asylum where applicant was detained and tortured for more than one month); *with Lal v. INS*, 255 F.3d 998, 1009–10 (9th Cir. 2001) (severe past persecution found where applicant was arrested, detained, tortured, urine forced into mouth, cut with knives, burned with cigarettes, and forced to watch sexual assault of wife). For these reasons, the Court finds that the respondent is not eligible for humanitarian asylum under 8 C.F.R. § 1208.13(b)(1)(iii)(A).

*b. Other Serious Harm*

Humanitarian asylum may be granted where a victim of past persecution has established that there is a reasonable possibility she will suffer "other serious harm" in the country of removal. 8 C.F.R. § 1208.13(b)(1)(iii)(B). Although "other serious harm" may be wholly unrelated to the applicant's past harm, it "must be so serious that it equals the severity of past persecution." *Matter of L-S-*, 25 I&N Dec. 705, 714 (BIA 2012). Eligibility for humanitarian asylum under 8 C.F.R. § 1208.13(b)(1)(iii)(B) is not based on past persecution but on the potential for physical or psychological harm the applicant may suffer in the future. *See id.* Here, the Court finds that the respondent has established that she faces "other serious harm" in El Salvador.

First, the respondent faces a risk of harm from her former partner, Mr. [redacted] The respondent suffered more than seven years of severe physical, sexual, and psychological abuse from Mr. [redacted]. He inflicted knife wounds, machete wounds, broke her wrist, and threatened to kill her on multiple occasions. Even after fleeing El Salvador in 2012, the respondent received threats from Mr. [redacted] in 2016 and January 2018, in which Mr. [redacted] told her that he was going to do everything possible to make her return to El Salvador.

The Court also finds there is a reasonable possibility that the Salvadoran government will

harm her upon her return. In May 2018, approximately six years after the respondent left El Salvador, the Salvadoran government issued an arrest warrant alleging that she was an active member of the MS-13 gang and that she had participated in two aggravated burglaries and one aggravated robbery. *See* Exh. 6 at 14. Additionally, in August 2018, the Salvadoran government issued an Interpol Red Notice requesting that the respondent be detained and extradited to El Salvador. *See id.* at 1–3. The Court finds these documents indicate that the Salvadoran government is interested in locating and detaining the respondent. The existence of the Red Notice also increases the likelihood that the Salvadoran government would identify her upon re-entry to El Salvador and subject her to detention, harm, or torture. Indeed, Dr. Hallett explained that due to increasing governmental pressure to show results in the "war on gangs," deportees designated as gang-affiliated face a high risk of being detained upon entry and suffering human rights abuses by officials acting under color of law. *See id.* at 644–47.

Finally, the respondent also faces potential harm from MS-13 gang members. The gang has multiple reasons to personally target and harm the respondent, including to carry out Mr. [redacted] wishes to punish the respondent and to determine whether the respondent divulged any information about the gang to authorities. *See* Exh. 9 at 21. In addition, country conditions documents indicate that women are uniquely vulnerable to gang violence and are often punished by gangs seeking revenge and retaliation. *See, e.g.*, Exh. 14 at 690 ("Women's bodies are a territory for revenge and control. Not one person interviewed denied the harsh reality for women in gang-controlled areas. . . Women are also killed or otherwise punished by gangs in revenge.").

For these reasons, the Court finds that the respondent has established a reasonable possibility of suffering "other serious harm" in El Salvador. *See* 8 C.F.R. § 1208.13(b)(1)(iii)(B). Therefore, the respondent has established her statutory eligibility for a grant of humanitarian asylum.

4. Discretion

Once an applicant has established statutory eligibility for a grant of asylum, she must further show that she merits such relief as a matter of discretion. INA § 240(c)(4). This determination requires weighing both the positive and negative factors in the respondent's case. *Kalubi v. Ashcroft*, 364 F.3d 1134, 1139–40 (9th Cir. 2004).

The most significant negative factors presented in this matter include the respondent's Red Notice, Salvadoran arrest warrant for aggravated robbery and aggravated burglary, arrest after calling the police regarding Mr. [redacted] abuse in 2011, and arrest after scolding her niece in 2011. The Court notes that the respondent was not convicted of any of these offenses. Moreover, the respondent's case presents numerous positive factors. The respondent has resided in the United States for seven years, she has two United States citizen children, and she has never been convicted of a crime. Accordingly, the Court finds that the respondent merits a favorable exercise of its discretion. *See* INA § 240(c)(4).

Because the Court has granted asylum on a humanitarian basis, the Court will not address the respondent's accompanying applications for withholding of removal or protection under the Convention Against Torture, as they are now moot.

## V. ORDERS

In light of the foregoing findings of the Court, the following orders will enter:

**IT IS HEREBY ORDERED** that the respondent's application for asylum under INA § 208 is **GRANTED**.

Julie L. Nelson
Immigration Judge

***Appeal is Reserved for Both Parties**
**Appeal Due: June 19, 2019**

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
900 MARKET STREET, SUITE 504
PHILADELPHIA, PA 19107

Sachs Law
Mitchell, Adriana
1518 Walnut St Suite 610
Philadelphia, PA 19102

In the matter of File A [redacted] DATE: May 20, 2019
C[redacted]

__ Unable to forward - No address provided.
__ Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

__ Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
900 MARKET STREET, SUITE 504
PHILADELPHIA, PA 19107

__ Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.

__ Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

X Other: **ORDER OF THE IMMIGRATION JUDGE GRANTING RELIEF.**

M.E.
COURT CLERK
IMMIGRATION COURT

FF

cc: DHS OFFICE OF THE CHIEF COUNSEL
900 MARKET STREET, SUITE 346
PHILADELPHIA, PA, 19107

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**UNITED STATES IMMIGRATION COURT**
**PHILADELPHIA, PENNSYLVANIA**

| | | |
|---|---|---|
| **IN THE MATTER OF:** | ) | **IN REMOVAL PROCEEDINGS** |
| | ) | |
| [redacted] | ) | **File No.:** [redacted] |
| | ) | |
| **RESPONDENT** | ) | **Date: May 15, 2019** |
| | ) | |

**CHARGE:** Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (hereinafter "INA" or "the Act"), as amended, as an alien 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(a); Withholding of Removal pursuant to INA § 241(b)(3); and protection under Article III of the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment ("CAT" or "Convention Against Torture").

**APPEARANCES**

**ON BEHALF OF RESPONDENT:**
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## FINAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

### I. Procedural History

Respondent is a 20-year-old native and citizen of Guatemala who entered the United States as an unaccompanied minor on June 1, 2014. Exh. 1. The Department of Homeland Security ("DHS") initiated removal proceedings against Respondent on June 5, 2014, through personal service of a Notice to Appear ("NTA"). Id. The NTA alleges that: (1) Respondent is not a citizen or national of the United States; (2) she is a native and citizen of Guatemala; (3) she arrived in the United States at or near Hidalgo, Texas, on or about June 1, 2014; and (4) she was not then admitted or paroled after inspection by an Immigration Officer. Id. Based on these factual allegations, the NTA charges Respondent as removable pursuant to section 212(a)(6)(A)(i) of the Act. Id.

At a Master Calendar Hearing on May 28, 2015, Respondent, through counsel, admitted the factual allegations in the NTA and conceded the charge of removability. She declined to designate a country of removal and, based on DHS's recommendation, the Court designated Guatemala. Based on her status as an unaccompanied minor, Respondent filed a Form I-589, Application for Asylum and Withholding with the United States Citizenship and Immigration Services ("USCIS") on July 29, 2015. Exh. 2, Tab 1. She subsequently filed that application with the Court on October 7, 2016, after USCIS determined that she was ineligible for asylum. Exh. 3, Tab 5. Respondent testified in support of her application at an individual hearing on March 13, 2019.

### II. Exhibits List

**Exhibit 1**: Form I-862, NTA, dated June 5, 2014

**Exhibit 2**: Respondent's Submission in Support of Application for Asylum and Withholding of Removal, Tabs 1-4, filed October 6, 2016

> **Tab 1**: Form I-589, Application for Asylum and Withholding of Removal Receipt Notice, dated August 6, 2015
>
> **Tabs 2-4**: Country Conditions Evidence

**Exhibit 3**: Respondent's Additional Submission in Support of Application for Asylum and Withholding of Removal, Tabs 5-7, filed October 7, 2016

> **Tab 5**: Form I-589, Application for Asylum and Withholding of Removal, dated July 27, 2015
>
> **Tab 6**: Respondent's Affidavit, undated
>
> **Tab 7**: Respondent's Birth Certificate, with translation

**Exhibit 4**: Respondent's Additional Submission in Support of Application for Asylum and Withholding of Removal, Tabs 8-11, filed February 22, 2018, *relevant tabs*:

**Tab 9**: Respondent's Supplemental Affidavit, undated

**Tabs 10-11**: Additional Country Conditions Evidence

**Exhibit 5**: Respondent's Additional Submission in Support of Application for Asylum and Withholding of Removal, Tabs A-F, filed March 5, 2019

**Tab A**: Respondent's Psychological Evaluation, dated February 19, 2019

**Tabs B-F**: Additional Country Conditions Evidence

**Exhibit 5A**: Respondent's Memorandum of Law in Support of Application for Asylum and Withholding of Removal, filed March 5, 2019

**Exhibit 6**: Additional Country Conditions Evidence, filed March 13, 2019

**Unmarked Exhibit 7**: Department of State Report on Human Rights Practices, 2018

## III. Issues Presented

The key issues before the Court are: (1) whether Respondent demonstrated past persecution or a well-founded fear of future persecution; (2) whether, under the particular facts of Respondent's case, "Guatemalan women" is a cognizable particular social group; and (3) whether Respondent demonstrated a nexus between her past persecution and/or well-founded fear of future persecution and particular social group.

## IV. Testimonial Evidence

Respondent was born and raised in [redacted][1], Guatemala in the Department of [redacted] She lived with her grandmother and great grandmother starting at the age of nine after her mother and father moved to the United States to work. In June 2014, when Respondent left Guatemala, her grandmother was fifty-nine years old and her great grandmother was seventy-nine years old.

Respondent came to the United States in June 2014, because she feared for her life in Guatemala. One night in April 2014, Respondent was walking home from her friend's house around 10:00 p.m. when an unknown man approached her from behind and tried to kidnap her. He grabbed her arm, took her to a dark area without street lights, and threatened to harm Respondent if she screamed or called for help. Respondent was crying and afraid and struggled to escape from the man's grasp. Eventually, Respondent kicked the man in the genitals, which gave her an opportunity to escape and run away.

[1] The Court takes administrative notice of the population of [redacted] which sits at approximately 47,000 and is comprised of about thirteen localities within that municipality.

Respondent ran the short distance back home, at which point she told her grandmother what had happened. Respondent's grandmother went outside with a stick to look for the man, but she did not see anyone in the area. Although it was dark, Respondent was able to see that the man who attacked her had a tattoo of the Virgin Mary. Later that night, Respondent's grandmother called Respondent's parents and told them what had happened. Everyone agreed that Respondent needed to leave Guatemala as soon as possible. Respondent left for the United States two weeks later.

During those two weeks, Respondent never left the house alone. She continued attending school, but her grandmother brought her to school and her brother-in-law picked her up at the end of the day. One day, a group of men started gathering on a corner near her house. The men wore long pants, were shirtless, and some had tattoos on their chests. The men whistled at Respondent and made fun of her when she passed. Respondent did not recognize the men and does not know why they showed an interest in her.

Before leaving Guatemala, Respondent talked to her older sister about her problems with men. Her sister advised her that the best course of action would be for her to leave Guatemala. Respondent does not know if her sister ever experienced similar problems with men because she never talked about it. Respondent also does not know if any of her female classmates in school were targeted by men because she never discussed this topic with them.

Respondent never reported her attack to the police because the police do not protect anyone in Guatemala, much less women. For example, ten years ago, Respondent's aunt was killed and it took the police several hours to begin investigating the crime after it happened. The police investigated for only short while and never arrested anyone for her aunt's murder. In addition, in 2013, Respondent and her aunt and cousin were robbed on a bus in Guatemala City. The man grabbed Respondent's aunt by the neck, pointed a knife at her, and stole all of her personal belongings. No one on the bus intervened or called the police.

Respondent did not move to another area of Guatemala instead of coming to the United States because all of her family lives in either the United States or [redacted]. Respondent's sister and brother-in-law live in Sutun, a rural village about twenty minutes' walk from Respondent's home in [redacted]. She could not move in with her sister because she lives with her in-laws and the house is very small. In addition to her sister, Respondent also has three aunts and other extended family in Guatemala. She is not very close with her aunts and other extended family, so she could not live with any of them if she returned to Guatemala.

If Respondent returns to Guatemala, she is afraid that the gangs would rape, kidnap, or kill her. Violence against women in Guatemala has increased in recent years, which makes it especially difficult for Respondent to live safely in Guatemala. Four months ago, a woman was found raped and killed in [redacted]. Respondent is afraid that the same will happen to her, and she wants to stay in the United States because she feels safe here.

## V. Documentary Evidence

Respondent provided an affidavit and supplemental affidavit about her past experiences in Guatemala. See Exhs. 3, Tab 6; 4, Tab 9. She also provided a psychological evaluation conducted by Dr. Daniel Schwarz and ample country conditions evidence about the mistreatment of females in Guatemala. See Exhs. 2, Tabs 2-4; 4, Tabs 10-11; 5, Tabs A-F; 6. The Court has reviewed all of these documents, but does not summarize the contents of the documents herein.

## VI. Statement of the Law and Legal Analysis

### A. Credibility and Corroboration

In considering Respondent's application, the Court must make a threshold determination of her credibility. INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C) (2012). See Matter of O-D-, 21 I&N Dec. 1079 (BIA 1998); Matter of Vigil, 19 I&N Dec. 572 (BIA 1988); Matter of Pula, 19 I&N Dec. 467 (BIA 1987). The statutory amendments of the REAL ID Act, P.L. 109-13, 119 Stat. 231 (2005), apply in this case because Respondent's asylum application was made after May 11, 2005. See Matter of S-B-, 24 I&N Dec. 42 (BIA 2006).

The REAL ID Act under INA § 208(b)(1)(B)(iii) provides:

> Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each statement, the consistency of such statements with other evidence of the record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

The testimony of an applicant may, in some cases, be the only evidence available, and it can suffice where the testimony is believable, consistent, and sufficiently detailed, in light of general conditions in the home country, to provide a plausible and coherent account of the basis for the alleged fear. Matter of Dass, 20 I&N Dec. 120, 124 (BIA 1989); 8 C.F.R. § 1208.16(b) (2012). An overall credibility determination "does not necessarily rise or fall on each element of the witness's testimony, but rather is more properly decided on the cumulative effect of the entirety of all such elements." Jishiashvili v. Att'y Gen., 402 F.3d 386, 396 (3d Cir. 2005). An applicant may be given the "benefit of the doubt" if there is some ambiguity regarding an aspect of her asylum

claim. See Matter of Y-B-, 21 I&N Dec. 1136, 1139 (BIA 1998). In some cases, an applicant may be found to be credible even if he has trouble remembering specific facts. See, e.g., Matter of B-, 21 I&N Dec. 66, 70–71 (BIA 1995) (finding that an alien who has fled persecution may have trouble remembering exact dates when testifying, and such failure to provide precise dates may not be an indication of deception).

Where an alien's claim relies primarily on personal experiences not reasonably subject to verification, corroborating documentary evidence of the alien's particular experience is not essential. See Matter of S-M-J-, 21 I&N Dec. 722, 725 (BIA 1997). The body of evidence, including testimony, must be considered in its totality. Id. at 729. Where it is reasonable, however, to expect such corroborating evidence for certain alleged facts pertaining to the specifics of the claim, the alien should provide such evidence or explain why it was not provided. Id. See also Matter of M-D-, 21 I&N Dec. 1180 (BIA 1998). When an alien's testimony is weak or lacking in specific details, there is an even greater need for corroborative evidence. Y-B-, 21 I&N Dec. at 1139. When the Court requires corroborative evidence it must (1) identify the facts for which it is reasonable to expect corroboration, (2) inquire as to whether the applicant had provided information corroborating those facts, and, if not, (3) analyze whether the applicant had adequately explained her failure to do so. Abdulai v. Ashcroft, 239 F.3d 542, 554 (3d Cir. 2001). It is improper for an Immigration Judge to deny an alien notice and an opportunity to produce corroboration of her claims or an opportunity to explain her failure if he could not do so. Saravia v. Att'y Gen., 905 F.3d 729, 738 (3d Cir. 2018).

Having reviewed the record in its entirety, the Court finds Respondent credible. Respondent testified candidly about her past mistreatment in Guatemala, her demeanor was forthright, and she answered all questions posed by her attorney, DHS, and the Court. Respondent testified consistently with her affidavit and supplemental affidavit, as well as with the information she provided during her psychological evaluation. See Exhs. 3, Tab 6; 4, Tab 9; 5, Tab A. Additionally, her testimony is plausible in light of the country conditions evidence in the record, which details the pervasive violence facing women in Guatemala. See Exhs. 2, Tabs 2-4; 4, Tabs 10-11; 5, Tabs B-F; 6.

The Court also finds that Respondent adequately corroborated her claim. Respondent provided her psychological evaluation conducted by Dr. Daniel Schwarz, who confirms that Respondent exhibits symptoms consistent with the trauma she states she experienced. See Exh. 5, Tab A. In addition, the country conditions evidence in the record corroborates the fact that violence against women, including domestic violence, rape, and femicide, is widespread in Guatemala, thus lending support to Respondent's claimed instances of harm. See Exhs. 2, Tabs 2-4; 4, Tabs 10-11; 5, Tabs B-F; 6. Though Respondent provided sparse documentary evidence, this evidence is sufficient to corroborate her claim in conjunction with her credible, plausible, and detailed testimony. In addition, given that Respondent's claim is based on her own personal experiences, it is not reasonable to expect additional corroborating evidence of her claim, with the exception of perhaps a few statements of support from members of her family.

DHS ultimately did not raise any issues with Respondent's credibility or the corroboration of her claim. For this reason, and those noted above, the Court finds that Respondent is credible and that she adequately corroborated her claim. INA § 208(b)(1)(B)(iii).

## B. Asylum

In an asylum adjudication, the applicant bears the burden of establishing statutory eligibility for relief. See INA § 208(b)(1)(B)(i); 8 C.F.R. § 1208.13(a); see also S-M-J, 21 I&N Dec. at 722; Matter of Acosta, 19 I&N Dec. 211, 215 (BIA 1985), modified on other grounds by Matter of Mogharrabi, 19 I&N Dec. 439, 446 (BIA 1987). To establish this eligibility, the applicant must demonstrate that she meets the definition of a refugee as defined in INA § 101(a)(42). INA § 208(b)(1)(A); 8 C.F.R. § 1208.13(a). Thus, the applicant must show that she either suffered past persecution or has a well-founded fear of persecution, and that this persecution is on account of the applicant's race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). If eligibility is established, asylum may be granted in the exercise of discretion. INA § 208(b)(1)(A); INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). Regardless, however, asylum may not be granted to any alien who falls under the exceptions of INA §§ 208(a)(2) and (b)(2).

Respondent claims that she experienced past persecution and has a well-founded fear of future persecution on account of her membership in the particular social groups, "Guatemalan women" and "Guatemalan women living in households without male relatives." Exh. 5A. For the reasons set forth below, the Court finds that Respondent has demonstrated a well-founded fear of persecution on account of a cognizable particular social group.

### 1. Timeliness of Application

As a threshold issue, an applicant must affirmatively prove by clear and convincing evidence that she filed her asylum application within one year of the date of her last arrival into the United States or April 1, 1997, whichever is later. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2). If the applicant filed after the one-year deadline, she must show, to the satisfaction of the Court that she qualifies for an exception to the filing deadline. Id. To qualify for an exception to the filing deadline, the applicant must demonstrate the existence of either (1) changed circumstances that materially affect her eligibility for asylum, or (2) extraordinary circumstances relating to the delay in filing an application within the filing time period. INA § 208(a)(2)(D); 8 C.F.R. § 1208.4(a)(4)-(5).

Respondent has not shown by clear and convincing evidence that she filed her asylum application within one year of her arrival. See INA § 208(a)(2)(B), (D). Respondent entered the United States on June 1, 2014, and filed her asylum application with USCIS on July 29, 2015 See Exhs. 1; 2, Tabs A. This is more than one year after Respondent's arrival in the United States, making her application untimely. However, Respondent argues, and DHS concedes, that extraordinary circumstances excuse her untimely filing because of a legal disability, i.e., her status as an unaccompanied minor at the time of entry. See 8 C.F.R. § 1208.4(a)(5)(ii).[2] The Board of Immigration Appeals ("BIA" or the "Board") has conclusively determined that "the meaning of 'minor' in the context of a '[l]egal disability' . . . is a person less than eighteen years old." See

[2] Even though the one-year filing deadline is inapplicable to unaccompanied alien children, Respondent does not, nor has she ever, qualified as an unaccompanied alien child as statutorily defined in 6 U.S.C. § 279(g)(2)(C) because her parents are in the United States. See 6 U.S.C. § 279(g)(2)(C). Therefore, the one-year filing deadline applies in this case.

Anna Dai, A200 753 526 (BIA May 26, 2017). Respondent entered the United States when she was fifteen years old and filed her asylum application one year and one month later, when she was sixteen years old. See Exhs. 1; 2, Tab A. Given the young age at which Respondent entered the United States and filed her application, the Court agrees that extraordinary circumstances excuse her untimely filing. As such, the Court will consider her eligibility for asylum under INA § 101(a)(42).

**2. Past Persecution**

Respondent has not met her burden of proving that she merits asylum on the basis of past persecution. Persecution is "a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." Acosta, 19 I&N Dec. at 222; Li v. Att'y Gen., 400 F.3d 157, 164–68 (3d Cir. 2005). Persecution "encompasses a variety of forms of adverse treatment, including non-life threatening violence and physical abuse or non-physical forms of harm." Matter of O-Z- & I-Z-, 22 I&N Dec. 23, 25–26 (BIA 1998). It does not include "all treatment that our society regards as unfair, unjust or even unlawful or unconstitutional." Fatin v. INS, 12 F.3d 1233, 1240 (3d Cir. 1993). In addition, "[g]enerally harsh conditions shared by many other persons" have not been found to amount to persecution. Acosta, 19 I&N Dec. at 222; see also Matter of Sanchez and Escobar, 19 I&N Dec. 276 (BIA 1985) (finding that harm resulting from country-wide civil strife is not persecution on account of one of the five enumerated grounds). An isolated incident of physical abuse does not rise to the level of persecution. Voci v. Gonzales, 409 F.3d 607, 615 (3d Cir. 2005). However, multiple beatings combined with other harassment may constitute persecution. Id. at 614–15 (citing O-Z- & I-Z-, 22 I&N Dec. at 26 (holding that incidents of harm suffered by the alien may, in the aggregate, rise to the level of persecution)). Torture is harm sufficiently severe to constitute persecution. See Acosta, 19 I&N Dec. at 222; Li, 400 F.3d at 164–68.

Respondent experienced two discrete instances of mistreatment in Guatemala, neither of which, individually or cumulatively, rise to the level of past persecution. In April 2014, Respondent was accosted on the street by an unknown man whom Respondent believed intended to rape her. See Exh. 4, Tab 9. Then, later that same month, a group of men started catcalling Respondent on her way to and from school. See id. These incidents were certainly frightening for Respondent given that she was a young girl at the time. However, Respondent did not suffer any physical harm from either of these two incidents, or at any point during her fifteen-year residence in Guatemala. In fact, the incident where Respondent was accosted lasted very briefly and ended before the perpetrator had the chance to physically or sexually abuse Respondent. Therefore, given that Respondent experienced two isolated incidents of mistreatment without any concomitant physical harm, the Court does not find that Respondent experienced past persecution in Guatemala under the Third Circuit Court of Appeals' ("Third Circuit") stringent standard. See Kibinda v. Att'y Gen., 477 F.3d 113, 120 (3d Cir. 2007) (holding that a five-day detention and beating that required stitches and left a scar were not "severe enough to constitute persecution under our stringent standard").

The Court recognizes that Respondent was a minor at the time of her past mistreatment in Guatemala. Several circuit courts have recognized that age can be a critical factor in determining whether the harm an individual suffered constitutes past persecution. See Hernandez-Ortiz v.

Gonzales, 496 F.3d 1042, 1045 (9th Cir. 2007); Jorge-Tzoc v. Gonzalez, 435 F.3d 146, 150 (2d Cir. 2006); Liu v. Ashcroft, 380 F.3d 307, 314 (7th Cir. 2004); Abay v. Ashcroft, 368 F.3d 634, 640 (6th Cir. 2004). This is because the harm a child fears or has suffered may be relatively less than that of an adult and still constitute persecution. Liu, 380 F.3d at 314. Even under this heightened standard, the Court does not find that Respondent experienced past persecution in Guatemala. Respondent's psychological evaluation states that she meets the diagnostic criteria for Upbringing Away from Parents and Acculturation Difficulty, both of which stem from her upbringing and environment in Guatemala and the United States. Exh. 5, Tab A. The Court is sympathetic to the difficulties Respondent experienced as a child growing up without her parents and in her transition to the United States. Nonetheless, without evidence of some type of physical harm or lasting psychological trauma, the Court cannot find that Respondent's past experiences constitute harm rising to the level of past persecution, even when viewing those experiences through the lens of a minor.

### 3. Well-Founded Fear of Future Persecution

If an applicant has not demonstrated past persecution, she may still establish that she has an independent well-founded fear of future persecution on account of a statutory ground committed by the government or by forces that the government is unable or unwilling to control. See Gao v. Ashcroft, 299 F.3d 266, 272 (3d Cir. 2002). An asylum applicant may demonstrate an independent well-founded fear of future persecution by showing that she has a genuine fear, and that a reasonable person in her circumstances would fear persecution if returned to her country of origin. Id. at 272. An applicant satisfies the subjective prong of this test by testifying credibly regarding her fear. Lie v. Ashcroft, 396 F.3d 530, 536 (3d Cir. 2005). An applicant satisfies the objective prong of this test by demonstrating that she would be individually singled out for persecution or by demonstrating that "there is a pattern or practice in his or her country of nationality . . . of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion . . . ." 8 C.F.R. § 208.13(b)(2)(iii)(A); see also Lie, 396 F.3d at 536. Significantly, an applicant cannot have a well-founded fear of future persecution if she could avoid persecution by relocating to another part of her country of origin, if under all circumstances it would be reasonable to expect the applicant to do so. 8 C.F.R. § 1208.13(b)(2)(ii).

#### a. Persecution

Respondent has not demonstrated that she suffered past persecution. As such, she is not entitled to a rebuttable presumption that she has a well-founded fear of future persecution. Respondent satisfies the subjective prong of the well-founded fear test because she credibly testified regarding her fear of harm in Guatemala. For the reasons discussed below, Respondent also satisfies the objective prong of the well-founded fear test given the pattern and practice of violence against women in Guatemala.

#### i. Objectively Reasonable Fear

Respondent has met her burden of proving that she merits asylum on the basis of an objectively reasonable well-founded fear of future persecution. To demonstrate an objectively

reasonable fear, there must be a "reasonable possibility," but not a certainty, that the applicant will suffer persecution. Cardoza-Fonseca, 480 U.S. at 430; 8 C.F.R. §1208.13(b)(2). "Reasonable" means a one-in-ten chance of suffering persecution, not a ninety or fifty percent chance of suffering persecution. See Cardoza-Fonseca, 480 U.S. at 421; 8 C.F.R. § 1208.13(b)(2). Therefore, to support a claim based on a well-founded fear of future persecution, the applicant must "provide some objective, credible evidence, direct or circumstantial, that her fear is reasonable" and demonstrate an objectively reasonable possibility of persecution. Cardoza-Fonseca, 480 U.S. at 421; Zubeda v. Ashcroft, 333 F.3d 463, 476 (3d Cir. 2003).

Although Respondent cannot demonstrate that she would be singled out for persecution upon her return to Guatemala, the Court finds that her fear of future persecution is objectively reasonable given the pattern and practice of violence against women in Guatemala as documented by the country conditions evidence in the record. See Lie, 396 F.3d at 537 (explaining that pattern and practice requires proof of persecution that is "systemic, pervasive, or organized"). Persistent stereotypes and biases regarding the status of women in Guatemala has contributed to a society in which women face brutal forms of violence because of their gender. Exh. 4, Tab 11. Such violence takes on many forms, such as "life-threatening and degrading" forms of domestic violence, sexual assault, and rape, and is carried out by various actors within Guatemalan society, such as romantic partners, criminal groups, and the police. Exh. 2, Tab 3. Documented cases of domestic violence have involved rape and physical beatings with baseball bats and other weapons. Id., Tab 2. Much of the violence against women is carried out in the home or by armed criminal groups that exert complete control over the communities in which women live. Id. The gangs, for example, use violence against women as a way to initiate new male members and as a way to punish women for refusing to join the gang. Id. Women who refuse to join a gang are threatened, raped, tortured, and killed. Id. Consequently, in order to avoid physical harm by the gangs, women routinely barricade themselves and their children inside their home, which requires them to give up school and work and go into hiding. Id. While this tactic may offer protection from criminal groups, it does not, as noted by the country conditions, offer a solution for those women who experience violence from "criminal armed groups alongside repeated physical and sexual violence at home," as is common in Guatemala. Id.

The high rate of crime against women illustrates that violence against women is a serious, growing, and pervasive problem in Guatemala that spans all demographics of women. Forty-five percent of Guatemalan women have suffered from some form of violence in their lifetimes, and many more have witnessed violence against female relatives. Exh. 5, Tab F. Guatemala has the third highest rate of femicide in the world, with the majority of those killings also involving sexual assault, torture, and mutilation. Exh. 4, Tab 11. 748 women were murdered in 2013, which equates to an average of two murders of women per day. Id. In addition, the Public Ministry reported 11,449 cases of sexual or physical assault against women in 2015, and 29,128 complaints of domestic violence in only the first eight months of 2015. Exh. 5, Tab C. Furthermore, as of September 8, the PNC reported at least forty-eight investigations against PNC officials for violence and discrimination against women. Unmarked Exh. 7 at 17. In light of such violence against women, the Guatemalan government established a 24-hour court in Guatemala City to offer services related to violence against women, including sexual assault, exploitation, and trafficking of women and girls. Id. at 16. The judiciary also created special courts in certain departments to handle cases involving violence against women, and Guatemala's Public Ministry established a

special prosecutor for femicide. Id. It is reasonable to infer that the existence of these tools for addressing the unique problem of violence against women is a reflection of the pervasiveness of that societal problem in Guatemala. Despite these initiatives, however, the PNC often fails to respond to requests for assistance related to domestic violence, and the government fails to enforce the laws against femicide, rape, and domestic abuse effectively, leading to pervasive impunity for violence against women. Id.

The foregoing evidence reflects the pervasiveness of the danger facing women in Guatemala. Such danger ranges from single incidents which constitute persecution, such as rape, Matter of D-V-, 21 I&N Dec. 77 (BIA 1993), and violent assaults Voci, 409 F.3d at 607; Stanojkova v. Holder, 645 F.3d 943, to the accrual of incidents over time where the aggregate harm rises to the severity of persecution. O-Z- & I-Z-, 22 I&N Dec. at 26. In these circumstances, the fact of pervasive or systemic persecution of women in Guatemala constitutes a well-founded fear of persecution. The documentation in the record paints a stark picture of Guatemala, far from the glossy brochures for ecotourism. DHS has chosen to rely on the argument that Respondent has not met her burden of proof in establishing statutory eligibility for asylum, either because she failed present a cognizable social group, a nexus to a protected ground, conduct the government is unable or unwilling to control, or an inability to internally relocate. What DHS has not done, however, is provide the Court with a counter factual narrative of the conditions in Guatemala. DHS has not presented any evidence to refute the depiction of Guatemala as a country rife with danger for women merely because they are women, thus constraining the evidence the Court is able to consider.

Respondent's personal experiences align with the reality facing thousands of women in Guatemala. As she got older, Respondent noticed that she was attracting the attention of unknown men on the street, whom she believed belonged to a gang or other criminal group. Exh. 4, Tab 9. Respondent was watched and street harassed by groups of men and on one occasion, was accosted by an unknown man who had tattoos. Id. Respondent believed that the man intended to rape her, perhaps with the help of some of his fellow gang members, and struggled to escape from the man's grasp. Id. Respondent eventually escaped from the man, ran home, and, that night, made arrangements with her parents to leave Guatemala. Id. Growing up, Respondent knew of several women in her community who had disappeared or been murdered, causing Respondent to live in fear that the same would happen to her. More recently, Respondent learned from her sister that a woman's body was found raped and beaten on the street in their hometown of Cubulco, thus showing that even a small town like Cubulco has its share of brutal violence. Respondent testified that she does not trust the police to protect her given that her aunt's murder is still unsolved today, ten years after it happened, due in large part to police inaction and disinterest. From all of this evidence, it is clear that there is a pervasive and indiscriminate practice of harming women in Guatemala on the basis of their gender, and that such practices are able to persist due to police and government indifference towards gender-based violence. As such, the Court finds that Respondent has met her burden in proving there is at least a one in ten chance that she—as a female—would be harmed if she returned to Guatemala.

### ii. Internal Relocation

Respondent must also demonstrate that she could not avoid persecution by relocating within Guatemala. In Matter of A-B-, the Attorney General reiterated that Immigration Judges must determine, consistent with the regulations, whether internal relocation in the alien's home country presents a reasonable alternative before granting asylum. 27 I&N Dec. 316 (A.G. 2018). Applying this rule in the context of an asylum claim based on private criminal activity, the Attorney General reasoned that "when the applicant has suffered personal harm at the hands of only a few specific individuals, internal relocation would seem more reasonable than if the applicant were persecuted, broadly, by her country's government." Id. at 345. This statement fails to address this Court's obligation to consider the reasonableness of internal relocation in light of several factors, including, but not limited to, "other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties." 8 C.F.R. § 1208.13(b)(3). Thus, even though Respondent suffered past harm at the hands of "only a few specific individuals," the Court will adhere to its obligation to analyze her ability to relocate in light of the regulatory factors noted in 8 C.F.R. § 1208.13(b)(3).

Under the regulatory framework, the Court finds that Respondent could not avoid persecution by relocating within Guatemala due to the pattern and practice of violence against women throughout Guatemala. As noted above, women face staggering rates of violence in the form of domestic violence, sexual assault, rape, and femicide by various actors throughout Guatemala, which necessarily eliminates the possibility of internal relocation to avoid harm. See Exh. 4, Tab 11. In addition, social and cultural constraints make internal relocation unreasonable in Respondent's case. Respondent's parents live in the United States and, aside from a few distant relatives, she has little familial ties outside of her hometown of Cubulco. Moreover, Respondent testified that she lived in Cubulco for her entire life and rarely traveled to other areas of Guatemala. Given Respondent's lack of social and family ties, it is unreasonable to expect Respondent, a young girl of twenty years old, to relocate to another area of Guatemala on her own. As such, internal relocation is not a viable option, and Respondent has met her burden in establishing a well-founded fear of future persecution.

### b. Membership in a Particular Social Group

Respondent must also establish that her future persecution would be inflicted on account of her membership in a particular social group. A particular social group is defined as a group of individuals who share a common, immutable characteristic that cannot be changed or that they should not be required to change because it is fundamental to their individual identities or consciences. Acosta, 19 I&N Dec. at 211; Fatin, 12 F.3d at 1233. Immutable characteristics include innate characteristics such as "sex, color, or kinship ties" or shared past experiences. Acosta, 19 I&N Dec. at 233. Although past experience is an immutable characteristic, a social group "must exist independently of the persecution suffered" and "must have existed before the persecution began." Lukwago v. Ashcroft, 329 F.3d 157, 172 (3d Cir. 2003).

Additionally, the Board has held that a social group must be defined with particularity. Matter of W-G-R-, 26 I&N Dec. 208, 214 (BIA 2014); Matter of A-M-E- & J-G-U-, 24 I&N Dec. 69, 76 (BIA 2007). Particularity entails that the group have "discrete and definable boundaries" and not be too broad or amorphous. See Matter of M-E-V-G-, 26 I&N Dec. 227, 239 (BIA 2014). Further, a social group must be "socially distinct" within the society in question such that people with shared, immutable characteristics are recognized or perceived as a particular group. W-G-R-, 26 I&N Dec. at 212–13; M-E-V-G-, 26 I&N Dec. at 237 (citing Matter of C-A-, 23 I&N Dec. 951, 956–57 (BIA 2014)). Notably, a group's limiting characteristics or boundaries must exist independently of persecution, and social distinction may not be determined solely by the perception of an applicant's persecutors. W-G-R-, 26 I&N Dec. at 218. However, persecutors' perceptions may be relevant because it is indicative of whether society views a group as distinct and in cases involving imputed grounds, where one may mistakenly be believed to belong to a particular social group. M-E-V-G-, 26 I&N Dec. at 243 (citations omitted).

The Board has repeatedly held that the determination of whether a particular social group is cognizable is a fact-based inquiry that must be made on a case-by-case basis. See Matter of W-Y-C & H-O-B, 27 I&N Dec. 189 (BIA 2018); M-E-V-G-, 26 I&N Dec. at 243; W-G-R-, 26 I&N Dec. at 218. The Circuit Courts of Appeals have similarly held that factual findings underlie the analysis of a group's cognizability, particularly social distinction. See e.g., Hernandez-De La Cruz v. Lynch, 819 F.3d 784, 787 (5th Cir. 2016); Sanchez-Robles v. Lynch, 808 F.3d 688, 691 (6th Cir. 2015). Recently, the Attorney General in A-B- adhered to the fact-based inquiry for particular social groups by reinforcing that respondents must articulate the exact delineation of any proposed social group on the record so that the immigration judge can engage in the necessary factual and legal findings. 27 I&N Dec. at 344.

As her primary claim, Respondent asserts that she is entitled to asylum on the basis of her membership in the particular social group, "Guatemalan woman." Exh. 5A. For the reasons set forth below, the Court finds that this social group is immutable, particular, and socially distinct under the specific facts of Respondent's case.

**i. Immutable**

Respondent's social group is immutable because it consists of two innate characteristics that are fundamental to an individual's identity. Acosta, 19 I&N Dec. at 233; See also, A-B-, 27 I&N Dec. at 320 (reaffirming the common immutable characteristic standard set forth in Acosta). "Guatemalan" and "women," or nationality and gender, are prototypical examples of immutable characteristics because one cannot change, or should not be required to change one's nationality and gender. Acosta, 19 I&N Dec. at 233; Fatin, 12 F.3d at 1233. Moreover, in Acosta, the Board specifically concluded that "sex" is a "shared characteristic" on which particular social group membership can be based. See Acosta, 19 I&N Dec. at 233. Therefore, analyzing Respondent's two traits together, the Court finds that "Guatemalan women" describes immutable characteristics.

**ii. Particular**

Respondent's articulated group is also sufficiently particular. The particularity analysis focuses on whether the terms defining the group are sufficiently objective to establish a group with

"discrete and definable boundaries." See M-E-V-G-, 26 I&N Dec. at 239; Matter of W-Y-C- & H-O-B-, 27 I&N Dec. at 189. These defining characteristics will provide a clear benchmark for determining who falls within a group and who does not. M-E-V-G-, 26 I&N Dec. at 239. A group that is "amorphous, overbroad, diffuse, or subjective," shall not fulfill these requirements. Id. Here, the terms that define Respondent's group are clear and precise, as gender and nationality both have commonly understood meanings that are unlikely to change when defined by different persons. See Matter of A-M-E- & J-G-U-, 24 I&N Dec. 69, 76 (BIA 2007) (finding that the particular social group defined by "affluent Guatemalans" was not particular because "affluence is simply too subjective, inchoate, and variable."). Accordingly, Respondent's group is not amorphous because its defining terms provide an adequate benchmark, gender, for determining group membership. Id. Thus, the boundaries of the group are identifiable: women in Guatemala are members, while men are not.

The Court recognizes that Respondent's social group is large; however, the size of a group does not necessarily preclude a particularity finding. The Board has routinely upheld large social groups despite its recognition that size is a factor that should be considered in the analysis. In S-E-G-, the Board stated that "while 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, 584 (BIA 2008). This affirms the reasoning in Matter of H-, in which the Board found that Somali clans constitute a particular social group, despite the fact that some number in the millions. 21 I&N Dec. 337 (BIA 1996); see also Mohammed v. Gonzalez, 400 F.3d 785 (9th Cir. 2005) (finding a group comprised of "Somali females" to be a cognizable social group given the widespread practice of female genital mutilation); Cece v. Holder, 733 F.3d 662, 674–75 (7th Cir. 2011) and Perdomo v. Holder, 611 F.3d 662, 669 (9th Cir. 2005) (rejecting the notion that a group can be too large to be a particular social group). Similarly, the Board has repeatedly upheld particular social groups based on sexual orientation as cognizable, even though such groups are sizeable. Matter of Toboso-Alfonso, 20 I&N Dec. 819, 822–23 (BIA 1990) (recognizing "homosexuals . . . in Cuba" as members of a particular social group); W-G-R-, 26 I&N Dec. at 219 (affirming "homosexuals in Cuba" as a particular social group because, in part, it is defined with particularity). In these cases, and as explained by S-E-G-, the "key question" is not the group's size, but whether the definition provides an adequate benchmark for determining who is a member and who is not based on the record at hand. The dispositive factor in Matter of H- was the shared kinship and linguistic attributes of clan members. 21 I&N Dec. at 343. In Respondent's case, the benchmark determinant is a combination of nationality and gender.

The Court's analysis of sizeable and diverse groups is consistent with the Attorney General's decision in A-B-, which contains several statements, in dicta, cautioning against such groups. A-B- surmises that social groups composed of "broad swaths of society" are likely insufficiently particular, as they may be "'too diffuse to be recognized as a particular social group.'" A-B-, 27 I&N at 335 (citing Constanza v. Holder, 647 F3d. 749, 754 (8th Cir. 2011)). For example, a group composed of "victims of gang violence" may not be particular because members "often come from all segments of society, and they possess no distinguishing characteristic or concrete trait that would readily identify them as members of such a group. A-B-, 27 I&N at 335. This echoes the Board's decision in W-G-R-, which struck down a social group based on former gang membership because the respondent had not established that Salvadoran society would

"generally agree on who is included" in the group. 26 I&N Dec. at 221 (finding the proposed group lacked particularity "because it is too diffuse, as well as being too broad and subjective" as it "could include persons of any age, sex, or background"). However, the shortcomings considered in A-B- and W-G-R- are not present in this case because Respondent's group possesses an objective, distinguishing characteristic: gender. As explained below, and as evidenced by the facts on the record, this characteristic enables Guatemalan society to readily identify group members, despite the presence of other diverse characteristics. Moreover, A-B-, reiterates the necessity for a fact-based, case-by-case inquiry in the social group analysis, a mandate which cannot be squared with a broad prohibition against large, diverse social groups. A-B-, 27 I&N at 344; W-Y-C- & H-O-B-, 27 I&N at 189. In this case, and on this record, the facts demonstrate that Respondent's social group exists in Guatemala and is consistent with the requirements of M-E-V-G- and W-G-R-.

Importantly, the Court notes as a final point that none of the other protected grounds in INA § 101(a)(42) are limited by size or prohibit diverse membership. A nation may host millions of members of a particular religion, yet these individuals are not precluded from asylum if persecuted. Likewise, religious groups are composed of individuals with a wide variety of characteristics and experiences. Each protected ground is bounded by an immutable characteristic. See Acosta, 19 I&N Dec. at 233. Thus, it follows that a proposed social group that establishes clear boundaries by way of its immutable characteristics is cognizable under the Act regardless of its size or internal diversity. Accordingly, Respondent's proposed social group "Guatemalan women" meets the particularly requirement.

### iii. Socially Distinct

Finally, Respondent's proposed social group is socially distinct. 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. at 217 (stating that "social distinction exists where the relevant society perceives, considers, or recognizes the group as a distinct social group"). Through Respondent's testimony and documentary evidence, she has established that Guatemalan society perceives women as sufficiently distinct from society as a whole to qualify as a particular social group.

As noted above, violence against women is one of the principal human rights abuses in Guatemala today. Exh. 5, Tab B at 1. The U.N. Human Rights Committee and the Committee on the Elimination of Discrimination Against Women have repeatedly expressed concern at the "persistence of very high levels of violence against women" in Guatemala. Exh. 4, Tab 11. Forty-five percent of women in Guatemala have suffered some form of violence in their lifetime, and many more have witnessed violence against a female relative. Exh. 5, Tab 7. Violence from criminal armed groups often occur alongside repeated physical and sexual violence at home, which includes life-threatening and degrading forms of domestic violence. Exh. 2, Tab 2. Women who come into contact with gangs are subject to threats, kidnapping, extortion, rape, sexual assault, and murder and as a result, increasing numbers of women and girls are fleeing Guatemala. Exhs. 2, Tab 2; 4, Tab 11. As one Guatemalan woman noted: "The gangs treat women much worse than

men. They want us to join as members, but then women are also threatened to be gang members 'girlfriends' and are raped, tortured, and abused" if they refuse. Exh. 2, Tab 2. This quote highlights the discord between the treatment of men and women and shows how Respondent's social group is distinct in Guatemalan society. It also shows how a group comprised of "Guatemalan women" is different from other social groups defined by vulnerability to harm, such as those who resist gang recruitment and who face violence from only a discrete segment of the population.

Recently, the Guatemalan government has recognized that Guatemalan women require special protection, as their law enforcement needs are different than other victims. The government enacted a femicide law in 2008, which criminalized gender motivated violence. Exh. 4, Tab 11. It also established a special prosecutor and court for female crime victims, as well as a 24-hour court in Guatemala City to offer services related to violence against women, including sexual assault, exploitation, and trafficking of women and girls. Exhs. 5, Tab B at 17; Unmarked Exh. 7 at 17. These reforms illustrate how the abuse of women is tied to circumstances that only women suffer. However, despite these reforms, violence against women remains a serious problem, in part because both the general public and state actors continue to view it as normal. Exh. 4, Tab 11. The public fails to view violence against women as unusual due to its decades-long acceptance. Id. Similarly, its normalization has created a lack of political will towards investigating and prosecuting gender-motivated crimes. Id. In an effort to change these views, the U.N. Human Rights Committee recently recommended that Guatemalan schools include women's rights and protection of women from violence in its curricula. Exh. 4, Tab 11. This reluctance to protect women, despite efforts by state and international organizations, further demonstrates how women are viewed as a separate, subordinate group within Guatemala.

The Court emphasizes that Respondent's articulated social group is perceived by Guatemalan society independently from any group member's experienced persecution. Thus, Respondent's articulated group is neither defined solely by the persecutor's perception nor by its persecution, despite the Court's discussion of violence against women in its analysis. See M-E-V-G-, 26 I&N Dec. at 242 (cautioning that the persecutors' perception is not itself enough to make a group socially distinct); A-B-, 27 I&N Dec. at 317 (holding that the social group must "exist[s] independently of the alleged underlying harm"); Lukwago v. Ashcroft, 329 F.3d at 172. Here, recognizing the nation-wide epidemic of violence against women informs the recognition of Respondent's social group as opposed to creating it. In other words, the persecution faced by women may act as the catalyst that causes Guatemalan society to meaningfully distinguish the group, but the defining immutable characteristic exists independently of that persecution. M-E-V-G-, 26 I&N Dec. at 243; see also W-G-R-, 26 I&N at 237 (clarifying that persecutor's perceptions may be relevant because it is indicative of whether society views the group as distinct). As such, Respondent has shown that Guatemalan women are "set apart, or distinct, from other persons within [Guatemala] in some significant way." M-E-V-G-, 26 I&N Dec. at 238. Therefore, Respondent's articulated social group meets the requirements for social distinction and is cognizable under the Act.[3]

[3] Because the Court finds that "Guatemalan women" is a cognizable particular social group, the Court need not address the cognizability of Respondent's alternative social group, "Guatemalan women living in households without male relatives."

### c. Nexus

In addition to establishing a cognizable particular social group, Respondent must also show that the harm she fears would be inflicted on account of her membership in that social group. 8 C.F.R. § 1208.13(b)(1). To demonstrate a nexus to a protected ground, an applicant need not show that she would be persecuted exclusively on account of the protected ground, but that the protected ground would be "one central reason" for the feared persecution, not just an "'incidental, tangential, or superficial' reason for persecution." Ndayshimiye v. Atty's Gen., 557 F.3d 124, 130 (3d Cir. 2009); Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 212–13 (BIA 2007). The Third Circuit has stressed that the proper standard is "one central reason" and not "the central reason." See Ndayshimiye, 557 at 129–31 (finding that the BIA's decision in J-B-N- & S-M- is not entitled to Chevron deference to the extent that it suggests a hierarchy of motives). The question of a persecutor's motive will involve a particularized evaluation of the specific facts and evidence in an individual claim. See L-E-A-, 27 I&N Dec. at 44 (citing Matter of N-M-, 25 I&N Dec. 526, 530 (BIA 2011).[4] In making this determination, the Court can consider both direct and circumstantial evidence of a persecutor's motive, and may make reasonable inferences based on the evidence in the record. L-E-A-, 27 I&N Dec. at 44.

Here, in drawing all reasonable inferences based on the evidence in the record, the Court finds that Respondent's status as a "Guatemalan woman" would be "one central reason" for her feared persecution. Respondent testified that women in Guatemala are targeted for harm simply because of their gender, an assertion which receives support from Respondent's own experiences. Respondent testified that she did not know or have any prior experiences with the man who accosted her or the men who catcalled her on the street. Given that she had no prior connection to these men, it is reasonable to infer that some other overt characteristic caused the men to take an interest in Respondent, such as her gender. Various anecdotal stories provided in the country conditions evidence confirm that women are targeted at such high rates in Guatemala because of their gender, which, according to Guatemalan society, makes them inferior and subservient to men. Exh. 2, Tab 2. While gangs or other actors may have mixed motives for harming women, these motives do not change the fact that women are specifically targeted for harm based on how gangs, and Guatemalan society as whole, view women and their worth in Guatemalan society. In this environment, Respondent's status as a "Guatemalan woman" would be "one central reason" for her feared persecution.

### d. Government Unable or Unwilling to Control

Respondent also must demonstrate that her well-founded fear of future persecution would be committed by the Guatemalan government, or by forces the government is unable or unwilling to control.[5] See Gao, 299 F.3d at 272. Here, the evidence in the record demonstrates that the

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[4] The Court is aware that the Attorney General stayed L-E-A- on December 3, 2018. See 27 I&N Dec. 494 (A.G. 2018). Nonetheless, the Court considers L-E-A- as persuasive authority in its analysis of the statutory nexus requirement in this case.

[5] The Attorney General in A-B- reaffirmed the "unable or unwilling to control" standard set forth in Gao, but also held that an asylum applicant must show that the government "condoned" the private actors or at least "demonstrated a complete helplessness to protect the victims," citing to a case from the Seventh Circuit Court of Appeals ("Seventh Circuit"). 27 I&N Dec. at 337 (citing Galina v. INS, 213 F.3d 955, 958 (7th Cir. 2000)). Thus, the Attorney General sets forth three different standards: "unable or unwilling to control," "condoned," and "complete helplessness." A-B-

Guatemalan government is both unable and unwilling to control violence against women, especially and including gang violence against women. Deeply-entrenched biases regarding the status of women in Guatemala have resulted in wide acceptance of violence against women, including by the police and judiciary. Exh. 4, Tab 11. Some officials, including judges and police officers, have refused to investigate crimes against women due to the appearance or attire of the victim. Id. As of September 8, the PNC reported forty-eight open investigations against officers for violence or discrimination against women or children. Unmarked Exh. 7 at 17. Despite the strides made by the International Commission against Impunity in Guatemala ("CICIG"), an organization responsible for investigating and prosecuting corrupt officials and narco-interests, President Morales recently announced he would not renew the organization's mandate, a move viewed by the UN and the Guatemalan Constitutional court as condonation of the violence in Guatemala. Id. at 1.

Compounding these problems is the fact that the PNC is understaffed, underfunded, and inadequately trained on how to investigate crimes against women. Exh. 2, Tab 3. For example, support for victims of sexual assault is lacking outside of major cities, and arrest and prosecution of assailants in sexual assault cases is difficult without private legal assistance. Id. The result of the biases against women and the inadequacy of the state institutions in Guatemala is virtual impunity for gender-based crimes. Id. Guatemala has the third highest rate of femicide in the world, with a conviction rate of only one to two percent. Exh. 4, Tab 11. Between 2012 and April 2016, the judicial system handed down 391 sentences for femicide, but in the same period, the National Institute of Forensic Sciences performed 2,512 autopsies on women who died violently. Exh. 5, Tab 6. Moreover, in the first ten months of 2015, there were 11,449 complaints of physical or sexual assault and 29,128 reports of domestic violence, yet there were only 527 and 141 convictions for those crimes, respectively. Id. In light of this evidence, it is clear that the Guatemalan government is unable and unwilling to control violence against women. Therefore, Respondent has established a well-founded fear of future persecution by an actor the Guatemalan government is unable and unwilling to control.

**e. Discretion**

An applicant who establishes statutory eligibility for asylum still bears the burden of demonstrating that she merits a grant of asylum as a matter of discretion. See INA § 208(b)(1)(A).

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, 27 I&N Dec. at 337. This conflicting language leaves the Court with questions as to what standard to apply when adjudicating asylum applications. To resolve this issue, the Court has reviewed relevant Board and Third Circuit precedent. In O-Z- & I-Z-, which remains controlling Board precedent, the Board paired the term "unable and unwilling to control" with the term "condoned," indicating to the Court that the two terms are the same, legally, for purposes of an asylum analysis. 299 F.3d at 26. Moreover, it is clear from a review of Third Circuit case law that "unable or unwilling to control" is the governing standard in the Third Circuit. See e.g., Gao, 299 F.3d at 272. The Court could not find a Board or Third Circuit case that uses or interprets the term "complete helplessness" as used by the Attorney General in A-B- and the Seventh Circuit in Galina. Absent such controlling case law, the Court chooses to apply the "unable or unwilling to control" standard when analyzing Respondent's asylum claim. This interpretation is consistent with the D.C. District Court's recent decision in Grace v. Whitaker, 344 F.Supp.3d 96, 130 (D.D.C. 2018) ("The "unwilling or unable" persecution standard was settled at the time the Refugee Act was codified, and therefore the Attorney General's "condoned" or "complete helplessness" standard is not a permissible construction of the persecution requirement.").

In determining whether a favorable exercise of discretion is warranted, both favorable and adverse factors should be considered, Pula, 19 I&N Dec. at 473, including adverse factors such as "the circumvention of orderly refugee procedures," A-B-, 27 I&N Dec. at 345 n.12, and humanitarian factors, such as age, health, and family ties. Matter of H-, 21 I&N Dec. at 348. The danger of persecution should outweigh all but the most egregious adverse factors. Pula 19 I&N Dec. at 473.

Here, the only adverse factor present in Respondent's case is her entry into the United States without inspection. This one factor is not so egregious as to warrant a denial of Respondent's asylum claim when compared with the numerous favorable factors present in her case. Respondent has lived in the United States for over four years and resides in Philadelphia with her parents. She graduated from Northeast High School in June 2018 and hopes to attend college to study nursing in the future. See Exh. 4, Tab 9. Respondent has not had any criminal contacts in the United States and faces an articulable risk of harm if she is returned to Guatemala. For these reasons, the Court finds that Respondent's case merits a favorable exercise of discretion.

### C. Withholding of Removal and Withholding of Removal under the CAT

As the Court grants Respondent asylum under INA § 208, the Court does not reach her application for withholding of removal pursuant to INA § 241(b)(3) or her request for protection under the CAT.

## VII. Conclusion

Respondent has demonstrated a well-founded fear of future persecution on her account of her membership in the particular social group, "Guatemalan women." Respondent has also demonstrated that she merits asylum as a matter of discretion. Therefore, the Court grants Respondent asylum pursuant to INA § 208.

Accordingly, the Court enters the following order:

## ORDER

**ORDER:** IT IS HEREBY ORDERED that Respondent [redacted]'s application for asylum pursuant to section 208 of the Act be GRANTED.

May 15, 2019
Date

Steven A. Morley
Immigration Judge
Philadelphia, Pennsylvania

**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*
*Office of the Clerk*

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*Falls Church, Virginia 22041*

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**West Covina, CA 91790**

**DHS/ICE Office of Chief Counsel - LOS**
**606 S. Olive Street, 8th Floor**
**Los Angeles, CA 90014**

**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

[illegible]
Userteam: Docket

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

Date: FEB 14 2019

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

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[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).

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).

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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*Office of the Clerk*

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**DHS/ICE Office of Chief Counsel - TUS**
**6431 S. Country Club Rd.**
**Tucson, AZ 85706**

**Name: P[redacted] C[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.

Userteam: Docket

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).

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

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: S[redacted]-M[redacted], T[redacted]** **A[redacted]-911**
**Riders:[redacted]**

**Date of this notice: 4/16/2019**

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

Userteam: Docket

Files: A[redacted]-911 – Los Angeles, CA
A[redacted]

Date: APR 16 2019

In re: T[redacted] S[redacted]-M[redacted]
[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Violeta Delgado, Esquire

APPLICATION: Asylum; withholding of removal

This matter was last before the Board on May 29, 2015, when we dismissed the lead respondent's [1] appeal from an Immigration Judge's decision denying her application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3). [2] On July 3, 2018, the United States Court of Appeals for the Ninth Circuit remanded proceedings for the Board to consider in the first instance whether "Guatemalan women" constitutes a particular social group. [3]

To establish that a group defined as "Guatemalan women" 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 [Guatemalan] 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).

We agree with the respondent's position on remand[4] that being a woman is an immutable characteristic (Respondent's Br. at 2, 4), as gender is fundamental to one's individual identity or conscience. *See Matter of A-B-*, 27 I&N Dec. at 316, 318. However, we are unable to determine

[1] The lead respondent's son is a derivative of her asylum application. Hereafter, references to "the respondent" will refer to the lead respondent.

[2] The respondent did not challenge on appeal the denial of her request for protection under the Convention Against Torture and it is not implicated in the Ninth Circuit's remand.

[3] The court agreed with our determination that "young Guatemalan females who have suffered violence due to female gender" is not a particular social group.

[4] The Department of Homeland Security did not submit a brief on remand.

from the record before us whether the social group of "Guatemalan women" satisfies the foregoing "particularity" and "social distinction" requirements. 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); *see also Matter of A-B-*, 27 I&N Dec. at 340-41 (emphasizing the importance of Immigration Judges as fact-finders). In evaluating the particularity and social distinction of the claimed group of "Guatemalan women," the Immigration Judge should consider 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); *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 "Guatemalan women" meets the requirements of particularity and whether that group is perceived as "distinct" in Guatemalan society. *See Matter of M-E-V-G-*, 26 I&N Dec. at 241-44; *Matter of W-G-R-*, 26 I&N Dec. at 221; *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014). If the social group is found to be cognizable under the Act, the Immigration Judge should consider whether the respondent has demonstrated a nexus between the social group of "Guatemalan women" and the past harm she suffered or future harm she fears. Additionally, per the Ninth Circuit's order, the Immigration Judge should reevaluate whether the respondent's failure to report her abuse to the Guatemalan police precludes her from showing that the Guatemalan government is unwilling or unable to protect her. *See Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1069-70 (9th Cir. 2017) (en banc); *see also Matter of A-B-*, 27 I&N Dec.at 337-38 (an applicant seeking to establish persecution based on violent conduct of a private actor must show the government condoned the private actions or demonstrated an inability to protect the victims). We express no opinion regarding the ultimate outcome of the respondent's case.

ORDER: The record is remanded for further proceedings consistent with this decision.

FOR THE BOARD

**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*
*Office of the Clerk*

*5107 Leesburg Pike, Suite 2000*
*Falls Church, Virginia 22041*

**Stratton, James Jay**
**Stratton Immigration, PLLC**
**811 1st Ave., Suite 261**
**Seattle, WA 98104**

**DHS/ICE Office of Chief Counsel - SEA**
**1000 Second Avenue, Suite 2900**
**Seattle, WA 98104**

**Name: C[redacted]-D[redacted], X[redacted] C[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

File: A[redacted]-474 - Seattle, WA

Date: DEC 1 1 2019

In re: X[redacted] Q[redacted] C[redacted]-D[redacted]

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

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

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

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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).

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

**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*
*Office of the Clerk*

*5107 Leesburg Pike, Suite 2000*
*Falls Church, Virginia 22041*

**Permut, David**
**Goodwin Procter LLP**
**901 New York Avenue NW**
**Washington, D.C., DC 20001**

**DHS/ICE Office of Chief Counsel - EAZ**
**Eloy Detention Ctr,1705 E. Hanna Rd**
**Eloy, AZ 85131**

**Name: L[redacted], Y[redacted] M[redacted]**

**A [redacted]-294**

**Date of this notice: 9/10/2019**

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:
Wendtland, Linda S.

Userteam: Docket

File: A[redacted]-294 – Eloy, AZ Date: SEP 10 2019

In re: Y[redacted] M[redacted] L[redacted] a.k.a.[redacted]

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: David L. Permut, Esquire

APPLICATION: Withholding of removal; Convention Against Torture

This case is before us pursuant to the March 19, 2019, decision of the United States Court of Appeals for the Ninth Circuit granting the government's motion to remand. The record will be remanded to the Immigration Court for further findings consistent with this decision.

On August 8, 2017, this Board dismissed the applicant's appeal from the Immigration Judge's October 11, 2016, decision denying the applicant's applications for withholding of removal pursuant to section 241(b)(3) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1231(b)(3), and protection under the Convention Against Torture pursuant to 8 C.F.R. § 1208.16(c)(2), and ordering the applicant removed to Guatemala.[1] One of the primary issues on appeal was whether the applicant proposed a cognizable particular social group. In our decision, we agreed with the Immigration Judge's conclusion that the applicant did not establish membership in a cognizable particular social group.

In the government's motion to remand before the Ninth Circuit, the government requested, inter alia, that this Board consider the applicant's proposed particular social group consisting of "Guatemalan women." The applicant's proposed group was not previously considered.[2] Determining whether the applicant's proposed particular social group is cognizable requires a detailed review of the background evidence, laws addressing crimes against women in Guatemala, and the enforcement of those laws (Applicant's Br. at 23-26). *See Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010) (providing that Guatemalan women may be a cognizable particular social group and reversing the Board's finding that "all women in Guatemala" is an overly broad and internally diverse group); *see also Silvestre-Mendoza v. Sessions*, 729 F. App'x 597 (9th Cir. 2018) (finding that laws addressing femicide provide support for social distinction); *Ticas-Guillen v. Whitaker*, 744 F. App'x 410 (9th Cir. 2018) (stating that gender and nationality can define a particular social group and remanding for Board to further consider whether women in El Salvador can be considered a particular social group); *Matter of A-B-*, 27 I&N Dec. 316, 335 (A.G. 2018)

[1] The case was previously before this Board on May 21, 2015, when we remanded the record for the Immigration Judge to apply controlling case law and reach further factual and legal findings.

[2] The Immigration Judge noted that the applicant asserted that her proposed particular social group consisted of Guatemalan women, but the decision addresses only subsets of that group, e.g., Guatemalan women in domestic relationships and female children of Guatemalan women in domestic relationships (IJ at 11 (October 11, 2016)).

(stating that social groups defined by their vulnerability to private criminal activity likely lack the particularity requirement). Inasmuch as this Board cannot make such findings of fact, we find it necessary to remand the record for the Immigration Judge to address this issue in the first instance. 8 C.F.R. § 1003.1(d)(3)(iv).

If the Immigration Judge determines that the applicant has not established membership in a cognizable particular social group, then the Immigration Judge need not address any remaining issues as the applicant has not met her burden of proof for withholding of removal. *See Matter of A-B-*, 27 I&N Dec. at 340 (providing that if an asylum application is fatally flawed in one respect, an immigration judge or the Board need not examine the remaining elements of the asylum claim). If the Immigration Judge determines that "Guatemalan women" is a cognizable particular social group, the Immigration Judge should address all other issues noted in the circuit court remand (i.e., nexus and internal relocation).[3]

In regard to the applicant's credibility, the Immigration Judge explicitly found that the applicant testified credibly (IJ at 7-8 (October 11, 2016)). The Immigration Judge additionally described inconsistencies between the applicant's testimony and evidence in the record (IJ at 7-8). The Immigration Judge concluded that although the applicant's testimony was credible, discrepancies in the record warranted affording her testimony less weight (IJ at 7-8). Regardless of the weight afforded to different details of the applicant's claim, we can decipher from the Immigration Judge's decision that the material facts were found credible. For example, the Immigration Judge did not question that the applicant was raped on multiple occasions or that her parents beat her. Consequently, the issue of credibility need not be further addressed. On remand, the Immigration Judge should address the legal issues outlined in this decision and treat the applicant's claim as credible.

Finally, the applicant argues that she should be granted protection under the Convention Against Torture. That issue is not currently before us. We previously found no clear error in the Immigration Judge's finding that the applicant did not establish that it is more likely than not she will be subject to torture upon return to Guatemala. The Ninth Circuit did not request reconsideration of the applicant's application for protection under the Convention Against Torture. Based on the foregoing, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further findings consistent with this decision.

Linda J. Wendtland

FOR THE BOARD

[3] The applicant asserts that the Department of Homeland Security conceded that the harm she suffered rises to the level of past persecution (Tr. at 82 (June 13, 2014); Applicant's Br. at 23). If the Immigration Judge determines that "Guatemalan women" is a cognizable particular social group, the Immigration Judge should address this issue and apply the presumption of future persecution, if necessary. 8 C.F.R. § 1208.16(b)(1).

**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*
*Office of the Clerk*

*5107 Leesburg Pike, Suite 2000*
*Falls Church, Virginia 22041*

P[redacted], Y[redacted] V[redacted]
[redacted]

**DHS/ICE Office of Chief Counsel - LOS**
**606 S. Olive Street, 8th Floor**
**Los Angeles, CA 90014**

**Name:** [redacted]

**A** [redacted]**-977**

**Date of this notice: 11/6/2019**

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Malphrus, Garry D.
Liebowitz, Ellen C
Baird, Michael P.

Userteam: Docket

File: A[redacted]-977 – Los Angeles, CA Date: NOV - 6 2019

In re: Y[redacted] V[redacted] P[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Kaitlin DeStigter
Associate Legal Advisor

APPLICATION: Asylum; withholding of removal; Convention Against Torture

This case is presently before us pursuant to a February 28, 2019, order of the United States Court of Appeals for the Ninth Circuit granting the Government's motion to remand. On August 27, 2019, we requested supplemental briefing from both parties. The Department of Homeland Security (DHS) filed a motion to remand in lieu of a supplemental brief. The respondent did not respond to the request for supplemental briefing. The record will be remanded to the Immigration Court.

This case was remanded for further evaluation of whether "women in El Salvador" constitutes a particular social group. The DHS has requested remand of the proceedings to the Immigration Court for consideration of whether the proffered group of "women in El Salvador" meets the particularity requirement for a particular social group and for a definitive or circumstance-specific finding regarding social distinction. *See 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 pertinent 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).

Given the remand and our limited fact-finding ability, we will remand this case to the Immigration Court. 8 C.F.R. § 1003.1(d)(3)(iv). 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 that group is perceived as "distinct" in El Salvadoran society. *See Matter of A-B-*, 27 I&N Dec. at 340-41 (emphasizing the importance of Immigration Judges as fact-finders); *Matter of M-E-V-G-*, 26 I&N Dec. at 241-44; *Matter of W-G-R-*, 26 I&N Dec. at 221; *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014).

If the social group is found to be cognizable under the Act, the Immigration Judge should consider whether the respondent has demonstrated a nexus between the social group of "women in El Salvador" and the past harm she suffered or future harm she fears. We express no opinion regarding the ultimate outcome of the respondent's case.

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

FOR THE BOARD