ADDENDUM

Please find enclosed the following unpublished decisions that are relevant to the issues under review:

I. —, (Arlington Immigration Court, 2018)…………………………….. 1–12

II. —, (Boston Immigration Court, June 18, 2019) ……………………. 13–27

III. —, (Denver Immigration Court, Mar. 7, 2019) …………………….. 28–43

IV. —, (Hartford Immigration Court, July 17, 2019) ……………………44–60

V. —, (San Francisco Immigration Court, Sept. 13, 2018) ……………. 61–82

VI. C-, (Philadelphia Immigration Court, May 15, 2019) …………….. 83–102

VII. *M-D-A-*, (BIA, Feb. 14, 2019) …………………………………….. 103–06

VIII. *S-R-P-O-*, AXXX XXX 056 (BIA, Dec. 20, 2018) ……………….. 107–10

IX. *X-Q-C-D-*, (BIA, Dec. 11, 2018) ………………………………….. 111–15

X. *N-P-S-*, AXXX-XXX-777 (BIA, July 27, 2020) ………………….. 116–18

XI. *Y-M-L-*, (BIA, Sept. 10, 2019) ……………………………………. 119–21

XII. *Y-V-P-*, (BIA, Nov. 6, 2019) ……………………………………… 122–24

XIII. *T-S-M-*, (BIA, Apr. 16, 2019) ……………………………………... 125–27

XIV. —, (Newark Immigration Court, Mar. 17, 2020) …………………. 128–40

XV. —, (Arlington Immigration Court, May 1, 2020) …………………141–56

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], Lead Respondent;	**File No.:** A [REDACTED]
[REDACTED], Rider Respondent;	**File No.:** A [REDACTED]
[REDACTED], Rider Respondent.	**File No.:** A [REDACTED]

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

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

APPEARANCES

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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]

In the Matters of

;

A

[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. <u>Past Harm</u>

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] 2018
Date

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

ON BEHALF OF THE RESPONDENT:
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Greater Boston Legal Services
197 Friend Street
Boston, Massachusetts 02114

ON BEHALF OF DHS:
Jernita Hines, ACC
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
15 New Sudbury Street, Room 425
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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

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.

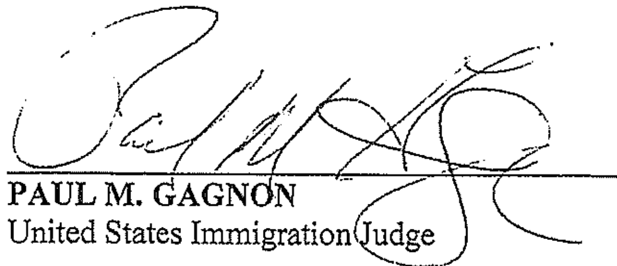
Based on the foregoing, the following orders shall enter:

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).

6/18/15
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

In the Matters of:	)	
	)	
	)	
	)	
	)	IN REMOVAL
	)	PROCEEDINGS
Respondents.	)	
	)	
File Nos.:	)	
	)	
	)	

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:
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Elkind Alterman Harston, PC
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Denver, CO 80202

ON BEHALF OF THE DEPARTMENT:
Cara Cutler, Assistant Chief Counsel
U.S. Department of Homeland Security
12445 East Caley Avenue
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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. <u>*Severity of Harm*</u>

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. <u>Government Involvement</u>

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 . . . vas 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 ıad "the third highest number of femicides in Mexico's recorded history"). Moreover, Lead Respondent has presented evidence that ıas 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. <u>Conclusion</u>

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:

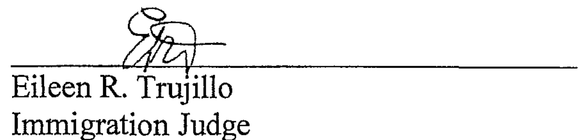
ORDERS

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

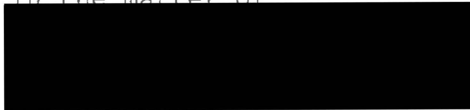


Eileen R. Trujillo
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

RECEIVED JUL 17 2019

New Haven Legal Assistance Association
Messali, Ellen Marie
426 State Street
New Haven, CT 06510

In the matter of  File A# DATE: Jul 10, 2019

X 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 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.

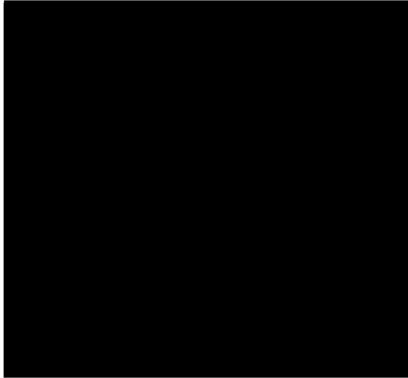
__ Other: ____________________

COURT CLERK
IMMIGRATION COURT FF

cc: GATES-GRACESON, COURTNEY
450 MAIN ST, RM 483
HARTFORD, CT, 06103

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
HARTFORD, CONNECTICUT

In the Matter of



Respondents

In Removal Proceedings

CHARGE: INA § 212(a)(7)(A)(i)(I)

APPLICATIONS: Asylum, withholding of removal, and protection under the Convention Against Torture

ON BEHALF OF THE RESPONDENT
Ellen Marie Messali
New Haven Legal Assistance Association
426 State Street
New Haven, CT 06510

ON BEHALF OF THE GOVERNMENT
Courtney Gates Graceson
Office of the Chief Counsel
450 Main Street, Room 483
Hartford, CT 06103

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. BACKGROUND AND PROCEDURAL HISTORY

are natives and citizens of Guatemala. Exh. 1.

On October 21, 2015, the Department of Homeland Security ("DHS") personally served Lead Respondent with a Notice to Appear ("NTA"). Exh. 1. The NTA alleged that she was 1) not a citizen or national of the United States; 2) is a native and citizen of Guatemala; 3) entered the United States at or near Hidalgo, Texas on September 18, 2015; 4) did not then possess or

present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document; 5) was not then admitted or paroled after inspection by an immigration officer. *Id.* Based on the factual allegations, DHS charged Lead Respondent deportable in violation of Immigration and Nationality Act ("INA") section 212(a)(7)(A)(i)(I). *Id.*

On November 30, 2016, DHS personally served Rider Respondent [redacted] and Rider Respondent [redacted] with NTAs. Exh. 1A; Exh. 1B. The NTA alleged that they 1) were not citizens or nationals of the United States; 2) were natives and citizens of Guatemala; 3) entered the United States at or near Hidalgo, Texas on or about November 14, 2016; 4) did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document; and 5) were not then admitted or paroled after inspection by an immigration officer. Exh. 1A; Exh. 1B. Based on the allegations, DHS charged Rider Respondent [redacted] and Rider Respondent [redacted] deportable pursuant to INA § 212(a)(7)(A)(i)(I). Exh. 1A; Exh. 1B.

On May 23, 2017, Respondents filed written pleadings with the Court. Exh. 3; Exh. 3A; Exh. 3B. In their pleadings, all Respondents conceded proper service of the NTA, conceded all allegations, and conceded all charges. Exh. 3; Exh. 3A; Exh. 3B. They declined to designate a country of removal. Exh. 3; Exh. 3A; Exh. 3B. They indicated that Lead Respondent intended to apply for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). Exh. 3; Exh. 3A; Exh. 3B. Lead Respondent also stated that she intended to apply for a U Visa from USCIS. Exh. 3; Exh. 3A; Exh. 3B.

On May 23, 2017, Lead Respondent filed an I-589 application for asylum, withholding of removal, and protection under CAT. Exh. 4. Rider Respondent [redacted] and Rider Respondent [redacted] were listed as derivatives on her asylum application. *Id.* They did not file their own individual I-589 applications. Lead Respondent also filed a motion to continue her case based on her pending U visa application. Exh. 7. The Court scheduled Lead Respondent's individual hearing on the merits of her applications for June 14, 2019.

II. EVIDENCE

The Court has considered all of the evidence and testimony in the record, even if not specifically discussed in this decision.

A. Documentary Evidence

The following documents were received into evidence:

Lead Respondent's Evidence:

Exhibit 1: Lead Respondent's Notice to Appear, dated October 21, 2015

Exhibit 2: Lead Respondent's Record of Determination/ Credible Fear Worksheet, dated October 20, 2015

Exhibit 3: Lead Respondent's written pleadings, filed May 23, 2017

Exhibit 4: Lead Respondent's I-589 Application for asylum, withholding of removal, and protection under CAT, filed May 23, 2017

Exhibit 5: Lead Respondent's Evidence: Tabs A-HHH, filed May 30, 2019

Tab A: Lead Respondent's witness list
Tab B: Lead Respondent's declaration
Tab C: Affidavit from [redacted], Lead Respondent's sister
Tab D: Letter from [redacted], Lead Respondent's friend
Tab E: Letter from [redacted] Lead Respondent's friend
Tab F: Letter from [redacted] Lead Respondent's former co-worker
Tab G: Letter from [redacted] Lead Respondent's former co-worker
Tab H: Affidavit and CV of John Thomas Way
Tab I: Declaration and CV of Jennifer Schirmer
Tab J: Declaration and CV of Thomas J. Boerman
Tab K: Letter and statement of experience of Joyceen S. Boyle
Tab L: Declaration and CV of Dr. Michelle Silva
Tab M: Declaration and CV of Hilda Morales Trujillo
Tab N: Declaration and CV of Claudia Paz y Paz Bailey
Tab O: Declaration and CV of Elisa Portillo Najera
Tab P: Declaration and CV of Nancy K. D. Lemon
Tab Q: Award for Lead Respondent signed by [redacted] from [redacted] Corporations
Tab R: Administration certificate for Lead Respondent
Tab S: Copy of Lead Respondent's passport
Tab T: Lead Respondent's birth certificate
Tab U: Copy of Rider Respondent [redacted]'s passport
Tab V: Rider Respondent [redacted]'s birth certificate
Tab W: Copy of Rider Respondent [redacted]'s passport
Tab X: Rider Respondent [redacted]'s birth certificate
Tab Y: Lead Respondent, Rider Respondent [redacted], and Rider Respondent [redacted]'s consular identification cards
Tab Z: Death certificate for [redacted]
Tab AA: Lead Respondent's NTA dated October 21, 2015
Tab BB: Rider Respondent [redacted]'s NTA dated November 30, 2016
Tab CC: Rider Respondent [redacted]'s NTA dated November 30, 2016
Tab DD: Notice of Hearing for Lead Respondent scheduling her to appear before the San Antonio immigration Court on [redacted]
Tab EE: Department of State, Guatemala 2018 Human Rights Report
Tab FF: Luis Caal, "Killed at Dinner," newspaper article

Tab GG: Natai Barrios, "Signs of envy, newspaper article

Tab HH: Giovanna Dell'Orto, "Ruling changes little: Guatemalan women still victims," azcentral.com, (May 17, 2015)

Tab II: Ambar Pardilla, "Patriarchal Power and Gender-Based Violence in Guatemala and El Salvador," Global Majority E-Journal (June 2016)

Tab JJ: Sarah Johnson, "Can health workers stop thousands of women being killed in Guatemala?" The Guardian (March 7, 2018)

Tab KK: Maria Fernanda Perez Arguello and Bryce Couch, "Violence Against Women driving Migration from the Northern Triangle," Atlantic Council (November 8, 2018)

Tab LL: Dinorah Azpuru, "Approval of Domestic Violence," Latin American Public Opinion Project Insight series (2015)

Tab MM: "IACHR Expresses Alarm over the Increase in Murders and Aggressions against Human Rights Defenders in Guatemala," Oas.org (October 31, 2018)

Tab NN: Liz Ford, "Women's rights take centre stage as murdered activists are remembered," The Guardian (November 29, 2018)

Tab OO: Yifat Susskind, "Who Benefits When Women Human Rights Defenders Are Targeted?" Commondreams.org (November 29, 2018)

Tab PP: "Situation of Human Rights in Guatemala," Inter-American Commission on Human Rights (December 31, 2017)

Tab QQ: Dr. Thomas Boerman, "The Socio-political context of violence in El Salvador, Honduras, and Guatemala," Immigration Briefings (October 2018)

Tab RR: Cecilia Menjivar and Shannon Drysdale Walsh, "Subverting justice: socio-legal determinants of impunity for violence against women in Guatemala," Mdpi.com (July 11, 2016)

Tab SS: "Concluding observations on the combined eighth and ninth periodic reports of Guatemala," UN Committee on the elimination of discrimination against women (Novemeber 22, 2017)

Tab TT: "Guatemala's compliance with the convention on the elimination of all forms of discrimination against women," The Advocated for Human Rights (August 2017)

Tab UU: "Concluding observations on the fourth periodic report of Guatemala," UN International Covenant on Civil and Political Rights (May 7, 2018)

Tab VV: Hector Ruiz, "No justice for Guatemalan women: an update twenty years after Guatemala's firt violence against women law," Hastings Women's Law Journal

Tab WW: Nicole Akoukou Thompson, "the war on Guatemalan women: gangs murder with impunity," Latin Post (July 9, 2014)

Tab XX: Photos

Tab YY: Letter from Reverend [redacted]
Tab ZZ: Letter from [redacted]
Tab AAA: Rider Respondent [redacted]'s report card
Tab BBB: Certificate awarding Rider Respondent [redacted] for making it onto the Honor Roll
Tab CCC: Letter from [redacted]
Tab DDD: Letter from [redacted]
Tab EEE: Rider Respondent [redacted]'s homework
Tab FFF: Rider Respondent [redacted]s report card
Tab GGG: Letter from [redacted]
Tab HHH: Immigration Court Decision dated September 13, 2018

Exhibit 6: DHS Evidence, filed June 14, 2019

Exhibit 7: Lead Respondent's motion to continue with supporting documents, filed May 30, 2019
Tab A: Form I-797C, Notice of Action stating that USCIS service center has received U visa application
Tab B: Biometrics appointment notice
Tab C: U Visa Processing Times
Tab D: Correspondence between Ellen M. Messali and John Marley regarding U Visa prima facie determination letter request
Tab E: Correspondence between Ellen M. Messali and ICE regarding prima facie determination letter request
Tab F: Lead Respondent's certified Supplement B for U Visa
Tab G: Certified West Haven Police Department police report

Rider Respondent [redacted]'s Evidence:

Exhibit 1A: Rider Respondent [redacted]'s NTA, dated November 30, 2016

Exhibit 2A: Rider Respondent [redacted]'s Record of Determination/Credible fear worksheet

Exhibit 3A: Rider Respondent [redacted]'s amended written pleadings, filed May 23, 2017

Rider Respondent [redacted]'s Evidence:

Exhibit 1B: Rider Respondent [redacted]'s NTA, dated November 30, 2016

Exhibit 2B: Rider Respondent [redacted]'s record of determination/credible fear worksheet

Exhibit 3B: Rider Respondent [redacted]s written pleadings, filed May 23, 2017

B. Lead Respondent's Testimony

Lead Respondent testified, under oath, to the following:

Lead Respondent was born and raised in Guatemala. She fears that if she returns to Guatemala people will find and kill her. Specifically she fears the father of her children, [redacted], and her former supervisor at work, [redacted], and his friends. [redacted] always wanted to control her according to the rules of men and women in Guatemala. Her former supervisor, [redacted] did not like that she was a woman and that she wanted to get ahead in her job. Both men were very machismo and lashed out at her for violating the rules of men and women. She does not believe that she could be safe if she returns because she was a woman who held the position of a man and people in her community knew who she was because of her job. She does not believe that she has any means of protection in Guatemala because the government is corrupt and would not intervene on her behalf. She believes that [redacted] and [redacted] did not like her independence and wanted to control her.

Lead Respondent testified that she learned that the Guatemalan government did not protect women after her mother was murdered. After Lead Respondent's mother was murdered, the police did not do anything to investigate or prosecute those involved.

Lead Respondent received a degree in business administration in Guatemala. She attended school in Guatemala for twelve years. She stopped attending school when she was twenty-years-old. After her mother was killed, Lead Respondent worked during the day and attended school in the evenings so that she could afford to attend school. She is currently finishing high school in the United States.

When Lead Respondent decided to leave [redacted], she moved into her sister's house. Lead Respondent stated that her sister lived four hours away from where she lived with [redacted] Lead Respondent stated that [redacted] knew where her parents' house was located but did not know exactly where her sister lived. He just knew the town that her sister lived in, not the specific location. She stated that when she left her home she left her children with [redacted]. She felt that she could leave them with [redacted] because he did not treat them like he treated her.

Lead Respondent testified that when she left [redacted] to live with her sister she did not have a custody agreement regarding their children. She went to a lawyer to try to get a divorce from [redacted] but she was unable to obtain a divorce because [redacted] refused to sign the divorce documents. She stated that in Guatemala it is required that both people consent to the divorce. She stated that the court will not accept the divorce if [redacted] does not go to court. She stated that someone at her church is helping her file for divorce from [redacted] in the United States. She testified that she is unsure where [redacted] is at the moment. She thinks that he may be in the United States because after he was attacked in Guatemala if he had stayed in Guatemala he probably would have been killed. She has not spoken with [redacted] directly, however, so she is unsure of his location.

Lead Respondent returned to Guatemala to retrieve her children because she feared for their safety. Her sons called her and told her that some men came to the house and said that they

were sent to fix the washing machine. Lead Respondent told her children that she had not sent the men. The men beat up and her sons were afraid that he was killed. Her children told her that was severely beaten. She was not present when this happened. She does not believe that owed anyone money. The children were left alone in the house to fend for themselves. When Lead Respondent arrived at the house to get them, was not there. had called the children and told them that he was severely beaten. 's parents had been dropping off food for them. She just went late at night into the home to get them. To her knowledge, no one is living in the house now.

Lead Respondent took her children and moved from one place to another for approximately five months. She stayed with different friends in Guatemala during this time who lived approximately two hours away from where she lived with She did not see when she returned to Guatemala. She stated that she did not get permission from before taking her children to the United States. She stated that she has not spoken to since leaving Guatemala in 2015. Her children speak to sometimes and tell her about him.

Lead Respondent contacted that police after one incident with . He wanted to beat her up. The police told her that they do not interfere with marriages. also raped Lead Respondent. He raped her after she got her tubes tied.

Lead Respondent also testified that she was afraid to return to Guatemala because she was harassed and raped by her former supervisor at , Lead Respondent testified that she began working for in February 2015. She stated that is a company that distributes food and other products to stores throughout Guatemala. It is a well-known company throughout Guatemala. She worked in the sales division of the company. In her role, she would go to companies and stores and sell them the products distributed. She had specific areas that she worked in. There were approximately twelve to fifteen people who worked in the sales division with her. She was the only female sales representative at the company. She stated that a manager named hired her. was her direct supervisor in the sales division and he reported to Lead Respondent worked for for approximately six to seven months. She did not report 's behavior to because threatened her. He also told her that no one would believe her. Other coworkers feared because he threatened to fire them. She stated that he wanted total control. She stated that everyone there was aware of how treated her. Her coworker was also supervised by .

She believes that felt threatened by her because her sales were very high. wanted her sales to be low because he did not believe that women should work. told her he did not want her working there from the very first day that she started working for the company. He told her on her first day that if it was up to him she would not be working there. He told her that women are for sex and should stay in the home. Others who worked at the company were bothered by her because her sales were so high and the company had to pay her well because of that. applauded other sale representatives' numbers even when Lead Respondent's sales were significantly higher. frequently made sexual comments to her at work in front of other employees. He would always tell her that she should be at home and that she was only good for sex. He also made her watch porn at work. Lead Respondent testified that she stopped going

to work after [redacted] raped her. She stated that one day when she went into work [redacted] brought her to a remote area in the mountains and raped her.

Lead Respondent stated that although she did not see [redacted] when she returned to Guatemala, she did receive threatening phone calls from her former boss, [redacted] The phone calls asked why she was hiding because he knew that she was there. She testified that the phone calls came from men and she believes the men were friends of [redacted] They did not identify themselves in the phone calls. She does not know what became of [redacted] after he was fired.

Lead Respondent has also had abusive relationships in the United States. The police were called to her residence after one incident and her partner was arrested. Lead Respondent is seeking a U Visa based on that incident.

Lead Respondent testified that she does not have any enemies in Guatemala other than [redacted] and [redacted]. She believes that the threatening phone calls she received were from men associated with [redacted].

III. LEGAL STANDARDS

A. Eligibility for Asylum

Respondent bears the burden in establishing that he is eligible for asylum, withholding of removal under section 241(b)(3) of the Act, and protection under Article III of the Convention Against Torture. *See* 8 C.F.R. § 1208.13(a), 1208.16(b).

To qualify for asylum, the Respondent must show either that he suffered past persecution or that he has a well-founded fear of future persecution on account of his race, religion, nationality, political opinion, or membership in a particular social group. INA § 101(a)(42). Under the REAL ID Act, one of those five grounds must be at least one central reason for persecuting the applicant. 8 U.S.C. § 1158(b)(1)(B)(I). To be eligible for withholding of removal under the INA, the applicant must show that he is more likely than not to be persecuted on account of one of the protected grounds. INA § 241(b)(3); 8 C.F.R. § 1208.16(b). This provision requires a clear probability of persecution on account of one of the grounds. *INS v. Stevic*, 467 U.S. 407 (1984).

"Persecution" is harm or suffering inflicted upon an individual to punish her for possessing a belief or characteristic a persecutor seeks to overcome. *See Matter of Acosta*, 19 I&N Dec. 211, 223 (BIA 1985); *Matter of T-M-B-*, 21 I&N Dec. 775, 777 (BIA 1997) (noting even "morally reprehensible" treatment is not persecution unless "on account of" one of five enumerated grounds, either actual or imputed). To establish that past mistreatment constituted persecution, an applicant must demonstrate that the harm she suffered was sufficiently serious to rise above mere harassment. *See Beskovic v. Gonzalez*, 467 F.3d 223, 225-26 (2d Cir. 2006) (distinguishing persecution from harassment); *see also Ivanishvilli v. U.S. Dep't of Justice*, 433 F.3d 332, 341 (2d Cir. 2006) (concluding persecution is the infliction of suffering or harm upon those who differ on

the basis of a protected statutory ground, while harassment consists of words, conduct, or action that annoys, alarms, or causes substantial emotional distress and serves no legitimate purpose); *Chen v. INS*, 359 F.3d 121, 128 (2d Cir. 2004) (concluding non-life-threatening violence and physical abuse may constitute persecution).

Persecution takes many forms, and the determination of whether mistreatment rises to the level of persecution must be made on a case-by-case basis. *See Matter of C-Y-Z-*, 21 I&N Dec. 915, 924 (BIA 1997) *abrogated on other grounds in Shi Liang Lin v. U.S. Dep't of Justice*, 494 F.3d 296 (2d Cir. 2007). Violent conduct generally goes beyond the annoyance and distress that characterize harassment and other lesser harms. *Ivanishvilli*, 433 F.3d at 342 (citing *Chen v. INS*, 359 F.3d at 128). Threats may amount to persecution if they are imminent, concrete, or so menacing as to cause significant actual suffering or harm. *Ci Pan v. U.S. Att'y Gen.*, 449 F.3d 408, 413 (2d Cir. 2006); *see Guan Shan Liao v. U.S. Dep't of Justice*, 293 F.3d 61, 70 (2d Cir. 2002).

An applicant found to have established past persecution shall be presumed to have a well-founded fear of future persecution on the basis of his original claim. 8 C.F.R. § 1208.13(b)(1). DHS may rebut the presumption if it establishes, by a preponderance of the evidence, that either: (1) there has been a fundamental change in circumstances in the country of nationality rendering the applicant's fear no longer well-founded; or (2) the applicant could avoid future persecution by relocating to another part of her country of nationality. 8 C.F.R. § 1208.13(b)(1)(i). Asylum is a discretionary form of relief. INA § 240(c)(4)(A)(ii).

The standard for withholding is higher than that for asylum—Respondent must establish he will "more likely than not" be persecuted if removed. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987); *INS v. Stevic*, 467 U.S. at 413 (holding applicant must demonstrate a clear probability his life or freedom would be threatened in the country of removal on account of a protected ground). As in an asylum claim, Respondent's establishment of past persecution creates a rebuttable presumption of future persecution. 8 C.F.R. § 1208.16(b)(1)(i). Withholding of removal, unlike asylum, is a mandatory form of relief. INA § 241(b)(3)(A).

B. Eligibility for Relief under the Convention Against Torture

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Torture Convention"), together with its implementing regulations, provides that no person may be removed to a country where it is "more likely than not" that such person will be subject to torture. *See* United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. A/39/51 (Dec. 10, 1984); 8 C.F.R. §§1208.16, 1208.17, 1208.18. "Torture" is the intentional infliction of severe pain or suffering by, or at the instigation of, or with the consent or acquiescence of a public official. 8 C.F.R. § 1208.18(a)(1); *see Matter of J-E-*, 23 I&N Dec. 291, 297 (BIA 2001).

The definition of torture does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions, unless such sanctions defeat the object and purpose of the CAT. 8 C.F.R. § 1208.18(a)(3); *see Pierre v. Gonzales*, 502 F.3d 109, 121 (2d Cir. 2007) ("The failure to maintain standards of diet, hygiene, and living space in prison does not constitute torture under the CAT unless the deficits are sufficiently extreme and are inflicted intentionally rather than as a result of poverty, neglect, or incompetence"). For an act to constitute torture, it must be directed against a person. *Jo v. Gonzales*, 458 F.3d 104, 109-10 (2d Cir. 2006) (finding the definition of "torture" does not encompass theft, destruction, expropriation, or other deprivation of property); *see also* 8 C.F.R. § 1208.18(a)(6).

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. 8 C.F.R. § 1208.18(a)(7); *Khouzam v. Ashcroft*, 361 F.3d 161, 171 (2d Cir. 2004). However, the fact that "some" officials take action to prevent torture is not enough to preclude a finding of government acquiescence "[w]here a government contains officials that would be complicit in torture, and that government, on the whole, is admittedly incapable of actually preventing that torture." *De La Rosa v. Holder*, 598 F.3d 103, 110 (2d Cir. 2010).

The applicant for CAT protection 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.* An adverse credibility finding in the context of an applicant's asylum claim does not necessarily discredit an applicant's CAT claim because a CAT claim may be established through objective evidence alone. *See Ramsameachire v. Ashcroft*, 357 F.3d 169, 184-85 (2d Cir. 2004). However, if the applicant's testimony is the primary basis for the CAT claim and it is found not to be credible, that adverse credibility finding may provide a sufficient basis for denial of CAT relief. *See Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 163 (2d Cir. 2006); *Paul v. Gonzales*, 444 F.3d 148, 157 (2d Cir. 2006); *Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d 520, 523 (2d Cir. 2005).

In assessing whether an applicant has satisfied his or her burden of proof, 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 he or 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 information on country conditions. 8 C.F.R. § 1208.16(c)(3); *see also Ramsameachire*, 357 F.3d at 184. To meet his or her burden of proof, an applicant for CAT relief must establish that someone in his or her particular alleged circumstances is more likely than not to be tortured in the country designated for removal. *Mu-Xing Wang v. Ashcroft*, 320 F.3d 130, 144 (2d Cir. 2003). Eligibility for CAT relief cannot be established by stringing together a series of suppositions to show that torture is more likely than not to occur unless the evidence shows that each step in the hypothetical chain of events is more likely than not to happen. *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006); *see also Savchuck v. Mukasey*, 518 F.3d 119, 123-24 (2d Cir. 2008). Where an application for

asylum is denied because the applicant failed to demonstrate the "slight, though discernible, chance of persecution" required for asylum, the applicant necessarily fails to meet the "more likely than not to be tortured" standard for CAT relief. *Lecaj v. Holder*, 616 F.3d 111, 119 (2d Cir. 2010).

IV. Findings of Fact and Conclusions of Law

A. Credibility and Corroboration

In all applications for relief, the Court must make a threshold determination of the alien's credibility. *Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). The REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231 (2005), applies to Respondent's asylum claim. Thus, after considering "the totality of the evidence, and all relevant factors," the Court must assess Respondent's credibility based on her demeanor, candor, or responsiveness; consistency or lack thereof between oral and written statements; consistency or lack thereof between Respondent's written and oral assertions and evidence of record; the entire story's inherent plausibility; and finally any inaccuracies or falsehoods Respondent puts forward, regardless of whether they go to the heart of Respondent's claim for relief. INA § 208(b)(1)(B)(iii); *see Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 164 (2d Cir. 2008) ("[I]n evaluating an asylum applicant's credibility, an [Immigration Judge (IJ)] may rely on omissions and inconsistencies that do not directly relate to the applicant's claim of persecution as long as the totality of the circumstances establish that the applicant is not credible."); *Matter of J-Y-C-*, 24 I&N Dec. 260, 266 (BIA 2007).

An applicant's testimony may be sufficient to meet her burden of proof without corroboration if the testimony is credible, persuasive, and "refers to specific facts sufficient to demonstrate that the applicant is a refugee." INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.13(a); *see Matter of J-Y-C-*, 24 I&N Dec. at 263. Where the Court determines the applicant should "provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant cannot reasonably obtain the evidence." INA § 208(b)(1)(B)(ii); *see Yan Juan Chen v. Holder*, 658 F.3d 246 (2d Cir. 2011) (finding undocumented alien's fear of arrest did not render him "unavailable" to testify at his wife's asylum hearing). The REAL ID Act "thus codifies the rule that an IJ, weighing the evidence to determine if the alien has met his burden, may rely on the absence of corroborating evidence adduced by an otherwise credible applicant unless such evidence cannot be reasonably obtained." *Liu v. Holder*, 575 F.3d 193, 197 (2d Cir. 2009).

The Court finds that Lead Respondent testified credibly inasmuch as her in-Court testimony was generally consistent with her written affidavit and testimony provided to an asylum officer during her credible fear interview. During her testimony in Court, she responded directly and candidly to the questions asked of her. For these reasons, the Court finds Lead Respondent credible.

The Court finds that Lead Respondent successfully corroborated her claim. She submitted significant documentation underlying her claim including country condition reports, declarations from her former coworkers, and expert witness declarations. *See* Exh. 5, Tabs H-P (expert witness declarations and CVs); Exh. 5, Tabs F-G (letters from Lead Respondent's former coworkers); Exh.

5, Tabs EE-HHH (articles and country condition reports documenting violence against women in Guatemala). For these reasons, the Court finds Lead Respondent successfully corroborated her claims.

B. Asylum

Lead Respondent claims that she qualifies for asylum based on her membership her anti-machismo political opinion. She also claims that she qualifies for withholding of removal based on her membership in the following three particular social groups; Guatemalan women, Guatemalan women who defy gender norms, and Guatemalan women who are viewed as property by their spouses. Respondent's brief at 3 (filed May 30, 2019). For the following reasons, the Court will grant her asylum claim based on her membership in the particular social group, Guatemalan women who defy gender norms. The Court declines to make findings on Lead Respondent's other claimed grounds for asylum. *See Matter of Mogharrabi*, 19 I&N Dec. at 449; *see also Bagamasbad*, 429 U.S. 24 (government agencies are not required to make findings on issues which are unnecessary to the result).

1. Particular Social Group: Guatemalan Women who defy gender norms

In a claim of persecution on account of membership in a particular social group, the applicant must establish that he or she possesses an immutable characteristic shared by a group of people—a characteristic that either is beyond the power of an individual to change or is so fundamental to individual identity or conscience that it should not be required to be changed. *See Matter of Kasinga*, 21 I&N Dec. 357, 365-66 (BIA 1996) (holding that "young women of the Tchamba-Kunsuntu Tribe [of northern Togo] who have not had FGM [female genital mutilation], as practiced by that tribe, and who oppose the practice," were a particular social group); *see also Matter of H-*, 21 I&N Dec. 337, 343 (BIA 1996) (holding that members of the Marehan subclan of Somalia, who share ties of kinship and linguistic commonalities, were a particular social group); *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990) (holding that individuals identified by the Cuban government as "homosexuals" were a particular social group). *But see Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985) (holding that Salvadoran taxi drivers were not a cognizable social group because they could change professions). The characteristic may be innate or based upon a shared past experience. *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985); *see also Matter of C-A-*, 23 I&N Dec. 951, 958 (BIA 2006). However, "not all applicants who can point to membership in some group united by a shared past experience will qualify for asylum." *Koudriachova v. Gonzales*, 490 F.3d 255, 261 (2d Cir. 2007); *see also Matter of M-E-V-G-*, 26 I&N Dec. 227, 242-43 (BIA 2014) (discussing circumstances under which shared past experiences might give rise to a cognizable social group); *Matter of W-G-R-*, 26 I&N Dec. 208, 219-20 (BIA 2014) (same).

To constitute a particular social group, the proposed group must also exhibit a shared characteristic that is socially distinct within the society in question and defined with sufficient particularity. *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208, 210-12 (BIA 2014); *Paloka v. Holder*, 762 F.3d 191, 196 (2d Cir. 2014). When assessing the particularity and social distinction of a putative social group, defining characteristics