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

The Court recognizes that Respondent's social group is large; however, the size of a group does not necessarily preclude a particularity finding. The Board has routinely upheld large social groups despite its recognition that size is a factor that should be considered in the analysis. In S-E-G-, the Board stated that "while size of the group may be an important factor in determining whether the group can be so recognized, the key question is whether the proposed definition is sufficiently particular or is too amorphous . . . to create a benchmark for determining group membership." 24 I&N Dec. 579, 584 (BIA 2008). This affirms the reasoning in Matter of H-, in which the Board found that Somali clans constitute a particular social group, despite the fact that some number in the millions. 21 I&N Dec. 337 (BIA 1996); see also Mohammed v. Gonzalez, 400 F.3d 785 (9th Cir. 2005) (finding a group comprised of "Somali females" to be a cognizable social group given the widespread practice of female genital mutilation); Cece v. Holder, 733 F.3d 662, 674–75 (7th Cir. 2011) and Perdomo v. Holder, 611 F.3d 662, 669 (9th Cir. 2005) (rejecting the notion that a group can be too large to be a particular social group). Similarly, the Board has repeatedly upheld particular social groups based on sexual orientation as cognizable, even though such groups are sizeable. Matter of Toboso-Alfonso, 20 I&N Dec. 819, 822–23 (BIA 1990) (recognizing "homosexuals . . . in Cuba" as members of a particular social group); W-G-R-, 26 I&N Dec. at 219 (affirming "homosexuals in Cuba" as a particular social group because, in part, it is defined with particularity). In these cases, and as explained by S-E-G-, the "key question" is not the group's size, but whether the definition provides an adequate benchmark for determining who is a member and who is not based on the record at hand. The dispositive factor in Matter of H- was the shared kinship and linguistic attributes of clan members. 21 I&N Dec. at 343. In Respondent's case, the benchmark determinant is a combination of nationality and gender.

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

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

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

iii. Socially Distinct

Finally, Respondent's proposed social group is socially distinct. In M-E-V-G-, the Board explained that "[a] viable particular social group should be perceived within the given society as a sufficiently distinct group," and that "[t]he members of a particular social group will generally understand their own affiliation with the grouping, as will other people in the particular society." 26 I&N Dec. 227, 238; see also W-G-R-, 26 I&N Dec. at 217 (stating that "social distinction exists where the relevant society perceives, considers, or recognizes the group as a distinct social group"). Through Respondent's testimony and documentary evidence, she has established that Guatemalan society perceives women as sufficiently distinct from society as a whole to qualify as a particular social group.

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

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

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

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

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

c. Nexus

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

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

d. Government Unable or Unwilling to Control

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

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

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

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

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

e. Discretion

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

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

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

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

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

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

VII. Conclusion

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

Accordingly, the Court enters the following order:

ORDER

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

May 15, 2019
Date

Steven A. Morley
Immigration Judge
Philadelphia, Pennsylvania

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: A[redacted], M[redacted] D...
Riders:[redacted]

A [redacted]-053

Date of this notice: 2/14/2019

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
O'Connor, Blair

Userteam: Docket

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

Date: FEB 14 2019

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Eloy A. Aguirre, Esquire

APPLICATION: Asylum; withholding of removal: Convention Against Torture

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

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

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

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

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

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

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

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

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

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

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

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

Accordingly, the following order is entered.

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

FOR THE BOARD

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

U.S. Department of Justice

Executive Office for Immigration Review

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Name: P[redacted] C[redacted], S[redacted] R[redacted] **A [redacted]-056**

Date of this notice: 12/20/2018

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

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

Userteam: Docket

File: A[redacted]-056 – Tucson, AZ

Date: DEC 20 2018

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rachel Wilson, Esquire

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

APPLICATION: Asylum; withholding of removal; Convention Against Torture

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

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

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

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

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

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

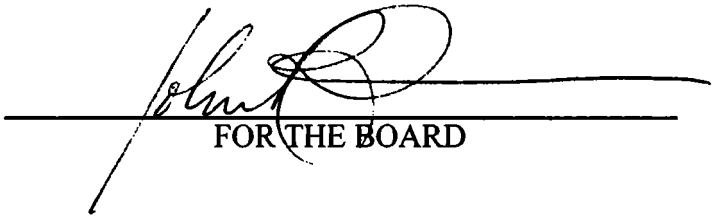
We agree with the Immigration Judge's decision as it relates to "Mexican women who are victims or potential victims of gender-motivated violence." To be cognizable, a particular social group must exist independently of the harm claimed by its members. *Matter of A-B-*, 27 I&N Dec. at 317, 334-35; *Matter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

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

by a "government official or persons the government is unable or unwilling to control"). We express no opinion regarding the ultimate outcome of the respondent's case.[1]

Accordingly, the following order will be entered.

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



FOR THE BOARD

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

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

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

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

Name: C[redacted]-D[redacted], X[redacted] C[redacted]... **A [redacted]-474**

Date of this notice: 12/11/2018

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

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

Userteam: Docket

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

Date: DEC 1 1 2018

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James J. Stratton, Esquire

ON BEHALF OF DHS: Mark Hardy
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

Accordingly, the following order will be entered.

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

FOR THE BOARD

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
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Rashid, Diana
National Immigrant Justice Center
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Chicago, IL 60604

DHS/ICE Office of Chief Counsel - CHI
525 West Van Buren Street
Chicago, IL 60607

Name: P[redacted]-S[redacted], N[redacted]

A [redacted]-777

Date of this notice: 7/27/2020

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Donovan, Teresa L.
Swanwick, Daniel L.
Greer, Anne J.

Userteam: Docket

File: A[redacted]-777 – Chicago, IL

Date: JUL 27 2020

In re: N[redacted] P[redacted]-S[redacted]

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Diana Rashid, Esquire

ON BEHALF OF DHS: Caitlin A. Corcoran
Assistant Chief Counsel

APPLICATION: Withholding of removal

The applicant, a native and citizen of Mexico, appeals from the Immigration Judge's September 16, 2019 decision denying her application for withholding of removal from Mexico under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3). The Department of Homeland Security ("DHS") opposes the appeal, but does not challenge the Immigration Judge's decision insofar as it grants the applicant withholding of removal from Mexico pursuant to the Convention Against Torture, 8 C.F.R. §§ 1208.16(c)-1208.18. The record will be remanded.

This Board reviews the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The applicant claims past persecution and a well-founded fear of future persecution in her native Mexico on account of her membership in the following particular social groups: 1) "Mexican women"; 2) "Mexican women in intimate relationship they are unable to leave"; 3) Mexican women who disobey or oppose patriarchal societal norms; 4) "Nuclear family members of Josue Morales de Leon" (IJ at 7; Applicant's Pre-hearing Br. at 13-20). The Immigration Judge noted the similarity between the first three proposed social groups and found they were restatements of the core particular social group, "Mexican women in Chiapas in intimate relationships they are unable to leave because of patriarchal societal norms" (IJ at 7). The Immigration Judge found the applicant credible, but denied her application for withholding of removal under section 241(b)(3) of the Act after she failed to establish membership in a legally cognizable social group under *Matter of A-B-*, 27 I&N Dec. 316 (A.G 2018) (IJ at 9).

The Attorney General determined that "[s]ocial groups defined by their vulnerability to private criminal activity likely lack the particularity required [for a social group to be cognizable], given that broad swaths of society may be susceptible to victimization." *Matter of A-B-*, 27 I&N Dec. 316, 320, 333, *overruling Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014). However, the Attorney General's decision does not preclude all domestic violence claims without exception in the asylum context and adjudicators are required to conduct a case-by-case analysis of each asylum claim. *Matter of A-B-*, 27 I&N Dec. at 320, 340. Thus, we will remand the record to the

Immigration Judge to make additional, relevant findings of fact pursuant to *Matter of A-B-*, 27 I&N Dec. at 332, and to reassess the applicant's eligibility for relief. Because we are remanding the record for further proceedings, we need not address additional arguments the applicant raises in her brief on remand.

On remand, the Immigration Judge should reassess the legal cognizability of each of the applicant's proposed gender-based particular social groups. *Matter of A-B-*, should be applied to each of the proposed particular social groups. If, on remand, the Immigration Judge concludes that the applicant established membership in a legally cognizable particular social group, the Immigration Judge should next assess whether the applicant established past persecution or a well-founded fear of future persecution on account of her membership in that particular social group, determine if the Mexican government was unable or unwilling to control her feared persecutor, and whether she can internally relocate within Mexico.

If the applicant succeeds in establishing that she suffered past persecution on account of a protected ground by a perpetrator whom the government was unable or unwilling to control, she would be entitled to a presumption of a well-founded fear of persecution on this basis. 8 C.F.R. §1208.13(b)(1). This presumption could be rebutted upon a showing by the DHS that there has been a "fundamental change in circumstances such that applicant no longer has a well-founded fear of persecution" in Mexico, or that "the applicant could avoid future persecution by relocating to another part of the applicant's country of nationality." 8 C.F.R. §§ 1208.13(b)(1)(i)(A)-(B), (ii). We make no determination as to the outcome of the case.

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

Teresa L Dawn

FOR THE BOARD

Board Member Anne J. Greer respectfully dissents without opinion.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

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

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

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

A [redacted]-294

Date of this notice: 9/10/2019

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Wendtland, Linda S.

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

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

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: David L. Permut, Esquire

APPLICATION: Withholding of removal; Convention Against Torture

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

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

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

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

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

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

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

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

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

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

Linda J. Wendtland

FOR THE BOARD

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

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

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

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

Name: [redacted] **A** [redacted]**-977**

Date of this notice: 11/6/2019

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

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

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

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Kaitlin DeStigter
Associate Legal Advisor

APPLICATION: Asylum; withholding of removal; Convention Against Torture

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

This case was remanded for further evaluation of whether "women in El Salvador" constitutes a particular social group. The DHS has requested remand of the proceedings to the Immigration Court for consideration of whether the proffered group of "women in El Salvador" meets the particularity requirement for a particular social group and for a definitive or circumstance-specific finding regarding social distinction. *See Matter of A-B-*, 27 I&N Dec. 316, 319 (A.G. 2018) (quoting *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)); *see also Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff'd in pertinent part and vacated and remanded in pertinent part on other grounds sub nom. by Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016), *cert. denied sub nom. Reyes v. Sessions*, 138 S. Ct. 736 (2018).

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

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

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

FOR THE BOARD

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Delgado, Violeta
Law Offices of Violeta Delgado
2112 North Main Street Unit 200
Santa Ana, CA 92706

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

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

Date of this notice: 4/16/2019

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
O'Connor, Blair

Userteam: Docket

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

Date: APR 16 2019

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Violeta Delgado, Esquire

APPLICATION: Asylum; withholding of removal

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

To establish that a group defined as "Guatemalan women" is cognizable under the asylum and withholding of removal statutes, the respondent must prove that the group is: "'(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within [Guatemalan] society . . . .'" *Matter of A-B-*, 27 I&N Dec. 316, 319 (A.G. 2018) (quoting *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)); *see also Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff'd in pertinent part and vacated and remanded in part on other grounds sub nom. by Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016), *cert. denied sub nom. Reyes v. Sessions*, 138 S. Ct. 736 (2018).

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

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

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

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

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

from the record before us whether the social group of "Guatemalan women" satisfies the foregoing "particularity" and "social distinction" requirements. As the requirements of particularity and social distinction involve fact-finding that we cannot do in the first instance, remand to the Immigration Judge is necessary. *See* 8 C.F.R. § 1003.1(d)(3)(iv); *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008); *see also Matter of A-B-*, 27 I&N Dec. at 340-41 (emphasizing the importance of Immigration Judges as fact-finders). In evaluating the particularity and social distinction of the claimed group of "Guatemalan women," the Immigration Judge should consider the Ninth Circuit's decision in *Perdomo v. Holder* 611 F.3d 662, 669 (9th Cir. 2010), and its rejection of the "notion that a persecuted group may simply represent too large a portion of a population to allow its members to qualify for asylum." *See also Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) ("[T]he recognition that girls or women of a particular clan or nationality[,] or even in some circumstances females in general[,] may constitute a social group is simply a logical application of our law.") (internal parentheses omitted); *accord Ticas-Guillen v. Whitaker*, 744 F. App'x 410 (9th Cir. Nov. 30, 2018).

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

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

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
970 BROAD STREET, ROOM 1200
NEWARK, NJ 07102

Law Offices of Patrick C. McGuinness LLC
McGuinness, Patrick C
304 Maple Ave.
South Plainfield, NJ 07080

In the matter of [redacted] File A [redacted] DATE: Mar 17, 2020
A [redacted]

___ Unable to forward - No address provided.

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 as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
970 BROAD STREET, ROOM 1200
NEWARK, NJ 07102

___ 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: _____

RD
COURT CLERK
IMMIGRATION COURT FF

cc: [redacted]
970 BROAD STREET, ROOM 1300
NEWARK, NJ, 07102

3/17/20 RD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
NEWARK, NEW JERSEY

File Nos.	**A** [redacted] **(Lead)**	)
	A [redacted]	)
In the Matter of		)
[redacted]		) **In Removal Proceedings**
Respondents.		)

CHARGE:	INA § 212(a)(6)(A)(i)	Present in the United States without being admitted or paroled
APPLICATIONS:	INA § 208	Asylum
	INA § 241(b)(3)	Withholding of Removal
	8 C.F.R. § 1208.16	Relief under the Convention against Torture

ON BEHALF OF RESPONDENT
Raquel Montenegro, Esq.
Law Offices of Patrick C. McGuiness LLC
304 Maple Ave.
South Plainfield, NJ 07080

ON BEHALF OF ICE/DHS
[redacted]
Assistant Chief Counsel
970 Broad Street, Room 1300
Newark, New Jersey 07102

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

The lead respondent, [redacted] ("the Respondent"), is a 29-year-old female native and citizen of Honduras. Exh. 1; Exh. 2. The Respondent's minor daughter, [redacted], is the derivative respondent in this matter (collectively "the Respondents"). Exh. 1. On September 4, 2013, both the Respondents entered the United States at or near Hidalgo, Texas. *Id.* They were not admitted or paroled upon inspection by an immigration officer. On September 4, 2013, the Department of Homeland Security ("DHS") commenced removal proceedings against the Respondents by filing Notices to Appear ("NTA") with the New York Federal Plaza Immigration Court, charging them as inadmissible under section 212(a)(6)(A)(i) of the Act. On February 27, 2015, the Respondents' Motion for Change of Venue was granted and venue was changed to the Newark Immigration Court. On March 6, 2015, the charges were

sustained. On September 20, 2016, the Respondents filed I-589 Applications for Asylum and Withholding of Removal ("I-589 Application") with this Court, after they had been previously lodged on August 14, 2015. Exh. 2; Exh. 2A.

On October 25, 2019, the Respondents appeared for an individual hearing before this Court and the lead respondent testified with the assistance of a Spanish language interpreter.

II. Summary of the Evidence

A. Documentary Evidence

The evidentiary record of this proceeding consists of documentary Exhibits 1 through 3. All admitted evidence has been considered in its entirety regardless of whether specifically mentioned in the text of this decision.

Exhibit 1: Respondent's and Derivative's Notices to Appear, filed November 12, 2013

Exhibit 2: Respondent's Form I-589, Application for Asylum and Withholding of Removal and Personal Statement, filed September 20, 2016

Exhibit 2A: Derivative's Form I-589 Application for Asylum and Withholding of Removal, filed September 20, 2016

Exhibit 2U: Respondent's Updated Form I-589 Application for Asylum and Withholding of Removal, filed October 24, 2019

Exhibit 2AU: Derivative's Updated Form I-589 Application for Asylum and Withholding of Removal, filed October 24, 2019

Exhibit 3: Respondent's Supplemental Evidence in Support of I-589 Application (Tabs A – D), filed September 8, 2016

B. Testimonial Evidence

The Respondent was born on [redacted] in Tela, Honduras. She grew up in a large town called Arizona, where she attended six years of school. Growing up, the Respondent lived with her father, one older sister, and one younger brother. Her mother died when she was eight years old. After completing six years in school, she stayed at home. Her father would make her clean the house and do other chores around the house. She stated that her father mistreated her sometimes. For instance, he wouldn't let her go see her grandmother or any other family member and he would never buy her any clothing. He would also punish her with "whatever he had in hand," such as "a belt, a switch, [and] a stick." Both the Respondent and her sister suffered mistreatment at the hands of their father, which began after their mother died. The Respondent's brother was not abused. She believes this is because her father "preferred boys over girls."

When the Respondent was 17 years old, she met the future father of her children named [redacted] was 28 years old at the time. He worked as a day laborer in a palm tree farm. They met by chance in the middle of 2007. They started going on dates and about one month later, the Respondent and [redacted] became boyfriend and girlfriend. At first, they would see each other every five to eight days. When they spent time together, [redacted] would pick up the Respondent and they would go out to eat. In February of 2008, the Respondent moved in with [redacted] and his family in a town called Hicaque, about half an hour from Arizona, where she had been living. [redacted] lived with his father, mother, and two brothers. At that point, the Respondent was already two months pregnant with their daughter [redacted] She stated that another reason she moved in with [redacted] was because she just wanted to leave her home.

When the Respondent and [redacted] first moved in together, she said that "he was a beautiful person . . . he was gentle, sympathetic, [and] very caring." On September 23, 2008, the Respondent gave birth to their daughter, [redacted] She stated that during that time, things were still going well with [redacted] However, shortly after, in December of 2008, the Respondent began having problems with [redacted] parents, Patrocina and Gregorio. She said that they started to see her "as a maid" and "a slave." They demanded that she clean the entire house, wash and iron their clothes, and cook for everyone. The Respondent stated that she did this all alone and did not have help from anyone. She complained about this treatment to [redacted] but she said that he never defended her and never did anything to help her. The Respondent became even more afraid [redacted] parents after listening to their conversations about being willing to do "anything" to people who went against them.

In 2011, due to the mistreatment by [redacted] parents, the Respondent told [redacted] that they had to make a decision and find a place where they could live together just the three of them: [redacted] the Respondent, and their daughter. Thus, they moved out [redacted] parent's house and to the house next door. However, the Respondent said that "things got worse" because she still had to take care of Patrocina's house, in addition to her own house. She still had to clean [redacted] parents' house because they and [redacted] forced her to. As she stated, "Braulio said I had to do it, [so] I had to do it—period."

When she first moved in with [redacted] the Respondent would visit an aunt who lived in the town of Arizona every weekend. She would go on Saturday and then return Sunday to her home with [redacted] Occasionally, she would also visit her father. The Respondent said that her father had asked for her forgiveness and would invite her over to his house occasionally. She would go see him so that he "wouldn't feel bad." However, in 2011, [redacted] wouldn't let the Respondent visit her family members anymore. He told her that she could not go because she had to "take care of his mother" and since his mother did not have anyone to help her, the Respondent "had to be there all the time." He also said that he did not want the Respondent to see her aunt because he believed she would tell her aunt about the mistreatment she was experiencing.

The Respondent stated that towards the end of 2011, things with [redacted] started to worsen. [redacted] placed a lock on the gate of the house and would not let her leave. She said that he had her "like a slave in the house." In October of 2011, [redacted] stopped bringing home food for the Respondent. He would only bring food for their daughter. The Respondent could not leave to get her own food because she was locked inside their house. She was only able to leave the house to

go to [redacted] parents' house to clean because the two houses were both on one lot and were connected by a gate that was unlocked. The Respondent was able to communicate with relatives who live in the United States about not having food, so they sent her money through the Respondent's female neighbor. The neighbor would receive the money, buy food for the Respondent, and bring it to her house in hiding.

Additionally, around that same time, [redacted] began abusing the Respondent. She would often tell him that she wasn't anyone's servant, but he would say that she *was* his servant. He used physical force on her and foul language when talking to her. [redacted] would tell her that the only reason she wanted to go out to the street was to become a prostitute and that's why he didn't let her go out. He would also say that a person like her deserved to be locked up.

One day, the Respondent tried to escape. She was able to break the lock but [redacted] and his father caught her, so she was never able to leave. [redacted] asked her why she wanted to go out to the street and told her that she had to be locked up. He said that if she managed to get out, she would "regret it in a thousand ways." He then grabbed the Respondent and forced her back inside the house. The Respondent said that he locked the gate once again but that time he used a type of lock that was used by the military during the war with El Salvador. Things worsened after she tried to escape.

The Respondent's second child with [redacted] a son, was born on [redacted]. At that time, she moved to another room in the house and [redacted] would go there to try to abuse her. The Respondent said "he tried to force me and I refused." On one occasion, he grabbed her by the hair and smacked her. On another occasion, he "tried to force himself upon [her]" but then her daughter started to cry and scream. The screams caused him to stop because he was afraid that someone was going to hear her and come to the house. Another day, he tried to do it again and that is when "he grabbed [her and] threw [her] down the stairs," which caused the Respondent to injure her ankle.

The physical and verbal abuse continued well into 2013. The Respondent stated that "it got to the point that I was fearful when I saw him arrive [home.]" The Respondent's neighbor who would bring her food told her that she needed to escape or "things were going to get ugly." Thus, one day in June of 2013, when neither [redacted] nor his parents were home, the neighbor helped the Respondent escape. She passed the Respondent a ladder, which the Respondent put "over the wall on the inside and [the neighbor] had another [ladder] on the outside." The Respondent first got her children over the wall and then the Respondent herself jumped "over to the other side." She fell and was injured above her left eye, where she now has a scar. The Respondent was able to escape. She hailed a taxi and went to her aunt's house. Her neighbor told the Respondent that when [redacted] got home and noticed that the Respondent wasn't home, he started looking for her. The neighbor called the Respondent and told her that "they were like crazy on the way to look for [her] at the bus stop," since they thought she was there. The Respondent then went to the police and told them what had been happening to her. The police told her that "there was nothing they could do for [her]" and that "they couldn't have a person there to guard [her]" all the time. Thus, the Respondent went back to her aunt's house and they spent most of their time in hiding.

They spent five days hiding and on the fifth day, the Respondent's daughter, [redacted] went to the store with her cousin. At that point, [redacted] had gone to the Respondent's father's house to

look for the Respondent. He then realized that she was at her aunt's house and went there to look for the Respondent. When [redacted] was heading back to the Respondent's aunt house with her cousin, [redacted] found her, grabbed her, and took her with him back to his parents' house. The Respondent's son was still with the Respondent at the aunt's house safely. The Respondent went to the police once again and told them what had happened with [redacted] The police assigned an officer to go with her to [redacted]s house to rescue [redacted] The police returned [redacted] to the Respondent "in a bad way" and told her to "figure out what to do because they couldn't be keeping an eye on [her.]" The Respondent and [redacted] went back to the Respondent's aunt's house. Shortly after, on June 27, 2013, the Respondent's cousin helped her and [redacted] flee to Mexico. The Respondent left her son with her aunt in Honduras.

In Mexico, the Respondent and [redacted] were staying with another aunt named [redacted]. The Respondent worked for three months in Mexico in order to save money so that they could flee to the United States. One day, when she arrived back at Ms. [redacted] house from work, about one month after she had arrived in Mexico, Ms. [redacted] informed the Respondent that she had some news for her. She told the Respondent that [redacted] had called and told her that he knew the Respondent was living in Mexico and that he was "going to come get [her]" and bring her back to Honduras. The Respondent was fearful that he would find her and take her back to Honduras "to continue torturing [her.]" The Respondent continued to work for two more months to save money and finally, on September 5, 2013, she and [redacted] left Mexico. The Respondent and [redacted] traveled through Mexico for seven days until they reached the United States, where she said she finally "felt free."

When they arrived in the United States, they first lived in New York with another aunt named [redacted] Two months after they arrived, [redacted] found out that the Respondent was living in New York. He also obtained her phone number and would call her repeatedly. He would tell her that she was "better off dead" because she came to the United States and "now he [was] not able to do anything." He told her that he knew she was in New York and that he had her phone number now. He told her that he was going to get in touch with one of his cousins who is a police officer in Virginia and give him her number so that he could find her and deport her. He said that once she was deported, he would be waiting for her in Honduras. After receiving these threats, the Respondent changed her phone number, deleted all her social media accounts, and moved to New Jersey in September of 2014 to live with a female cousin named [redacted]. She said she decided to move so that nobody would know where she was.

The Respondent's brother who still lives in Honduras told the Respondent that [redacted] is still trying to find out where she is. However, he thinks that she is still in New York. If she were to return to Honduras, she believes that he would begin to torture her again like he used to. She would not be able to move to another city in Honduras because "he knows that whole place" and "wherever I go, he is going to find me." Finally, she stated that she feels safe in the United States because she does not think that [redacted] would be able to "make it up here." She added that "here, there are laws" and "people respect the law."

III. Relief from Removal—Law and Analysis

A. Timeliness

An applicant for asylum must prove by clear and convincing evidence that her asylum application was timely filed within one year of the date of her last arrival into the United States. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)(ii). The evidence in the record indicates that the Respondents' I-589 Applications were lodged on August 14, 2015, before their first master calendar hearing at the Newark Immigration Court. Thus, the Court will honor the lodging date. Moreover, the parties do not dispute the timeliness of the Respondents' applications for relief.

B. Application of The REAL ID Act of 2005

All applications for relief filed after May 11, 2005 are subject to the REAL ID Act of 2005. The REAL ID Act amended INA § 208 and places all burdens of proof on the applicant. INA § 240(c)(4). The applicant must establish that she satisfies the applicable eligibility requirements and that she merits a favorable exercise of discretion for relief. In this case, the REAL ID Act governs the Respondents' applications.

1. Credibility

As a threshold matter, the Court must make a determination of the Respondent's credibility. A credibility finding is independent of an analysis of the sufficiency of an applicant's evidence. *Chen v. Gonzales*, 434 F.3d 212, 221 (3d Cir. 2005). Pursuant to the REAL ID Act, credibility determinations will be made "considering the totality of the circumstances and all relevant factors." INA § 240(c)(4)(C). A trier of fact may base a credibility determination on:

> 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, the internal consistency of each such statement, the consistency of such statements with other evidence of record, and any inaccuracies or falsehoods in such statements, *without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim*, or any other relevant factor. There is no presumption of credibility; however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

INA § 208(b)(1)(B)(iii) (emphasis added); *see generally, Lin v. Att'y Gen.*, 543 F.3d 114 (3d Cir. 2008) (affirming the IJ's adverse credibility determination based on discrepancies between his testimony and affidavit). The statutory language suggests that all relevant factors in the record be considered when determining credibility and that all the circumstances be considered when weighing any one factor.

After a careful consideration of all relevant factors, the Court finds the Respondent credible. Her testimony was internally consistent and generally consistent with her detailed declaration and with the evidence in the record. Furthermore, the Respondent was forthcoming and candid with information that was asked of her. During difficult parts of her testimony, the Respondent's voice would shake, indicating that it was distressing for her to talk about what she experienced. Accordingly, the Court finds the Respondent credible.

2. Corroboration

An applicant bears the evidentiary burden of proof and persuasion in connection with any application under INA § 208. INA § 208(b)(1)(B); 8 C.F.R. § 1208.13(a); *Matter of Acosta*, 19 I&N Dec. 211, 215 (BIA 1985), *modified on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987). An applicant's own testimony may be sufficient to sustain the burden of proof for asylum 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); *Sandie v. Att'y Gen.*, 562 F.3d 246, 252 n.2 (3d Cir. 2009); *Matter of J-Y-C-*, 24 I&N Dec. 260, 263 (BIA 2007). The Board of Immigration Appeals ("BIA") has recognized the difficulties an asylum applicant may face obtaining documentary or other corroborative evidence to support her claim of persecution. *Matter of Dass*, 20 I&N Dec. 124 (BIA 1989). As such, "[u]nreasonable demands are not placed on an asylum applicant to present evidence to corroborate particular experiences (e.g., corroboration from the persecutor)." *Matter of S-M-J-*, 21 I&N Dec. 722, 725 (BIA 1997). However, the weaker an applicant's testimony, the greater the need for corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998) (citing *Matter of E-P-*, 21 I&N Dec. 860 (BIA 1997)).

The Court finds that the Respondent has corroborated her claim through, *inter alia*, country conditions on Honduras, a police report, and numerous affidavits from her father, her brother, the neighbor who helped her escape, the aunt she stayed with in Honduras, her cousin, and a Honduran attorney she spoke to regarding her domestic violence situation. *See* Exh. 3; *see also* Respondent's Submission of Evidence, filed December 5, 2019; United States Department of State Honduras 2018 Human Rights Report. Thus, the Court finds that the corroborating documents the Respondent submitted, coupled with her testimony, are sufficient to meet the standard for corroboration.

C. Asylum under Section 208 of the Act

The Respondent bears the evidentiary burden of proof and persuasion regarding eligibility for relief from removal. INA § 240(c). To be eligible for asylum pursuant to section 208 of the Act, the Respondent must establish that she was persecuted in the past or that she has a well-founded fear of persecution in the future on account of race, religion, nationality, membership in a particular social group, or political opinion. *See* INA § 101(a)(42)(A); *INS v. Elias-Zacarias*, 502 U.S. 478 (1992); 8 C.F.R. § 1208.13(a). A claim of persecution must have a nexus to one of the five statutorily protected grounds. In cases where the REAL ID Act applies, such as this case, the applicant must demonstrate that the protected ground would be "at least one central reason" for the persecution. INA § 208(b)(1)(B)(i). The protected ground does not need to be "the only central reason for the persecution ... [further,] an applicant need not prove that a protected ground was

the most important reason why the persecution occurred." *Ndayshimiye v. Att'y Gen.*, 557 F.3d 124, 130 (3d Cir. 2009).

If the Respondent establishes past persecution on account of one of the protected grounds, it "shall be presumed that [her] life or freedom would be threatened in the future in the country of removal on the basis of the original claim." 8 C.F.R. § 1208.16(b)(1)(i). The persecution must be or have been committed by the government or by forces that the government is unable or unwilling to control. *See Gao v. Ashcroft*, 299 F.3d 266, 272 (3d Cir. 2002); *Kibinda v. Att'y Gen.*, 477 F.3d 113, 119 (3d Cir. 2007) (quoting *Fiadjoe v. Att'y Gen.*, 411 F.3d 135, 160 (3d Cir. 2005)).

1. Past Persecution

There is no universally accepted definition of "persecution." *See Handbook on Procedures and Criteria for Determining Refugee Status*, Office of the United Nations High Commissioner for Refugees, ¶ 51 (Geneva, January 1992). While "persecution" has generally been interpreted to include threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom, courts have also recognized that "the concept of persecution is broad enough to include governmental measures that compel an individual to engage in conduct that is not physically painful or harmful but is abhorrent to that individual's deepest beliefs." *Fatin v. INS*, 12 F.3d 1233, 1242 (3d Cir. 1993).

Evidence that an asylum applicant was physically harmed by her persecutors and that the harm was severe and required medical attention, along with other harassment, may rise to the level of persecution. *See Voci v. Gonzales*, 409 F.3d 607, 615 (3d Cir. 2005) (finding past persecution where the petitioner was found to have been beaten by police numerous times, which on one occasion, necessitated the petitioner's extended hospitalization for a broken knee). Unfulfilled threats are generally not sufficient enough to constitute persecution, unless they are "so menacing as to cause significant actual suffering or harm." *Chavarria v. Gonzalez*, 446 F.3d 508, 518 (3d Cir. 2006) (citing *Li v. Att'y Gen.*, 400 F.3d 157 (3d Cir. 2005)). The severity of each incident should not be addressed in isolation without considering the cumulative effect of events. *Fei Mei Cheng v. Att'y Gen.*, 623 F.3d 175, 190-98 (3d Cir. 2010).

The Court finds that Respondent suffered harm rising to the level of past persecution. For more than two years, the Respondent's partner, [redacted] kept the Respondent captive in their own home. He kept her inside a locked gate and deprived her of food. During that time, [redacted] physically and verbally abused the Respondent. On one occasion, he grabbed her by the hair and smacked her. On another occasion, he pushed her down the stairs which caused her to injure her ankle. He would constantly insult her and tell her that she deserved to be locked up and he would not let her leave. Looking at these events cumulatively, the Court finds that the harm suffered by the Respondent rises to the level of severe past persecution.

2. Nexus to a Protected Ground – Particular Social Group

An applicant for asylum must demonstrate that the persecution she fears would be "on account of" her race, nationality, religion, membership in a particular social group, or political

opinion. INA §§ 101(a)(42)(A), 208(b)(1)(A); 8 C.F.R. §§ 1208.13, 1240.8(d); *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996).

In determining whether the alleged persecution is "on account of" one of the protected grounds, the court must examine the persecutor's views of the applicant's actions or lack of action. *See INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992) (finding that "the mere existence of a generalized 'political' motive underlying the guerrillas' forced recruitment [of the respondent] is inadequate to establish . . . the proposition that he fears persecution on account of political opinion"). In certain cases, "the factual circumstances alone may constitute sufficient circumstantial evidence of a persecutor's . . . motives." *Espinosa-Cortez v. Att'y Gen.*, 607 F.3d 101, 108 (3d Cir. 2010) (quoting *Canales-Vargas v. Gonzales*, 441 F.3d 739, 744 (9th Cir. 2006)) ("[C]ircumstantial evidence of motive may include, *inter alia*, the timing of the persecution and signs or emblems left at the site of persecution."). Moreover, the court may rely on the applicant's credible testimony to assess the motive and perspective of the persecutor. *Chavarria v. Att'y Gen.*, 446 F.3d 508, 521 (3d Cir. 2006).

A "particular social group" must (1) be composed of members who share a common immutable characteristic; (2) be defined with particularity; and (3) be socially distinct within the society in question. *S.E.R.L. v. Att'y Gen.*, 894 F.3d 535 (3d. Cir. 2018); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014). 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).

In this matter, the Respondent claims to have suffered past persecution on account of her membership in a particular social group. The evidence of record and the Respondent's testimony lead this Court to conclude that the applicable particular social group is "Honduran women." Thus, the Court will proceed to analyze whether this group is cognizable under the standards set forth in *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014) and *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018).

First, the proposed social group of "Honduras women" is immutable. One's nationality is immutable because it is not a characteristic that one should be required to change. Further, in *Matter of Acosta*, the BIA found that one's "sex" is a "shared characteristic" on which particular social group membership can be based. *See Matter of Acosta*, 19 I&N Dec. at 233. Second, the Court finds that the evidence of record demonstrates that the group is sufficiently particular. A particular social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group. *M-E-V-G-*, 26 I&N Dec. at 239 (citing *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007)). The terms used to describe the group must have commonly accepted definitions in the society of which the group is a part. *Id.* The group must be discrete and have definable boundaries—it must not be amorphous, overbroad, diffuse, or subjective. *Id.* Here, it is clear who falls within the social group "Honduran women" and who does not because nationality and gender have commonly understood definitions that limit and define the membership of the group. Although the group is admittedly large, the boundaries of the group are fixed and inalterable.

Finally, "Honduran women" is a socially distinct group in Honduras. "Social distinction" means social recognition, or "whether the people of a given society would perceive a proposed group as sufficiently separate or distinct [.]" *M-E-V-G-*, 26 I&N Dec. at 241. The evidence of record demonstrates that Honduran society perceives the Respondent's particular social group as distinct in Honduras. Honduran law indicates that members of the Respondent's social group are treated differently and seen as a distinct group. Specifically, the U.S. Department of State Human Rights Report on Honduras states that discrimination against women is illegal and female victims of domestic violence are accorded special protections under the law. *See* United States Department of State Honduras 2018 Human Rights Report, pp. 17-18. However, though women and men have equal educational, labor, and legal rights, such protections were not adequately enforced under the law. *Id.* Even if laws are not enforced to the fullest extent, the presence of such specific legal protections for women indicate that Honduran society recognizes women as a distinct group in society.

Thus, the Court finds that the Respondent has demonstrated that "Honduran women" is a cognizable particular social group.

Furthermore, the Respondent has shown that at least one of the central reasons [redacted] targeted her was on account of her membership in her particular social group. [redacted] felt entitled to abuse the Respondent because of her status as a Honduran woman. He locked the Respondent up in their own house and would not let her leave. He said that he did not want to let her out because, according to him, she would start prostituting herself on the streets. He even stopped bringing her food and told her she had to stay home "like a servant." [redacted] forced the Respondent to do housework both at their own home and [redacted] parents' home. He physically abused the Respondent and used foul language towards her, telling her that she deserved to be locked up. When the Respondent eventually escaped, [redacted] went "crazy" and began looking for her everywhere and even kidnapped their daughter. Even after the Respondent came to the United States, [redacted] continued to look for her and harassed her over the phone, telling her that she was "better off dead." All of these facts indicate that [redacted] was controlling and possessive over the Respondent and felt entitled to abuse her as a result of the Respondent's status as a Honduran woman.

Accordingly, the Court finds that the Respondent has demonstrated past persecution on account of her membership in the particular social group of "Honduran women," and she is therefore entitled to a regulatory presumption that her life or freedom would be threatened in the future in Honduras. 8 C.F.R. § 1208.16(b)(1)(i).

3. Persecution the Government is Unable or Unwilling to Control

An applicant for asylum must demonstrate that the persecution was committed by the government or by forces that the government is unable or unwilling to control. *Kibinda v. Att'y Gen.*, 477 F.3d 113, 119 (3d Cir. 2007).

The Respondent testified that, after she escaped, she went to the police to tell them everything that had been happening with [redacted] Evidence that the Respondent filed a complaint with the police was submitted to this Court. However, the police told her that "there was nothing

they could do for [her]" and that "they couldn't have a person there to guard [her.]" A few days later, when [redacted] kidnapped their daughter, the Respondent went back to the police. Although the police was able to bring the Respondent's daughter back to her, they told the Respondent to "figure out what to do because they couldn't be keeping an eye on [the Respondent.]" It appears that the police only acted that time because it involved the minor daughter's safety, but it did not act when the problem only involved the Respondent. Therefore, it is clear that the police was and is not able to protect the Respondent from [redacted]

Additionally, country conditions for Honduras stated that "corruption and impunity remain serious problems within the security forces. Some members of security forces allegedly committed crimes." *See* United States Department of State Honduras 2018 Human Rights Report, p. 7. Moreover, as of November of 2018, "the Police Purge Commission reported that, since its creation in 2016, it had referred for removal or provisional suspension more than 5,600 police officers on various grounds including corruption, criminal activity, and poor performance." *Id.*

Based on the foregoing, the Respondent has demonstrated that the Honduran government is unwilling and unable to protect her.

4. Rebuttable Presumption of Well-Founded Fear of Future Persecution

The Respondent has established past persecution in Honduras on account of a protected ground and is therefore entitled to a rebuttable presumption that she has a well-founded fear of future persecution if she must return to Honduras. 8 C.F.R. § 1208.13(b)(1). The DHS bears the burden to rebut the Respondent's presumption of a well-founded fear of persecution. Specifically, the DHS must establish by a preponderance of the evidence that the Respondent's fear is no longer well-founded due to a fundamental change in circumstances. 8 C.F.R. § 1208.13(b)(1)(i)(A). The presumption of a well-founded fear of future persecution may also be overcome if the DHS demonstrates that the applicant could avoid future persecution by relocating to another part of the country and that it would be reasonable to do so. 8 C.F.R. § 1208.13(b)(1)(i)(B). The DHS must show that there is a specific area of the country where the risk of persecution to the applicant falls below the well-founded fear level. *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33 (BIA 2012).

In this case, the DHS failed to rebut the presumption that the Respondent has a well-founded fear of future persecution. No evidence was present that internal relocation is possible and reasonable or that a fundamental change in circumstances had occurred. Consequently, the Respondents have met all the requirements for asylum and the Court will grant the applications as a matter of discretion.

D. Withholding of Removal under Section 241(b)(3) of the Act and Withholding of Removal under the Convention Against Torture

Because the Court grants the Respondents' applications for asylum, it need not reach the merits of their applications for withholding of removal under Section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture. *See Mogharrabi*, 19 I&N Dec. at 449; *see also INS v. Bagamasbad*, 429 U.S. 24 (1976) (government agencies are not required to make findings on issues which are unnecessary to the result).

In light of the foregoing, the following order shall be entered:

ORDER

IT IS HEREBY ORDERED that the Respondents' applications for asylum pursuant to section 208 of the Act is **GRANTED**;

IT IS FURTHER ORDERED that the Respondents' applications for withholding of removal pursuant to section 241(b)(3) of the Act is **NOT REACHED**;

IT IS FURTHER ORDERED that the Respondents' applications for withholding or deferral of removal pursuant to the Convention Against Torture is **NOT REACHED**.

Date: 3-13-20

Hon. Shifra Rubin
Immigration Judge

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

IN THE MATTERS OF:	)	**IN REMOVAL PROCEEDINGS**
[redacted],	)	**File Nos.:** [redacted]
Respondents.	)	

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended ("INA" or "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.

APPLICATIONS: Asylum, pursuant to INA § 208; humanitarian asylum pursuant to 8 C.F.R. § 1208.13(b)(1)(iii); 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 ("CAT"), pursuant to 8 C.F.R. §§ 1208.16-.18.

APPEARANCES

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DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

The respondents—[redacted] ("[redacted]") and [redacted] ("[redacted]"), a mother and daughter, respectively—are natives and citizens of Honduras. *See* Ex. 1; Ex. 1A. They entered the United States at or near Laredo, Texas, on May 9, 2015, and were not then admitted or paroled after inspection by an immigration officer. *Id.* On June 1, 2015, the Department of Homeland Security ("DHS") filed a Notice to Appear ("NTA") against each respondent, charging them as inadmissible pursuant to INA § 212(a)(6)(A)(i). Ex. 1; Ex. 1A. On February 25, 2016, the respondents admitted the factual allegations contained in their NTAs and

conceded inadmissibility as charged. Accordingly, the Court finds inadmissibility has been established. *See* 8 C.F.R. § 1240.10(c).

On February 25, 2016, [redacted] filed an Application for Asylum and for Withholding of Removal (Form I-589) with the Court, claiming [redacted] as a derivative asylum applicant. Ex. 2. Subsequently, on October 15, 2019, [redacted] filed an amended asylum application. Ex. 5, Tab H. On October 29, 2019, the Court held an individual hearing on the merits of [redacted] applications for relief. For the following reasons, the Court grants her application for asylum and, as a result, also grants [redacted]'s derivative application for asylum.

II. SUMMARY OF THE EVIDENCE

A. Documentary Evidence

Exhibit 1: NTA for [redacted] filed June 1, 2015;
Exhibit 1A: NTA for [redacted] filed June 1, 2015;
Exhibit 2: Form I-589 and Supporting Documents, including Tabs B-D,[1] filed February 25, 2016;
Exhibit 3: Additional Documents in Support of Form I-589, including Tabs E-F, filed August 24, 2016;
Exhibit 4: [redacted]'s Sworn Statement, filed September 26, 2017;
Exhibit 5: Additional Documents in Support of Form I-589, including Tabs G-M, filed October 15, 2019; and
Exhibit 6: [redacted]'s Statement on Qualifying Particular Social Groups, filed October 15, 2019.[2]

B. Testimonial Evidence

On October 29, 2019, the Court heard testimony from [redacted]. The testimony provided in support of her applications for relief, although considered by the Court in its entirety, is not fully repeated herein as it is already part of the record. Rather, her testimony is summarized below to the extent it is relevant to the subsequent analysis.

[redacted] was born in San Pedro Sula, Honduras, and was twenty-six years old at the time of her individual hearing. She and her partner, [redacted]), have two children together: [redacted], who was six years old at the time of the individual hearing, and [redacted] a U.S. citizen who was one year old. [redacted]'s mother and two sisters still reside in Honduras.

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[1] [redacted] filed Exhibit 2, with her Form I-589 marked as Tab A, at a master calendar hearing on February 25, 2016. Ex. 2, Tab A. However, the presiding immigration judge at that hearing inadvertently failed to stamp the Form I-589 to indicate that she filed it on that date. Thus, the Court here notes that [redacted] timely filed her Form I-589 on February 25, 2016, as the audio recording of proceedings in this matter clearly reflects, despite the fact the document bears a stamp indicating she filed it on August 24, 2016. *See* INA § 208(a)(2)(B).

[2] The Court marked [redacted] Statement on Qualifying Particular Social Groups for identification purposes only as it is not evidence, but rather legal argument. *See* Ex. 6.

Prior to departing Honduras, [redacted] attended high school and worked in the accounting department at [redacted], a company that manufactured billboards. Around 2012, when she was eighteen years old, she met a man named [redacted] claimed to be very well connected, wealthy, and powerful; he was related to the owners of [redacted], as well as [redacted]'s landlord. [redacted] parents owned their own company called [redacted] which supposedly provided cable and internet services. However, those services were merely a façade for their criminal enterprises, including money laundering and drug trafficking schemes.

[redacted] harassed [redacted] at work nearly every day, telling her that he so frequently visited the company because he wanted to see her. He told her that he desired to date her because she was an attractive "chick," unlike the other women he "had before." When she rejected his advances, he claimed that "nobody says no" to him and, if she did not oblige, he would "do it the bad way." He also bragged to [redacted] about his family's illicit dealings, encouraging her to work for his family because he could "profit" off her. He explained that his family paid the police for protection and impunity. When she declined to join his family's black-market businesses, he repeated that "nobody says no" to him. Nevertheless, [redacted] continued to reject his aggressive advances.

One day, while [redacted] waited in front of Imagen Global after work for her bus home, [redacted] approached her in his car. He pointed a gun at her and demanded that she enter the car, threatening to shoot her. She complied. He continued to point the gun at her as he drove the car to nearby secluded hills. He stopped the car, brandished a blade, and then raped her. He cut her multiple times, resulting in deep gashes on her arm, leg, and back. Afterwards, he left her in the street, and she hitchhiked home. As a result of the rape and beating, she was severely bruised, bloodied, and lacerated.

Two days after this rape, [redacted] and two other men approached [redacted] at their home and threatened to kill him if he did not end his relationship with [redacted]. Thereafter, one of [redacted]'s associates repeatedly and menacingly rode past [redacted]'s home on a motorcycle. [redacted] recognized the associate, as he had previously approached her at a store and told her that she was going to receive "a little surprise" from [redacted].

Following the abuse, [redacted] filed a police report against [redacted]. However, she was hesitant to do so because the Honduran police are corrupt and only protect affluent individuals. As she reported [redacted] abuse, the police officer who took the report asked her whether she knew what she was "getting into" when she identified [redacted] as the perpetrator. She felt compelled to omit or distort certain details of the event in order to mitigate any retaliation that could arise from her complaint, as [redacted] indicated his family bribed the police for protection and impunity. For example, she inaccurately told the police officer that [redacted] had abandoned her. She also declined to explicitly mention that [redacted] raped her and instead only claimed that he "touched" her. While she was at the police station, the police officer input [redacted]'s name into the police database, which revealed multiple complaints against him related to his mistreatment of other women.

Subsequently, [redacted] forcibly entered [redacted]'s home and kidnapped her. He forced her into a car and, accompanied by three other men and a woman, brought [redacted] to an unknown location. He held her there for about three days and repeatedly raped her. The other men and woman watched as he raped her. He cursed at her and beat her, punching and kicking her face and head. He reminded her that he told her he would "do things the bad way" if she did not "accept"

him. He threatened to kill [redacted], and, eventually, the woman helped to convince [redacted] to allow [redacted] to leave.

Thereafter, [redacted] left her home to seek protection at various other locations. She moved to her mother's home in Loma Larga, San Antonio de Cortes, Honduras, about three hours away from her home. She stayed there for a few days, before moving to a friend's home in Siguatepeque, Comayagua, Honduras. She also spent some time at a hospital during and after [redacted]'s birth. Meanwhile, [redacted] sent her text messages indicating that he was looking for her and intended to kill her. He also repeatedly called her, as well as [redacted], and posted threatening messages on her Facebook page; for example, he claimed that he was going to find her and kill her "wherever" she was, referring to her as a "bitch." She believes he was searching for her in order to traffic her to Guatemala and force her to join his prostitution and drug distribution businesses. Shortly thereafter, she fled Honduras.

In May 2015, [redacted] entered the United States with [redacted]. Immigration officials apprehended her and [redacted] upon their arrival. Although documents filed by DHS suggest [redacted] told immigration officials she did not fear return to Honduras, she claimed that she did indeed state a fear of harm upon her return due to the abuse she suffered, as well as the rampant crime in the country. Nevertheless, the immigration officials allegedly responded to her claim with rebuffs, retorting that "all immigrants lie" and provide the same narrative underlying their requests for protection. After her arrival, [redacted] learned that [redacted] was murdered.

She fears returning to Honduras because of the abuse she suffered and lack of government protection she was provided. Every time she looks at the scars on her body, she remembers the times [redacted] raped her and beat her. On two occasion, she unsuccessfully attempted to commit suicide. Six months prior to the individual hearing in this matter, [redacted] sister received threatening text messages, menacingly asserting that [redacted] would soon return to Honduras. Honduras is rife with crime and corruption and the authorities do not protect women, in part due to cultural *machismo*. [redacted] believes that, regardless of where they lived in the country, the government would not protect her or her children from violence. Indeed, multiple members of [redacted]'s family have been murdered. Men wearing police uniforms murdered [redacted]'s pregnant sister-in-law. [redacted]'s father was also murdered. The police neither performed an autopsy on her father nor pursued any suspects of the two murders. For those reasons, [redacted] requests protection in the United States.

III. LAW, ANALYSIS, AND FINDINGS

The Court has reviewed all evidence and testimony in the record, even if not specifically addressed in this decision, and has given the evidence appropriate weight. *See generally Orellana v. Barr*, 925 F.3d 145, 153 (4th Cir. 2019); *Alvarez Lagos v. Barr*, 927 F.3d 236, 251 (4th Cir. 2019).

A. Credibility and Corroboration

When an applicant offers testimonial evidence to support an application for relief, the Court must assess credibility. *See* INA § 240(c)(4)(B). The REAL ID Act of 2005 governs the credibility analysis for cases in which the applicant filed for relief on or after May 11, 2005. *Matter*

of S-B-, 24 I&N Dec. 42, 42-43 (BIA 2006). In making a credibility determination, a court must consider the totality of the circumstances and all relevant factors. INA § 240(c)(4)(C); *see Matter of J-Y-C-*, 24 I&N Dec. 260, 266 (BIA 2007). Generally, a witness must provide detailed, plausible, and consistent testimony. INA § 240(c)(4)(B). To be credible, the witness's testimony should satisfactorily explain any material discrepancies or omissions. INA § 240(c)(4)(C). A court may also base a credibility determination on a witness's demeanor, candor, or responsiveness, and the inherent plausibility of the witness's account. *Id.* Additionally, a court may consider the consistency between a witness's written and oral statements; the internal consistency of each such statement; the consistency of such statements with other evidence of record; 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. *Id.*

An applicant also "bears the burden to provide reasonably available supporting evidence for material facts that are central to [her] claim," and the absence of "corroborating evidence [can] lead to a finding that an applicant did not meet [her] burden of proof." *Matter of L-A-C-*, 26 I&N Dec. 516, 519 (BIA 2015) (citing *Matter of S-M-J-*, 21 I&N Dec. 722, 725-26 (BIA 1997)). However, an applicant's own testimony, without corroborating evidence, may be sufficient proof to support an application if that testimony is believable, consistent, and detailed enough to provide a plausible and coherent account of the basis for the 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 [redacted]'s testimony generally credible. *See* INA § 240(c)(4)(C). The Court notes some areas of concern, but finds that she satisfactorily explained them, or that they are too minor to warrant an adverse credibility finding. DHS did not explicitly contest the credibility of [redacted] testimony but did inquire as to certain inconsistencies in the record during cross-examination.

It is true that some of [redacted]'s testimony regarding the events occurring before and after the abuse she suffered were inconsistent with her written statements. For example, her declaration states that her landlord's son introduced her to [redacted], while she testified that she met [redacted] at Imagen Global. Ex. 2, Tab B at 13. However, she credibly explained that [redacted] was related to both her landlord and the owners of Imagen Global; thus, it is not inconceivable that she had interactions with [redacted] both by virtue of her employment at Imagen Global as well as through her relationship with her landlord. Additionally, the police report indicates that [redacted] informed the police officers that [redacted] had abandoned her after learning about the rape, while she testified that such abandonment never occurred. Ex. 5, Tab L at 232-36. Yet, this inconsistency is minor, and [redacted] adequately explained that she believed she needed to distort her account of the abuse to mitigate any possible retaliation arising from her contact with the authorities, in light of government corruption. Notably, moreover, she explained that [redacted] had connections with law enforcement and also explicitly threatened to kill [redacted]. *See also* Ex. 5, Tab I at 221 (stating that [redacted] "had friends in the police"). Thus, it is plausible that [redacted] dishonestly informed the police that [redacted] abandoned her in order to protect him from [redacted] and his criminal associates. Such inconsistencies do not merit an adverse credibility finding. INA § 240(c)(4)(C).

Finally, there were inconsistencies within [redacted]'s accounts of the repeated rapes and beating from which she suffered. However, it has long been documented that victims of severe

abuse often struggle to recall certain details of the traumatizing events.[3] Moreover, victims of sex crimes often suffer "from further trauma and embarrassment" when discussing the harm they suffered and, thus, may be reluctant to fully describe the abuse, instead providing different details during different retellings. *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 607 (1982). Relatedly, DHS stipulated that [redacted] could provide cursory testimony regarding the abuse she suffered in order to avoid retraumatization. [redacted] also credibly explained that her descriptions of the attacks differed because of the emotional distress such retellings induce. Based on the foregoing, the Court finds that the inconsistencies in [redacted] testimony and written statements are excusable.[4] INA § 240(c)(4)(C).

As such, the Court finds that [redacted] testified credibly. Her testimony generally provides a plausible, coherent, and sufficiently consistent and detailed basis for her claims. *Mogharrabi*, 19 I&N Dec. at 445; 8 C.F.R. § 1208.13(a). It was also largely consistent with her Form I-589 and the objective evidence in the record. *See generally* Ex. 2, Tab D at 24-124; Ex. 3, Tab F at 128-88; Ex. 5, Tab M at 244-441. She was candid and forthright, even as to unfavorable facts. The Court observed her demeanor as she testified and did not identify any effort to obfuscate the truth in order to bolster her claims. Additionally, she was responsive to DHS's questions and honestly attempted to address inconsistencies in the record. She also provided some corroborating evidence, including a declaration from her sister, the police report, and an article about [redacted]. *See* Ex. 5, Tab L at 232-43. Accordingly, the Court finds [redacted]'s testimony both credible and generally corroborated. INA § 240(c)(4)(B).

B. Asylum

To qualify for asylum, an applicant must demonstrate she is a "refugee" within the meaning of INA § 101(a)(42). INA § 208(b)(1)(B)(i). To satisfy the "refugee" definition, an applicant must demonstrate that she is unable or unwilling to return to her country of origin because of a "well-founded fear" of future persecution on account of one of the five statutory grounds: race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). If an applicant establishes that she suffered past persecution on account of a protected ground, then she benefits from a rebuttable presumption that she also has a well-founded fear of future persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). An applicant must also establish that the persecution was or will be at the hands of the applicant's government or a private actor the government is unwilling or unable to control. *See Crespin-*

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[3] *See* Robert Timothy Reagan, *Scientific Consensus on Memory Repression and Recovery*, 51 Rutgers L. Rev. 275 (1999); Sheree L. Toth & Dante Cicchetti, *Remembering, Forgetting, and the Effects of Trauma on Memory: A Developmental Psychopathology Perspective* (1998); Maura Dougherty, *Evaluating Recovered Memories of Trauma as Evidence*, 25-JAN Colo. Law. 1 (1996).

[4] With regard to the encounter between [redacted] and immigration officials at the border, the Court does not find that the contradictory statements [redacted] allegedly made to them undercut the credibility of her statements in her testimony and declaration. Indeed, such interviews at ports of entry "are brief affairs given in the hours immediately following long and often dangerous journeys into the United States." *Qing Hua Lin v. Holder*, 736 F.3d 343, 352-53 (4th Cir. 2013). [redacted]'s testimony and demeanor also clearly show she genuinely fears return to Honduras, notwithstanding the immigration officials' record stating she did not express such a fear. The Court declines to comment on the propriety of any alleged derogatory statements made by the immigration officials and instead cites generally to 5 C.F.R. § 2635.101.

Valladares v. Holder, 632 F.3d 117, 128 (4th Cir. 2011). The applicant also must demonstrate that one of the protected ground was or will be at least one central reason for her persecution. INA § 208(b)(1)(B)(i). Finally, the applicant must show that the court should favorably exercise its discretion to grant asylum. INA § 208(b)(1)(A); 8 C.F.R. § 1208.14(a).

[redacted] claims that she suffered past persecution at the hands of [redacted] and his criminal associates on account of her membership in the particular social group composed of "Honduran women." *See* Ex. 6 at 5.[5] For the following reasons, the Court grants [redacted] asylum application.

1. Past Persecution

Persecution within the meaning of the Act is harm surpassing the level of "mere harassment," and occurring at the hands of the applicant's government or an agent the government is unwilling or unable to control, on account of a protected ground. *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (quoting *Dandan v. Ashcroft*, 339 F.3d 567, 573 (7th Cir. 2003)); *Crespin-Valladares*, 632 F.3d at 128; *see Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985).

a. Harm Rising to the Level of Persecution

"'Persecution involves the infliction or threat of death, torture, or injury to one's person or freedom, on account of one of the enumerated grounds in the refugee definition.'" *Baharon v. Holder*, 588 F.3d 228, 232 (4th Cir. 2009) (quoting *Li*, 405 F.3d at 177). In determining whether mistreatment rises to the level of persecution, the Fourth Circuit has observed that persecution is systematic, whereas less-severe mistreatment is generally limited to isolated incidents. *Id.* Thus, when the alleged mistreatment is in the form of brief detentions, repeated interrogations, or "[m]inor beatings," courts generally do not regard it as persecution. *Li*, 405 F.3d at 177 (quoting *Kondakova v. Ashcroft*, 383 F.3d 792, 797 (8th Cir. 2004)). In contrast, the Fourth Circuit has expressly held that "the threat of death alone constitutes persecution," even without more. *Tairou v. Whitaker*, 909 F.3d 702, 707-08 (4th Cir. 2018); *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) (quoting *Crespin-Valladares*, 632 F.3d at 126); *but see Cortez-Mendez v. Whitaker*, 912 F.3d 205, 209 n. (4th Cir. 2019) (a death threat may not always rise to the level of persecution if it is too "distant," "unspecific," or remote in time and place). Rape may also rise to the level of persecution. *See Matter of D-V-*, 21 I&N Dec. 77, 79-80 (BIA 1993). A court must consider all of the threats and harm "[i]n the aggregate" to determine whether an applicant has suffered past persecution. *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1998).

The Court finds [redacted] has established that she suffered past harm rising to the level of persecution. DHS does not argue otherwise. The credible testimonial and documentary evidence in the record show that [redacted] kidnapped, repeatedly raped, and beat [redacted]. *See* Ex. 2, Tab B at 14. Such abuse constitutes persecutory mistreatment. *D-V-*, 21 I&N Dec. at 79-80. [redacted] then

[5] [redacted] also argues that she suffered past persecution and has a well-founded fear of future persecution on account of other alleged protected grounds; however, for the sake of administrative efficiency, the Court declines to address those asserted grounds as [redacted] has met her burden to show that she has a fear of future persecution on account of her membership in the cognizable social group composed of "Honduran women." *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040 (1984) (noting removal hearings "provide a streamlined determination of eligibility to remain in this country").

continually lodged credible threats—including death threats—against [redacted] which also constitute harm rising to the level of persecution. *Tairou*, 909 F.3d at 707-08; *Hernandez-Avalos*, 784 F.3d at 949; *see also* Ex. 2, Tab B at 14; Ex. 5, Tab I at 221. [redacted] and his associates' persistent pursuit of [redacted] was not contained to isolated incidents; they repeatedly threatened to kill her, [redacted], and [redacted]. *Baharon*, 588 F.3d at 232; Ex. 2, Tab B at 15; Ex. 5, Tab I at 221. Thus, [redacted] has met her burden to establish past harm of sufficient severity to constitute persecution. *Crespin-Valladares*, 632 F.3d at 128.

b. Government Unwilling or Unable to Control

An applicant for asylum must show she fears persecution by the government or an agent the government is unwilling or unable to control. *Hernandez-Avalos*, 784 F.3d at 950; *Acosta*, 19 I&N Dec. at 222. Whether the government is unable or unwilling to control private actors must be determined on a case-by-case basis. *See Crespin-Valladares*, 632 F.3d 117, 128-29 (4th Cir. 2011). "[T]he mere fact that a country may have problems effectively policing certain crimes . . . cannot itself establish an asylum claim." *Matter of A-B-*, 27 I&N Dec. 316, 320 (A.G. 2018), *abrogated on other grounds by Grace v. Whitaker*, 344 F.Supp.3d 96 (D.D.C. Cir. 2018). Moreover, in *Orellana v. Barr*, the Fourth Circuit explained that an applicant's failure to report abuse "does not prove the availability of government protection." 925 F.3d 145, 153 (4th Cir. 2019). Even if an applicant sought government protection, mere "access to a nominal or ineffectual remedy," or "empty or token 'assistance,'" is not sufficient to establish that the government is able to control a private persecutor—a separate and distinct question from whether it is willing to do so. *Id.* at 151-52 & n.3 (citing *Rahimzadeh v. Holder*, 613 F.3d 916, 921 (9th Cir. 2010)). Finally, an applicant need not have persisted in seeking government protection if doing so would have been futile or resulted in further abuse. *Id.* at 153 (citing *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1058 (9th Cir. 2006)).

The Court finds that [redacted] has met her burden of proving that the Honduran government is unable or unwilling to protect her. Importantly, she credibly testified that she contacted law enforcement and filed a police report, a copy of which she provided to the Court. Ex. 5, Tab L at 232-36. She further explained that the police officer who documented her complaint asked her whether she knew what she was "getting into" when she identified [redacted] as the perpetrator. *See also* Ex. 2, Tab B at 15. In spite of her effort to report the abuse, the record suggests that the Honduran government took no action at all. *Id.* at 14-15; Ex. 5, Tab K at 230.

DHS argues that, because [redacted] only filed one police report, whereas the petitioner in *Orellana* contacted law enforcement multiple times, the Court should find that [redacted] failed to show that the government is unwilling or unable to protect her. It further argues that she failed to meet her burden because, when she did actually file a police report, she lied about the relevant events. First, the Court does not read into the relevant law any requirement regarding the number of police reports an asylum applicant must file to show that a government is unwilling or unable to control a persecutor. Indeed, an applicant is not required to show that she filed even one complaint, particularly if doing so would be futile or risk further abuse. *Orellana*, 925 F.3d at 153. Futility and risk were high in [redacted]'s decision to report [redacted] she credibility testified that [redacted] told her that his family bribed the police for protection and impunity, an assertion which is supported by his family's elevated social status. *See* Ex. 5, Tab I at 221 (stating that [redacted] "had friends in the police"); *id.*, Tab L at 239 (referring to [redacted] as the son of "entrepreneurs" and

owners of Cable Sula); *id.*, Tab M at 244 (noting "widespread government corruption" and impunity). Second, while it is true that [redacted] did not accurately describe to the police the traumatic abuse she suffered, her dishonesty was justified. As explained above, she distorted the relevant events in an attempt to mitigate any potential retaliation arising from her complaint, as well as to protect [redacted]. *Id.* at 233-34. Her reasonable decision to do so is supported by objective evidence showing government corruption, as well as her testimony that the officer who took the report suggested that reporting the abuse was unwise. *See also* Ex. 2, Tab B at 15; Ex. 5, Tab I at 221; *id.*, Tab M at 239, 331.

Nevertheless, regardless of the number of complaints [redacted] filed or the contents therein, she did report clearly criminal conduct to the police, yet the authorities took no action at all. *See* Ex. 5, Tab L at 233-34. Such inaction aligns with [redacted]'s credible testimony that Honduran law enforcement is corrupt and only protects wealthy individuals. In fact, "[t]he police force is reported to be one of the most corrupt and mistrusted in Latin America." *Id.*, Tab M at 331. For example, there have been "several reports that the government or its agents committed arbitrary or unlawful killings." *Id.* at 245. Numerous government officials have also been exposed for their illicit dealings, including "attempted murder" and "premediated killings." *Id.* at 246. Relatedly, many police officers have "faced prosecution or were convicted in the United States for involvement in organized crime." *Id.* at 283. Nevertheless, such corruption in the government is "reported to continue to contribute to widespread impunity for crimes committed by members of drug smuggling structures." *Id.* at 332.

As a result of rampant crime and government corruption, "there are no areas in major urban cities free of violent crime." *Id.* at 286. Indeed, "[v]iolent crime is rampant in Honduras," and women and girls in particular "face high levels of gender-related violence." *Id.* at 283, 281. Passengers on public transportation are often raped, robbed, kidnapped, and murder. *Id.* at 287. The corrupt government even struggles to control crime in its prisons, which are saturated with "pervasive gang-related violence." *Id.* at 249. Moreover, abundant independent evidence in the record generally shows that "[o]rganized criminal elements," such as those in which [redacted]'s family and associates were involved, were "significant perpetrators of violent crimes and committed acts of murder, extortion, kidnapping, torture, [and] human trafficking," often targeting "members of vulnerable populations," including "women." *Id.* at 244, 247, 252, 263. Thus, the record reflects that the Honduran government does not merely "have problems" policing "certain crimes." *A-B-*, 27 I&N Dec. at 320. Instead, it is a significant part of the broader problem itself. *See* Ex. 5, Tab M at 405 (reporting that "[t]he Honduran government has been unable and unwilling to protect women from various forms of violence through direct action, such as engaging in their persecution and killings"). Finally, while the record does show that some sectors of the government make some efforts to protect residents, "nominal or ineffectual" assistance is insufficient to demonstrate that the government is willing or able to protect [redacted]. *Orellana*, 925 F.3d at 152.

In light of the foregoing, the Court concludes that [redacted] has shown that the government of Honduras is unable or unwilling to protect her. *Hernandez-Avalos*, 784 F.3d at 950.

c. Membership in a Cognizable Particular Social Group

An applicant for asylum alleging persecution on account of membership in a particular social group must show that she is a member of a cognizable "particular social group" within the

meaning of the Act. *See* INA § 101(a)(42)(A). A cognizable 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 M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014); *see Temu v. Holder*, 740 F.3d 887, 892 (4th Cir. 2014).

[redacted] argues that she suffered persecutory abuse on account of her membership in the particular social group composed of "Honduran women." *See* Ex. 6 at 5. For the reasons that follow, the Court concludes this is a cognizable particular social group under the Act.

First, the Court finds Honduran women share an immutable characteristic—the fact that they are Honduran women. One's sex and nationality are so fundamental to identity that one should not be required to change them in order to avoid persecution. *See Acosta*, 19 I&N Dec. at 233 (recognizing that sex is an immutable characteristic); *Matter of Kasinga*, 21 I&N Dec. 357, 366 (BIA 1996) ("The characteristic[] of being a 'young woman' . . . cannot be changed."); *see also Perdomo v. Holder*, 611 F.3d 662, 666-67 & n.5 (9th Cir. 2010); *see also* INA § 101(a)(42)(A) (listing nationality, *inter alia*, as protected grounds). Accordingly, the Court finds that the group "Honduran women" is comprised of members who share a common immutable characteristic. *M-E-V-G-*, 26 I&N Dec. at 237.

Next, the Court finds that the group "Honduran women" is defined with sufficient particularity. To satisfy the particularity requirement, a proposed group "must be defined by characteristics that provide a clear benchmark for determining who falls within the group." *M-E-V-G-*, 26 I&N Dec. at 239; *accord Alvarez Lagos*, 927 F.3d at 253. "The group must also be discrete and have definable boundaries—it must not be amorphous, overbroad, diffuse, or subjective." *M-E-V-G-*, 26 I&N Dec. at 239; *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").

"[T]he size and breadth of a group alone does not preclude a group from qualifying as [a particular] social group." *Alvarez Lagos*, 927 F.3d at 253 (quoting *Perdomo*, 611 F.3d at 669) (internal quotation marks omitted); *see also Reyes v. Lynch*, 842 F.3d 1125, 1135 (9th Cir. 2016). This is in keeping with the other protected grounds in the statutory series—for example, there may be tens of millions of members of a certain race or religion in a given country, but this fact does not preclude any one of those members from qualifying for asylum if they can show persecution on account of race or religion. *See* INA § 101(a)(42)(A); *see also M-E-V-G-*, 26 I&N Dec. at 234 (applying the *ejusdem generis* canon of construction to construe the statutory phrase "membership in a particular social group" harmoniously with the other four protected grounds). Indeed, the Board of Immigration Appeals ("Board") has held cognizable numerous particular social groups that have a high number of members. *See, e.g.*, *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990) (finding that the grouping of homosexuals in Cuba is sufficiently particular); *Matter of H-*, 21 I&N Dec. 337, 343 (BIA 1996) (concluding that members of the Marehan subclan in Somalia belong to a sufficiently particular group); *Matter of V-T-S-*, 21 I&N Dec. 792, 798 (BIA 1997) (finding that Filipinos of mixed Filipino-Chinese ancestry are members of a sufficiently particular group). Moreover, a group need not have "an element of 'cohesiveness' or homogeneity among group members" for it to satisfy the particularity requirement. *Matter of C-A-*, 23 I&N Dec. 951, 957 (BIA 2006).

In *Matter of A-M-E- & J-G-U-*, 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." 24 I&N Dec. 69, 74 (BIA 2007). In *Temu*, the Fourth Circuit commented that the group in *A-M-E- & J-G-U-*, "affluent Guatemalans," was not defined with particularity "because the group changes dramatically based on who defines it." 740 F.3d at 895. The Fourth Circuit explained 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.*

Unlike the group "affluent Guatemalans," the group "Honduran women" does not change based on who defines it, and therefore it has boundaries that are fixed enough to meet the particularity requirement. There is a clear and unambiguous benchmark to determine who is a member of the group—Honduran women are members; Honduran men and people of other nationalities are not. This is not a subjective or amorphous criterion. *See Temu*, 740 F.3d at 895. Nor do the size or internal diversity of the group "Honduran women" imply that the group is not particular, any more than the size or internal diversity of the groups "homosexuals in Cuba" or "Filipinos of mixed Filipino-Chinese ancestry" defeated the particularity of those groups. *Toboso-Alfonso*, 20 I&N Dec. at 822-23; *V-T-S-*, 21 I&N Dec. at 798; *see Alvarez Lagos*, 927 F.3d at 253 (quoting *Perdomo*, 611 F.3d at 669) (noting that a large group can be particular); *C-A-*, 23 I&N Dec. at 957 (explaining that intra-group homogeneity or cohesiveness is not required). The group "Honduran women" is "at least as 'particular and well-defined' as other groups whose members have qualified for asylum," such as "former gang members," "the educated, landowning class of cattle farmers," and "Iranian women who advocate women's rights or who oppose Iranian customs relating to dress and behavior." *See Crespin-Valladares*, 632 F.3d at 125 (collecting cases). Therefore, the Court finds that the articulated group satisfies the particularity requirement.

Finally, the Court finds that the group composed of "Honduran women" is socially distinct. The social distinction inquiry turns on whether the proposed group is "perceived as a group by society"—specifically, "the society in which the claim for asylum arises." *M-E-V-G-*, 26 I&N Dec. at 240-41. A group need not be ocularly visible to others in society for it to be socially distinct. *Id.* at 240. "Although the society in question need not be able to easily identify who is a member of the group, it must be commonly recognized that the shared characteristic is one that defines the group." *Matter of W-G-R-*, 26 I&N Dec. 208, 217 (BIA 2014). The dispositive reference point in the social distinction analysis is the perception of the society in question, as opposed to the perception of the persecutor. *M-E-V-G-*, 26 I&N Dec. at 241-42. However, the perception of the persecutor "may be relevant, because it can be indicative of whether society views the group as distinct." *Id.* at 242. Evidence that is probative on the issue of social distinction may include "country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies, historical animosities, and the like." *Id.* at 244-47. The fact that members of the proposed group are singled out for greater persecution than the general population is also "highly relevant" to the social distinction analysis. *Temu*, 740 F.3d at 894.

[redacted] has shown that women in Honduras are "set apart" and "distinct" from other persons in Honduras in "some significant way," and are therefore socially distinct. *M-E-V-G-*, 26 I&N Dec. at 238. Generally, the record reflects that, because women in Honduras are seen as subordinate to the rest of society, they are significantly set apart from the public at large. The

phenomena of *machismo* and *marianismo*, common cultural tenets widely held in Hondurans, give rise to the belief that women are inferior to men and must carry out certain subaltern societal roles. *See* Ex. 5, Tab M at 362, 369-70, 375. An inherent aspect of these principles is that "men can do anything they want to women in Honduras." *Id.* 364. Although the social distinction requirement does not necessitate ocular visibility, the subordination of and violence against women in nearly omnipresent in Honduras. *See, e.g., id.* at 276, 278, 345-47, 405. Indeed, gender-based violence in Honduras is unavoidable—in the country itself and abroad; for example, only a few years prior to the issuance of this decision, a global beauty pageant contestant and her sister fell victim to femicide; "[t]heir joint funeral was broadcast around the world and attended by thousands." *Id.* at 364. The sister was shot by her boyfriend "[b]ecause of his machismo." *Id.* (internal quotation marks omitted). Such atrocious gender-based violence is commonplace and frequently published in the media. *See, e.g., id.* at 404.

Even when not reported in the media, the record reveals that the subordination of Honduran women—and violence against them—is inescapably perceptible. In fact, Honduras "has the highest recorded rate of femicide in Latin America, and also one of the highest rates of femicide among girls . . . in the world." *Id.* at 345, 404; *Temu*, 740 F.3d at 894 (explaining that whether a group "is singled out for greater persecution than the population as a whole" is a "highly relevant factor" in determining social distinction). Such "widespread and systematic" violence against women and girls is carried out by a diverse array of members of the public, including "members of gangs and other organized criminal groups, the security services[,] and other individuals." *Id.* at 345, 244, 247. The ubiquity of the problems Honduran women face is only increasing, as there has been a "recent spiral of violence in the lives of women." *Id.* at 405. For example, one of the many forms of gender-based abuse, domestic violence, is widespread, "as is impunity for the perpetrators." *Id.* at 347. "Large numbers of Honduran girls and women . . . are also reported to be forced into prostitution in Honduras and trafficked into sex slavery in Mexico, Guatemala, El Salvador, the United States[,] and elsewhere." *Id.* at 346. The subordination of women results in obvious barriers to women's fundamental participation in civil society, such as accessing adequate employment and voting in election, further setting them apart in the margins of society. *Id.* at 276, 278, 263; *id.* at 267 (noting that, notwithstanding that "the law accords women and men the same legal rights and status . . . , many women did not fully enjoy such rights").

Thus, the record clearly reflects that Honduran women are significantly set apart from Guatemalan society at large. As such, the Court finds that [redacted]'s proposed group is sufficiently socially distinct. *M-E-V-G-*, 26 I&N Dec. at 238.

Accordingly, the Court concludes that [redacted] is a member of the cognizable particular social group composed of "Honduran women."[6] *See* INA § 101(a)(42)(A).

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[6] The notion that women in a given country can form a particular social group is not novel. As noted above, the Board stated in 1985 in *Acosta* that one's "sex" is a "shared characteristic" on which particular social group membership can be based. 19 I&N Dec. at 233. In *Mohammed v. Gonzales*, the Ninth Circuit stated that "the recognition that girls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group is simply a logical application of our law." 400 F.3d 785, 797 (9th Cir. 2005). In its 2010 decision in *Perdomo v. Holder*, the Ninth Circuit interpreted its *Mohammed* decision as "clearly acknowledg[ing] that women in a particular country, regardless of ethnicity or clan membership, could form a particular social group." 611 F.3d 662, 667 (9th Cir. 2010). Similarly, in *Hassan v. Gonzales*, the Eighth Circuit found that "Somali females" are members of a particular social group. 484 F.3d 513, 518 (8th Cir. 2007). In *Fatin v. INS*, the Third Circuit stated

d. Nexus

An asylum applicant must demonstrate that a protected ground, such as membership in a particular social group, was "at least one central reason" for the persecution she suffered or fears she would suffer. INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212-14 (BIA 2007). "The applicant need not prove that the protected ground was *the* central reason or even a dominant central reason for the persecution; she need only show that the protected ground was more than an incidental, tangential, superficial, or subordinate reason underlying the persecution." *Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 247 (4th Cir. 2017) (quoting *Quinteros-Mendoza v. Holder*, 556 F.3d 159, 164 (4th Cir. 2009)) (internal quotation marks omitted). In conducting the nexus analysis, a court must consider not only the "'articulated purpose'" of a persecutor's threats, but also the "'intertwined reasons'" for those threats. *Id.* at 248 (quoting *Cantillano Cruz v. Sessions*, 853 F.3d 122, 129 (4th Cir. 2017)). A court should consider both direct and circumstantial evidence of a persecutor's motive, and is free to make reasonable inferences from that evidence. *Matter of L-E-A-*, 27 I&N Dec. 40, 44 (BIA 2017), *overruled in part on other grounds*, 27 I&N Dec. 581 (A.G. 2019).

The Court finds [redacted] has met her burden of proving that her status a Honduran woman was at least one central reason why [redacted] and his associates targeted her. DHS argues that she failed to establish the requisite nexus because the record merely shows that [redacted] was a stalker who pursued her because he was obsessed with her. While DHS's theory may be one part of the aggressors' broader motive, the record clearly reflects that [redacted]'s sex and inseparably attendant vulnerability was at least one central reason for the mistreatment. *Zavaleta-Policiano*, 873 F.3d at 247. Indeed, the evidence and testimony in this case establish that the abuse [redacted] suffered goes beyond a simple case of gender-based mistreatment within a personal relationship. *See Velasquez v. Sessions*, 866 F.3d 188, 195 (4th Cir. 2017).

As discussed above, there is a belief in Honduras that a man can "do anything" he wants to a women; thus, "[b]ecause of his machismo," he will willfully carry out horrific acts of abuse—on account of the fact that the victim is a Honduran woman is therefore largely helpless. Ex. 5, Tab M at 364. This gendered motivation is present [redacted] and his associates' pursuit of [redacted] In fact, [redacted] credibly testified that law enforcement informed her that [redacted] had engaged in such abuse before, revealing his awareness that he could harm Honduran women with impunity on account of the cultural gender bias in Honduran society. Ex. 2, Tab B at 15. Of course, this awareness was not at all misguided; indeed, the government took no action against [redacted], and he and his associates continued to pursue [redacted]. Moreover, the language [redacted] used when speaking to [redacted] evinces his gender-based motive and recognition of her perceived inferior status, repeatedly referring to her possessively and as a "bitch," as well as asserting that he could mistreat her without punishment. *Id.* at 13-15. Importantly, he also told her he could "profit" off her, again suggesting he targeted her because of her identity as a woman. It could be argued that [redacted] was targeted in order to enrich the Canahuati criminal enterprise, but her status as a Honduran woman is inextricably intertwined with any such motive, as the record clearly shows

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that, under *Acosta*, "to the extent that the petitioner in this case suggests that she would be persecuted or has a well-founded fear that she would be persecuted in Iran simply because she is a woman," she has articulated a cognizable particular social group. 12 F.3d 1233, 1240 (3d Cir. 1993). This Court is aware of no precedential opinion of the Board or of any circuit court holding that a group made up of all the women in a given country cannot be a particular social group.

that her sex was a crucial factor in [redacted]'s and his associates' decision to pursue her. *Zavaleta-Policiano*, 873 F.3d at 247. Based on the foregoing, the record clearly corroborates the notion that [redacted] and his associates pursued [redacted] because of her identity, as it demonstrates that women in Honduras are widely subject to unpunishable mistreatment due to their subordination to men. *See, e.g.*, Ex. 5, Tab M at 263, 276, 278, 345-47, 362, 364, 404-05.

As such, the Court finds that [redacted] has shown by a preponderance of the evidence that at least one central reason [redacted] and his criminal associates targeted her, rather than another person, is that she is Honduran woman. *Hernandez-Avalos*, 784 F.3d at 949-50. Therefore, the Court concludes that she has demonstrated the requisite nexus. INA § 208(b)(1)(B)(i).

2. Rebuttable Presumption of Well-Founded Fear of Future Persecution

Because [redacted] has demonstrated that she suffered past persecution on account of membership in a particular social group, she benefits from a rebuttable presumption that she has a well-founded fear of future persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). DHS bears the burden of rebutting this presumption by proving by a preponderance of the evidence that, *inter alia*, there has been a fundamental change in circumstances such that she no longer has a well-founded fear of persecution in Honduras on account of a protected ground. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B).

DHS argues that [redacted]'s death is a fundamental change in circumstances that rebuts the presumption of a well-founded fear of future persecution. It is true that [redacted], one of the aggressors who pursued [redacted], has died. Ex. 5, Tab L at 238-43. However, the record shows that multiple criminal associates affiliated with [redacted] and his family likewise pursued [redacted]. Indeed, [redacted] informed [redacted] that "his family has orders to kill" her and his bodyguards were searching for her. Ex. 2, Tab B at 14-15. She also credibly explained that his family is well connected and powerful. Ex. 5, Tab I at 222. [redacted] threateningly asserted that he had "a lot of friends in the police" and that his boss, a high-ranking drug trafficker, would target [redacted]. Ex. 5, Tab I at 221-22; Ex. 2, Tab B at 14-15. His associates also made their presence known in the lives of [redacted]'s family. For example, suspicious cars and a motorcycle frequently drove by [redacted]'s home. Ex. 2, Tab B at 15. Importantly, moreover, [redacted]'s sister has received numerous threatening phone calls from "various numbers," as well as text messages. *See* Ex. 5, Tab I at 221. In fact, only two months prior to the individual hearing in this matter, [redacted]'s sister received text messages that menacingly claimed that [redacted] would soon return to Honduras. Similarly, men recently approached [redacted]'s mother at her business to inquire about [redacted]'s whereabouts, asserting they will find [redacted] because they have numerous "contacts" in Honduras. Ex. 2, Tab B at 15. Therefore, even though [redacted] is dead, [redacted] would face abuse at the hands of [redacted] family and criminal associates if she were returned to Honduras.

As such, the Court finds DHS has not met its burden to prove a fundamental change in circumstances sufficient to rebut the presumption of a well-founded fear of future persecution.

3. Humanitarian Asylum

In the alternative, the Court grants [redacted]'s asylum application due to the severity of the past persecution she suffered. Even where an applicant might not be able to establish a well-

founded fear of future persecution, if she has established particularly severe past persecution, then a court may grant asylum in an exercise of its discretion. *See* 8 C.F.R. § 1208.13(b)(1)(iii)(A); *Matter of Chen*, 20 I&N Dec. 16, 21 (BIA 1989). Under Fourth Circuit precedent, "[e]ligibility for asylum based on severity of persecution alone is reserved for the most atrocious abuse." *Naizgi v. Gonzales*, 455 F.3d 484 (4th Cir. 2006) (quoting *Gonahasa v. INS*, 181 F.3d 538, 544 (4th Cir.1999)) (internal quotation marks omitted); *see also Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1072 (9th Cir. 2004) (noting that rape may constitute atrocious abuse to support a grant of humanitarian asylum). Thus, a court may only grant humanitarian asylum when the past persecution was "so severe that it would be inhumane to return the [applicant] even in the absence of any risk of future persecution." *Gonahasa*, 181 F.3d at 544 (quoting *Vaduva v. INS*, 131 F.3d 689, 690 (7th Cir. 1997)) (internal quotation marks omitted).

The Court finds that [redacted] has established past persecution so severe that she merits a grant of humanitarian asylum. 8 C.F.R. § 1208.13(b)(1)(iii)(A). The record reflects that she was kidnapped, violently raped, and brutally beaten multiple times. Ex. 2, Tab B at 14; *Garcia-Martinez*, 371 F.3d at 1072. On at least one occasion, other people watched while she was raped. The beatings to which she was subjected left her bruised and bloodied. She was cut multiple times on her arm, leg, and back. Following this abuse, she, [redacted], and [redacted] were threatened with death several times. Ex. 2, Tab B at 14; *see also* Ex. 5, Tab I at 221. When [redacted] attempted to escape harm, her aggressors incessantly pursued her. Ex. 5, Tab I at 221. As a result of this repeated, prolonged abuse, [redacted] suffers from severe emotional trauma. *Id.* She has twice attempted to commit suicide. She is constantly reminded of attacks she endured due to the scars left on her body. The Court observed her demeanor during the individual hearing and does not doubt that she suffered extreme, inhumane mistreatment that permanently affected her life.

The severity of the abuse [redacted] suffered is largely unparalleled by the harm discussed in Fourth Circuit decisions addressing requests for humanitarian asylum. In *Naizgi*, for example, the Fourth Circuit affirmed the Board's denial of humanitarian asylum, concurring that harm in the form of expatriation as well as the loss of livelihood and property was insufficient to warrant a grant of humanitarian asylum. 455 F.3d at 487. The atrocious abuse that [redacted] experienced, resulting in her enduring trauma, is certainly more deplorable and depraved than the terrible mistreatment the petitioner in *Naizgi* suffered. Again, she was sequestered and repeatedly raped and beaten, resulting in lasting physical and emotional damage. Therefore, the Court concludes that this is such a case where the past persecution was so severe that it would be inhumane to remove [redacted] to Honduras, even if there were an absence of a risk of future persecution. *Gonahasa*, 181 F.3d at 544.

As such, the Court grants [redacted]'s request for humanitarian asylum in the alternative. 8 C.F.R. § 1208.13(b)(1)(iii)(A).

IV. CONCLUSION

The Court concludes that [redacted] has shown she faced past persecution on account of a protected ground and, thus, benefits from the presumption of a well-founded fear of future persecution on the same basis. DHS has not rebutted that presumption. Therefore, the Court will

[redacted]

grant her application for asylum in an exercise of its discretion.[7] Alternatively, the Court finds that she warrants a grant of humanitarian asylum based on the severity of the past harm she experienced. As such, the Court also grants [redacted]'s derivative application for asylum.

Accordingly, the Court enters the following order:

ORDERS

It Is Ordered that: [redacted] application for asylum be **GRANTED**.

It Is Further Ordered that: [redacted] derivative application for asylum pursuant to 8 C.F.R. § 1208.21 be **GRANTED**.

5/1/2020
Date

Wynne P. Kelly[8]
United States 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.

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[7] Once an applicant has shown her statutory eligibility for asylum, a court must consider whether to grant or deny asylum in its discretion. 8 C.F.R. § 1208.14(a). 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, 507-14 (4th Cir. 2008) (quoting *Huang v. INS*, 436 F.3d 89, 92 (2d Cir. 2006)). [redacted] merits a favorable exercise of discretion. She has a well-founded fear of persecution in Honduras on account of membership in a particular social group. There is no evidence she has any criminal history or any previous violations of U.S. immigration law. Notably, [redacted]'s removal would profoundly negatively affect the life of her both of her minor children: [redacted], a U.S. citizen who is currently two years old. Ex. 5, Tab J at 226. As detailed above, violence and crime is widespread in Honduras, so there is a high likelihood [redacted] and her children will face harm. Thus, a grant of asylum would advance humanitarian interests. Under the totality of the circumstances, the Court concludes this is not the exceedingly rare case in which a discretionary denial of asylum is warranted.

[8] The signing Immigration Judge was transferred this matter for resolution. Pursuant to 8 C.F.R. § 1240.1(b), the signing Immigration Judge has familiarized himself with the record.