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

IN THE MATTERS OF:	IN REMOVAL PROCEEDINGS
[redacted], Lead Respondent;	File No.: A [redacted]
[redacted], Rider Respondent;	File No.: A [redacted]
[redacted], Rider Respondent.	File No.: A [redacted]

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

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

APPEARANCES

ON BEHALF OF THE RESPONDENTS:
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ON BEHALF OF THE DHS:
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DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

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

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

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

II. SUMMARY OF THE EVIDENCE

A. Documentary Evidence

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

B. Testimonial Evidence

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

[REDACTED]

In the Matters of

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A

III. LAW, ANALYSIS, AND FINDINGS

A. Credibility and Corroboration

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

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

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

B. Asylum

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

1. One Year Deadline

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

2. Past Persecution

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

a. <u>Past Harm</u>

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

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

b. Government Unable or Unwilling to Control

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

3. Nexus to a Protected Ground

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

c. Women in Honduras

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. <u>On Account Of</u>

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

The respondent has demonstrated that her status as a woman was at least one central reason for the harm that [redacted] and [redacted] inflicted on her. She submitted sufficient circumstantial evidence of [redacted] and [redacted] motives to establish that her status as a woman was one central reason for the harm she suffered. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (stating that "the [asylum] statute makes motive critical," and that an applicant "must [therefore] provide *some* evidence of it, direct or circumstantial") (stating that "we do not require" "direct proof of [a] persecutor's motives"). [redacted] The Court therefore finds that the respondent's membership in the particular social group of "women in Honduras" is "at least one central reason" for the persecution she suffered. *J-B-N- & S-M-*, 24 I&N Dec. at 214.

4. *Presumption of Future Persecution*

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

5. *Discretion*

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

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

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

IV. CONCLUSION

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

ORDERS

It Is Ordered that: The respondent's application for asylum under INA § 208 be **GRANTED**.

It Is Further Ordered that: The rider respondents' derivative application for asylum pursuant to 8 C.F.R. § 1208.21 be **GRANTED**.

[redacted] 2018
Date

DNadkarni
Deepali Nadkarni[1]
Immigration Judge

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

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

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
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 File A [redacted] DATE: Mar 17, 2020
A [redacted]

[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], [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 INA § 241(b)(3) 8 C.F.R. § 1208.16	Asylum Withholding of Removal Relief under the Convention against Torture

ON BEHALF OF RESPONDENT
Raquel Montenegro, Esq.
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304 Maple Ave.
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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 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 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 became boyfriend and girlfriend. At first, they would see each other every five to eight days. When they spent time together, would pick up the Respondent and they would go out to eat. In February of 2008, the Respondent moved in with and his family in a town called Hicaque, about half an hour from Arizona, where she had been living. lived with his father, mother, and two brothers. At that point, the Respondent was already two months pregnant with their daughter She stated that another reason she moved in with was because she just wanted to leave her home.

When the Respondent and 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, She stated that during that time, things were still going well with However, shortly after, in December of 2008, the Respondent began having problems with 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 but she said that he never defended her and never did anything to help her. The Respondent became even more afraid 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 parents, the Respondent told that they had to make a decision and find a place where they could live together just the three of them: the Respondent, and their daughter. Thus, they moved out 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 parents' house because they and 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 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 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, 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 started to worsen. 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, 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 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, 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. 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 and his father caught her, so she was never able to leave. 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 a son, was born on . At that time, she moved to another room in the house and 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 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 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, went to the store with her cousin. At that point, 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 was heading back to the Respondent's aunt house with her cousin, 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 The police assigned an officer to go with her to s house to rescue The police returned 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 went back to the Respondent's aunt's house. Shortly after, on June 27, 2013, the Respondent's cousin helped her and flee to Mexico. The Respondent left her son with her aunt in Honduras.

In Mexico, the Respondent and were staying with another aunt named . 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. house from work, about one month after she had arrived in Mexico, Ms. informed the Respondent that she had some news for her. She told the Respondent that 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 left Mexico. The Respondent and 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 Two months after they arrived, 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 . 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 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 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, kept the Respondent captive in their own home. He kept her inside a locked gate and deprived her of food. During that time, 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 targeted her was on account of her membership in her particular social group. 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." forced the Respondent to do housework both at their own home and 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, went "crazy" and began looking for her everywhere and even kidnapped their daughter. Even after the Respondent came to the United States, 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 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 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 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

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], [redacted],	File Nos.: [redacted] [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

ON BEHALF OF THE RESPONDENTS:
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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, attended high school and worked in the accounting department at , a company that manufactured billboards. Around 2012, when she was eighteen years old, she met a man named claimed to be very well connected, wealthy, and powerful; he was related to the owners of , as well as 's landlord. parents owned their own company called 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.

harassed 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 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, continued to reject his aggressive advances.

One day, while waited in front of Imagen Global after work for her bus home, 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, and two other men approached at their home and threatened to kill him if he did not end his relationship with . Thereafter, one of 's associates repeatedly and menacingly rode past 's home on a motorcycle. 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

Following the abuse, filed a police report against . However, she was hesitant to do so because the Honduran police are corrupt and only protect affluent individuals. As she reported abuse, the police officer who took the report asked her whether she knew what she was "getting into" when she identified 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 indicated his family bribed the police for protection and impunity. For example, she inaccurately told the police officer that had abandoned her. She also declined to explicitly mention that raped her and instead only claimed that he "touched" her. While she was at the police station, the police officer input 's name into the police database, which revealed multiple complaints against him related to his mistreatment of other women.

Subsequently, forcibly entered 's home and kidnapped her. He forced her into a car and, accompanied by three other men and a woman, brought 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 , and, eventually, the woman helped to convince to allow to leave.

Thereafter, 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 's birth. Meanwhile, sent her text messages indicating that he was looking for her and intended to kill her. He also repeatedly called her, as well as , 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, entered the United States with . Immigration officials apprehended her and upon their arrival. Although documents filed by DHS suggest 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, learned that 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 raped her and beat her. On two occasion, she unsuccessfully attempted to commit suicide. Six months prior to the individual hearing in this matter, sister received threatening text messages, menacingly asserting that 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*. 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 's family have been murdered. Men wearing police uniforms murdered 's pregnant sister-in-law. '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, 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-*

[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] 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]'s 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

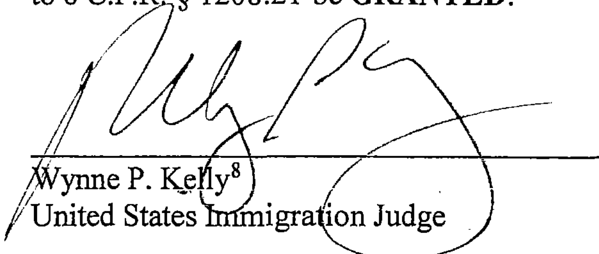
grant her application for asylum in an exercise of its discretion.[7] Alternatively, the Court finds that she warrants a grant of humanitarian asylum based on the severity of the past harm she experienced. As such, the Court also grants derivative application for asylum.

Accordingly, the Court enters the following order:

ORDERS

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

It Is Further Ordered that: 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.

[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)). 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, s removal would profoundly negatively affect the life of her both of her minor children: and , 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 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.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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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

[illegible]
Userteam: Docket

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

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]

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

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

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

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

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

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

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

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

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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

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[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.

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).

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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

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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

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[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

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Name: C[redacted]-D[redacted], X[redacted] Q[redacted]...

A [redacted]-474

Date of this notice: 12/11/2018

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

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

Userteam: Docket

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

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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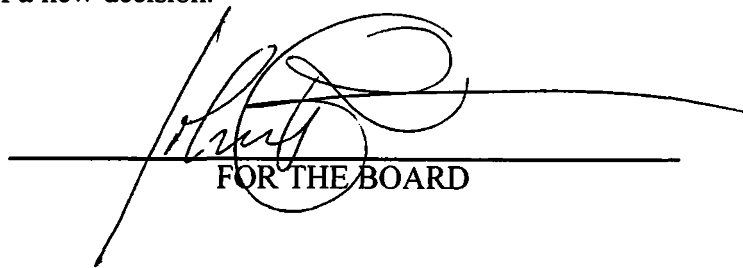
experience such harm; (3) whether the respondent could avoid being harmed by internally relocating in Mexico; (4) whether any harm the respondent is likely to experience is "torture" as a matter of law; and (5) whether any public official would commit or acquiesce to the harm under the pertinent legal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

Accordingly, the following order will be entered.

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



FOR THE BOARD

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS

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

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

APPLICATIONS: Asylum, pursuant to INA § 208
Withholding of Removal, pursuant to INA § 241(b)(3)
Withholding of Removal under the Convention Against Torture, pursuant to 8 C.F.R. § 1208.16

ON BEHALF OF THE RESPONDENT:
Gerald D. Wall, Esq.
Greater Boston Legal Services
197 Friend Street
Boston, Massachusetts 02114

ON BEHALF OF DHS:
Jernita Hines, ACC
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
15 New Sudbury Street, Room 425
Boston, Massachusetts 02203

DECISION OF THE IMMIGRATION COURT

I. Procedural History

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

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

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

II. Documentary Evidence

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

III. Testimonial Evidence

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

IV. Standards of Law

A. Removability

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

B. Credibility and Corroboration

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

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

INA § 208(b)(1)(B)(iii).

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

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

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

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

C. Asylum Pursuant to Section 208 of the Act

1. Statutory Eligibility

The Court may grant asylum to an applicant who proves that she is unwilling or unable to return to her country of nationality because of persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA §§ 101(a)(42)(A), 208(b)(1)(A)-(B); 8 C.F.R. § 1208.13(a); *see also Jutus v. Holder*, 723 F.3d 105, 110 (1st Cir. 2013).

a. Timeliness of Application

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

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

b. Past Persecution

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

c. Well Founded Fear of Future Persecution

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

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

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

d. On Account of a Protected Ground

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

Overall, an applicant for asylum or withholding of removal based on membership in a particular social group must establish that the proposed group: (1) is composed of members who share a common immutable characteristic; (2) is defined with particularity; and (3) is socially distinct within the society in question. *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014); *Matter of M-E-V-G-*, 26 I&N Dec. 222, 237 (BIA 2014). The shared characteristic may be innate or it may be a shared past experience. *Matter of Acosta*, 19 I&N Dec. at 233. However, it must be a characteristic that the members of the group cannot change or should not be required to change as a matter of conscience. *Id.* at 233-34. Particularity requires that the proposed group be "discrete and have definable boundaries – it must not be amorphous, overbroad, diffuse or subjective." *Matter of M-E-V-G-*, 26 I&N Dec. at 239. Social distinction (formerly known as social visibility) means that the group must be perceived as a distinct social group by society, regardless of whether society can identify the members of group by sight. *Matter of W-G-R-*, 26 I&N Dec. at 216-17 (renaming the "social visibility" element as "social distinction" to clarify that social visibility does not mean "ocular" visibility). To demonstrate social distinction, an applicant must provide evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. *Id.* at 217. Social distinction may not be determined solely by the perception of an applicant's persecutors. *See id.* at 218; *Matter of M-E-V-G-*, 26 I&N Dec. at 242. A respondent may meet their burden by providing "some evidence" of her persecutors' motives. *Elias-Zacarias*, 502 U.S. at 483.

e. Government Action

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

2. Discretion

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

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

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

E. Protection Under the Convention Against Torture

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

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

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

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

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

V. Findings of Fact and Conclusions of Law

A. Removability

The Court finds that the Respondent is removable from the United States. The Respondent admitted the allegations and conceded the charge under section 212(a)(6)(A)(i) of the Act, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Exh. 1; Exh. 2. Therefore, the Court finds that the Respondent is removable by evidence that is clear and convincing, and will proceed to consider her application for asylum, withholding of removal, protection under the CAT. The Court designates Guatemala as the country of removal.

B. Credibility and Corroboration

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

C. Asylum Pursuant to Section 208 of the Act

1. Statutory Eligibility

a. Timeliness of Application

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

b. Nexus

The Court finds that the Respondent belongs to the particular social group of "Guatemalan women," and that such group is cognizable under the law. To be cognizable under the law, a particular social group must be: (1) composed of members who share a common immutable characteristic; (2) defined with particularity; and (3) socially distinct within the society in question. *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014); *Matter of M-E-V-G-*, 26 I&N Dec. 237, 237 (BIA 2014).

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

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

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

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

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

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

Third, the Court finds that the Respondent's proposed social group is socially distinct within Guatemalan society. Social distinction (formerly known as social visibility) means that the group must be perceived as a distinct social group by society, regardless of whether society can identify the members of group by sight. *Matter of W-G-R-*, 26 I&N Dec. at 216-17 (renaming the "social visibility" element as "social distinction" to clarify that social visibility does not mean "ocular" visibility). To demonstrate social distinction, an applicant must provide evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. *Id.* at 217. The Board has further explained that the "members of a particular social group will generally understand their own affiliation with the grouping." *Matter*

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

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

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

c. Past Persecution on Account of a Protected Ground

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

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

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

d. Government Action

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

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

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

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

e. Well Founded Fear of Future Persecution

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

2. Discretion

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

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

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

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

D. Other Relief

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

Based on the foregoing, the following orders shall enter:

ORDER

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

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

6/18/15
Date

PAUL M. GAGNON
United States Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Arlington, Virginia

IN THE MATTER OF:		IN REMOVAL PROCEEDINGS
[redacted]		[redacted]
Respondent		

APPLICATIONS: Asylum, withholding of removal under the Immigration and Nationality Act, and protection under the Convention Against Torture.

ON BEHALF OF THE RESPONDENT:
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DECISION OF THE IMMIGRATION JUDGE

I. Introduction

This is a decision in the matter of [redacted]. The respondent, a citizen of El Salvador, has applied for asylum, withholding of removal under the Immigration and Nationality Act (Act), and protection under the Convention Against Torture (CAT). At a master calendar hearing, the respondent, through counsel, admitted the factual allegations in the Notice to Appear (NTA) and conceded removability. She has filed a Form I-589, *Application for Asylum and for Withholding of Removal*, as well as supporting documentation. A total of four exhibits have been admitted into evidence. An individual calendar hearing was held August 31, 2017. At the end of that hearing, I told the parties I was reserving my decision on the respondent's applications. As explained below, I now grant the respondent's asylum application.

II. Testimony and Evidence

The respondent was the only person to testify at her individual calendar hearing. Below is a summary of the main elements of the respondent's testimony. I have elaborated further on particular aspects of the respondent's testimony, and on certain documents, in section III, below.

The respondent testified that she is a citizen of El Salvador. She was brought up by her grandmother. In 2012, she was attending university in San Salvador, El Salvador. She lived with her grandmother, about one-and-a-half to two hours from the university by public transport. In the spring of 2012, one of the respondent's aunts died, and the respondent attended the funeral. At the funeral were some cousins of the respondent who the respondent knew from family members belonged to a gang. The respondent subsequently found out that these cousins were MS-13 gang members. At the funeral, the cousins searched attendees for tattoos indicating affiliation with rival gangs. One of these cousins took an interest in the respondent, and he started sending her text messages regularly after the funeral. The respondent interpreted his messages as "insinuating" that he "want[ed] to have a relationship" with her. However, she "always declined."

Later in 2012, the respondent's cousin came to see her at her university, which the respondent stated "seemed strange." Shortly afterward, on October 23, 2012, she was leaving the university at around seven o'clock in the evening. A man standing by a light post signaled her to approach. She started walking faster, but a car stopped in front of her, and she was forced inside. The respondent's eyes and mouth were covered, and she was tied up. The respondent was driven to a place she could not identify, where she was held captive for three days. During those three days, the respondent was repeatedly beaten and raped by a group of men. They injected her with what the respondent described as "drugs or tranquilizers," resulting in her being not "very conscious." The men called her a "bitch" and directed other obscenities at her, and they told her that she was "worth nothing." During the three days she was detained, the respondent was kept on a dirt floor, blindfolded and tied up. She heard a baby cry, but the cries stopped at some point, and the respondent thinks the baby died.

The respondent's captors ultimately released her, throwing her from a moving car on a highway. Before releasing the respondent, her captors told her that she had to leave El Salvador, and would be killed if she did not. The respondent's uncles and grandmother took her to a hospital within a few days of her release. The respondent was suffering from vaginal and anal tears, and had bruises all over her body. At the hospital, the respondent received treatment for her injuries, and she spoke with a psychiatrist. Following the attack, the respondent had trouble sleeping, and she had hallucinations and suicidal thoughts. She did not report the attack to the police, testifying that gangs in El Salvador communicate with, and bribe, the police. She said it would have been no use to make such a report, and that it would have been too dangerous. The respondent moved in with an uncle, about an hour from where she had been living with her grandmother. However, she left his house shortly thereafter, partly because her uncle was afraid something would happen to him. The respondent entered the United States on March 1, 2013. *See* ex. 1. Her grandmother visited the family in the United States in July 2017, and told them that the respondent's cousin's uncle came to her grandmother's house at some point between March and May 2017, asking where the respondent was. The respondent thinks he was trying to

get this information for his nephew, the respondent's cousin. After leaving El Salvador, the respondent has continued to suffer from psychological problems resulting from the trauma she suffered, and she has seen a psychologist in the United States.

The respondent has submitted a written statement that corroborates her testimony. *See* ex. 3, Tab E. She has also submitted a report from the doctor who examined her in El Salvador. *See* ex. 2, Tab C. The report states that the respondent was treated on October 28, 2012 after she was "kidnapped and sexually abused by subjects 6 days ago," and was "force[d] to ingest[] pills and beers." The report details her injuries, referencing "[m]ultiple bruises . . . on her forearms and thighs," and "[m]ulitple 'needle-pricks in arms.'" The report references "[f]emale [e]xternal [g]enitalia," though it is not clear if any specific injuries were diagnosed. The report states that the respondent "was seen by a psychiatrist who recommended" to "notify the prosecution of rape fact." The report states, however, that the case was not being "reported to the authorities," at the respondent's family's "request" for "fear [of] retaliation."

Also, the respondent's counsel reported that, as a result of the trauma the respondent experienced in El Salvador, she was involuntarily committed to a hospital in Virginia in 2016. The respondent has submitted an April 5, 2016 petition for involuntary admission for treatment. *See* ex. 3, tab F. The petition states, among other things, that the respondent was "psychotic and hallucinating a baby crying," that she had "not been eating or sleeping for [three] days," and that she was "presently catatonic." The respondent has also submitted a request for magistrate action related to this incident, and a resulting order for treatment, dated April 7, 2016. *See id.*

III. Analysis

A. Credibility

The respondent has testified credibly in support of her applications, under the standard in section 208(b)(1)(B)(iii) of the Immigration and Nationality Act (Act). The respondent's testimony was detailed, plausible, internally consistent, and consistent with the documentation she provided. The respondent's demeanor suggested that she was testifying honestly and candidly, and that she was not being in any way evasive. DHS counsel did not raise any concerns about the respondent's credibility.

B. Asylum

1. One Year Filing Deadline

The respondent has established that her asylum application is not barred by the filing deadline at section 208(a)(2)(B) of the Act. Under that provision, an asylum applicant must "demonstrate[] by clear and convincing evidence that the application has been filed within 1 year after the date of [his or her] arrival in the United States." However, under section 208(a)(2)(D) of the Act, an untimely asylum application can be "considered . . . if the [applicant] demonstrates to the satisfaction of the [immigration judge] either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing [the] application."

In this, case, the respondent entered the United States on March 1, 2013. *See* ex. 1. She was placed into removal proceedings less than one year later, with the filing of an NTA with the immigration court on December 23, 2013. *See id.* After being placed into removal proceedings, the respondent could only file an asylum application with the immigration court, as opposed to with U.S. Citizenship and Immigration Services. *See* 8 CFR § 1208.4(b)(3) (stating that "[a]sylum applications shall be filed directly with the Immigration Court having jurisdiction over the underlying proceedings . . . [d]uring . . . removal proceedings"). Before September 14, 2016, the Executive Office for Immigration Review's policy was that asylum applications could only be filed in court during a hearing, and not at a court window or by mail.[1] The respondent's initial master calendar hearing took place August 25, 2015. The respondent, through counsel, filed her Form I-589 on that date.[2] The respondent has established extraordinary circumstances for the delay in filing her asylum application given that she was placed into removal proceedings before the one year deadline had passed, and that she filed her application at her first opportunity after being placed into proceedings.[3]

2. *Persecution on Account of a Protected Ground*

To qualify for asylum, an applicant must show that he or she is a "refugee," meaning that he or she has suffered "persecution," or has a "well-founded fear of persecution," "on account of race, religion, nationality, membership in a particular social group, or political opinion." Sections 101(a)(42), 208(b)(1)(A) of the Act. If an applicant establishes that he or she has been persecuted on account of a protected ground, then there is a rebuttable presumption that he or she has "a well-founded fear of persecution on the basis of the original claim." 8 CFR § 1208.13(b)(1). If DHS rebuts the presumption, then the application must be denied. 8 CFR § 1208.13(b)(1)(i). If an applicant ultimately establishes eligibility for asylum, then the application may be granted or denied in the exercise of discretion. *See* section 208(b)(1)(A) of the Act (stating that an immigration judge "may grant asylum" to a qualified applicant).

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[1] *See* Operating Policies and Procedures Memorandum (OPPM) 16-01, *Filing Applications for Asylum*, Sept. 14, 2016, *available at* https://www.justice.gov/sites/default/files/pages/attachments/2016/09/14/oppm_16-01.pdf.

[2] The respondent's application references an "enclosed statement" in response to certain questions. *See* ex. 2. Some documentation pertaining to the respondent's case was filed with the application on August 25, 2015, but no such statement was included. *See id.* On February 28, 2017, the respondent, through counsel, filed documentation with the court that included a written statement from the respondent. *See* ex. 3. The immigration judge who presided over the respondent's August 25, 2015 master calendar hearing did not note that the respondent's application was unaccompanied by a written statement, or give any indication that he was not accepting her application as filed on that date. Given that the respondent was not put on notice at her August 25, 2015 hearing as to any deficiencies with her application, I am deeming the application to have been filed on that date, even though a written statement was not included.

[3] In addition, the respondent lodged her application with the court on March 11, 2015. The lodging of an asylum application is not a filing. *See* OPPM 13-03, *Guidelines for Implementation of the ABT Settlement Agreement*, Dec. 2, 2013, *available at* https://www.justice.gov/sites/default/files/eoir/legacy/2013/12/03/13-03.pdf. However, the respondent's lodging of her application does demonstrate diligence in pursuing relief.

a. Past Persecution

The respondent has established that she suffered persecution in El Salvador. The harm she suffered – being held captive for three days, during which time she was drugged and repeatedly beaten and raped – rises far above the level of "mere harassment," and is serious enough to be persecution. *See Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (stating that "persecution includes actions less severe than threats to life or freedom," but that the "actions must rise above the level of mere harassment" (quotation omitted)). In addition, when the respondent's captors released her, they threatened to kill her if she did not leave El Salvador. These threats were credible given the severe mistreatment the respondent had just suffered, and thus provide another basis to conclude that the harm to her was serious enough to be persecution. *See Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011) (stating that a "threat of death" can constitute persecution) (quotation omitted). The respondent has also shown that the harm was inflicted by people that the Salvadoran government was "unwilling or unable to control," as she must for the harm to be persecution. *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985); *see also Mulyani v. Holder*, 771 F.3d 190, 197-98 (4th Cir. 2014). The respondent credibly testified that she did not report the attack to the police for fear that doing so would put her in greater danger, and documentary evidence she provided supports her contention that Salvadoran authorities struggle to meaningfully control sexual violence of the type she endured.[4] DHS counsel did not attempt to argue that the harm the respondent suffered does not constitute persecution.

b. On Account of a Protected Ground

The respondent has established that the persecution she suffered was on account of a protected ground. The respondent argues that she was persecuted on account of her membership in a particular social group. She has articulated four alternative such groups: (1) single women in El Salvador; (2) young, single women in El Salvador; (3) single women in El Salvador who are unable to decline a relationship; and simply (4) women in El Salvador. DHS counsel argued that none of the respondent's proposed groups are cognizable particular social groups, and that, even if the respondent had articulated a cognizable such group, she had not established that her persecution was on account of her group membership. As explained below, the respondent has established that her persecution was on account of her membership in the particular social group of "women in El Salvador."

i. Women in El Salvador

The respondent has established that women in El Salvador are members of a cognizable particular social group. In *Matter of Acosta*, 19 I&N Dec. at 233, the Board of Immigration Appeals (Board) stated that a particular social group is made up of people "all of whom share a common, immutable characteristic." The Board stated that an immutable characteristic is "a

[4] For example, the respondent submitted the 2015 State Department Human Rights Report on El Salvador, which describes widespread violent crime against women. *See* ex. 3, Tab G at 51-54. The respondent submitted a 2013 *Al Jazeera* article describing high levels of violence against girls and women in El Salvador. *Id.* at 67-69. In addition, the respondent submitted a 2015 report by the Immigration and Refugee Board of Canada, documenting pervasive violence against women in El Salvador. *Id.* at 74-81. This evidence is discussed in more detail below.

characteristic that is either beyond the power of an individual to change or is so fundamental to individual identity or conscience that it ought not to be required to be changed." *Id.* One's sex qualifies as an immutable characteristic as it is generally unchangeable, and is certainly a characteristic that no one should be required to change. In fact, the Board specified in *Matter of Acosta* that one's "sex" is a "shared characteristic" on which particular social group membership can be based. *Id.* (stating that "[t]he shared characteristic might be an innate one such as sex, color, [or] kinship ties").

In addition, the Board has held that a particular social group must be distinct in the society in question. In *Matter of M-E-V-G-*, 26 I&N Dec. 227, 238 (BIA 2014), 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." *See also Matter of W-G-R-*, 26 I&N Dec. 208, 217 (BIA 2014) (stating that "social distinction exists where the relevant society perceives, considers, or recognizes the group as a distinct social group"). The respondent has established that Salvadoran society views women as sufficiently distinct to qualify as a particular social group. The respondent submitted the 2015 State Department Human Rights Report on El Salvador, which states that "[r]ape and other sexual crimes against women were widespread," and that "[v]iolence against women, including domestic violence, was a widespread and serious problem." Ex. 3, Tab G at 52. The report also states that the Salvadoran government "did not effectively enforce" laws "prohibit[ing] discrimination based on . . . sex," among other characteristics, and that "women" suffered "discrimination" as a result. *Id.* at 51-52. The report further states that, although women and men have the same legal rights in many respects in El Salvador, "women did not enjoy equal treatment." *Id.* at 54. The report concludes that "women suffered from cultural, economic, and societal discrimination" in El Salvador. *Id.*

The rest of the respondent's country conditions documentation is consistent with the State Department's report. For example, the respondent submitted a 2013 *Al Jazeera* article describing "[e]ndemic levels of sexual abuse and gender based violence" in El Salvador, making it "one of the most dangerous countries in the world for girls and women." *Id.* at 67. In addition, the respondent submitted a 2015 report by the Immigration and Refugee Board of Canada, documenting pervasive violence against women in El Salvador. *Id.* at 74-81. Taken as a whole, the respondent's evidence establishes that cultural and legal norms in El Salvador permit widespread violence and discrimination against women. Through this evidence, the respondent has shown that women in El Salvador "are set apart, or distinct, from other persons within [El Salvador] in some significant way," and are therefore socially distinct. *Matter of M-E-V-G-*, 26 I&N Dec. at 238; *cf. Matter of A-R-C-G-*, 26 I&N Dec. 388, 394 (BIA 2014) (finding that the group of "married women in Guatemala who are unable to leave their relationship" is socially distinct where the record "includes unrebutted evidence that Guatemala has a culture of machismo and family violence" (quotation omitted)).

The Board has also held that a particular social group must be defined with particularity. In *Matter of M-E-V-G-*, 26 I&N Dec. at 238, the Board explained that "[t]he particularity requirement relates to the group's boundaries or . . . the need to put outer limits on the definition of a particular social group." (Quotations omitted.) *See also Matter of W-G-R-*, 26 I&N Dec. at

214. That is, "[a] particular social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group," and "be discrete and have definable boundaries." *Matter of M-E-V-G-*, 26 I&N Dec. at 239; *see also Matter of W-G-R-*, 26 I&N Dec. at 214. The requirement that a cognizable group be defined with particularity "chiefly addresses the question of delineation." *Matter of W-G-R-*, 26 I&N Dec. at 214; *see also Matter of A-R-C-G-*, 26 I&N Dec. at 393. In other words, the requirement "clarifies the point . . . that not every 'immutable characteristic' is sufficiently precise enough to define a particular social group." *Matter of M-E-V-G-*, 26 I&N Dec. at 239; *see also Matter of A-R-C-G-*, 26 I&N Dec. at 393; *Matter of W-G-R-*, 26 I&N Dec. at 213. Or, as the Fourth Circuit put it, a "group must have identifiable boundaries to meet the [Board's] particularity element." *Temu v. Holder*, 740 F.3d 887, 895 (4th Cir. 2014); *see also Zelaya v. Holder*, 668 F.3d 159, 165 (4th Cir. 2012) (stating that a particular social group must "be defined with sufficient particularity to avoid indeterminacy").

The respondent's proposed group – women in El Salvador – is defined with particularity. The boundaries of the group are precise, clearly delineated, and identifiable: women are members and men are not. *See Matter of A-R-C-G-*, 26 I&N Dec. at 393; *Matter of M-E-V-G-*, 26 I&N Dec. at 239; *Matter of W-G-R-*, 26 I&N Dec. at 213-14; *Temu*, 740 F.3d at 895; *Zelaya*, 668 F.3d at 165. There is a clear benchmark for determining whether a person in El Salvador is a member of the group: whether that person is a woman. *See Matter of M-E-V-G-*, 26 I&N Dec. at 238-39; *Matter of W-G-R-*, 26 I&N Dec. at 213-14. In *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007), the Board ruled that "affluent Guatemalans" are not members of a cognizable particular social group, holding that "[t]he terms 'wealthy' and 'affluent' standing alone are too amorphous to provide an adequate benchmark for determining group membership." Here, by contrast, the term "woman" is not too amorphous to provide such an adequate benchmark, as, in the vast majority of cases, a person either is a woman or is not. *Cf. Matter of A-R-C-G-*, 26 I&N Dec. at 393 (holding that the group of "married women in Guatemala who are unable to leave their relationship" is defined with particularity as "[t]he terms used to describe the group – 'married,' 'women,' and 'unable to leave the relationship,' have commonly accepted definitions within Guatemalan society"). In *Temu*, 740 F.3d at 895, the Fourth Circuit commented that the group in *Matter of A-M-E- & J-G-U-*, "affluent Guatemalans," was not defined with particularity "because the group changes dramatically based on who defines it." The court stated that "[a]ffluent might include the wealthiest 1% of Guatemalans, or it might include the wealthiest 20%," and that the group therefore "lacked boundaries that are fixed enough to qualify as a particular social group." *Id.* The group of "women in El Salvador" does not change based on who defines it, and it therefore has boundaries that are fixed enough to meet the particularity requirement.

The respondent's proposed group – women in El Salvador – is defined with particularity even though it is large. In *Matter of S-E-G-*, 24 I&N Dec. 579, 585 (BIA 2008), the Board stated that:

> The essence of the particularity requirement . . . is whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons. While the size of the group may be an important factor in determining whether the group

can be so recognized, the key question is whether the proposed definition is sufficiently particular or is too amorphous . . . to create a benchmark for determining group membership.

(Quotations omitted.) Therefore, the "key question" relates not to the size of the group but to whether the group's definition provides an adequate benchmark for determining which people are members and which people are not. *See also Reyes v. Lynch*, 842 F.3d 1125, 1135 (9th Cir. 2016) (stating that the Board's "statement of the purpose and function of the 'particularity' requirement does not, on its face, impose a numerical limit on a proposed particular social group or disqualify groups that exceed specific breadth or size limitations"). In the respondent's case, as discussed above, the group's definition provides such an adequate benchmark: women are members and men are not.

Moreover, it would be inconsistent the principle of edjusdem generis to find that a large group necessarily cannot be defined with particularity. For decades, the Board has stated that edjusdem generis underlies its determinations of which groups qualify as particular social groups. *See Matter of M-E-V-G-*, 26 I&N Dec. at 234 (applying "the interpretive canon 'ejusdem generis'" in interpreting "the phrase 'membership in a particular social group'"); *Matter of Acosta*, 19 I&N Dec. at 233 (stating that "[w]e find the well-established doctrine of ejusdem generis . . . to be most helpful in construing the phrase 'membership in a particular social group'"). Ejusdem generis is "[a] cannon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed." *Black's Law Dictionary* (10th ed. 2014).[5] As noted above, section 101(a)(42) of the Act defines a "refugee," in relevant part, as someone who has been persecuted, or has a well-founded fear of persecution, "on account of race, religion, nationality, membership in a particular social group, or political opinion." In this provision, "membership in a particular social group" is a general phrase as compared with the more specific words and phrases "race," "religion," "nationality," and "political opinion." Applying edjusdem generis, the phrase "particular social group" should be interpreted to include groups in the same class as the other protected grounds: race, religion, nationality, and political opinion.[6] *See Matter of M-E-V-G-*, 26 I&N Dec. at 234 (stating that "[c]onsistent with the interpretive cannon 'ejusdem generis,' the proper interpretation of the phrase [membership in a particular social group] can only be achieved when it is compared with the other enumerated grounds of persecution . . ."). None of the other protected grounds are limited by size. For example, there may be thousands or millions of people of a particular race or religion in a given country. Under ejusdem generis, particular social groups should similarly not be limited by size.

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[5] Or, as the Board put it in *Matter of M-E-V-G-*, 26 I&N Dec. at 234 n. 10, "[e]jusdem generis is a more specific application of the cannon 'noscitur a sociis,' meaning that a word is known by the company it keeps." (Quotation omitted.)

[6] The Board conducted such an analysis in *Matter of Acosta*, 19 I&N Dec. at 233. There, the Board noted that persecution on account of race, religion, nationality, or political opinion is "aimed at an immutable characteristic." Therefore, the Board stated that, "[a]pplying the doctrine of ejusdem generis, we interpret the phrase 'persecution on account of membership in a particular social group' to mean persecution that is [likewise] directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic." *Id.*

In addition, the Board has routinely recognized large groups as defined with particularity. Most obviously, the Board has long held that gay and lesbian people in various countries can qualify as members of particular social groups. *See Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990) (recognizing "homosexuals . . . in Cuba" as members of a particular social group). The Board recently affirmed that "homosexuals in Cuba" are members of a cognizable particular social group because, among other things, the group is defined with particularity. *See Matter of M-E-V-G-*, 26 I&N Dec. at 245; *Matter of W-G-R-*, 26 I&N Dec. at 219. The Board has never found, in a precedent decision, that a group of gay and lesbian people in a given country is not defined with particularity, even though such groups are sizable. The Board has also recognized that particular social group membership can be based on clan membership. In particular, in *Matter of H-*, 21 I&N Dec. 337, 343 (BIA 1996), the Board found that members of the Marehan subclan in Somalia are members of a particular social group. The Board later affirmed that the group of "members of the Marehan subclan" is defined with particularity, simply noting that the group is "easily definable." *See Matter of W-G-R-*, 26 I&N Dec. at 219 (stating that the group of "members of the Marehan subclan" is "easily definable and therefore sufficiently particular").

It is true that, in *Matter of W-G-R-*, 26 I&N Dec. at 221, the Board found that the proposed group of "former members of the Mara 18 gang in El Salvador who have renounced their gang membership" was not defined with particularity. The Board supported this conclusion as follows:

> The group as defined lacks particularity because it is too diffuse, as well as being too broad and subjective. *See Mayorga-Vidal v. Holder*, 675 F.3d 9, 15 (1st Cir. 2012) (stating that "loose descriptive phrases that are open-ended and that invite subjective interpretation are not sufficiently particular"). As described, the group could include persons of any age, sex, or background. It is not limited to those who have had a meaningful involvement with the gang and would thus consider themselves – and be considered by others – as "former gang members."
>
> For example, it could include a person who joined the gang many years ago at a young age but disavowed his membership shortly after initiation without having engaged in any criminal or other gang-related activities; it could also include a long-term, hardened gang member with an extensive criminal record who only recently left the gang. It is doubtful that someone in the former category would consider himself, or be considered by others, as a "former gang member" or could be said to have any but the most peripheral connection to someone in the latter category. Even if some in the former category might consider themselves "former gang members" in a general sense, this does not mean that they would perceive themselves as part of a discrete group within society or be so perceived. The boundaries of a group are not sufficiently definable unless the members of society generally agree on who is included in the group, and evidence that the social group proposed by the respondent is recognized within the society is lacking in this case.

> In this regard, the boundaries of the group of "former gang members who have renounced their gang membership" are not adequately defined. The group would need further specificity to meet the particularity requirement. Our analysis illustrates the point that when a former association is the immutable characteristic that defines a proposed group, the group will often need to be further defined with respect to the duration or strength of the members' active participation in the activity and the recency of their active participation if it is to qualify as a particular social group under the Act.

Id. at 221-22.

However, the Board's decision in *Matter of W-G-R-* does not support a finding that the group of "women in El Salvador" is not defined with particularity. The Board's conclusion in *Matter of W-G-R-* that the group in that case was not defined with particularity was based on its finding that the group's "boundaries" were "not adequately defined." That is, in the Board's view, the respondent had not established that society in El Salvador would "generally agree on who is included" in the group of former gang members. *Id.* at 221. By contrast, the group in this case – women in El Salvador – has well-defined boundaries. "[M]embers of society" in El Salvador would, in all likelihood, "generally agree on who [are] included in the group" – women – and who are excluded – men. Regarding the First Circuit decision cited by the Board – *Mayorga-Vidal v. Holder*, 675 F.3d at 15 – the group "women in El Salvador" contains no descriptive phrases that are "loose" or "open-ended," or that "invite subjective interpretation." The boundaries of the group of "women in El Salvador" are precise as opposed to loose, finite as opposed to open-ended, and objective as opposed to subjective. Finally, the group proposed by the respondent in this case is not based on "former association" with a gang or other organization, as was the proposed group in *Matter of W-G-R-*. Instead, it is based on one's biological identity. As the respondent's proposed group is not based on "former association" with a gang or other organization, the Board's final instruction – that groups based on such association "will often need to be further defined with respect to the duration or strength of the members' active participation in the activity and the recency of their active participation" to be defined with particularity – does not apply. *Matter of W-G-R-*, 26 I&N Dec. at 221-22.

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

However, imposing a requirement that a group cannot be internally diverse to be defined with particularity would run counter to other Board precedent decisions, and would preclude the recognition of particular social groups that are currently commonly accepted. *See Reyes*, 842 F.3d at 1135 (stating that the particularity requirement is not "contrary to the principle that diversity within a proposed particular social group may not serve as the *sine qua non* of the particularity analysis"). In *Matter of C-A-*, 23 I&N Dec. 951, 957 (BIA 2006), the Board stated that it did not "require an element of 'cohesiveness' or homogeneity among group members." *See also Matter of S-E-G-*, 24 I&N Dec. at 586 n. 3. A policy that an internally diverse group cannot be defined with particularity would preclude particular social groups based on sexual orientation. As noted above, the Board has long recognized, and continues to recognize, particular social groups of gay and lesbian people in various countries. *See Matter of Toboso-Alfonso*, 20 I&N Dec. at 822-23; *see also Matter of M-E-V-G-*, 26 I&N Dec. at 245, (affirming that "homosexuals in Cuba" are members of a cognizable particular social group because, among other things, the group is defined with particularity); *Matter of W-G-R-*, 26 I&N Dec. at 219 (affirming that "homosexuals in Cuba" "had sufficient particularity because it was discrete and readily definable"). Groups composed of gay and lesbian people in particular countries are extremely diverse; such a group would include young people and old people, rich people and poor people, people in same-sex romantic relationships and people not in such relationships, people living in cities and people living in rural areas, and so on.

A policy that an internally diverse group cannot be defined with particularity would also preclude the particular social group recognized by the Board in *Matter of A-R-C-G-*, 26 I&N Dec. at 392-94: "married women in Guatemala who are unable to leave their relationship." That group includes young women and old women, rich women and poor women, women living in cities and women living in rural areas, women who have been married a long time and women who are newly married, and so on.[7] Such a policy would also likely preclude particular social groups based on clan membership, as a clan would, in all likelihood, include people from a variety of backgrounds and walks of life. *See Matter of H-*, 21 I&N Dec. at 343 (finding that members of the Marehan subclan in Somalia are members of a particular social group); *see also Matter of W-G-R-*, 26 I&N Dec. at 219 (affirming that the group in *Matter of H-* is defined with particularity as it is "easily definable"). For the same reason, such a policy would also likely preclude particular social groups based on ethnicity, such as "Filipino[s] of mixed Filipino-Chinese ancestry," recognized by the Board as a particular social group in *Matter of V-T-S-*, 21 I&N Dec. 792, 798 (BIA 1997). *See also Matter of W-G-R-*, 26 I&N Dec. at 219 (stating that the group of "Filipino[s] of mixed Filipino-Chinese ancestry" is defined with particularity as it "ha[s] clear boundaries, and its characteristics ha[ve] commonly accepted definitions").

It is true that there is a line of decisions in the Ninth Circuit, which has been cited by the Board in precedent decisions, suggesting that broad or otherwise large groups cannot qualify as particular social groups. In *Sanchez-Trujillo v. INS*, 801 F.3d 1571, 1577 (9th Cir. 1986), the Ninth Circuit stated "the term 'particular social group' was intended to apply" to "cohesive, homogeneous group[s]." The court further stated that:

[7] It was not even disputed that the proposed particular social group in *Matter of A-R-C-G-* was defined with particularity, as DHS conceded that it was. *Matter of A-R-C-G-*, 26 I&N Dec. at 393.

> Major segments of an embattled nation, even though undoubtedly at some risk from general political violence, will rarely, if ever, constitute a distinct 'social group' for the purposes of establishing refugee status. To hold otherwise would be tantamount to extending refugee status to every alien displaced by general conditions of unrest or violence in his or her home country.

Id.

Subsequently, in *Ochoa v. Gonzales*, 406 F.3d 1166, 1170 (9th Cir. 2005), the Ninth Circuit, citing to the above passage in *Sanchez-Trujillo*, rejected as "too broad" a proposed particular social group of "business owners in Colombia who rejected demands by narco-traffickers to participate in illegal activity." The court commented that "[t]here is no unifying relationship or characteristic to narrow this diverse and disconnected group." *Id.* at 1171. The Board cited to *Ochoa*, 406 F.3d at 1170-71, in *Matter of M-E-V-G-* and *Matter of W-G-R-*, characterizing the Ninth Circuit's decision as holding that "a particular social group must be narrowly defined and that major segments of the population will rarely, if ever, constitute a distinct social group." *Matter of M-E-V-G-* 26 I&N Dec. at 239; *Matter of W-G-R-*, 26 I&N Dec. at 214.

However, Ninth Circuit case law does not support an argument that women in El Salvador are not members of a particular social group. With regard to the Ninth Circuit's concern in *Sanchez-Trujillo* that recognizing a "major segment" of a country's population as a cognizable particular social group would be would be "tantamount to extending refugee status to every alien displaced by general conditions of unrest or violence in his or her home country," the simple fact that one is a member of a cognizable particular social group does not mean that he or she will necessarily qualify for asylum. To qualify for asylum, it is not enough for an applicant to show that he or she is a member of a particular social group; he or she must also show that he or she has the requisite fear of persecution, and that the persecution would be on account of his or her group membership. To analogize to one of the other protected grounds, everyone has a racial identity, but no one would likely argue that the possibility that an applicant can receive asylum based on persecution on account of his or her race is, to use the Ninth Circuit's words in *Sanchez-Trujillo*, "tantamount to extending refugee status to every alien displaced by general conditions of unrest or violence in his or her home country." Moreover, were the Board to agree with the Ninth Circuit's statement in *Sanchez-Trujillo* that groups must be "cohesive" and "homogeneous" in order to be cognizable particular social groups, the Board would be contradicting its own statement in *Matter of C-A-*, 23 I&N Dec. at 957, that it did not "require an element of 'cohesiveness' or homogeneity among group members."

In addition, subsequent to *Sanchez-Trujillo*, the Ninth Circuit has recognized particular social groups that are large and internally diverse. In *Mihalev v. Ashcroft*, 388 F.3d 722 (9th Cir. 2004), the Ninth Circuit found that particular social group membership can be based on "Gypsy ethnicity." In *Donchev v. Mukasey*, 553 F.3d 1206, 1220 (9th Cir. 2009), the Ninth Circuit ruled that "friends of the Roma" were not particular social group members, but commented that "ethnicity" "fits well into the 'particular social group' category." In *Karouni v. Gonzales*, 399 F.3d 1163, 1172 (9th Cir. 2005), the Ninth Circuit "affirm[ed] that *all* alien homosexuals are members of a 'particular social group.'" In *Perdomo v. Holder*, 611 F.3d 662, 668 (9th Cir.

2010), the Ninth Circuit, referencing *Karouni* and *Mihalev*, commented that "broad and internally diverse social groups" based on "an innate characteristic," such as "homosexuals and Gypsies," can qualify as particular social groups under Ninth Circuit law. In addition, the *Perdomo* court stated that the Ninth Circuit had "rejected the notion that a persecuted group may simply represent too large a portion of a population to allow its members to qualify for asylum," and also stated that "the size and breadth of a group alone does not preclude a group from qualifying as [a particular social] group." *Perdomo*, 611 F.3d at 669 (citing *Singh v. INS*, 94 F.3d 1353, 1359 (9th Cir. 1996)). Also, as alluded to above, the Ninth Circuit more recently made clear that that the Board's "statement of the purpose and function of the 'particularity' requirement does not, on its face, impose a numerical limit on a proposed particular social group or disqualify groups that exceed specific breadth or size limitations." *Reyes*, 842 F.3d at 1135.

Finally, the Ninth Circuit has explicitly addressed particular social group membership based on gender, stating in *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005), 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." In *Perdomo*, 611 F.3d at 667, 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." In this respect, *Perdomo* is line with other circuit court decisions acknowledging that women in certain countries can form particular social groups. In *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007), the Eighth Circuit found that "Somali females" are members of a particular social group. In *Fatin v. INS*, 12 F.3d 1233, 1240 (3d Cir. 1993), the Third Circuit stated that, under *Matter of 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.

ii. On Account Of

The respondent has established that the persecution she suffered was on account of her particular social group membership. Sections 101(a)(42), 208(b)(1)(A) of the Act. In order to do this, she must show that her status as a woman "was . . . at least one central reason" for the attack. Section 208(b)(1)(B)(i) of the Act. As noted above, the respondent was attending university in San Salvador, El Salvador when the attack took place. She testified that she believed that the attack – during which she was held captive for three days, and was drugged and repeatedly beaten and raped – occurred "because of [her] being a college woman, alone, single, young." She testified that her attackers were men, that they called her a "bitch" and directed other obscenities at her, and that they told her "you are worth nothing." In a written declaration submitted in support of her applications, the respondent stated that her attackers yelled derogatory terms for women at her. *See* ex. 3, Tab E at 16. The respondent's counsel asked the respondent if she believed the attack would have taken place if she had been a man.[8] The respondent initially answered that she did not know, but then clarified that she thought she would not have been attacked had she been a man. The respondent testified that she believed her cousin, who was an MS-13 gang member, was involved in the attack, and that the attack was related to her having declined a romantic relationship with him.

[8] DHS counsel initially objected to this question as leading, but then withdrew her objection.

The respondent has shown that her status as a woman was at least one central reason for the attack she suffered. The respondent is not required to show that her status as a woman was "the sole or dominant motivation for her persecution." *Cruz v. Sessions*, 853 F3d. 122, 127-28 (4th Cir. 2017). Under section 208(b)(1)(B)(i) of the Act, there can be more than one central reason for persecution, and the respondent must merely show that her status as a woman was one such reason for the persecution. *See Cruz*, 853 F.3d at 128 (stating that "more than one central reason may, and often does, motivate a persecutor's actions"); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212 (BIA 2007) (stating that "Congress purposely did not require that the protected ground be the central reason for the actions of the persecutors"). In this case, there was more than one central reason why the respondent was attacked: she was a woman, she was in a somewhat vulnerable position as a university student in San Salvador, and she had recently turned down a romantic relationship with her cousin, who was a gang member. The respondent has submitted adequate circumstantial evidence of her attackers' motives to establish that her status as a woman was one central reason for the attack. Specifically, her attackers were men, the attack was sexual in nature, and her attackers called her a "bitch" and other derogatory terms for women during the attack. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (stating that "the [asylum] statute makes motive critical," and that an applicant "must [therefore] provide *some* evidence of it, direct or circumstantial"). It may be that the respondent has not provided direct proof of her attackers' motives, but no such proof is required. *See id.* (stating that "we do not require" "direct proof of [a] persecutor's motives"). The Board ruled in *Matter of N-M-*, 25 I&N Dec. 526, 531 (BIA 2011), that "an alien must demonstrate that the persecutor would not have harmed the applicant if the protected trait did not exist," and the respondent in this case testified that she thought she would not have been attacked had she been a man. As the respondent has shown that her status as a woman was one central reason for her attack, she has shown that the persecution she suffered was on account of a protected ground. *See* section 208(b)(1)(B)(i) of the Act.

c. Presumption of Future Persecution

DHS has not rebutted the presumption of "a well-founded fear of persecution on the basis of the original claim." 8 CFR § 1208.13(b)(1). DHS counsel made no meaningful attempt to rebut this presumption, whether by arguing that there has been "a fundamental change in circumstances" under the standard in 8 CFR § 1208.13(b)(1)(i)(A), or that the respondent "could avoid future persecution by relocating" in El Salvador under the standard in 8 CFR § 1208.13(b)(1)(i)(B).[9]

3. Conclusion

The respondent has established that she is eligible for asylum: (1) as she has established that her application is not barred by the one year asylum filing deadline; (2) as she has established that she suffered past persecution on account of her membership in a particular social group; and (3) as DHS has not rebutted the presumption of future persecution. *See* sections 101(a)(42), 208 of the Act; 8 CFR § 1208.13. Considering the totality of the circumstances, I find that she merits asylum in the exercise of discretion. *See* 208(b)(1)(A) of the Act.

[9] Instead of trying to rebut the presumption of future persecution, DHS counsel argued that the harm the respondent suffered was not on account of a protected ground.

C. Other Applications

As I am granting the respondent's asylum application based on her membership in the particular social group of "women in El Salvador," I am making no findings, whether factual or legal, concerning her eligibility for asylum or withholding of removal under the Act based on her membership in her other proposed particular social groups: single women in El Salvador; young, single women in El Salvador; and single women in El Salvador who are unable to decline a relationship. I am also making no findings, whether factual or legal, concerning her eligibility for protection under the Convention Against Torture.

ORDER

IT IS ORDERED THAT: The respondent's application for asylum under section 208 of the Act be **granted**.

May 22, 2018
Date

Emmett Soper
Immigration Judge

APPEALS

Both parties have the right to appeal this decision. Any appeal is due at the Board of Immigration Appeals thirty calendar days from the date of service of this decision.