NO. 21-1180

IN THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

MARTHA ELENA CHAVEZ-CHILEL,
Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES,
Respondent

On Review of an Order of the Board of Immigration Appeals

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR REHEARING AND REHEARING EN BANC

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MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

Amici curiae are 34 former Immigration Judges (IJs) and former Members of the Board of Immigration Appeals (BIA).

Amici respectfully move for leave to file the accompanying brief in support of Petitioner Martha Elena Chavez-Chilel.

Amici have dedicated their careers to the immigration court system and to upholding the immigration laws of the United States. Each is intimately familiar with the functioning of immigration courts and is invested in improving the fairness and efficiency of the U.S. immigration scheme.

Amici have filed *amicus* briefs in *Matter of A-B-,* 27 I&N Dec. 316 (A.G. 2018) ("*A-B- I*"); *De Pena-Paniagua v. Barr*, 957 F.3d 88 (1st Cir. 2020); *Diaz-Reynoso v. Barr*, 968 F.3d 1070 (9th Cir. 2020), and other cases involving the issue of particular social groups in the domestic violence context. *Amici* have heard and decided cases involving gender-based particular social groups, and they include the author of the majority and one of the concurring opinions in *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996), the first BIA precedent to recognize a gender-based particular social group.

In their proposed brief, Amici underscore the impact of the application of "particularity," in the development of asylum law relating to particular social groups. As this Court recognized in *S.E.R.L. v. Att'y Gen. of U. S.*, 894 F.3d 535 (3d Cir. 2019), framing the particularity requirement too narrowly in the particular social

group context may, under the canon of *ejusdem generis*, impose an unreasonably high evidentiary burden on all who seek asylum.

Counsel for Amici Curiae notified counsel for Petitioner and Respondent of the anticipated filing of this motion and sought their consent. Both Petitioner and Respondent are unopposed to this motion.

CONCLUSION

For the foregoing reasons, Amici Curiae respectfully request that this Court grant them leave to file the accompanying brief in support of the Petitioner.

Dated: March 25, 2022

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NO. 21-1180

IN THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

MARTHA ELENA CHAVEZ-CHILEL,
Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES,
Respondent

On Review of an Order of the Board of Immigration Appeals

BRIEF OF *AMICUS CURIAE* FORMER IMMIGRATION JUDGES AND FORMER MEMBERS OF THE BOARD OF IMMIGRATION APPEALS IN SUPPORT OF PETITIONER'S PETITION FOR REHEARING AND REHEARING EN BANC

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CORPORATE DISCLOSURE STATEMENT

Amicus Curiae Former Immigration Judges and Former Members of the Board of Immigration Appeals state that they, their subsidiaries and any corporate interests involved in this matter, do not have any monetary interest in the outcome of this case.

FRAP RULE 29 STATEMENT OF CONSENT

Attorneys representing both of the parties consent to the filing of this amicus brief. Amici state that no counsel for the party authored this brief in whole or in part and no party, party's counsel, person, or entity contributed money that funded the preparation of the brief.

INTEREST OF *AMICI CURIAE*

Amici curiae are 34 former immigration judges ("IJs") and members of the Board of Immigration Appeals ("BIA").

Amici have dedicated their careers to the immigration court system and to upholding the immigration laws of the United States. Each is intimately familiar with the functioning of immigration courts and is invested in improving the fairness and efficiency of the U.S. immigration scheme.

Amici have filed *amicus* briefs in *Matter of A-B-,* 27 I&N Dec. 316 (A.G. 2018) ("*A-B- I*"); *De Pena-Paniagua v. Barr*, 957 F.3d 88 (1st Cir. 2020); *Diaz-Reynoso v. Barr*, 968 F.3d 1070 (9th Cir. 2020), and other cases involving the issue of particular social groups in the domestic violence context. *Amici* have heard and decided cases involving gender-based particular social groups, and they include the author of the majority and one of the concurring opinions in *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996), the first BIA precedent to recognize a gender-based particular social group.

SUMMARY OF ARGUMENT

Amici are greatly concerned with the impact that the panel decision in the instant case will have on the development of asylum law relating to particular social groups. In *S.E.R.L. v. Att'y Gen. of U.S.*, 894 F.3d 535, 550 (3d Cir. 2019), this court recognized concerns raised that under the canon of *ejusdem generis*, surrounding terms in the statute, including religion and political opinion, would likely be found too amorphous or diffuse to satisfy the narrowing particularity requirement imposed on particular social groups.

This court agreed that "[t]hose critiques raise legitimate concerns," and could result in the imposition of an unreasonably high evidentiary burden. This court's response was that the particularity requirement remained relatively new, "and clarity and consistency can be expected to emerge with the accretion of case law." *Id*. However, the panel decision in the instant case presents a barrier to the development foreseen in *S.E.R.L.* The decision additionally runs contrary to the individualized analysis cited by the BIA as a justification for adding the particularity requirement to the particular social group analysis.

ARGUMENT

I. THE DECISION BELOW DOES NOT REPRESENT THE AGENCY'S POSITION ON THE ISSUE

It bears noting that the BIA's decision below in the instant case was issued by a single Temporary Board Member.[1] As such, the decision can hardly be said to represent the agency's position on the subject. The BIA has yet to address the cognizability of a particular social group defined by gender and nationality in a precedent decision.[2] The Board has remanded cases to Immigration Judges to decide the matter in the first instance, and, in another single Board Member decision, affirmed an IJ grant based on such group in at least one instance.[3]

Furthermore, in a decision dated May 15, 2019, Judge Morley himself issued a written decision (attached) granting asylum based on the applicant's membership in a particular social group consisting of "Guatemalan women," the precise group involved in the instant case. In his later decision, Judge Morley determined that the group was sufficiently particular, concluding that "the boundaries of the group are identifiable:

---

[1] Temporary Board Members may serve for a period not to exceed six months and are precluded from voting on *en banc* decisions. 8 C.F.R. § 1003.1(a)(4).

[2] In *Matter of A-R-C-G-*, 26 I&N Dec. 388, 395, fn. 16, (BIA 2014), the Board recognized that several *Amici* had argued for recognition of gender *per se* as a valid group but found it unnecessary to reach the issue.

[3] *In re A-C-A-A-* (BIA, Nov. 6, 2019) (unpublished) (affirming an IJ's grant of asylum based on a particular social group of "Salvadoran females"). Although the Board's decision was overruled by the Attorney General pursuant to his certification power in *Matter of A-C-A-A-*, 28 I&N Dec. 84 (A.G. 2020), the subsequent vacating of that decision in its entirety in *Matter of A-C-A-A-*, 28 I&N Dec. 351 (A.G. 2021) restored the BIA's decision in the case.

women in Guatemala are members, while men are not." *In re [name redacted]* (I.J. Steven Morley, May 15, 2019) at 14.

The later decision of Judge Morley further found that the group "possesses an objective, distinguishing characteristic: gender," which "enables Guatemalan society to readily identify group members, despite the presence of other diverse characteristics." Importantly, the decision emphasized the need for "a fact-based, case-by-case inquiry in the social group analysis, a mandate which cannot be squared with a broad prohibition against large, diverse social groups."

Lastly, Judge Morley noted that none of the other protected grounds included in 8 C.F.R. § 1101(a)(42) as bases for asylum "are limited by size or prohibit diverse membership."

II. THE PANEL DECISION PRECLUDES THE ACCRETION OF AGENCY CASE LAW ON THE ISSUE

The above developments illustrate the accretion of case law encouraged by this court in *S.E.R.L*, *supra*. In the interim between Judge Morley's two decisions, the issuance of *Grace v. Whitaker*, 344 F. Supp. 3d 96 (Dist. D.C. 2019) helped clarify the state of the law, as the Government in that case argued that *A-B- I* did not create a general rule regarding domestic-violence based asylum claims, but instead emphasized "that the only change to the law in *Matter of A-B-* is that *Matter of A-R-C-G-* was overruled." *Grace*, *supra* at 125.

Furthermore, in the absence of *A-R-C-G-* as precedent, Immigration Judges heard an increasing number of claims based on a particular social group of nationality plus gender. In *De Pena Paniagua v. Barr*, 957 F.3d 88, 96 (1st Cir. 2020), the First Circuit stated in *dicta* "it is not clear why a larger group defined as 'women 'or 'women in country X' — without reference to additional limiting terms — fails either the 'particularity 'or 'social distinction 'requirement."

Judge Morley's later decision was not an anomaly; it is consistent with a trend.[4] *Amici* include recently retired IJs who issued decisions granting asylum based on a particular social group defined by nationality and gender while *Matter of A-B-* remained precedent. Redacted versions of two of those decisions, issued by *Amici* retired Immigration Judges Miriam Hayward and Charles Honeyman, finding cognizable groups consisting of "Mexican females" and "Honduran women," are attached.

III. THE PANEL DECISION IS INCONSISTENT WITH CIRCUIT AND AGENCY PRECEDENT

Indeed, the Third Circuit has expanded its own definition of particular social group following the publication of *S.E.R.L.* in the context of cooperating witnesses. Prior to *S.E.R.L.*, in *Garcia v. Att'y Gen.*, this Court had found cooperating witnesses

[4] The Center for Gender and Refugee Studies noted 170 asylum and withholding of removal grants by Immigration Judges within the one-year period following the publication of *Matter of A-B-* among the cases included in that organization's database alone, including several grants based on gender and nationality alone. Kate Jastram and Sayoni Maitra, *Matter of A-B- One Year Later: Winning Back Gender-Based Asylum Through Litigation and Legislation*, 18 SANTA CLARA J. INT'L L. 48, 73, 76-77 (2020).

who testified in court to constitute a valid particular social group. *Garcia v. Att'y Gen.*, 665 F.3d 496, 502 (3d Cir. 2011), as amended (Jan. 13, 2012). Subsequent to its decision in *S.E.R.L.*, this Court went a step further, holding those seen as publicly cooperating with the government, whether or not they testified in court, to also comprise a valid particular social group. In its precedential decision, this court reasoned that "a group of witnesses who have publicly provided assistance to law enforcement against major Salvadoran gangs "has definable boundaries and is equipped with a benchmark for determining who falls within it" sufficient to satisfy the particularity requirement." *Guzman-Orellana v. Att'y Gen.*, 956 F.3d 171, 179 (3d Cir. 2020) (citing *Radiowala v. Att'y Gen.*, 930 F.3d 577, 583 (3d Cir. 2019)). The same test for particularity should have been applied in the context of gender-based claims; however, the panel in the instant case inexplicably failed to follow its own precedent, instead defining the visibility component so as to require that "all Guatemalan women share a unifying characteristic that results in them being targeted for any form of persecution based solely on their gender." The panel's requirement that a group's unifying characteristic "results in them being targeted for any form of persecution based solely on their gender" is inconsistent with the standard enunciated in *Guzman-Orellana*, which did not include nexus to the persecution as an element of the particularity determination.

Importantly, the BIA has noted that while group size "may be an important factor" in determining whether the group is cognizable, "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).

Furthermore, agency rulemaking on the subject is forthcoming. *See* Feb. 2, 2021 Executive Order of President Biden ordering the promulgation of "joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a 'particular social group,' as that term is used in 8 U.S.C. 1101(a)(42)(A), as derived from the 1951 Convention relating to the Status of Refugees and its 1967 Protocol."[5] And in *Matter of A-B-*, 28 I&N Dec. 307, 308 (A.G. 2021) ("*A-B- III*"), Attorney General Garland vacated his predecessors 'precedent decisions in the same case "to leave open the questions that those opinions sought to resolve and to ensure that the Departments have appropriate flexibility in the forthcoming rulemaking."

Unfortunately, the panel decision in the instant case runs counter to the developing trend in case law, and in categorically precluding a group defined by gender and nationality, impedes the agency's flexibility in its forthcoming analysis of the issue.

[5] Exec. Order No. 14010, § 4(c)(ii), 86 Fed. Reg. 8267, 8271 (Feb. 2, 2021).

IV. THE PANEL DECISION RELIED ON OUTDATED CASE LAW

Additionally, the panel decision relied on outdated case law. The view that a group comprised of gender and nationality "is overbroad[] because no factfinder could reasonably conclude that all [of a country's] women had a well-founded fear of persecution based solely on their gender" as expressed in *Safaie v. INS*, 25 F.3d 636, 640 (8th Cir. 1994) and subsequent cases reflected the views of a time when courts had yet to distinguish between a group's cognizability as a ground for asylum, and the separate need to demonstrate a nexus to the protected ground. As recognized by this court far more recently in *S.E.R.L.*, broad groups defined by race, religion, nationality, and political opinion were designated by Congress as asylum grounds, in spite of the fact that not everyone with a race or a religion, for example, would be found to possess a well-founded fear of persecution on account of such ground. *S.E.R.L.*, *supra* at 550.

The categorical preclusion of a group as overly broad also runs counter to the oft-recognized need for individualized determinations in asylum adjudication. As the Board has explained, its intent in adding the particularity and social distinction criteria was to clarify the meaning of the term "particular social group" to "give it more 'concrete meaning through a process of case-by-case determination.'" *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014) (citing *INS v. Cardoza Fonseca*, 480 U.S. 421, 448 (1987)).

Individual cases will contain specific country condition evidence, which may include expert testimony on the subject. The consideration of the individual facts of each case always informed our determinations of particular social group cognizability while adjudicating such cases on the bench.

CONCLUSION

For particular social group purposes, particularity involves the ability to clearly determine who is a member of the group and who is not.

Were *Amici* to gather in a room and be asked to divide themselves by gender, they would have no trouble doing so. Society has long created benchmarks based on gender. Gender provides an equally clear benchmark for inclusion as do race, nationality, and religion.

We respectfully hope that this Court will consider *Amici*'s views in considering Petitioner's motion for rehearing.

Dated: March 25, 2022

Respectfully submitted,

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Hon. Robert D. Weisel
Assistant Chief Immigration Judge, Immigration Judge, New York, 1989-2016

CERTIFICATE OF COMPLIANCE

1. I HEREBY CERTIFY that the Attorney for *Amici Curiae* is a member of the Bars of New Jersey #049271996 and New York.

2. I FURTHER CERTIFY that the hat the foregoing brief complies with the type volume limitation of Fed. R. App. P. 32(a)(7)(B)(ii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in 14-point Times New Roman Font. Excluding those portions proscribed by rule, this brief in support contains 2437 words.

3. LASTLY, I CERTIFY that, in accordance with Third Circuit Rules, all required privacy redactions have been made, any required paper copies to be submitted to the court are exact copies of the version submitted electronically, and the electronic submission was scanned for viruses was completed using Malwarebytes version 4.4.2.123 and McAfee LiveSafe version 24.5 and is free from viruses.

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2022, I electronically filed the foregoing brief with the Clerk of this Court using the CM/ECF system, and counsel for all parties will be served by the CM/ECF system.

Dated: March 25, 2022

Respectfully submitted,

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EXHIBIT A

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

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

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

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

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

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

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

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

M.E.
COURT CLERK
IMMIGRATION COURT

FF

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

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

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

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

APPLICATIONS: Asylum pursuant to INA § 208(a); Withholding of Removal pursuant to INA § 241(b)(3); and protection under Article III of the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment ("CAT" or "Convention Against Torture").

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FINAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

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

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

II. Exhibits List

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

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

Tab 1: Form I-589, Application for Asylum and Withholding of Removal Receipt Notice, dated August 6, 2015

Tabs 2-4: Country Conditions Evidence

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

Tab 5: Form I-589, Application for Asylum and Withholding of Removal, dated July 27, 2015

Tab 6: Respondent's Affidavit, undated

Tab 7: Respondent's Birth Certificate, with translation

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

Tab 9: Respondent's Supplemental Affidavit, undated

Tabs 10-11: Additional Country Conditions Evidence

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

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

Tabs B-F: Additional Country Conditions Evidence

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

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

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

III. Issues Presented

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

IV. Testimonial Evidence

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

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

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

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

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

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

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

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

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

V. Documentary Evidence

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

VI. Statement of the Law and Legal Analysis

A. Credibility and Corroboration

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

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

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

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

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

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

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

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

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

B. Asylum

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

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

1. Timeliness of Application

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

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

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

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

2. Past Persecution

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

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

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

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

3. Well-Founded Fear of Future Persecution

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

a. Persecution

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

i. Objectively Reasonable Fear

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

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

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

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

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

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

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

ii. Internal Relocation

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

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

b. Membership in a Particular Social Group

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

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

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

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

i. Immutable

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

ii. Particular

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

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

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

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

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

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

iii. Socially Distinct

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

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

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

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

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

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

c. Nexus

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

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

d. Government Unable or Unwilling to Control

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

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

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

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

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

e. Discretion

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

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

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

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

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

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

VII. Conclusion

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

Accordingly, the Court enters the following order:

ORDER

ORDER: IT IS HEREBY ORDERED that Respondent Josseline Cornelio-Garcia's application for asylum pursuant to section 208 of the Act be GRANTED.

May 15, 2019
Date

Steven A. Morley
Immigration Judge
Philadelphia, Pennsylvania

EXHIBIT B

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

IN THE MATTER OF: [redacted]	)	IN REMOVAL PROCEEDINGS
RESPONDENTS	)	File No: A[redacted] A[redacted] Date: August 8, 2019

CHARGE: Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA" or "the Act"), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

APPLICATIONS: Asylum pursuant to INA § 208(a); Withholding of Removal pursuant to INA § 241(b)(3); and protection under Article III of the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment ("CAT" or "Convention Against Torture").

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FINAL DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. Procedural History

Respondent is a 36-year-old native and citizen of Honduras who applied for admission to the United States on October 21, 2016, with her son, Minor Respondent [redacted]. Exh. 1. After applying for admission, Respondents were detained at the South Texas Family Residential Center in Dilley, Texas. Exh. 3, Tab A. Respondent attended a credible fear interview while in custody on October 28, 2016, after which the Asylum Officer determined that Respondent established a credible fear of persecution. Id. Accordingly, on January 22, 2015, the Department of Homeland Security ("DHS") personally served Respondents with Notices to Appear ("NTA") and placed them into removal proceedings. Exh. 1.

The NTAs allege that: (1) Respondents are not citizens or nationals of the United States; (2) they are natives and citizens of Honduras; (3) they applied for admission to the United States at or near the Hidalgo, Texas Port of Entry on October 21, 2016; and (4) they did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document. Id. Based on these factual allegations, the NTAs charge Respondents as removable pursuant to section 212(a)(7)(A)(i)(I) of the Act, as aliens who were not in possession of valid entry documents at the time of admission. Id.

At a Master Calendar Hearing before this Court on August 16, 2017, Respondents, through counsel, admitted the factual allegations in the NTAs and conceded the charge of removability. They declined to designate a country of removal and, based on DHS's recommendation, the Court designated Honduras. On August 16, 2017, Respondent filed a Form I-589, Application for Asylum and Withholding of Removal with the Court, listing [redacted] as a derivative of her application. Exh. 2, Tab 1. Respondent claims that she is entitled to asylum based on her membership in a particular social group. See Exh. 4A. Respondent testified in support of her application at an individual hearing on June 27, 2019.

II. Exhibits List

Exhibit 1: Form I-862, NTAs, dated October 28, 2016

Exhibit 2: Respondent's Submission of Documents for I-589 Application, Tabs 3-5, filed August 16, 2017

Tab 1: Form I-589, Application for Asylum and Withholding of Removal, undated

Tab 2: Respondent's Affidavit, undated

Tabs 3-5: Country Conditions Evidence

Exhibit 3: DHS's Notice of Intent to Offer Evidence, Tabs A-B, filed October 16, 2017

Tab A: Form I-870, Record of Determination/Credible Fear Worksheet, dated October 28, 2016

Tab B: Credible Fear Interview Notes

Exhibit 4: Respondent's Submission of Additional Documents in Support of I-589 Application, Tabs 6-13, filed July 19, 2019

Tabs 6-13: Country Conditions Evidence

Exhibit 4A: Respondent's Prehearing Brief, filed July 19, 2019

Exhibit 5: Respondent's Submission of Additional Documents in Support of I-589 Application, Tabs 14-17, filed July 26, 2019

Tabs 14-17: Country Conditions Evidence

Exhibit 6: Respondent's Birth Certificate and Honduran Identification Card, filed July 30, 2019

Exhibit 7: Birth Certificate of [redacted] filed July 30, 2019

III. Testimonial Evidence

A. Direct Examination

Respondent testified that she was born in Comayagua, Honduras, where she attended school until the ninth grade. Prior to coming to the United States in October 2016, Respondent worked for Gildan, a clothing factory in San Pedro Sula. Respondent has never been married but has three children, [redacted] and [redacted]. [redacted] and [redacted]'s father is a man named [redacted] [redacted]'s father is a man named [redacted] [redacted] lives in the United States and is a United States citizen. [redacted] lives in Honduras, and [redacted] lives in the United States with Respondent.

Respondent came to the United States to escape her abusive ex-partner [redacted] ([redacted]), whom she dated for two years. Respondent used to live with her sister [redacted] in San Pedro Sula, which is when she first met [redacted] in 2012. She moved in with [redacted] around February 2012. At first, Respondent and [redacted] had a nice relationship. Over time, however, [redacted] started behaving differently and mistreating Respondent. Respondent first noticed [redacted]'s change in behavior after he got a job in a different city, which is also when he started hanging out with new friends and abusing alcohol and drugs.

[redacted] started mistreating Respondent and forcing her to have sexual relations with him around December 2015. He would come home drunk in the morning and force Respondent to have sex with him. During sex, he would force Respondent to perform certain sexual acts against her will. This type of sexual abuse occurred about twice per week, usually on the weekends when [redacted] came home drunk or high. Whenever [redacted] drank, he told Respondent that she needed to do whatever he wanted because she was his woman and his property.

According to Respondent, [redacted] believed that he was better than Respondent because she was a woman. He frequently told Respondent that she was "less than him" and would belittle her. He believed that he was the boss and that he had the authority to make decisions for both of them. Respondent would try to resist [redacted]'s sexual advances, but he forced her to have sex with him because she was his woman. [redacted] was never physically abusive toward [redacted] or [redacted]

[redacted] would also prevent Respondent from seeing her family and friends. If a friend would call when [redacted] was home, [redacted] would instruct Respondent not to answer the telephone. [redacted] only ever met Respondent's mother and her sister [redacted] Neither [redacted] nor Respondent's mother ever visited Respondent's home. Rather, Respondent and [redacted] would visit their homes. [redacted] knew about [redacted]'s abuse, but Respondent's mother did not because Respondent never told her. Respondent's mother is not in the best health, so Respondent did not want to worry her.

Respondent separated from [redacted] in April 2016. She agrees that the period of physical abuse occurred between December 2015 and April 2016. Respondent decided to leave [redacted] in April 2016 because she realized that she did not want to be with him anymore. [redacted] had traveled for work to another city in the weeks prior, so Respondent decided to leave while he was gone. Respondent moved with [redacted] and [redacted] to Sandoval, a neighborhood about twenty minutes from San Pedro Sula. Respondent was still working at the factory during this time.

After Respondent left the house, [redacted] tried to contact Respondent numerous times over the telephone, but Respondent never answered his calls. Respondent saw [redacted] for the first time after she left in June 2016. [redacted] showed up at Respondent's house and demanded that Respondent come back to him. Respondent and [redacted] argued about why Respondent left him. Respondent told [redacted] that she left him because he mistreated her. In response, [redacted] told her that she would never be able to leave him. [redacted] then raped Respondent.

Respondent did not see [redacted] again until September 2016. At the time, Respondent was living in the same apartment in Sandoval. When Respondent saw [redacted] he told her that he would not stop until she fell in love with him again. Respondent again refused his advances, telling him that he was a bad influence on her and her children. [redacted] than threatened to kill Respondent and remarked that it would cost only 500 pesos to have her killed. Fearing for her life, Respondent called her sister [redacted] and told her that she planned to leave Honduras as soon as possible.

Respondent never reported the domestic abuse to the police because the police do not intervene in domestic disputes. In addition, [redacted] always told Respondent that he had friends in the police department. He proved this by showing her photographs of him with police officers. Respondent spoke to Paula about the possibility of reporting [redacted] to the police, but Respondent and [redacted] were both afraid and did not want to testify against him in court. Consequently, Respondent and [redacted] decided that the best option was for Respondent to come to the United States.

Since coming to the United States, Respondent has not spoken to [redacted] directly. However, [redacted] saw [redacted] about six months after Respondent came to the United States, around December 2018. [redacted] asked [redacted] about Respondent's whereabouts. This is the only contact that anyone in Respondent's family has had with [redacted] [redacted] has not tried to contact Respondent via any social media accounts since coming to the United States. In addition, Respondent's has a different cell phone number in the United States, so [redacted] is not able to contact her.

Respondent fears that [redacted] will kill her if she returns to Honduras. If [redacted] finds out that Respondent left the country and abandoned him, he will react violently upon her return. He will know about Respondent's return because Comayagua is a very small town. Respondent could not return to another town in Honduras to avoid harm by [redacted] because the country is very small. If [redacted] wishes to find Respondent, he will find her. Further, Respondent could not work in a factory in another town in Honduras because they do not hire woman over the age of thirty.

[redacted] is currently living in San Pedro Sula with Respondent's sister, [redacted]. Respondent left [redacted] in Honduras because he was sick at the time and could not make the trip with Respondent. Respondent does not want to return to Honduras because she does not want to return to her prior life of abuse. [redacted] made her feel sad and worthless simply because she is a woman.

B. Cross Examination

[redacted] who Respondent references during her credible fear interview, is a family friend who helped her immediately after she arrived in the United States.. Respondent did not try to seek protection in Guatemala or Mexico before coming to the United States, because she does not consider those countries safe. She was never offered protection by the Guatemalan or Mexican governments.

Respondent and [redacted] started living together in February 2014. He was born in February, but Respondent cannot remember the specific day or year. [redacted] worked as a welder for a construction company in San Pedro Sula. He had two children from a prior relationship, but Respondent does not know their names or ages. As far as Respondent knows, [redacted] did not have much contact with the mother of his children. She had remarried, and her new husband did not let her talk to [redacted].

[redacted] was always under the influence of alcohol or drugs when he abused Respondent. He drank to excess and used marijuana and cocaine. Respondent knows he used marijuana and cocaine because he blamed those drugs for being physically aggressive towards Respondent one day. Respondent has never used drugs.

Respondent let [redacted] into the guest room in her home during the incident in June 2016. When asked why she did this if she was afraid of him, Respondent explained that her children were home at the time and she did not want him to harm her children or to disturb her neighbors. He was banging on the door very loudly, so she let him in. Respondent states in her affidavit that

[redacted] was acting "strange" on this occasion because she believes he was on drugs. There were also rumors in the community that [redacted] belonged to a gang.

[redacted] threatened to kill Respondent about three times, all in person. Respondent's oldest son [redacted] knew that [redacted] and Respondent argued, but not that [redacted] was physically abusive. Other than [redacted] no one else in Respondent's family, including [redacted] knew about the abuse. Respondent asked [redacted] to provide a statement in support of her case, and [redacted] sent a statement sometime in 2018. However, because the statement was not detailed enough, Respondent asked [redacted] to provide a more detailed statement, but she never did.

The original statement from [redacted] contains some of the details about the past abuse, but not all of them. Respondent speaks to [redacted] frequently on the telephone, about once a week. During these conversations, [redacted] promised to send another more-detailed statement, but Respondent has not received a statement. As her hearing date approached, Respondent did not press [redacted] to send the new statement. Respondent guesses that [redacted]'s husband might have pressured her not to participate in Respondent's case.

Respondent never tried to get a restraining order against [redacted] because she was afraid. She also never tried seeking help at a women's shelter because that kind of support is not available in Honduras. As far as Respondent knows, [redacted] never cheated on Respondent with another woman.

Aside from his children, [redacted]'s only family in Honduras is his mother and one sister. Respondent and [redacted] visited his mother and sister one time. Both his mother and sister are very nice people and [redacted] treated them well. [redacted] also treated Respondent's mother well when they interacted, which was only one time. Respondent never saw [redacted] be physically abusive to his mother or sister. During the last few months of their relationship, [redacted] did not want Respondent to communicate with her mother.

Respondent could not have avoided harm in Honduras by living with one of her brothers. Respondent's brothers lived in a different city, and Respondent had to work in San Pedro Sula. She would not have been able to find work in the city where her brothers live because the main source of income is agriculture; there are no opportunities for women to support themselves.

C. Court's Questioning

In addition to speaking on the telephone to [redacted], Respondent also communicates with [redacted] through WhatsApp. [redacted] has not seen or spoken to [redacted] other than the incident in December 2018. Respondent does not know, whether through [redacted] or someone else, whether [redacted] has a new girlfriend.

Respondent currently lives with her boyfriend [redacted], her son [redacted], and her daughter [redacted]. [redacted] has four children from a prior relationship, none of whom live with Respondent. He has been separated from his children's mother for seven years, but they never obtained a divorce. If Respondent returned to Honduras, [redacted] would remain in the United States.

IV. Documentary Evidence

Respondent provided identity documents for her and [redacted], as well as an affidavit that details her past harm at the hands of [redacted] in Honduras. See Exhs. 2, Tab 2; 6; 7. She also provided ample country conditions evidence about the high rates of violence against women in Honduras, including domestic violence, rape, and femicide. See Exhs. 2, Tabs 3-5; 4, Tabs 6-13; 5, Tabs 14-17. The Court has considered all of the foregoing documents, but does not summarize the contents of those documents herein.

V. Statement of the Law and Legal Analysis

A. Credibility and Corroboration

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

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

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

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

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

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

The Court finds Respondent credible. She testified candidly, her demeanor was forthright, and, despite the traumatic nature of her claimed past harm, she answered all questions posed by her attorney, DHS, and the Court to the best of her ability. Respondent's testimony was also consistent with the information in her I-589 application, affidavit, and credible fear interview, thus showing that her asylum claim has remained consistent since 2016. See Exhs. 2, Tab 1-2; 3, Tabs A-B. Respondent's asylum claim is also plausible in light of the country conditions evidence in the record, which documents the high rates of violence against women in Honduras, especially and including domestic violence and rape. See Exhs. 2, Tabs 3-5; 4, Tabs 6-13; 5, Tabs 14-17.

The Court also finds that Respondent adequately corroborated her claim. Respondent provided ample country conditions evidence about the mistreatment of women in Honduras, including domestic violence, rape, and femicide, which lends objective support to her claimed past instances of harm in Honduras. See Exhs. 2, Tabs 3-5; 4, Tabs 6-13; 5, Tabs 14-17. Although this is the only corroborating evidence provided by Respondent, the Court nonetheless finds that this evidence is sufficient to corroborate Respondent's claim given the particular facts of her case. Respondent's asylum claim is principally based on her own personal experiences with [redacted], which are not reasonably subject to corroboration. S-M-J-, 21 I&N Dec. 722. Given the traumatic nature of these personal experiences, which included repeated sexual abuse, it is not unreasonable that Respondent chose not to widely share these experiences with her family or friends. Rather, Respondent testified that she only ever told her sister [redacted] about the abuse, which explains the lack of corroborating evidence from other members of her family or friends. When asked why [redacted] did not provide a statement on Respondent's behalf, Respondent explained that [redacted] initially provided a statement, but that this statement lacked any meaningful detail about

[redacted]'s abuse. Respondent testified that [redacted] never provided a second, more detailed statement, despite repeated requests by Respondent when they spoke on the telephone and through WhatsApp. While Respondent does not know for certain, she guesses that [redacted] has not provided a second statement at the advice of her husband, who does not want her to get involved in Respondent's case. The Court recognizes that a statement from [redacted] is a key piece of corroborative evidence in this case, considering that she is the only other person with knowledge of [redacted]'s abuse. However, the Court does not find that this one piece of missing evidence is fatal to Respondent's asylum claim given that her testimony is otherwise detailed, credible, and plausible. Therefore, the Court finds Respondent credible and that she adequately corroborated her claim. INA § 208(b)(1)(B)(iii).

B. Asylum

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

1. Timeliness of Application

As a threshold issue, an applicant must affirmatively prove by clear and convincing evidence that she filed her asylum application within one year of the date of her last arrival into the United States or April 1, 1997, whichever is later. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2). Alternatively, an applicant may prove that she qualifies for an exception to the one-year deadline. 8 C.F.R. § 1208.4(a)(2)(i)(B). Here, Respondent has shown by clear and convincing evidence that she filed her asylum application within one year of her arrival. Respondent entered the United States on October 21, 2016. See Exh. 1. She filed her application for asylum with the Court on August 16, 2017. See Exhs. 2, Tab 1. Therefore, Respondent's asylum application is timely.

2. Past Persecution

Respondent alleges that she is entitled to asylum because she experienced past persecution in Honduras. To establish eligibility for asylum on the basis of past persecution, an applicant must show (1) an incident, or incidents, that rise to the level of persecution; (2) that is/are "on account of" one of the statutorily protected grounds; and (3) that is/are committed by the government or forces whom the government is "unable or unwilling" to control. Gao v. Ashcroft, 299 F.3d 266, 272 (3d Cir. 2002).

a. Persecution

Respondent must first establish that her past harm in Honduras rises to the level of persecution. Persecution is "a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." Acosta, 19 I&N Dec. at 222; Li v. Att'y Gen., 400 F.3d 157, 164–68 (3d Cir. 2005). Persecution "encompasses a variety of forms of adverse treatment, including non-life threatening violence and physical abuse or non-physical forms of harm." Matter of O-Z- & I-Z-, 22 I&N Dec. 23, 25–26 (BIA 1998). It does not include "all treatment that our society regards as unfair, unjust or even unlawful or unconstitutional." Fatin v. INS, 12 F.3d 1233, 1240 (3d Cir. 1993). Threats do not constitute persecution unless they are highly imminent. Li, 400 F.3d at 164. An isolated incident of physical abuse that does not result in serious injury does not rise to the level of persecution. Voci v. Gonzales, 409 F.3d 607, 615 (3d Cir. 2005). However, multiple beatings combined with other harassment may constitute persecution. Id. at 614–15 (citing O-Z- & I-Z-, 22 I&N Dec. at 26 (holding that incidents of harm suffered by the alien may, in the aggregate, rise to the level of persecution)). Torture is harm sufficiently severe to constitute persecution. See Acosta, 19 I&N Dec. at 222; Li, 400 F.3d at 164–68.

Respondent argues that her past harm in Honduras rises to the level of persecution. From December 2015 until April 2016, Respondent experienced repeated sexual abuse at the hands of her ex-partner, [redacted], who forced Respondent to have sex with him and perform sexual acts against her will. See Exh. 2, Tab 2 at 21. On one occasion, [redacted] grabbed her by the hair, forced her onto the bed, and raped her. See id. Respondent testified that during this same time period, [redacted] routinely verbally abused and degraded her, telling her that she could not leave him because she was his property. When Respondent eventually left [redacted] in April 2016, he continued harassing her by calling her on the telephone and showing up unannounced at her new apartment. See id. On one occasion in June 2016, Respondent testified that [redacted] showed up at her apartment and raped her after she refused to get back together with him. When Respondent again refused to go back to [redacted] in September 2016, [redacted] threatened to kill her, remarking that it would cost only 500 pesos to have her killed. See id. at 22. Respondent testified that [redacted] threatened to kill her three times before she fled Honduras.

The Court finds that Respondent's past harm, in the aggregate, constitutes past persecution as contemplated by the statute and case law. The Board of Immigration Appeals ("BIA" or the "Board") and circuit courts have found rape and sexual assault to constitute persecution for asylum purposes. See e.g., Matter of D-V-, 21 I&N Dec. 77 (BIA 1993) (finding gang rape and beating sufficient to establish persecution); Lopez-Galarza v. INS, 99 F.3d 954 (9th Cir. 1996) (holding that rape may satisfy the persecution standard); Angoucheva v. INS, 106 F.3d 781 (7th Cir. 1997) (remanding to the Board for consideration of whether sexual assault was on account of protected characteristic). Moreover, the Third Circuit Court of Appeals ("Third Circuit") has held that "rape can constitute torture" for the purposes of CAT relief. Zubeda v. Ashcroft, 333 F.3d 463, 472 (3d Cir. 2003) (explaining that "[r]ape is a form of aggression constituting an egregious violation of humanity" that has scarring effects that endure for years). Here, [redacted] not only raped Respondent numerous times between December 2015 and June 2016, he also verbally abused her and threatened to kill her on numerous occasions. This harm, in the aggregate, clearly rises to the level of past persecution.

b. Membership in a Particular Social Group

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

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

The Board has repeatedly held that the determination of whether a particular social group is cognizable is a fact-based inquiry that must be made on a case-by-case basis. See Matter of W-Y-C & H-O-B, 27 I&N Dec. 189 (BIA 2018); M-E-V-G-, 26 I&N Dec. at 243; W-G-R-, 26 I&N Dec. at 218. The Circuit Courts of Appeals have similarly held that factual findings underlie the analysis of a group's cognizability, particularly social distinction. See e.g., Hernandez-De La Cruz v. Lynch, 819 F.3d 784, 787 (5th Cir. 2016); Sanchez-Robles v. Lynch, 808 F.3d 688, 691 (6th Cir. 2015). The Attorney General has also adhered to the fact-based inquiry for particular social groups by reinforcing that respondents must articulate the exact delineation of any proposed social group on the record so that the immigration judge can engage in the necessary factual and legal findings. Matter of L-E-A-, 27 I&N Dec. 581 (A.G. 2019); Matter of A-B-, 27 I&N Dec. 316, 335 (A.G. 2018).

Respondent has articulated four separate particular social groups: (1) "Honduran women who are unable to leave domestic partnerships;" (2) Honduran woman viewed as property by virtue of their positions within a domestic relationship;" (3) "working class single mothers in Honduras;" and (4) "Honduran women." See Exh. 4A. The Court finds that Respondent's first three articulated social groups are not cognizable, either because they are defined principally by the persecution or because they lack social distinction within Honduran society. See W-G-R-, 26 I&N Dec. at 218; M-E-V-G-, 26 I&N Dec. at 237. However, for the reasons set forth below, the Court finds that

Respondent's fourth articulated social group, "Honduran women," is a cognizable particular social group.

i. Immutable

First, the particular social group "Honduran women" is comprised of immutable characteristics. Members of the group all share "a characteristic that is . . . 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. In Acosta, the Board concluded 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"). Thus, the Court finds that "Honduran women" describes immutable characteristics.

ii. Socially Distinct

Second, the particular social group "Honduran women" 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. at 217 (stating that "social distinction exists where the relevant society perceives, considers, or recognizes the group as a distinct social group"). As above, the social distinction analysis is a fact-based inquiry that must be assessed "in the context of the country of concern and the persecution feared." Matter of S-E-G-, 24 I&N Dec. 579, 587 (BIA 2008). Here, an analysis of the evidence in the record establishes that Honduran 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 establishes that Honduran women are a selectively targeted group in Honduras. In the past decade, violence towards women has escalated at an alarming rate, causing the U.S. Department of State to classify such violence as a "pervasive societal problem." Exh. 2, Tab 3 at 26. Today, Honduras has one of the highest femicide rates per capita in the world, with one woman murdered every sixteen hours. See Exh. 4, Tab 7 at 72. While 2017 saw a decline in the number of reported femicides, the brutality with which such violence is carried out continues to increase; in 2017, forty-one percent of women and girls killed in Honduras showed signs of mutilation, disfigurement, and cruelty beyond what was needed to kill them, according to the Observatory of Violence at the National Autonomous University of Honduras ("UNAH"). See Exh. 5, Tab 15 at 145. Honduran women are also particularly susceptible to sexual abuse and other forms of non-lethal, gender-based violence. See Exh. 2, Tab 3 at 26. In 2015, 2,774 women and girls reported sexual crimes to the Public Ministry, and in that same year, the Center for Women's Rights reported that 18,070 women filed complaints of domestic violence in special domestic violence courts across the country. See id. at 26-27. Today, an average of 30,000 women report incidents of domestic violence each year, and a woman reports an incident of sexual violence every three hours. See Exh. 4, Tab 9 at 90. One country conditions article provides several anecdotal stories of women who were murdered in López Arellano, Honduras in 2017,

including: a fourteen year-old girl who was abducted by a drug dealer who raped and shot her in the head five times; two fifteen year olds killed by MS-13 when they resisted an order to sell drugs; and two seventeen-year-old cousins whose breasts and buttocks were cut off before 18th Street shot them in the head. See Exh. 5, Tab 15 at 150. This evidence highlights the selective nature of gender-based violence in Honduras and, in turn, how Honduran women are viewed as a distinct class of persons.

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

iii. Particular

Third, the particular social group "Honduran women" is defined with particularity. The Board has explained that a group is particularly defined if it has "definable boundaries," and is not "amorphous, overbroad, diffuse, or subjective." Id. 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 particular social group "Honduran women" is defined with particularity because 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. 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-, 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). Here, by contrast, the term "woman" is not too amorphous to provide such an adequate benchmark, as a person either is a woman or is not.

The Court recognizes that Respondent's proposed social group is large. However, size of the group does not disqualify it from being particular. The Board has found Somali clans to constitute a particular social group based on their unique identification within society, including, among other things, their linguistic attributes. Matter of H-, 21 I&N Dec. 337 (BIA 1996). Given that some Somali clans number in the millions, it is clear that size of the group does not foreclose a finding of particularity. See also Cece v. Holder, 733 F.3d 662, 674–675 (7th Cir. 2013) and Perdomo v. Holder, 611 F.3d 662 (9th Cir. 2010) (rejecting the notion that a group can be too large to be a particular social group); Mohammed v. Gonzales, 400 F.3d 785 (9th Cir. 2005) (finding a group comprised of "Somali females" to be a cognizable social group given the widespread practice of FGM). The Board has also long held that LGBTQIA people in various countries can qualify as members of particular social groups, despite their size. See Matter of Toboso-Alfonso, 20 I&N Dec. 819, 822–23 (BIA 1990). 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 Court also recognizes that Respondent's proposed group contains diverse members. However, just like size, the diversity within a social group does not preclude it from being particular. If the terms used to define the group are objective, the fact that the members of the group have different personal attributes is irrelevant to the particularity analysis. In W-G-R-, 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. Id. at 221. 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 W-G-R- does not support a finding that the group "Honduran women" is not defined with particularity. The Board's conclusion in 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 Salvadoran society would "generally agree on who is included" in the group of former gang members. Id. By contrast, the group in this case—Honduran women—has well-defined boundaries, namely women are members and men are not. The boundaries of the group "Honduran women" 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 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. 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 "Honduran women" is not defined with particularity. However, this argument is not persuasive in the face of Toboso-Alfonso, which clearly finds that a diverse range of individuals can be within a particular

social group so long as the terms defining the group are objective. In Respondent's case, as discussed above, the group's definition provides such an adequate objective benchmark: women are members and men are not.

Further, 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 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 LGBTQIA 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"). Yet, no group will have more diversity among its members, with varying genders, ages, social classes, economic statuses, and places of residence. 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. 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 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").

Finally, as noted above, Respondent's particular social group exists independent of the harm its members suffer. See A-B-, 27 I&N Dec. 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 above, 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. See Exh. 2, Tab 3 ("[M]ost women in Honduras remained marginalized, discriminated against, and at high risk of being subjected to human rights violations."). Finally, Respondent is a member of her particular social group because she is a Honduran woman. Therefore, for the foregoing reasons, Respondent has established her membership in the cognizable particular social group, "Honduran women."

c. Nexus

Respondent must also establish that she was persecuted because of her status as a "Honduran woman." To demonstrate a nexus to a protected ground, Respondent need not show

that she would be persecuted exclusively on account of the protected ground, but that the protected ground would be "one central reason" for the feared persecution, not just an "'incidental, tangential, or superficial' reason for persecution." Ndayshimiye v. Atty's Gen., 557 F.3d 124, 130 (3d Cir. 2009); Matter of J-B-N- & S-M-, 24 I. & N. Dec. 208, 212-13 (BIA 2007). The Third Circuit has stressed that the proper standard is "one central reason" and not "the central reason." See Ndayshimiye, 557 F.3d at 129–31. The question of a persecutor's motive will involve a particularized evaluation of the specific facts and evidence in an individual claim. See Matter of N-M-, 25 I&N Dec. 526, 530 (BIA 2011).

The Court finds that Respondent's membership in a group of "Honduran women" was "one central reason" for her past persecution. The evidence in the record indicates that [redacted] raped, verbally abused, and threatened Respondent because she is a woman and, in turn, his property. For example, Respondent testified that [redacted] often belittled her by telling her that she had to do whatever he asked and that she could not leave him because she was his property. In addition, whenever Respondent refused [redacted]'s sexual advances, he would rape her because he believed that was his right as her husband. See Exh. 2, Tab 2 at 21. When Respondent eventually left [redacted] in April 2016, he continued to harass and threaten her, again claiming that she would never be able to leave him. See id. [redacted] even told Respondent that she was "no one to decide that [she] was going to end the relationship," presumably because he believed that he had the right to make decisions for both of them, as he often told her was the case. See id. at 22. Then, in September 2016, [redacted] told Respondent that it would cost only 500 pesos to have her killed, indicating that [redacted], and the rest of Honduran society, viewed Respondent's life as less valuable than a man's. See id. The totality of [redacted]'s conduct in this case demonstrates that he viewed Respondent as his property because she was his wife, which is inextricably intertwined with Respondent's gender and social group membership, as discussed below.

The country conditions evidence in the record further supports the assertion that [redacted] harmed Respondent because she is a woman. Violence against women, most especially domestic violence, is a pervasive and growing problem in Honduras today, with approximately 30,000 complaints of domestic violence each year. See Exh. 4, Tab 9 at 90. Such violence is due in large part to cultural norms and gender hierarchies in Honduras, which permit violence against women without sanction. See id., Tab 6 at 45. The most prevailing culture norm is that of machismo: a sexist attitude that "holds that women must be subservient to men, that women obtain their identity from and belong to their partners, husbands, and fathers, and that intimate relationships should be controlled by the man without any outside intervention." Id. As a result, Honduran men believe that they can abuse their wives and partners with impunity because these women "belong" to them, much like pieces of property. See id. at 51. The high rates of violence against women is also tied to gender hierarchies, where women are perceived as second-class citizens who lack the same capabilities and rights as men. See id. These gender hierarchies and cultural norms persist across Honduras and within various local, state, and national institutions, trapping Honduran women in a continuous cycle of unsanctioned gender-based violence. See Exh. 2, Tab 5 at 35. In this societal context, it is clear that Respondent's status as a "Honduran woman" was, at the very least, "one central reason" for her past harm at the hands of her ex-partner.

d. Government Unable or Unwilling to Control

Respondent must next demonstrate that the persecution she experienced was committed by the Honduran government, or by forces the government is unable and unwilling to control. [1] See Gao, 299 F.3d at 272. The country conditions evidence in the record confirms that the Honduran government is, at the very least, unable to control the epidemic of gender-based violence in Honduras. Despite efforts undertaken by the government to combat gender-based violence, such as harsher sentences for femicide and the creation of special courts and offices to handle crimes against women, violence against women persists in Honduras today, as evidenced by the fact that 31 women were murdered in Honduras in January 2019 alone. See Exh. 5, Tab 17 at 192. According to the UN Office of Drugs and Crime, Honduras has one of the highest femicide rates per capita in the world, with approximately one woman murdered every sixteen hours. See Exh. 4, Tab 11 at 91. In addition, approximately 30,000 women report incidents of domestic violence each year, and a woman reports an incident of sexual violence every three hours. Id. at 90. The escalating rates of violence in recent years have led to more than 174,000 displaced persons in Honduras today, more than half of whom are women. See Exh. 2, Tab 5 at 25.

In addition, the country conditions evidence shows that the Honduran government, as seen through the actions of various state institutions, is also unwilling to control gender-based violence in Honduras. Cultural and institutional biases persist in all areas of the country and throughout various state institutions, most notably, the police force. See Exh. 4, Tab 6 at 51. The police view crimes against women as less serious than drug trafficking and gang violence, leading to an underreporting of crimes by women. See id. The police also routinely fail to investigate crimes such as domestic violence because they believe that such crimes should be resolved in the home. See Exh. 2, Tab 5 at 36. As a result, very few crimes against women are investigated, much less prosecuted in court. See Exh. 5, Tab 16 at 178. In 2016, for example, authorities investigated only

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[1] The Attorney General in A-B- reaffirmed the "unable or unwilling to control" standard set forth in Gao, but also held that an asylum applicant must show that the government "condoned" the private actors or at least "demonstrated a complete helplessness to protect the victims," citing to a case from the Seventh Circuit Court of Appeals ("Seventh Circuit"). 27 I&N Dec. at 337 (citing Galina v. INS, 213 F.3d 955, 958 (7th Cir. 2000)). Thus, the Attorney General sets forth three different standards: "unable or unwilling to control," "condoned," and "complete helplessness." A-B, 27 I&N Dec. at 337. This conflicting language leaves the Court with questions as to what standard to apply when adjudicating asylum applications. To resolve this issue, the Court has reviewed relevant Board and Third Circuit precedent. In O-Z- & I-Z-, which remains controlling Board precedent, the Board paired the term "unable and unwilling to control" with the term "condoned," indicating to the Court that the two terms are the same, legally, for purposes of an asylum analysis. 299 F.3d at 26. Moreover, it is clear from a review of Third Circuit case law that "unable or unwilling to control" is the governing standard in the Third Circuit. See e.g., Gao, 299 F.3d at 272. The Court could not find a Board or Third Circuit case that uses or interprets the term "complete helplessness" as used by the Attorney General in A-B- and the Seventh Circuit in Galina. Absent such controlling case law, the Court chooses to apply the "unable or unwilling to control" standard when analyzing Respondent's asylum claim. This interpretation is consistent with the D.C. District Court's recent decision in Grace v. Whitaker, 344 F.Supp.3d 96, 130 (D.D.C. 2018) ("The "unwilling or unable" persecution standard was settled at the time the Refugee Act was codified, and therefore the Attorney General's "condoned" or "complete helplessness" standard is not a permissible construction of the persecution requirement."). Nonetheless, even if A-B-'s higher standard were to apply, this Court finds that the Honduran government's inability to control violence against women effectively demonstrates that the police are helpless to protect domestic violence victims.

fifteen of the more than 400 femicide cases, with only two of those fifteen cases resulting in a conviction. See id. In addition, according to the UNAH, although more than sixty percent of women's murders are classifiable as femicide, the charge has only been used thirty-three times, during a period when 1,569 women and girls died violently. Id., Tab 15 at 154. Not only do the police fail to protect women who are victims of abuse, there are also credible reports that the police themselves perpetrate violence against women, including by sexually abusing women who are in police custody. See Exh. 4, Tab 6 at 52. All of this evidence clearly shows that, due to pervasive cultural and institutional biases against women, the Honduran government is unable and unwilling to control the actors who perpetrate gender-based violence, including domestic partners.

e. Well-Founded Fear of Future Persecution

If the Court determines that the applicant has suffered past persecution on account of a statutorily protected ground, it shall be presumed that the applicant has a well-founded fear of future persecution based on the original claim. 8 C.F.R. § 1208.13(b)(1); Abdulrahman v. Ashcroft, 330 F.3d 587, 592 (3d Cir. 2003). This presumption may be rebutted if DHS can demonstrate by a preponderance of the evidence either (1) that there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution, or (2) that it is possible for the applicant to relocate within her country of origin to avoid persecution in the future. 8 C.F.R. § 1208.13(b)(1)(i). DHS may meet this burden either "by adducing additional evidence or [by] resting upon evidence already in the record." Matter of H-, 21 I&N Dec. at 346. Importantly, however, the simple passage of time does not by itself constitute sufficiently changed circumstances to rebut the presumption of a well-founded fear of persecution. Matter of Y-T-L-, 23 I&N Dec. 601 (BIA 2003).

The Court finds that Respondent benefits from a rebuttable presumption of future persecution because she experienced past persecution on account of a protected ground by forces whom the Honduran government are unable to control. 8 C.F.R. § 1208.13(b)(1). DHS has offered no evidence of a fundamental change in circumstances or Respondent's ability to relocate to another part of Honduras. As discussed at length, the country conditions evidence in the record shows that violence against women remains an endemic problem in Honduras today, with thirty-one women killed in January 2019 alone. See Exh. 5, Tab 17 at 192. While the rate of femicide has decreased in recent years, the brutality with which such crimes are carried out has increased; in 2017, forty-one percent of women and girls killed in Honduras showed signs of mutilation, disfigurement, and cruelty beyond what was needed to kill them, according to the UNAH. See id., Tab 15 at 145. This makes it difficult to avoid harm through internal relocation for any woman in Honduras, but especially Respondent, who is a past victim of domestic violence at the hands of an abusive ex-partner. According to Ms. Herrmannsdorfer, an expert on violence against women in Honduras, it is unfeasible for past victims of domestic abuse to internally relocate in Honduras, a country roughly the size of Ohio, because the abuser usually knows the woman's family and friends and can easily discover her whereabouts by instilling fear in or manipulating those family members of friends to provide information. See Exh. 4, Tab 6 at 57. The possibility of internal relocation in Respondent's case is also refuted by the nature and causes of violence against women, namely cultural and institutional biases against women, which persist throughout Honduras, even in the largest cities like San Pedro Sula and Tegucigalpa. See id., at 55. Therefore, for all of these

reasons, the Court finds that the presumption of a well-founded fear of future persecution stands in this case.

f. Discretion

An applicant who establishes statutory eligibility for asylum still bears the burden of demonstrating that she merits a grant of asylum as a matter of discretion. See INA § 208(b)(1)(A). In determining whether a favorable exercise of discretion is warranted, both favorable and adverse factors should be considered, Pula, 19 I&N Dec. at 473, including adverse factors such as "the circumvention of orderly refugee procedures," A-B-, 27 I&N Dec. at 345 n.12, and humanitarian factors, such as age, health, and family ties. Matter of H-, 21 I&N Dec. at 348. The danger of persecution should outweigh all but the most egregious adverse factors. Pula 19 I&N Dec. at 473.

There are no adverse factors present in Respondent's case. Respondent did not unlawfully enter or attempt to unlawfully enter the United States. Rather, she sought admission at the Hidalgo, Texas Port of Entry and requested asylum upon her arrival. Exh. 1. In addition, Respondent has appeared at all of her scheduled immigration hearings, and she has not incurred any criminal contacts since her arrival in the United States in October 2017. Respondent is also residing in the United States with her son and USC daughter. For all of these reasons, the Court finds that Respondent's case merits a favorable exercise of discretion.

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

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

VI. Conclusion

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

Accordingly, the Court enters the following orders:

ORDER

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

ORDER: IT IS HEREBY FURTHER ORDERED that Derivative Respondent [redacted]'s application for asylum pursuant to section 208(b)(3) be GRANTED.

Date 8/8/19

Charles M. Honeyman
Immigration Judge
Philadelphia, Pennsylvania

EXHIBIT C

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

Matter of	Date: Sept. 13, 2018
	File Number:
Respondent	In Removal Proceedings

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

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

On Behalf of Respondent:
Kelly Engel Wells
Dolores Street Community Services
938 Valencia Street
San Francisco, California 94110

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

DECISION OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

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

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

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

II. EVIDENCE PRESENTED

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

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

A. Respondent's Testimony and Declaration

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

1. Background

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

2. Abuse by

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

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

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

3. Abuse by

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

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

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

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

4. Abuse by _____

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

children together, born , 1996, born 1997, and born 2004. Shortly after beginning their relationship, Respondent and Mr. H began living together, and Mr. H beat Respondent for the first time because he believed she was having an affair with his friend. However, he did not harm Respondent again until approximately two years later.

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

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

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

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

5. Criminal History

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

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

6. Fear of Returning to Mexico

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

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

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

B. Documentary Evidence

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

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

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

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

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

C. Country Conditions Evidence

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

III. ANALYSIS

A. Credibility

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

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

B. Asylum

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

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

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

I. Past Persecution

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

a. Harm Rising to the Level Necessary to Establish Persecution

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

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

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

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

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

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

b. On Account of a Protected Ground

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

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

i. Particular Social Group

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

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

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

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

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

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

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

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

ii. Particular Social Group Nexus

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

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

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

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

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

iii. Political Opinion

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

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

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

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

c. Government Unable or Unwilling to Control Persecutor

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

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

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

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

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

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

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

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

2. Well-Founded Fear of Future Persecution

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

a. Fundamental Change in Circumstances

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

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

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

b. Internal Relocation

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

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

c. Independent Well-Founded Fear

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

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

i. Subjectively Genuine and Objectively Reasonable Fear

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

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

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

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

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

iii. On Account of a Protected Ground

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

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

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

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

iv. Government Unable or Unwilling to Control

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

v. Internal Relocation

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

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

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

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

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

3. Discretion

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

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

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

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

C. Alternative Finding: Withholding of Removal

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

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

D. Alternative Finding: Protection Under the Convention Against Torture

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

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

See 8 C.F.R § 1208.16(c)(3).

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

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

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

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

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

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

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

IV. CONCLUSION

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

In light of the foregoing, the following order[4] shall enter:

ORDER

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

Miriam Hayward
Immigration Judge

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