UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
365 CANAL STREET, SUITE 500
NEW ORLEANS, LA 70130

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In the matter of [redacted] File [redacted] DATE: May 6, 2022

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

__ Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
365 CANAL STREET, SUITE 500
NEW ORLEANS, LA 70130

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

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

__ Other: _____

MTR
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IMMIGRATION COURT FF

cc: CHIEF COUNSEL
1250 POYDRAS ST., STE. 2100
NEW ORLEANS, LA, 70113

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
NEW ORLEANS, LOUISIANA

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
[redacted]	)	**File No.:** [redacted]
Respondent	)	

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act

APPLICATIONS: Asylum; withholding of removal under INA §241(b)(3); and withholding of removal under the Convention Against Torture

ON BEHALF OF RESPONDENT:
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ON BEHALF OF THE DEPARTMENT:
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DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY OF THE CASE

The Respondent, [redacted] (Respondent), is a thirty-two-year-old female native and citizen of Honduras. *See* Ex. 1 (NTA). The United States Department of Homeland Security (DHS) has brought these removal proceedings against her under the authority of the Immigration and Nationality Act (INA). Proceedings were commenced with the filing of the Notice to Appear (NTA) with the Immigration Court. *See id.*

Respondent admitted the allegations in the NTA and conceded removability as charged under INA § 212(a)(6)(A)(i). On the basis of the Respondent's admissions and concession, the Court finds that Respondent's removability has been established. *See* INA § 240(c)(2). Honduras was designated as the country of removal. Respondent applied for relief from removal in the form of asylum under INA § 208(a), withholding of removal under INA § 241(b)(3), and withholding of removal under the regulations implementing the Convention Against Torture (CAT). *See* Ex. 2 (Form I-589 application). Her amended Form I-589 is contained in the record at Exhibit 11.

Prior to Respondent's testimony at the Individual Merits Hearing on March 11, 2021, the Court provided Respondent the opportunity to make any necessary corrections to her Form I-589 application. She was also advised of the consequences of knowingly filing a frivolous application for asylum. *See* 8 C.F.R. § 1208.18; Ex. 12 (frivolous warnings). Respondent then swore or affirmed that the contents of her Form I-589 application, as amended, were all true and correct to the best of her knowledge. *See* Ex. 11 (amended Form I-589 application). The evidentiary record consists of the following documentary exhibits:

Exhibit 1:	NTA;
Exhibit 2:	Form I-589, Application for Asylum and for Withholding of Removal, and supporting documents, Tabs A-H (filed March 13, 2018);
Exhibit 3:	Respondent's brief in support of Form I-589;
Exhibit 4:	Respondent's Motion to Terminate Proceedings;
Exhibit 5:	Respondent's Witness List;
Exhibit 6:	Respondent's resubmission of brief in support of Form I-589;
Exhibit 7:	Respondent's Witness List;
Exhibit 8:	Respondent's Motion for Leave to Submit Additional Evidence in Support of Form I-589;
Exhibit 9:	Respondent's supporting documents, Tabs A-M;
Exhibit 10:	Respondent's Motion for Continuance;
Exhibit 11:	Respondent's amended Form I-589 application and supporting documents, Tabs N-U;
Exhibit 12:	Frivolous Asylum Warnings;
Exhibit 13:	Respondent's Form I-213, Record of Deportable/Inadmissible Alien;
Exhibit 14:	Motion to Exceed Page Limit of the Respondent's Supplemental Brief;
Exhibit 15:	Respondent's Supplemental Brief.

The Court has admitted Exhibits 1, 2, 4, 5, and 7-12 without objection and has marked Exhibits 3, 6, and 15 for the purpose of identification. Counsel for Respondent objected to the timeliness, reliability, and fundamental fairness of Exhibit 13. The Court admitted Exhibit 13 as rebuttal evidence over the objection, as it was a government record. Respondent testified in support of the application. All admitted evidence identified above has been considered in its entirety regardless of whether specifically mentioned in the text of this decision.

II. Statement of the Law

A. Credibility

The burden of proof is on the applicant to establish eligibility for asylum pursuant to INA § 208, withholding of removal under INA § 241(b)(3), or protection pursuant to the CAT regulations. 8 C.F.R. § 1240.8(d). The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. INA § 208(b)(1)(B)(ii). In determining whether the applicant has met her burden, the trier of fact may weigh the credible testimony along with other evidence of record. *Id.* Where the trier of fact determines that the applicant should provide

evidence that corroborates otherwise credible testimony, such evidence must be provided, unless the applicant does not have the evidence and cannot reasonably obtain the evidence. *Id.*

In applications for relief from removal, the Court must make a threshold determination of the applicant's credibility. *See Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). Considering the totality of the circumstances and all relevant factors, a trier of fact may base a credibility determination on the following considerations:

> 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 made under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor.

INA § 240(c)(4)(C).

B. Asylum

An applicant has the burden of proving: (1) by clear and convincing evidence that the application has been filed within one year of the date of the applicant's arrival in the United States, or (2) that she qualifies for an exception to the one-year deadline. 8 C.F.R. § 1208.4(a)(2). An application for asylum may be considered, notwithstanding the fact that it is filed outside of the one-year deadline, if the applicant demonstrates either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application. INA § 208(a)(2)(D). Extraordinary circumstances may excuse an applicant's failure to file her asylum application within the one-year period as long as the asylum application is filed within a reasonable period given those circumstances. 8 C.F.R. § 1208.4(a)(5).

To qualify for asylum under INA § 208, Respondent must show that she is a refugee within the meaning of INA § 101(a)(42). An asylum applicant may demonstrate that she is a "refugee" by showing that she has suffered past persecution on account of a protected ground, which includes race, religion, nationality, membership in a particular social group, or political opinion, or that she has a well-founded fear of future persecution on account of a protected ground. INA § 101(a)(42)(A). The statute specifies that the applicant must establish that one of the five grounds was or will be at least one central reason for persecuting the applicant. INA § 208(b)(1)(B)(i).

An asylum applicant who claims persecution on account of political opinion must demonstrate that the particular belief or characteristic that a persecutor seeks to overcome is the applicant's political opinion. *Matter of Acosta*, 19 I&N Dec. 211, 234-35 (BIA 1985). "Persecution on account of political opinion" refers not to the ultimate political end that may be served by persecution, but to the belief held by an individual that causes her to be the object of the persecution. *Id.* at 235. An applicant must provide some evidence, direct or circumstantial, that the persecutor's motive to persecute arises from the applicant's political belief. *Matter of N- M-*, 25 I&N Dec. 526, 529 (BIA 2011); *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). An applicant must demonstrate through direct or circumstantial evidence that her persecutors knew of her political opinion and that they have or may persecute her because of it. *See Sharma v. Holder*, 729 F.3d 407, 412 (5th Cir. 2013) (citing *Ontunez–Tursios v. Ashcroft*, 303 F.3d 341, 351 (5th Cir. 2002)).

An applicant seeking relief based on "membership in a particular social group" must establish that the group is: (1) composed of members who share a common immutable characteristic; (2) defined with particularity; and (3) socially distinct within the society in question. *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014). The common characteristic that defines the group must be one that the members of the group either cannot change or should not be required to change because it is fundamental to their individual identities or consciences. *Orellana-Monson v. Holder*, 685 F.3d 511, 518 (5th Cir. 2012) (citations omitted). Only when this is the case does the mere fact of membership become something comparable to the other four grounds of persecution under the Act, namely, something that is beyond the power of an individual to change or that is so fundamental to his identity or conscience that it ought not be required to be changed. *Acosta*, 19 I&N Dec. at 233-34.

A particular social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group to be defined with particularity. *Matter of M-E-V-G-*, 26 I&N Dec. at 239. It is critical that the terms used to describe the group have commonly accepted definitions in the society of which the group is a part. The group must also be discrete and have definable boundaries. *Id.* It must not be amorphous, overbroad, diffuse, or subjective. *Id.*

Social distinction refers to social recognition, taking as its basis the plain language of the Act, in this case, the word "social." *Matter of M-E-V-G-*, 26 I&N Dec. at 240. To be socially distinct, a group need not be visibly seen by society; rather, it must be perceived as a group by society. *Id.* Society can consider persons to comprise a group without being able to identify the group's members on sight. *Id.* Finally, a group's recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception only of the persecutor. *Id.*

If past persecution on account of a protected ground is established, a presumption arises that the applicant has a well-founded fear of future persecution on the basis of her original claim. 8 C.F.R. § 1208.13(b)(1). To rebut this presumption, DHS must demonstrate by a preponderance of the evidence either a fundamental change in the applicant's circumstances or that the applicant is reasonably able to relocate within her home country to avoid future persecution. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B). In particular, DHS must demonstrate that there is a specific area of

the country where the risk of persecution to the respondent falls below the well-founded fear level. *Singh v. Sessions*, 898 F.3d 518, 521 (5th Cir. 2018). The purpose of the relocation rule is not to require an applicant to stay one step ahead of persecution in the proposed area; rather that location must present circumstances that are substantially better than those giving rise to a well-founded fear of persecution. *Id.* If the evidence indicates that the area may not be practically, safely, and legally accessible, then DHS would also bear the burden to show by a preponderance of the evidence that the area is or could be made accessible to the applicant. *Id.* Where an applicant has demonstrated past persecution, "it shall be presumed that internal relocation would not be reasonable, unless [DHS] establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate." 8 C.F.R. §1208.13(b)(1)(iii). In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for her to relocate. 8 C.F.R. §1208.13(b)(3)(i).

Absent the presumption, to establish a well-founded fear of future persecution, the applicant must demonstrate that her fear is subjectively genuine, objectively reasonable, and on account of a protected ground. 8 C.F.R. § 1208.13(b)(2)(i). Credible testimony by an applicant may be enough to satisfy the subjective component, depending on the circumstances. INA § 208(b)(1)(B)(ii). Once a subjective fear of persecution is established, the applicant need only show that such fear is grounded in reality to meet the objective element of the test. *Guevara Flores v. INS*, 786 F.2d 1242, 1249 (5th Cir. 1986). That is, she must present credible, specific, and detailed evidence that a reasonable person in her position would fear persecution. *Id.* The applicant's fear may be "well-founded" even if there is only a slight, though discernible, chance of persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987).

When the persecution entails harm inflicted by an actor other than the government, the applicant must demonstrate that the government is unable or unwilling to control her alleged persecutor. *Tesfamichael v. Gonzales*, 469 F.3d 109, 113 (5th Cir. 2006); *see also Shehu v. Gonzales*, 443 F.3d 435, 437 (5th Cir. 2006) (noting that harassment or violence against an individual cannot be labeled "persecution" absent some proof that the government condoned it or at least demonstrated a complete helplessness to protect the victims). Finally, an applicant must also establish that asylum is warranted in the exercise of discretion.

C. Withholding of Removal pursuant to INA § 241(b)(3)

As with asylum, a threshold determination must be made as to the credibility of the applicant for withholding of removal. INA § 241(b)(3)(C). A claim for withholding of removal is factually related to an asylum claim, but the applicant bears a heavier burden of proof to merit relief. Thus, an applicant who fails to establish her eligibility for asylum necessarily fails to establish eligibility for withholding of removal.

There is no discretionary element. Therefore, if the applicant establishes eligibility, withholding of removal must be granted. INA § 241(b)(3). Additionally, there is no statutory time limit for bringing a withholding of removal claim.

D. Withholding of Removal Pursuant to the Convention Against Torture

The Convention Against Torture and its implementing regulations provide that no person may be removed to a country where it is "more likely than not" that such person will be subject to torture. 8 C.F.R. §§ 1208.16-18; *Matter of M-B-A-*, 23 I&N Dec. 474, 477-78 (BIA 2002). "Torture" is defined, in part, as the intentional infliction of severe pain or suffering by, or at the instigation of, or with the consent or acquiescence of a public official. 8 C.F.R. § 1208.18(a)(1). For an act to constitute torture, it must be directed against a person. Torture is an extreme form of cruel and inhuman treatment that does not include pain or suffering arising from lawful sanctions. 8 C.F.R. § 1208.18(a)(2)-(3).

To constitute torture, the pain and suffering must be inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." 8 C.F.R. § 1208.18(a)(1). Acquiescence of a public official requires that the official have awareness of or remain "willfully blind" to the activity constituting torture prior to its commission, and thereafter breach his or her legal responsibility to intervene to prevent such activity. 8 C.F.R. § 1208.18(a)(7). The Fifth Circuit has adopted the Attorney General's interpretation of "acting in an official capacity" as "acting under color of law." *Garcia v. Holder*, 756 F.3d 885, 891 (5th Cir. 2014). Under this standard, an act is under color of law when it constitutes a "misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *Id.* at 891-92. The Attorney General has noted that whether any particular official's actions ultimately satisfy this standard is a fact-intensive inquiry that depends on whether the official's conduct is "fairly attributable to the State." *Matter of O-F-A-S-*, 28 I&N Dec. 35, 40 (A.G. 2020) (citation and internal quotation marks omitted).

The applicant for CAT protection bears the burden of proof. 8 C.F.R. § 1208.16(c)(2). As with asylum adjudications, the applicant's testimony, if credible, may be sufficient to sustain the burden of proof without corroboration. *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998). In assessing whether the applicant has satisfied the burden of proof, the Court must consider all evidence relevant to the possibility of future torture, including evidence that the applicant has suffered torture in the past; evidence that the applicant could relocate to a part of the country of removal where she is not likely to be tortured; evidence of gross, flagrant, or mass violations of human rights within the country of removal; and other relevant information on country conditions. 8 C.F.R. § 1208.16(c)(3).

A pattern of human rights violations alone is not sufficient to show that a particular person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist to indicate that the applicant will be personally at risk of torture. *Matter of S-V-*, 22 I&N Dec. 1306, 1313 (BIA 2000). To meet her burden of proof, an applicant for CAT protection must establish that someone in her particular alleged circumstances is more likely than not to be tortured in the country designated for removal. *Matter of J-E-*, 23 I&N Dec. 291, 303-04 (BIA 2002). Eligibility for CAT protection cannot be established by stringing together a series of suppositions to show that torture is more likely than not to occur unless the evidence shows that each step in the hypothetical chain of events is more likely than not to happen.

Matter of J-F-F-, 23 I&N Dec. 912, 917-18 (A.G. 2006). There is no time limit for filing a claim under the CAT regulations.

III. FINDINGS OF FACT

Respondent is from [redacted], Honduras, and grew up in [redacted], Honduras. *See* Ex. 11 (amended Form I-589 application). She has two children: Gever Josue Caceres Cardona (Josue) (age 11) who was born in Honduras, and Mia Elizabeth Ramos Mejia (Mia) (6) who is a United States citizen. *See id.*

Respondent stated that [redacted] was originally a tranquil town but became dangerous, as there were men who attacked women. *See* Ex. 11, Tab O (Respondent's updated declaration). Respondent lived with her mother and five siblings in [redacted] until she moved to [redacted], Honduras when she was fifteen years old. *See id.* Respondent moved to [redacted] because there was a man in [redacted] nicknamed "El [redacted]" who was attempting to force her to be his girlfriend. *See id.* El [redacted] and his brother were involved in drug trafficking, and El [redacted] walked around armed. *See id.*; Ex. 11, Tab S (updated declaration of [redacted]). He was often around other armed drug traffickers. El [redacted] and his brother were known for putting out hits on people who opposed them. *See* Ex. 11, Tab O (Respondent's updated declaration). She would see El [redacted] on the weekends at soccer games, and he would pass by her house on the way to the soccer field. When he saw her, he would threaten to rob her if she did not agree to be his girlfriend. El [redacted] would also harass her when she went with her mother to sell food.

During one encounter with El [redacted], he told Respondent that she would be his girlfriend "one way or another." She interpreted this to mean that he would force her to be his girlfriend. Respondent testified that El [redacted] was used to treating women poorly and would take women "by force" if they did not want to be with him. *See id.* Respondent testified that her mother and aunt told her another woman had previously ignored and refused El [redacted]'s advances, and he kidnapped her for three days and raped her. *See id.*; Ex. 11, Tab S (updated declaration of [redacted]). Respondent believes this woman did not report El [redacted] to police. Respondent testified that the police "do not do anything" because the drug dealers, including El [redacted], would pay off the police. *See* Ex. 11, Tab O (Respondent's updated declaration). Respondent described El [redacted] as machismo and a man who felt good when he treated women poorly.

Because of El [redacted]'s advances, Respondent was sent to [redacted] to live with her aunt and uncle when she was fifteen. *See id.* Although she did not see El [redacted] after she moved to [redacted] was more dangerous than [redacted] because there were people that would rob and rape women. *See id.* Her aunt and uncle would not let her outside by herself and would pay for a taxi to take her to school. *See id.* Respondent's uncle went to jail in 2009 after he was accused of robbing a car and was in jail for one year before being released. While he was incarcerated, Respondent lived with her aunt alone. *See* Ex. 11, Tab T (updated declaration of [redacted]).

While living in [redacted], Respondent met her husband, [redacted], at church in 2009. *See* Ex. 11, Tab O (Respondent's updated declaration). Respondent testified that the

first few months of dating [redacted] were fine, and he was always nice at church. *See id.* She noticed that [redacted]'s behavior changed after she became pregnant with her oldest child, [redacted]. *See id.* [redacted] became aggressive and started abusing her. *See id.* Respondent stated that [redacted] did not believe the child was his and accused her of cheating on him. *See id.* Respondent testified that people at the church would ask her if [redacted] was being abusive to her because they knew he had been abusive to past girlfriends. She stated that she never said anything to anyone about his abuse because she feared [redacted] would find out and treat her worse.

When Respondent was around five months pregnant, she went to meet [redacted]'s family in [redacted]. *See id.* Respondent stated that [redacted]'s brother, [redacted] was very verbally and physically abusive to his wife, which Respondent did not like. *See id.* [redacted] would yell and beat his wife with a belt. When Respondent told [redacted] that she wanted to return to [redacted], [redacted] told [redacted] that she should not be telling him what to do, and [redacted]'s father told him to hit Respondent with a belt. *See id.* [redacted] eventually dropped Respondent off at the bus stop and she took a bus back to [redacted]. *See id.* [redacted] came back to [redacted] after Respondent's aunt called him and told him he needed to return to [redacted] and be responsible. *See id.* Respondent stated that she wanted [redacted] to return because she did not think she could be a single parent and thought he could change.

Respondent and [redacted] then moved in with his friends for about seven months in [redacted]. Respondent stated that they slept on the living room floor because they did not have a bedroom. *See id.* [redacted] continued to be aggressive and would force her to have sex with him "whenever he felt like." *See id.* She recalled this would happen almost every day. Respondent said that she tried to resist [redacted]'s advances by putting her hands in between her legs and telling him "no" but felt like she could not use force because she was pregnant. *See id.* [redacted] would often grab her by the hair and force her to perform oral sex on him. In one instance, Respondent was trying to block [redacted] from hitting her across the face and he bit her hand instead. On another occasion when she refused to have sex with him, he took a knife and threatened to kill her with it. *See id.* He then put the knife to his stomach and told her that he would tell his family she was hurting him. *See id.* He would also cover her mouth while he forced her to have sex so no one could hear her struggling. *See id.* He would leave her with bruises when she resisted because he would push her against the bed and yank her arms. *See id.* [redacted] would also be verbally abusive, calling her "fat," "ugly," "whore," "prostitute," "loose" and "slut," and he said that she "was not worth anything." *See id.* Respondent believes he said these things to her because he saw his brother treat his wife abusively and it would make him feel like a "man" if he mistreated her.

Respondent and [redacted] moved together to [redacted] which was about an hour and a half from [redacted]. [redacted] continued to be abusive throughout the rest of Respondent's pregnancy and after [redacted] was born. *See id.* [redacted] would accuse Respondent of cheating when she would not want to have sex with him and say she was "not worth it." *See id.* [redacted] also started abusing [redacted]. *See id.* [redacted] would get "offended" when [redacted] would cry and would hit [redacted] with his hands or a belt until he stopped crying. *See id.* Respondent would try and defend [redacted], but [redacted] would yell at her and take [redacted] away from her. *See id.* [redacted] continue to be verbally abusive, telling Respondent she was "ugly," "fat," and "had a big vagina." *See id.*

Respondent married [redacted] in or around November 2011 after experiencing pressure from people at their church. *See id.* Respondent testified that she did not want to marry him, but the pastors told her to get married so they would not be living in sin, and [redacted] told her he would change his abusive behavior towards her and [redacted]. *See id.* However, [redacted] continued to abuse and threaten her after they were married. *See id.* [redacted] would tell Respondent that he had "uncles" involved in the cartels that would kill people that wronged his family. *See id.* [redacted] would threaten to take [redacted] from her or threaten to have his uncles kill her if she left the house. *See id.*

Respondent stated that she would tell [redacted] she was going to go to the police to report his abuse, but he would threaten to send his family members after her. He told her that if police ever arrested him, his family would harm her. [redacted] would also threaten to take [redacted] away from her. *See id.* Respondent never went to police because of [redacted]'s threats and because she did not think the police would do anything to protect her. *See id.* She said that she did not believe the police would do anything because she had a friend who reported her abusive husband to police and they did nothing. *See id.*

She never told her family about [redacted]'s abuse because of his threats, but she told her friends [redacted] and [redacted]. *See id.* [redacted] and [redacted] told her to leave [redacted] and offered to have her and [redacted] stay with [redacted]. *See id.* Respondent sent [redacted] to live with her mother in [redacted] when he was approximately fifteen months old. *See id.* She did this because she said she wanted to leave [redacted] but did not think she could leave if [redacted] was there. *See id.* She did not go to her mother's when she sent [redacted] to live there because [redacted] would know where she was. She told [redacted] that [redacted] would only be staying with her mother for one month. *See id.* After [redacted] had been there for four months, [redacted] became upset and wanted [redacted] to come home. *See id.* He did not go to retrieve [redacted] because he could not afford to travel there. *See id.*

Respondent eventually moved into [redacted]'s house, which was about an hour away from where she lived with [redacted]. *See id.* She was able to escape when [redacted] was at work. *See id.* After he discovered she had left, [redacted] called [redacted]'s house, told her that he would find and kill Respondent if she did not come back, and called Respondent a "bitch." *See* Ex. 11, Tab Q (updated declaration of [redacted]). However [redacted] would also surveil [redacted]'s place to see if Respondent was there. [redacted] also approached [redacted] on the street and told her that if Respondent did not come back to him, she was going to regret it and he would take [redacted] away from Respondent. *See id.* However, Respondent did not have in-person contact with [redacted] after she moved to [redacted]'s house. Respondent remained at [redacted]'s house for approximately seven months. *See* Ex. 11, Tab O (Respondent's updated declaration).

After living with [redacted], Respondent went back to [redacted] in 2013, where she rented a room for eight months before coming to the United States with [redacted]. *See id.* Respondent worked at a cell phone store while in [redacted], and her mother dropped [redacted] off in December 2013. *See id.* [redacted] called her and searched for her while she lived in [redacted], but she did not encounter him in person. *See id.*

Respondent and [redacted] reached the United States border in January 2014, where they were stopped by immigration officers and detained for one day. *See* Ex. 13 (Form I-213). Respondent

testified that the immigration officials only asked where she was from and whether she had identification. Respondent told the officers that she was from Honduras and that she was fleeing to have a better future and protection for her and her son. Respondent testified that the officers did not ask her if she was afraid to return to Honduras and did not ask her what she was seeking protection from. However, Respondent's I-213 states that she claimed to have no credible fear. *See id.* She stated they did not tell her about the one-year filing deadline for asylum. She also stated that she could not understand the immigration officials because they did not speak Spanish well.

[redacted] contacted Respondent in March 2014 via telephone. *See* Ex. 11, Tab O (Respondent's updated declaration). She had changed her number but he had obtained her new number from friends in Honduras. *See id.* He was very upset that she had taken [redacted] and that he told her he was going to report her to authorities. *See id.* He also said he had been in contact with an attorney to take [redacted] away from her. *See id.* He also stated that he was working as a body guard for a cartel and was traveling to Mexico. *See id.* In 2018, [redacted] approached Respondent's brother at a concert in Honduras and said that he was going to find and hurt Respondent. *See id.*; Ex. 11, Tab P (updated declaration of [redacted]). [redacted] also still sees [redacted] and he stills asks about Respondent. *See* Ex. 11, Tab R (updated declaration of [redacted]). In 2019, [redacted] saw [redacted] in [redacted] and asked her about Respondent. *See id.* He also asked for Respondent's phone number, which [redacted] did not provide. *See id.* He told [redacted] to tell Respondent that he was still looking for her. *See id.* [redacted] was armed during this conversation with [redacted]. He told [redacted] that he was travelling back and forth from Mexico to Honduras.

Respondent is afraid that [redacted] would harm her or kill her if she were to return to Honduras. *See* Ex. 11, Tab O (Respondent's updated declaration). She also believes he would take [redacted] away from her. *See id.* She does not believe that there is anywhere in Honduras where she could be safe or that the police would protect her. *See id.* Respondent's family still lives in Honduras but she testified she would not feel safe to return so long as [redacted] was still in Honduras.

She is also afraid she would be harmed by El [redacted] if she returns to Honduras. *See id.* In 2017, after Respondent had moved to the United States, El [redacted] contacted her. *See id.* He told her that he was in Spain and still had not lost hope of finding her. *See id.* He said that if he was not able to find her, he would harm or threaten her family. *See id.* She believes El [redacted] would be able to find her and harm her in Honduras because he threatened to find and harm her current partner so that she could be with him. She has not heard from El [redacted] since 2017, but thinks he still resides in Honduras. None of her family members have been threatened or harmed by El [redacted] despite his threats. El [redacted]'s brothers were killed by the United States Drug Enforcement Agency while trafficking drugs, but El [redacted] fled to Spain. *See* Ex. 11, Tab S (updated declaration of [redacted]). Respondent does not believe that there is anywhere she could go in Honduras because El [redacted] still returns and travels throughout the country and would look for her.

IV. FINDINGS & ANALYSIS

A. Credibility

The Court carefully listened to the testimony of Respondent, observed her demeanor, and analyzed her testimony for consistency, detail, specificity, and persuasiveness. Overall, the Court finds that Respondent was a credible witness. She provided a detailed account, corroborated by and consistent with the documentary evidence of record, about matters relating to her eligibility for relief from removal. Based on the foregoing, the Court will credit Respondent's claim. INA § 240(c)(4)(C).

B. Asylum

Respondent entered the United States on January 21, 2014, when she was twenty-four years old, and she filed her Form I-589 application on March 13, 2018. *See* Ex. 2 (Form I-589 application). Her application was not filed within one year after her arrival to the United States. However, the Court will treat Respondent's application as timely under *Mendez-Rojas v. Johnson*, 305 F.Supp.3d, 1176 (W.D. Wash. March 29, 2018).

Pursuant to *Mendez Rojas*, there are two distinct classes of asylum seekers whose otherwise untimely asylum applications are considered timely filed due to DHS's failure to notify them of the one-year filing deadline. *See id.* at 1179. The Court finds that Respondent belongs to Class B. Class B encompasses individuals who were encountered by DHS upon arrival or within fourteen days of unlawful entry, expressed fear of returning to their home country, were released by DHS after issuance of an NTA, and were never notified by DHS upon release of the one-year asylum filing deadline. *See id.* Respondent testified that she was stopped and detained by immigration officials upon entering the United States. While detained, she told the officials that she was fleeing Honduras and was seeking protection for her and her son. Though Respondent's I-213 stated that she did not express a fear of returning to Honduras, Respondent credibly testified that she told border officials she was fleeing the Honduras and seeking protection. *See* Ex. 13 (Form I-213). She was subsequently released from custody after receiving an NTA, but DHS officials never informed her of the one-year filing deadline for asylum. *See* Ex. 1 (NTA). As a *Mendez Rojas* class member, the Court will treat Respondent's asylum application as timely filed.

Respondent bears the burden to establish eligibility for asylum by either demonstrating she experienced past persecution on account of a protected ground or that she has a well-founded fear of future persecution on account of a protected ground. INA § 101(a)(42)(A). Respondent has two separate factual claims of past persecution based on her interactions with El [redacted] and [redacted], and the Court will address each of them in turn. *See* Ex. 11 (amended Form I-589).

Regarding El [redacted], Respondent has not met her burden to show that the harm he inflicted upon her rises to the level of persecution. The term "persecution" does not encompass all treatment that society regards as unfair or unlawful. *See Eduard v. Ashcroft*, 379 F.3d 182, 188 (5th Cir. 2004); *Tesfamichael*, 469 F.3d at 116. Conduct must be extreme to rise to the level of persecution. *See Eduard*, 379 F.3d at 188. Persecution requires more than a few isolated

incidents of intimidation and verbal harassment. *See Morales v. Sessions*, 860 F.3d 812, 816 (5th Cir. 2017)

Respondent testified that El [redacted] harassed her on multiple occasions but never physically harmed her. *See* Ex. 11, Tab O (Respondent's updated declaration). Though he did threaten her several times, he never acted on it. *See id.* These incidents are not sufficiently extreme as to constitute persecution. *See Eduard*, 379 F.3d at 188 (5th Cir. 2004); *see also Castro-Servellon v. Holder*, 602 F. App'x 1005 (5th Cir. 2014) (holding that being pushed, shoved, having books torn, and being beaten in the face on one occasion did not qualify as persecution); *Hussain v. Holder*, 567 F. App'x 223 (5th Cir. 2014) (holding several instances of physical assault, denial of college admission, threats to life and calling of names was insufficient to support a finding of past persecution). The Court notes that the threats that El [redacted] made against Respondent and her family when he called Respondent in 2017 also do not qualify as persecution. *See* Ex. 11, Tab O (Respondent's updated declaration). Respondent received this threatening call after she was already in the United States, and the regulations state that persecution must have occurred in the past in the applicant's home country. *See* 8 C.F.R. § 1208.13(a)(1). Respondent has not shown that the harm El [redacted] inflicted upon her in Honduras rose to the level of persecution. *See id.* Consequently, she has not established that she experienced past persecution by El Negro in Honduras.

The Court finds, however, that Respondent has demonstrated the harm she suffered at the hands of [redacted] in Honduras rises to the level of persecution. Respondent testified that she was physically, sexually, and verbally abused by [redacted] throughout their relationship. *See* Ex. 11, Tab O (Respondent's updated declaration). He regularly raped her and physically assaulted her when she resisted his sexual advances. *See id.* He also threatened to kill Respondent on multiple occasions, including one during which he threatened her with a knife while she was pregnant. *See id.* When viewed cumulatively, this harm is sufficiently severe to rise to the level of persecution. *See Eduard*, 379 F.3d at 188.

Respondent has also shown that the harm she suffered at the hands of [redacted] was on account of a protected ground. Respondent claims that her political opinion was at least one central reason for the harm inflicted upon her by [redacted], but the Court finds insufficient evidence to support this assertion. *See* Ex. 11 (amended Form I-589 application). Respondent identified her political opinion as being opposed to living under male domination. *See* Ex. 3 (brief in support of Form I-589 application). Respondent did not testify to this alleged political opinion or indicate an opposition to living under male domination. Even if she did, it is not enough to show harm on the basis of a political opinion, as it is simply demonstrating resistance to a certain lifestyle. *See Matter of N-M-*, 25 I&N Dec. at 529. Respondent also did not present sufficient evidence that [redacted]'s motives to persecute her were based on his knowledge of this alleged political opinion. *See Sharma*, 729 F.3d at 412 (internal citations omitted). Therefore, Respondent has not shown that the harm she faced was on account of her political opinion.

While Respondent has not shown that the harm she experienced was on account of her political opinion, she has demonstrated a nexus to a particular social group. Respondent alleges that the harm inflicted by [redacted] in Honduras was on account of her membership in the following particular social groups: (1) Honduran women; (2) Honduran mothers; (3) Honduran women

unable to leave domestic relationships; and (4) Honduran women viewed as property. *See* Ex. 3 (brief in support of Form I-589 application).

In relation to Group 1, Federal Circuit courts disagree as to whether gender-based groups may constitute legally cognizable particular social groups pursuant to immigration laws. *Compare De Pena-Paniagua v. Barr*, 957 F.3d at 93-94, 96 (1st Cir. 2020) ("[I]t 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."), *with Amezcua-Preciado v. U.S. Att'y Gen.*, 943 F.3d 1337, 1344-45 (11th Cir. 2019) ("[W]hile the members of Amezcua-Preciado's proposed social group arguably share the immutable characteristic of being women, that characteristic alone is insufficient to make them cognizable as a particular social group under the INA."), *and Rreshpja v. Gonzales*, 420 F.3d 551, 555 (6th Cir. 2005) (noting that the Board never held an entire gender can constitute a social group under the INA). The Fifth Circuit in *Jaco v. Garland* suggested that "Honduran women" is not sufficiently particular. 16 F.4th 1169, 1181 (5th Cir. 2021). The particular social group of "Honduran women" was not at issue in *Jaco*, however, and the Fifth Circuit's comment related to this group was incidental to the disposition of the case. *See id.* Therefore, the Fifth Circuit's comment regarding "Honduran women" as a particular social group is dicta and is not binding on this Court's decision. *See id.* The Court also finds that the facts in *Jaco* are distinguishable from the facts in Respondent's case, such that *Jaco* does not directly apply. Unlike Jaco, Respondent was married to [redacted]. *See id.* at 1173; Ex. 11, Tab O (Respondent's updated declaration). Also unlike Jaco, Respondent was raped, abused, and insulted by [redacted] while pregnant. *See* Ex. 11, Tab O (Respondent's updated declaration). These insults included references to Respondent's gender. *See id.* [redacted] also had a personal and family history of abusing other women as well. *See id.* Jaco underwent court proceedings to secure child support and a restraining order against her former partner, while Respondent did not turn to authorities for assistance. *See Jaco*, 16 F.4th at 1172.

In the absence of binding precedent as to whether "Honduran women" is a cognizable particular social group, the Court will conduct a fact-based inquiry based on the record at hand. *See Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191-93 (BIA 2018) (stressing that the particular social group analysis is a fact-based inquiry to be made on a case-by-case basis depending on the group's immutability and whether the group is particular and socially distinct within the society in question). The Court concludes the record presented in this case establishes that "Honduran women" is cognizable and that Respondent's membership in this group was one central reason for the harm she suffered by [redacted]. *See* Ex. 11, Tabs O, K (Respondent's updated declaration; country conditions evidence). Consequently, the Court need not address the other proposed particular social groups.

The Board and several Federal Circuit courts have found that gender is an immutable characteristic. *See Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 73 (BIA 2007) (citing *Matter of Acosta*, 19 I&N Dec. at 233) (noting sex may be a common, immutable characteristic); *Cece v. Holder*, 733 F.3d 662, 671 (7th Cir. 2013) (finding, in part, the characteristics of the proposed group consisted of the immutable or fundamental trait of being female); *Perdomo v. Holder*, 611 F.3d 662, 667 (9th Cir. 2010) (acknowledging that "women in a particular country, regardless of ethnicity or clan membership, could form a particular social group"); *Hassan v. Gonzales*, 484

F.3d 513, 518 (8th Cir. 2007) (holding "Somali females" was a valid particular social group, based on gender and the prevalence of female genital mutilation); *Niang v. Gonzales*, 422 F.3d 1187, 1199 (10th Cir. 2005) ("Both gender and tribal membership are immutable characteristics."). Moreover, the size of a particular social group is not determinative of the group's cognizability. *See Orellana-Monson*, 685 F.3d at 519. The Fifth Circuit has noted that "the key question is whether the group is sufficiently 'particular,' or is 'too amorphous . . . to create a benchmark for determining group membership.'" *Id.* (quoting *Matter of S-E-G-*, 24 I&N Dec. 579, 584 (BIA 2008)). "Honduran women" is sufficiently particular because it includes clearly defined characteristics of nationality and gender to demarcate group membership. Honduran society also recognizes sex, gender, and gender identity. *See* Ex. 9, Tab K (country conditions reports). Further, the Honduran government recognizes femicide and has laws, policies, and programs meant to protect Honduran women from violence and discrimination. *See id.* Group 1, therefore, is cognizable.

Respondent has also shown that [redacted] harmed her on account of her membership in the particular social group of "Honduran women." Evidence suggests that [redacted] physically, sexually, and emotionally abused Respondent because he was hostile to, or bore animosity towards, Honduran women. [redacted] had a history of abusing women. *See* Ex. 11, Tab O (Respondent's amended declaration). Throughout his physical and sexual abuse of Respondent, he also degraded her in ways that alluded to her gender, calling her a "slut," "prostitute," "whore," "loose," and "bitch," telling her she "had a big vagina," and saying she was worthless. *See id.* In addition to this abuse, he attempted to control her by threatening to take her son away if she left the house. *See id.* Country conditions evidence demonstrates a pervasive machista culture in Honduras that reinforces gender stereotypes about the role of women in the family and society. *See* Ex. 9, Tab K (country conditions reports). Machista culture treats women as subservient and disposable, and this mentality often manifests in domestic violence. *See id.* This machista mentality was evident within [redacted]'s own family, as reflected by [redacted]'s brother abusing his wife and discouraging Respondent from expressing her opinion and [redacted]'s father advising him to beat Respondent with a belt. *See* Ex. 11, Tab O (Respondent's amended declaration). Respondent testified that [redacted] felt more "like a man" when he abused her and other women, likely because he was influenced by how his male relatives treated women. *See id.* Because she has established the requisite nexus between the harm sustained and her membership in Group 1, the Court need not address the other proposed particular social groups. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (stating "[a]s a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

As Respondent's past harm was inflicted by someone other than the government, Respondent must show that the government is unable or unwilling to control [redacted]. INA § 101(a)(42)(A); *Tesfamichael*, 469 F.3d at 113. Although Respondent did not report [redacted]'s abuse to the police, she has nevertheless shown that the Honduran government is unable or unwilling to control [redacted]. An asylum applicant is not required to report third-party persecution to the government where it would be dangerous and unproductive to do so. *See Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000) (finding that the applicant's failure to report her abusive father to the police did not bar her from asylum where the evidence showed that, even if she had turned to the police, the police would have been unable or unwilling to protect her, she would

have been returned to her father, and her situation may have worsened); *see also Arevalo-Velasquez v. Whitaker*, 752 F. App'x 200, 202 (5th Cir. 2019) (citing *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1069 (9th Cir. 2007)) (noting that an applicant's credible testimony and evidence regarding why she did not report her abuse to the police is a factor to be considered in the unable or unwilling analysis).

Respondent has shown that it would have been both dangerous and futile for her to report [redacted]'s abuse to the police. Whenever Respondent told [redacted] she would report him to the police, he would threaten to have his family members harm or kill her. *See* Ex. 11, Tab O (Respondent's amended declaration). These threats were sufficient to dissuade her from reporting him based on his family's demonstrated history of violence and association with the cartels. *See id.* She also believed that it would be futile to report him based on the experience of her neighbor, who reported an abusive domestic partner but did not receive any protection from the police. *See id.* Respondent testified that police do not protect women in situations on domestic violence, and country conditions support that it would have been dangerous and unproductive for Respondent to report [redacted] to the police. *See* Ex. 9, Tab K (Honduras 2019 human rights report). Although there are laws criminalizing domestic violence, the United States Department of State reported that these laws are not effectively enforced due, in part, to "a pattern of male-dominant culture and norms." *Id.* The government failed to prosecute up to 90 percent of domestic violence cases. *See id.* As a result of this impunity, many women, like Respondent, did not report domestic violence out of fear of their partner's retaliation. *See id.* Where protections against domestic violence were enforced, the penalty often did not result in the abuser being imprisoned or otherwise segregated from the victim. *See id.* For instance, if the injuries inflicted by first-time offenders did not reach the severity of a criminal act, the legal penalty was only one to three months of community service. *See id.* Respondent testified that she had bruising after [redacted]s abuse, but she did not have any more severe or lasting physical injuries. *See* Ex. 11, Tab O (Respondent's amended declaration). As such, had she reported him to the police, he may have only been sentenced to one to three months of community service, in the unlikely event that he was prosecuted at all. *See* Ex. 9, Tab K (Honduras 2019 human rights report). Respondent, however, would likely have faced violent retaliation from [redacted] and his family had she gone to the police. *See* Ex. 11, Tab O (Respondent's amended declaration). Based on the record, the Court finds Respondent has met her burden to show that the Honduran government would have been unable or unwilling to protect her from [redacted].

As Respondent has established past persecution, she is entitled to a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). To rebut this presumption, DHS has alleged that she could avoid future persecution by relocating to another area of Honduras. 8 C.F.R. § 1208.13(b)(1)(i)-(ii). Specifically, DHS argues that, because Respondent was not harmed by [redacted] either while living at [redacted]'s house or when she lived with [redacted] in [redacted], she could safely internally relocate to avoid future harm. *See* Ex. 11, Tab O (Respondent's amended declaration). Although Respondent did not have in-person contact with [redacted] while living with [redacted], he remained a threat to Respondent because he repeatedly contacted [redacted], threatened to kill Respondent if she did not return, and surveilled [redacted]'s house. *See id.* Should Respondent relocate to [redacted]'s home upon her return to Honduras, her circumstances would not be substantially better than those giving rise to her

well-founded fear, as [redacted] would likely still pose a persistent threat to her. *See Singh v. Sessions*, 898 F.3d at 521-23.

As for [redacted], Respondent lived in [redacted] for around eight months without any in-person contact with [redacted]; however, the record does not show by a preponderance of the evidence that she could safely relocate there now. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B). [redacted] has familiarity with and connections within [redacted], as he and Respondent previously lived there together with [redacted]'s friends. *See* Ex. 11, Tab O (Respondent's amended declaration). Additionally, [redacted] is now better situated to find and harm Respondent than he was when she relocated in [redacted] previously. Whereas [redacted] used to work at a butcher and did not have money to travel, he now travels throughout Honduras and Mexico with the cartel, carries a gun, and has access to the cartel's resources. *See id.*; *see also* Ex. 8, Tab C (InSight Crime article). He has told both Respondent and her loved ones that he continues to look for her, and he has threatened to leverage his position within the cartel to find and harm Respondent. *See* Ex. 11, Tab O (Respondent's amended application). DHS has not presented any evidence that Respondent could safely internally relocate in light of [redacted]'s new cartel affiliation. Consequently, DHS has not shown by a preponderance of the evidence that Respondent could safely internally relocate to avoid future persecution. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B).

As Respondent has demonstrated that she experienced past persecution, and she has an unrebutted well-founded fear of future persecution, she has proven she qualifies as a refugee under the INA and established her eligibility for asylum. INA § 101(a)(42)(A). The Court further finds that Respondent warrants a favorable exercise of discretion and therefore will grant her application for asylum.

C. Withholding of Removal pursuant to INA § 241(b)(3) and the Convention Against Torture

Respondent's applications for withholding of removal pursuant to INA § 241(b)(3) and withholding of removal under the Convention Against Torture will be denied as moot because she has demonstrated her eligibility for asylum.

Accordingly, the following orders shall be entered:

ORDERS: **IT IS HEREBY ORDERED** that Respondent's application for asylum is **GRANTED.**

IT IS FURTHER ORDERED that Respondent's application for withholding of removal pursuant to INA § 241(b)(3) is **DENIED** as moot.

IT IS FURTHER ORDERED that Respondent's application for withholding of removal pursuant to the Convention Against Torture is **DENIED** as moot.

5/6/22
Date

Hon. Eric Marsteller
U.S. Immigration Judge

Appeal Date: June 6, 2022

NOTICE OF THE RIGHT TO APPEAL: You are hereby notified that both parties have the right to appeal the Immigration Judge's decision in this case to the BIA. 8 C.F.R. § 1003.38(a). A Notice of Appeal (Form EOIR-26) must be submitted to the BIA within 30 calendar days from the issuance or mailing of this decision. 8 C.F.R. §1003.38(b). If the final date for filing falls on a Saturday, Sunday, or legal holiday, the filing date is extended to the next business day. *Id.* If no appeal has been taken within the time allotted to appeal, the Immigration Judge's decision becomes final. *Id.* By failing to timely file an appeal, a party irrevocably relinquishes the opportunity to obtain review of the Immigration Judge's decision and challenge the ruling.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: ( ) Respondent ( ) Respondent c/o Custodial Officer (X) Respondent's ATT/REP (X) DHS

DATE: 5/6/2022 BY: COURT STAFF

Attachment(s): ( ) EOIR-33 ( ) EOIR-28 ( ) Legal Services List ( ) Other