No. 25-1964

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MARITZA ISABEL GUTIERREZ FLORES,
Petitioner
v.
PAMELA BONDI, UNITED STATES ATTORNEY GENERAL,
Respondent

ON PETITION FOR REVIEW OF AN ORDER OF THE BOARD OF IMMIGRATION APPEALS

BRIEF OF *AMICI CURIAE* AMERICAN IMMIGRATION LAWYERS ASSOCIATION AND CENTER FOR GENDER & REFUGEE STUDIES IN SUPPORT OF PETITIONER AND REVERSAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

ADMINISTRATIVE DECISIONS

INTERNATIONAL LEGAL DECISIONS

UNPUBLISHED ADMINISTRATIVE DECISIONS

OTHER AUTHORITIES

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and 28(a)(1), each amicus party certifies that it does not have a parent corporation and no publicly held corporation owns an interest of 10% or more of the stock of amicus.

Dated: February 20, 2026

/s/ Sabrineh Ardalan

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INTEREST OF AMICI CURIAE

Amici curiae are organizations with extensive expertise in the development and application of asylum law, including gender-based asylum claims. *Amici* have filed briefs in cases before the U.S. Supreme Court, federal courts of appeals, the Board of Immigration Appeals ("BIA" or "Board"), and various international tribunals. *Amici*'s clients include women from around the world applying for refugee protection before the U.S. Department of Homeland Security, immigration courts, the Board, and federal courts of appeals.[1] *Amici* have a direct interest in ensuring that survivors of gender-based violence are not erroneously denied asylum or withholding of removal.

The American Immigration Lawyers Association ("AILA") is a national association with over 18,000 members throughout the United States, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to advance the administration of law pertaining to immigration, nationality, and naturalization; to cultivate the jurisprudence of the immigration laws; and to facilitate the administration of justice and elevate the

[1] No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund the preparation or submission of this brief. No person, other than *amici* and their counsel, contributed money that was intended to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E). Petitioner consents and the Government does not object to the filing of this brief.

standard of integrity, honor, and courtesy of those appearing in a representative capacity in immigration and naturalization matters. The questions under consideration in this appeal regarding the proper interpretation of the particular social group ("PSG") ground for asylum implicate issues central to AILA's core interest and expertise. AILA's members regularly practice before federal appellate courts, including this Court, and have practiced before the U.S. Supreme Court regarding legal interpretations of domestic asylum law.

The Center for Gender & Refugee Studies ("CGRS") has a direct interest and extensive expertise in the proper development of refugee and asylum law, including with regard to gender-based claims. CGRS advances the human rights of refugees through litigation, scholarship, and policy recommendations. It also provides technical assistance to attorneys representing asylum seekers nationwide, reaching over 8,000 unique asylum cases at all levels of the immigration and federal court system in the past year alone. A significant number of those cases involved persecution based on membership in a particular social group, including cases of survivors of domestic violence. The questions presented in this petition for review relate directly to CGRS's core mission to ensure that asylum protections under U.S. law comport with international obligations.

INTRODUCTION

For over forty years, the Board of Immigration Appeals and courts of appeals have consistently reaffirmed that societies around the world recognize women in a country as a cognizable particular social group. Indeed, gender (or sex) was one of the first characteristics recognized by the Board as a basis for a social group.[2] Although the test for cognizability of social groups has changed over time, the Board and courts have continued to recognize groups defined by gender. Here, the Board misconstrued the test for cognizability and erroneously relied on *Matter of K-E-S-G-*, 29 I&N Dec. 145 (BIA 2025), to categorically reject social groups defined by gender. In so doing, the Board departed from this Court's precedent, its own decisions, Congressional intent, and international law interpretations.

The Board's decision directly contravenes what courts have long recognized both nationally and internationally: The Refugee Convention and its 1967 Protocol, which the United States signed, ratified, and incorporated into U.S. law, provides

[2] Executive Order 14,168 instructs agencies to refer to "sex" only, rather than the term "gender." 90 Fed. Reg. 8615 (Jan. 20, 2025). However, *Amici* submit that sex and gender are distinct, although overlapping, concepts. Broadly speaking, "sex" refers to classification (male, female, intersex) based on reproductive organs and function. "Gender" refers to individuals' self-representation and presentation, which may but does not necessarily correspond to their biological sex, and which includes how they interact with and are perceived by social and cultural institutions. Carolyn M. Mazure, *What Do We Mean By Sex and Gender?* Yale Sch. of Med. (Sep. 19, 2021), https://medicine.yale.edu/news-article/what-do-we-mean-by-sex-and-gender/.

protection to survivors of gender-based violence.[3] This Court should reject the Board's deeply flawed interpretation of social group, recognize the cognizability of the proffered gender-based social groups, and remand for further proceedings.

ARGUMENT

I. PARTICULAR SOCIAL GROUPS DEFINED BY GENDER ARE COGNIZABLE UNDER THIS COURT AND BOARD PRECEDENT.

The Board ignored entirely this Court's precedent in *De Pena Paniagua v. Barr* regarding the validity of gender-based social groups and flouted the long-standing recognition that asylum claims require case-by-case consideration in light of the record presented. *De Pena-Paniagua v. Barr*, 957 F.3d 88, 95–98 (1st Cir. 2020). The Board improperly rejected Ms. Gutierrez Flores's proffered group of "Salvadoran women" with a one-sentence assertion, relying on *K-E-S-G-* to categorically foreclose the group without any analysis. A.R. 4.[4] The Board further misinterpreted the immutability requirement when analyzing the validity of the proffered group of single Salvadoran women. *Id.* This Court should thus vacate the Board's decision and recognize the cognizability of the proffered gender-based social groups.

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[3] *See* Protocol Relating to the Status of Refugees, adopted Jan. 31, 1967, entered into force Oct. 4, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267, art. 1(2); Convention Relating to the Status of Refugees, adopted July 28, 1951, entered into force Apr. 22, 1954, 189 U.N.T.S. 137, art. 1(A)(2).

[4] All references to the A.R. are to the Certified Administrative Record.

A. A Particular Social Group Defined by Gender Plus Nationality is Consistent with Court and Board Precedent.

The Board and courts, including this one, have long recognized that gender alone or gender-plus-nationality is sufficient to establish a cognizable particular social group. *See Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985); *De Pena-Paniagua*, 957 F.3d at 95–98. In *Acosta*, the Board interpreted particular social group to refer to "a group of persons all of whom share a common, immutable characteristic" and identified "sex" as a quintessential shared characteristic. 19 I&N Dec. at 233. The Board has since imposed two additional requirements: particularity and social distinction. *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014) (setting forth the three-part test). Applying the Board's three-part test for cognizability, this Court has emphasized that social groups based on gender or gender-plus-nationality are likely cognizable. *See De Pena-Paniagua*, 957 F.3d at 95–98. Indeed, as this Court noted in *De Pena-Paniagua*, it is "difficult to think of a country in which women do not form a 'particular' and 'well-defined' group." *Id.* at 96. The Board's unreasoned assertion to the contrary stands in direct conflict with this Court's precedent and Board decisions.[5]

[5] Ms. Gutierrez Flores's proffered gender-based social groups satisfy the Board's three-part test for cognizability set forth in *M-E-V-G-*, 26 I&N at 237. But even before *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), courts rejected that test in whole or in part and specifically criticized the Board's imposition of

1. The group is "immutable."

A gender-plus-nationality social group of "Salvadoran women" meets the requirement of immutability. As the Board in *Acosta* explained, immutability is "a characteristic that either is beyond the power of an individual to change or is so fundamental to individual identity or conscience that it ought not be required to be changed." 19 I&N Dec. at 233. In *Acosta*, the Board applied the *ejusdem generis* canon of statutory interpretation, which counsels that "general words used in an

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additional requirements beyond immutability. *See, e.g.*, *Amaya v. Rosen*, 986 F.3d 424, 432 (4th Cir. 2021) (rejecting the Board's description of particularity in *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014) as unreasonable); *Gatimi v. Holder*, 578 F.3d 611, 615–17 (7th Cir. 2009) (rejecting social visibility because "it makes no sense"); *W.G.A. v. Sessions*, 900 F.3d 957, 964 n.4 (7th Cir. 2018) (recognizing that petitioner's argument that "social distinction and particularity create a conceptual trap that is difficult, if not impossible, to navigate" has "some force"); *Cece v. Holder*, 733 F.3d 662, 668 n.1, 669, 674 (7th Cir. 2013) (en banc) (deferring to *Acosta* but refusing to apply the particularity requirement because "breadth of category has never been a per se bar to protected status"); *Cantarero-Lagos v. Barr*, 924 F.3d 145, 154 (5th Cir. 2019) (Dennis, J., concurring) (criticizing the "ever-changing" "requirements" of the BIA's particular social group jurisprudence). Post-*Loper Bright*, the Board's three-part *M-E-V-G-* test can no longer receive deference. *See* 603 U.S. at 413 (explaining that courts "may not defer to an agency interpretation of the law simply because a statute is ambiguous"). Rather, this Court must exercise its "independent judgment," *id.*, to interpret the meaning of particular social group. *Amici* do not concede that the Board's three-part test—which is inconsistent with its own precedent and the history and purpose of the Refugee Act—represents a reasonable interpretation, much less the best interpretation, of the statute, *see id*. However, because the validity of the three-part test is not before this Court, *amici* focus on the flaws in *K-E-S-G-*'s application of particularity. Whether the Court evaluates the Board's reasoning under the *M-E-V-G-* test or under the statutory text, the Board's denial of "Salvadoran women" as a cognizable group defies logic.

enumeration with specific words should be construed in a manner consistent with the specific words," to conclude that "particular social group" should be read to encompass "a group of persons all of whom share a common, immutable characteristic." *Id*. The Board concluded that, "[o]nly when this is the case does the mere fact of group membership become something comparable to the other four grounds of persecution under the Act." *Id.* The Board then recognized "*sex*, color, or kinship ties" as "shared characteristic[s]" that can establish cognizable groups. *Id.* (emphasis added).

This Court has adopted *Acosta*'s framework and repeatedly recognized gender or sex as an immutable characteristic. *See, e.g.*, *De Pena-Paniagua*, 957 F.3d at 95 (quoting *Acosta* and pointing to the Board's recognition "that a particular social group is indeed a group of 'persons all of whom share a common, immutable characteristic,' including 'sex'"); *Mayorga-Vidal v. Holder*, 675 F.3d 9, 14 (1st Cir. 2012) (listing "sex" as an "immutable characteristic . . . akin to the other four protected grounds—race, religion, nationality, and political opinion"); *Ahmed v. Holder*, 611 F.3d 90, 96 (1st Cir. 2010) (noting that "gender—a common, immutable characteristic—can be a component of a viable 'social group' definition"); *Scatambuli v. Holder*, 558 F.3d 53, 58 n.2 (1st Cir. 2009) (recognizing this Court's adoption of "the 'immutable or fundamental' characteristic test set forth in *Acosta*").

Additionally, nationality is one of the five protected grounds under the statutory definition of "refugee," 8 U.S.C. § 1101(a)(42)(A), and therefore by definition an immutable characteristic. *Acosta*, 19 I&N Dec. at 233. Thus, under *Acosta*'s framework, both nationality and gender are immutable characteristics. *Id.*

2. The group is "particular."

Gender-plus-nationality social groups satisfy the particularity requirement articulated by the Board in *M-E-V-G-*. 26 I&N Dec. at 237. "Particularity" requires that proffered social groups must "be discrete," have "definable boundaries," and not be "amorphous, overbroad, diffuse or subjective." *Id.* at 239. This Court has explicitly recognized that gender-plus-nationality social groups can be particular, emphasizing that it has "never held—or even said—that 'women' as a descriptor of a group lacked particularity." *De Pena-Paniagua*, 957 F.3d at 97. The Board in the instant case, however, rejected Ms. Gutierrez Flores's proposed PSG without *any* reference to this Court's precedent in *De Pena-Paniagua*, relying on *K-E-S-G-* to categorically foreclose gender-plus-nationality groups as insufficiently particular. A.R. 4.

Where, as here, the Board fails to engage in the requisite case-by-case analysis and provide a reasoned decision, remand is required. *See López-Gómez v. Bondi*, 154 F.4th 1, 4 (1st Cir. 2025) ("If 'the BIA's explanation is too thin to allow us to evaluate the claims of error, we may find an abuse of discretion and remand to the

BIA for further explanation.'" (citation omitted)); *see also Ferreira v. Garland*, 97 F.4th 36, 53 (1st Cir. 2024) (remanding where Board had "not had an opportunity to pass on the proper formulation of Ferreira's PSG," emphasizing "record-dependent nature of the inquiry" and instructing Board to "carefully consider Ferreira's gender-based PSG in light of" precedent including *De Pena-Paniagua*).

Here, the record reflects that the Salvadoran government makes official determinations "that provide a clear benchmark for determining who falls within the group," *M-E-V-G-*, 26 I&N Dec. at 239—in this case, of who is a woman and who is not. *See* A.R. 467 (certified translation and original copy of Ms. Gutierrez Flores's Salvadoran passport noting her gender and nationality). Moreover, the "terms used to describe the group" certainly have "commonly accepted definitions." *See M-E-V-G-*, 26 I&N Dec. at 239; *see also Woman*, *Merriam-Webster Online*, https://www.merriam-webster.com/dictionary/woman (last visited Feb. 20, 2026) (defining "woman" as "an adult female person"). Under both the precedent of this Court and the Board, the group thus satisfies the particularity requirement. *See De Pena-Paniagua*, 957 F.3d at 97; *M-E-V-G-*, 26 I&N Dec. at 239.

The Board errs in relying on *K-E-S-G-*'s holding as requiring rejection of Ms. Gutierrez Flores's gender-plus-nationality group as "overbroad." A.R. 4. *K-E-S-G-* misapprehends the meaning of "overbroad" as set forth in Board precedent; "overbroad" does not refer to the size or makeup of the group, but rather the terms

used to define the group. *See, e.g.*, *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007) (rejecting "wealthy" as too amorphous to be a particular term since "[d]epending upon one's perspective, the wealthy may be limited to the very top echelon; but a more expansive view might include small business owners"). In *M-E-V-G-*, the Board offered "overbroad" as the opposite of "discrete" and "definable boundaries." 26 I&N Dec. at 239; *see Discrete*, *Webster's Third New International Dictionary* (1993) ("[P]ossessed of definite identity or individuality."). The other adjectives the Board listed alongside "overbroad" in *M-E-V-G-*—"amorphous," "diffuse," and "subjective"—likewise focused on the precision of the group's boundaries. 26 I&N Dec. at 239.

Contrary to the Board's unreasoned assertions in *K-E-S-G-* and in the instant case, gender is not "broad to the point of indeterminacy." *See Perez-Rabanales v. Sessions*, 881 F.3d 61, 66 (1st Cir. 2018). As official Salvadoran and U.S. documents demonstrate, gender is a group with discrete and definable boundaries, *see* A.R. 467, 197 (I-589 form denoting applicant's gender), that satisfies the particularity requirement. Indeed, this Court has directly rejected the notion that a social group can be too large to be particular when its members share common "underlying immutable characteristic[s]," such as gender and nationality. *De Pena-Paniagua*, 957 F.3d at 97 (recognizing "Dominican Women" as potentially cognizable); *see also Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010) (rejecting Board's

finding that "women in Guatemala" was overbroad and argument that groups can be "too large" to be cognizable); *W.G.A. v. Sessions*, 900 F.3d 957, 964 n.4 (7th Cir. 2018) ("rejecting a social group because it is too broad 'would be akin to saying that the victims of widespread governmental ethnic cleansing cannot receive asylum simply because there are too many of them'" (citations omitted)); —, (Tucson Immigr. Ct. Sept. 24, 2025) (unpublished) (recognizing "— women" as a cognizable particular social group, rejecting *K-E-S-G-* in favor of Ninth Circuit precedent), Add. 1–24.[6] In *De Pena-Paniagua*, this Court emphasized that "it is not clear why a large group defined as 'women,' or 'women in country X'—without reference to additional limiting terms—fails either the 'particularity' or 'social distinction' requirement." 957 F.3d at 96.

Furthermore, the Board's assertion in *K-E-S-G-* that gender-and-nationality groups lack particularity because they "contain no narrowing features such as a specific age range" and "encompass a diverse cross section of society," 29 I&N Dec. at 151, conflicts with precedent both from this Court and the Board itself. *Compare id.*, *with Matter of C-A-*, 23 I&N Dec. 951, 956–57 (BIA 2006) (particularity does "not require an element of 'cohesiveness' or homogeneity among group members"); *see De Pena-Paniagua*, 957 F.3d at 95–98. This Court has repeatedly addressed the potential cognizability of social groups that encompass people of varied ages, sexes,

[6] Unpublished decisions are included in the Addendum ("Add."), attached hereto.

marital statuses, and family backgrounds. *Kadri v. Mukasey*, 543 F.3d 16, 21 (1st Cir. 2008) (sexual orientation); *Mendoza v. Bondi*, 133 F.4th 139, 143 (1st Cir. 2025) ("victims of gangs who give statements to police in pending criminal proceedings"); *Espinoza-Ochoa v. Garland*, 89 F.4th 222, 234 (1st Cir. 2023) ("landowning farmers").

K-E-S-G-'s change in focus from definable boundaries to homogeneity cannot be squared with this Court's law or Board decisions explaining that particularity is defined by "a clear benchmark for determining who falls within the group." *M-E-V-G-*, 26 I&N Dec. at 239; *De Pena Paniagua*, 957 F.3d at 97 (explaining that "large" social groups may be particular including when "defined with reference to an underlying immutable characteristic").

To the extent that the Board interprets *K-E-S-G-* as a categorical ruling on gender-plus-nationality groups, that reasoning conflicts with the Board and this Court's repeated recognition that cognizability is a "fact-based inquiry" that must be conducted on a case-by-case basis. *See, e.g.*, *Acosta*, 19 I&N Dec. at 233; *Espinoza-Ochoa*, 89 F.4th at 232. This Court should thus reject the Board's interpretation of particular social group in *K-E-S-G-* and Ms. Gutierrez Flores's case.

3. The group is "socially distinct."[7]

To establish social distinction, the Board has held that an asylum applicant must show that "society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group." *Matter of W-G-R-*, 26 I&N Dec. 208, 217 (BIA 2014); *M-E-V-G-*, 26 I&N Dec. at 241 (referring to "social distinction" as "an external perception . . . within a given society"); *see also Vega-Ayala v. Lynch*, 833 F.3d 34, 39 (1st Cir. 2016) (noting that social distinction, within the Board's three-part test for cognizability, requires that members of the group be "set apart, or distinct, from other persons within the society in some significant way"). As this Court emphasized in *De Pena-Paniagua*, "it is not clear why" gender would *not* satisfy the social distinction requirement. *De Pena-Paniagua*, 957 F.3d at 96 ("[I]t is difficult to think of a country in which women are not viewed as 'distinct' from other members of society. In some countries, gender serves as a principal, basic differentiation for assigning social and political status and rights[.]").

Country conditions evidence demonstrates that gender in El Salvador is a "principal, basic differentiation for assigning social and political status." *Id.*

[7] Neither the Board nor the IJ made an express finding on social distinction, and that issue is therefore not squarely before this Court. *See SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947) (a reviewing court must judge the propriety of agency action solely on the grounds invoked by the agency). This discussion is offered only to demonstrate that, should the Court conclude that remand is appropriate, the record contains substantial evidence supporting the clear viability of the proposed group under the Board's *M-E-V-G-* framework.

Violence against women in El Salvador is driven by a "culture of violence . . . rooted in patriarchy [that] encourages violence against women and girls in particular." A.R. 320. In recognition of the distinct status of women, "femicide," defined as "killing motivated by hatred or contempt for women," is officially criminalized in El Salvador. A.R. 273. Nonetheless, gender-based violence remains "widespread," given ineffective enforcement of laws. A.R. 483; *see also* A.R. 484 (describing attitudes of police and authorities toward women); A.R. 400, 547 (describing high rates of femicide); A.R. 313 (explaining how violence against women in El Salvador differs from that against men, including significantly higher rates of "intrafamilial, sexual, or economic violence"). Both the criminalization of femicide and instances of widespread violence against women demonstrate the group's social distinction. *See Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013) (en banc) (holding that legislation addressing a group constitutes "evidence that a society recognizes a particular class of individuals"); *Guzman Orellana v. Att'y Gen.*, 956 F.3d 171, 179–80 (3d Cir. 2020) (referring to Guatemala witness protection law as evidence of social distinction). Remand is therefore appropriate.

B. Recognition of a Particular Social Group of "Single Salvadoran Women" is Consistent with Court and Board Precedent.

Contrary to the Board's reasoning, A.R. 4, the PSG of "single Salvadoran women" satisfies the immutability requirement. Marital status is a characteristic "so fundamental to [identity or conscience] that it ought not be required to be changed."

See Acosta, 19 I&N Dec. at 233; *see also De Pena-Paniagua*, 957 F.3d at 95 ("This circuit has adopted [*Acosta*'s immutability] formulation, recognizing sex as an immutable characteristic"). In this case, Ms. Gutierrez Flores's proposed social group includes three limiting terms ("Salvadoran," "women," "single"), each of which have "commonly accepted definitions in the society of which the group is a part." *W-G-R-*, 26 I&N Dec. at 214; *see* Const. Rep. El Salv. art. 32.[8] As this Court has repeatedly recognized, determining "'particular social group' status is a country-specific inquiry that involves underlying fact finding." *Mayorga-Vidal*, 675 F.3d at 15 (citations omitted). Yet, the Board engaged in no such analysis, summarily rejecting the group based on a faulty assertion that the group lacks immutability because it "is not limited to the subset of women who are single on principle." A.R. 4. The Board appears to suggest that, without such a principle, the characteristic is not immutable because Ms. Gutierrez Flores could decide to change her status in the future. However, the common, immutability characteristic framework imposes no such requirement. *See De Pena-Paniagua*, 957 F.3d at 95.

The Board's reasoning in Ms. Gutierrez Flores's case, if allowed to stand, would effectively redefine immutability by suggesting that a characteristic loses that status simply because it could, in theory, be changed. Religion and political opinion

[8] https://www.constituteproject.org/constitution/El_Salvador_2014 (last visited Feb. 20, 2026) (recognizing that "the family is the fundamental basis of society . . . [and] the legal foundation of the family is marriage").

are paradigmatic protected grounds defined by common immutable characteristics, *see Acosta*, 19 I&N Dec. at 233, yet both are capable of alteration; a person can convert faiths or renounce political beliefs. As the Seventh Circuit explained in *Cece v. Holder*, even characteristics that "might seem plausibly alterable" remain protected where they are "fundamental to [an individual's] identit[y]." 733 F.3d 662, 679 (7th Cir. 2013) (citation omitted).

Courts have repeatedly recognized the potential cognizability of a PSG comprised of gender and relationship status. *See, e.g.*, *Guzman-Alvarez v. Sessions*, 701 F.App'x 54, 56 (2d Cir. 2017) (recognizing the potential immutability of marital status, according to "fact-specific, case-by-case inquiry"); *Turcios-Flores v. Garland*, 67 F.4th 347, 356–57 (6th Cir. 2023) (assuming immutability and recognizing social distinction of "single mothers living without male protection"); *Alvarez Lagos v. Barr*, 927 F.3d 236, 255 (4th Cir. 2019) (remanding for consideration of "unmarried mothers living under the control of gangs in Honduras").

Additionally, the Board has recognized that maintaining certain characteristics related to bodily autonomy may be "so fundamental to the individual identity of a young woman that she should not be required to change it." *Matter of Kasinga*, 21 I&N Dec. 357, 366 (BIA 1996) (discussing the immutability of the characteristic of having intact genitalia). Marital status is similarly a characteristic

related to bodily autonomy that Salvadoran women ought not be required to change to avoid persecution.

The PSG of "single Salvadoran women" also meets the particularity and social distinction requirements in accordance with this Court's and Board precedent. *See Perez-Rabanales*, 881 F.3d at 66; *De Pena-Paniagua*, 957 F.3d at 96–97. The addition of "single" does not alter the conclusion that the PSG has discrete, definable boundaries. *See M-E-V-G-*, 26 I&N Dec. at 239. The Salvadoran government makes official determinations regarding marital status based on clear legal standards of who is single and who is not. For example, the Salvadoran identification card includes marital status. *See* DUI en el exterior*, DUICentro*, https://dui.sv/exterior/ (last visited Feb. 20, 2026) (describing requirement of adding marital status to the Salvadoran identification card).

Marital status meets this Court's test of whether, "if the common, immutable characteristic were known, those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it." *Perez-Rabanales*, 881 F.3d at 61 (citation modified). The record highlights El Salvador's culture of machismo and a consistent failure on the part of law enforcement to protect single women from these offenses, which contribute significantly to the social distinctiveness of the group. A.R. 301, 323, 330, 390 (finding the patriarchal and machismo culture in El Salvador encourages violence against women and girls).

Salvadoran law also grants married people different rights than single individuals in both inheritance and property, further demonstrating that the society views single individuals as a distinct group. *See, e.g.*, Cámara de Segunda Instancia, *Derecho de Representación Sucesoria*, Corte Suprema de Justicia (El Salvador);[9] Consejo Nacional de la Judicatura, *Código de Familia y Ley Procesal de Familia 2025*.[10]

II. MULTIPLE COURTS HAVE RECOGNIZED GENDER-BASED SOCIAL GROUPS AS COGNIZABLE.

Recognition of gender-plus-nationality as a cognizable social group is consistent with decisions by sister circuits. In *Perdomo v. Holder*, the Ninth Circuit found a PSG of "women in Guatemala" could be cognizable, reasoning that "the size and breadth of a group alone does not preclude [it] from qualifying." 611 F.3d at 668–69. Similarly, in *Mohammed v. Gonzales*, the Ninth Circuit concluded that "the recognition that girls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group is simply a logical

[9] https://www.jurisprudencia.gob.sv/busqueda/showExtractos.php?bd=1&nota=1072859&doc=1069363&singlePage=false (last visited Feb. 17, 2026) (inheritance).

[10] https://www.cnj.gob.sv/images/documentos/pdf/ecj/publicaciones/C%C3%93DIGO%20DE%20FAMILIA%20Y%20LEY%20PROCESAL%20DE%20FAMILIA%202025.pdf (last visited Feb. 17, 2026) (affording de facto unions fewer legal rights than married couples and recognizing certain property only for married individuals).

application of our law." 400 F.3d 785, 797 (9th Cir. 2005) (recognizing that a "group comprised of Somalian females" could be cognizable).

The Eighth and Tenth Circuits have also recognized that gender-plus-nationality or gender-plus-tribal membership may constitute a cognizable PSG. In *Hassan v. Gonzales*, the Eighth Circuit recognized the cognizability of "Somali females." 484 F.3d 513, 518 (8th Cir. 2007); *see also Ngengwe v. Mukasey*, 543 F.3d 1029, 1033–34 (8th Cir. 2008) (holding that "Cameroonian widows" is a cognizable group); *Niang v. Gonzales*, 422 F.3d 1187, 1199 (10th Cir. 2005) (finding "female members of a tribe" satisfied the social group requirements). The Second and Seventh Circuits have similarly recognized the potential cognizability of gender-based social groups. *See Paloka v. Holder*, 762 F.3d 191, 192–93 (2d Cir. 2014) (recognizing the potential cognizability of "young Albanian women"); *Cece*, 733 F.3d at 667–68 (recognizing cognizability of "young women who are targeted for prostitution by traffickers in Albania").

Additionally, nearly three decades ago, then-Judge Alito concluded that "to the extent that the petitioner in this case suggests that she would be persecuted . . . simply because she is a woman, she has [identified a cognizable social group]." *Fatin v. INS*, 12 F.3d 1233, 1239–40 (3d Cir. 1993) (relying on *Acosta*, 19 I&N Dec. at 233); *see also Estrada-Grajeda v. Att'y Gen.*, 731 F. App'x. 123, 126 (3d Cir. 2018)

(affirming *Acosta*).[11] *See also* Memorandum from Phyllis Coven, INS Office of International Affairs, *Considerations For Asylum Officers Adjudicating Asylum Claims From Women* 14 (May 26, 1995), *available at* http://www.unhcr.org/refworld/docid/3ae6b31e7.html [hereinafter 1995 U.S. Gender Guidelines] (recognizing "sex" could be the shared characteristic that defines a cognizable group); *Kasinga*, 21 I&N Dec. at 377 (Rosenberg, concurring) ("Our recognition of a particular social group based upon tribal affiliation and gender is . . . in harmony with the [1995 U.S. Gender Guidelines][.]").

Importantly, recognizing that gender or gender-plus-nationality may define a PSG does not entitle women around the globe to protection. As with cases based on any other protected ground (such as race or religion), an applicant must demonstrate that she meets all elements of the refugee definition. *See* 8 U.S.C. § 1101(a)(42).

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[11] *Cf. Chavez-Chilel v. Att'y Gen.*, 20 F.4th 138, 146 (3d Cir. 2021) (quoting *Safaie v. I.N.S.*, 25 F.3d 636, 640 (8th Cir. 1994)) (rejecting "Guatemalan women" as not cognizable because not all Guatemalan women have "a well-founded fear of persecution based solely on their gender"). That conclusion erroneously conflates two separate elements of the refugee definition—cognizability and well-founded fear. In any event, evaluation of a particular social group must be conducted on a case-by-case basis. *Compare Jaco v. Garland*, 24 F.4th 395, 402, 407 (5th Cir. 2021) (rejecting "Honduran women unable to leave their domestic relationships" but recognizing that "women who have suffered from domestic violence are [not] categorically precluded from membership in a particular social group") *with* —, (New Orleans Immigr. Ct., May 6, 2022) (unpublished) (recognizing gender *per se* as a cognizable social group post-*Jaco*), Add. 25–42; *see also* D-M-R-, AXXX XXX 278 (BIA Nov. 15, 2024) (unpublished), Add. 43–46 (remanding PSG of Honduran women for further fact-finding and consideration post-*Jaco*).

The other elements of the refugee definition, including the requirement that an applicant demonstrate persecution on account of a protected ground, play an important limiting role in gender-based claims. *See Niang*, 422 F.3d at 1199–200 ("[T]he focus with respect to [gender-based asylum] claims should be not on whether either gender constitutes a social group (which both certainly do) but on whether the members of that group are sufficiently likely to be persecuted . . . 'on account of' their membership."). The Board's decision, which flouts longstanding recognition of gender-based groups, is not faithful to statutory text and thus requires no deference.

III. CONGRESSIONAL INTENT AND INTERNATIONAL LAW SUPPORT RECOGNITION OF GENDER-DEFINED SOCIAL GROUPS.

Post-*Loper Bright*, this Court should determine the "best reading" of particular social group, 603 U.S. at 400, in light of the Refugee Act's history and purpose. *Almendarez-Torres v. United States*, 523 U.S. 224, 228 (1998) (describing "factors that typically help courts determine a statute's objectives and thereby illuminate its text," including "the statute's language, structure, subject matter, context, and history"); *see also La Casa Del Convaleciente v. Sullivan*, 965 F.2d 1175, 1180 (1st Cir. 1992) (explaining that where statutory language is ambiguous, courts "look to the legislative history to determine congressional intent").

One of Congress' primary purposes in passing the Refugee Act of 1980 was "to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees," which the United States signed and ratified. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436 (1987). The meaning of particular social group in the Refugee Convention, which the 1967 Protocol incorporates, is therefore directly relevant, given that "the definition of 'refugee' that Congress adopted [in the 1980 Refugee Act] . . . is virtually identical to the one" in the Convention. *Cardoza-Fonseca*, 480 U.S. at 437; H.R. Rep. No. 96-781, at 20 (1980) (Conf. Rep.) (explaining that the provision was adopted with the "understanding that it is based directly upon the language of the Protocol and it is intended that the provision be construed consistently with the Protocol"); *see also Murray v. Schooner Charming Betsy, The*, 6 U.S. 64, 118 (1804) ("[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.").

It is well-established that the United Nations High Commissioner for Refugees ("UNHCR") provides "significant guidance [to U.S. courts] in construing the Protocol[.]" *Cardoza-Fonseca*, 480 U.S. at 439 n.22. That guidance reaffirms that gender may establish a cognizable group. *See* UNHCR, Guidelines on International Protection: Gender Related Persecution, U.N. Doc. HCR/GIP/02/01 (May 7, 2002) (adopting *Acosta* and recognizing women as "a clear example" of a

social group). In its 2002 guidelines on gender-related persecution, UNHCR in part mirrored the Board's analysis in *Acosta*, explaining that "sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics." *Id.* ¶¶30–31 (explaining that rejecting women as a particular social group because of size "has no basis in fact or reason, as the other grounds are not bound by this question of size"); UNHCR, Guidelines on International Protection: "Membership of a particular social group," U.N. Doc. HCR/GIP/02/02 ¶15 (May 7, 2002) (recognizing "women may constitute a particular social group . . . based on the common characteristic of sex"); *see also* UNHCR Executive Committee, Conclusion 39 (XXXVI): Refugee Women and International Protection (1985) (recognizing that women may seek asylum based on social group membership).

Other signatories to the Refugee Convention and its 1967 Protocol have also long recognized that gender may define a social group. This jurisprudence of other States Parties is directly relevant to determining the best reading of the statute. *See Roper v. Simmons*, 543 U.S. 551, 578 (2005) ("The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions."); *see also Negusie v. Holder*, 555 U.S. 511, 537 (2009) (Stevens, J., concurring in part, dissenting in part) ("When we interpret treaties, we consider the interpretations of the courts of other nations[.]").

The Supreme Court of Canada, for example, has recognized that a PSG "would embrace individuals fearing persecution on such bases as gender[.]" *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 (Can., S.C.C.) (relying on *Acosta*); *see also Josile v. Canada (Minister of Citizenship & Immigration)*, [2011] 382 FTR 188 (Can. FC, Jan. 17, 2011), at [10], [28]-[30] ("Haitian women"); *Kn v. Canada (Minister of Citizenship & Immigration)*, [2011] 391 FTR 108 (Can. FC, June 13, 2011), at [30] ("women in the [DRC]").

Tribunals in New Zealand and Australia have concluded that "it is indisputable that sex and gender can be the defining characteristic of a social group, and that 'women' may be a [PSG]." *Refugee Appeal No. 76044* [2008] NZRSAA 719 at [92] (N.Z.); *accord Minister for Immigr. & Multicultural Affairs v. Khawar* [2002] HCA 14 at [32] (Austl.) (recognizing "women in Pakistan").

The United Kingdom House of Lords has similarly recognized "women in Pakistan" as a social group, observing that its conclusion was "neither novel nor heterodox," but "simply a logical application of the seminal reasoning in *Acosta.*" *Islam v. Sec'y of State for the Home Dep't*, [1999] 2 AC 629, 644-45 (U.K.); s*ee Fornah (FC) v. Sec'y of State for Home Dep't*, [2006] UKHL 46, para. 31 (Lord Cornhill) (identifying "women in Sierra Leone" as a viable PSG); *see also* Immigration Appellate Authority of the United Kingdom, *Asylum Gender*

Guidelines 41 (Nov. 2000) (offering "gender" as an example of a social group characteristic).

The European Court of Justice and numerous European countries have also affirmed that fear of persecution because of sex falls squarely within the ambit of the refugee definition. *See* Joined Cases C-608/22, C-609/22, AH & FN v. Bundesamt für Fremdenwesen und Asyl, ECLI:EU:C:2024:828, ¶46 (Oct. 4, 2024) (recognizing Afghan women as eligible for protection based on gender-plus-nationality); *see also* Guy S. Goodwin-Gill & Jane McAdam, *The Refugee in International Law* 110 (4th ed. 2021) (noting that the EU's Recast Qualification Directive requires consideration of gender when identifying PSGs and describing the evolving interpretation of gender-based claims internationally); James C. Hathaway & Michelle Foster, *The Law of Refugee Status* 437–38 (2d ed. 2014) (citing *E1-248.714/2008 v. Federal Asylum Authority* (Au. AGH [Austrian High Court for Asylum], Jan. 31, 2011) (finding that women constitute a PSG)); *STS 4013/2011* (Sp. TS [Spanish Supreme Court], June 15, 2011) (recognizing that Algerian women fleeing domestic violence constitute a PSG); *5 K 1181/10.TR* (Ger. VG Trier [German Administrative Court, Trier], Mar. 23, 2011) (recognizing social group of "women")). The Board's decision is thus wholly inconsistent with decades of UNHCR guidance and peer state jurisprudence and requires no deference.

IV. *K-E-S-G-*'S ATTEMPT TO CATEGORICALLY REJECT GENDER-DEFINED GROUPS CANNOT STAND

K-E-S-G-'s general statement that a "particular social group defined by the [noncitizen's] sex or sex and nationality, standing alone, is overbroad and insufficiently particular to be cognizable" appears intended to create a categorical rule that groups defined as "sex" or "sex-and-nationality" automatically fail. 29 I&N Dec. at 151; *Matter of L-A-L-T-*, 29 I&N Dec. 269, 274–75 (BIA 2025) (stating that *K-E-S-G-*'s rejection of gender groups should be read categorically).[12] Such a categorical rule against gender-based groups conflicts with the Board's own instruction that social groups are not to be assessed "in isolation, but rather in the context of the society out of which the claim for asylum arises." *See M-E-V-G-*, 26 I&N Dec. at 238.

This Court has emphasized that "[a] review of a PSG for legal validity must be based on a substantive analysis, not a superficial 'quick look.'" *Espinoza-Ochoa*, 89 F.4th at 233. Because the substantive analysis of particular social group necessarily requires examination of the record, the Board may not categorically reject a group based solely on its similarity to groups rejected in other cases. *M-E-*

[12] While the government may point to language in *K-E-S-G-* paying lip service to the idea that different gender-based groups might be analyzed differently, *see* 29 I&N Dec. at 151 n.8, *L-A-L-T-* belies that reading. The opinion in *L-A-L-T-* makes it plain that, as far as the BIA is concerned, *K-E-S-G-* articulated a categorical rule barring gender-based groups.

V-G-, 26 I&N Dec. at 251. An applicant who can marshal significant evidence of the particularity (and social distinction) of her group should not be foreclosed from presenting her claim because a different applicant, with a different record, preceded her.

Regardless of whether this Court agrees that *K-E-S-G-*'s particularity analysis is flawed, it should at least clarify that the decision cannot be read to create a categorical rule against gender-defined social groups. *See Acosta*, 19 I&N Dec. at 233; *see Espinoza-Ochoa*, 89 F.4th at 232 (finding that "a social group determination must be made on a case-by-case basis" (citation modified)); *Akinsaya v. Garland*, 125 F.4th 287, 295 (1st Cir. 2025) (rejecting BIA interpretation that conflicted with First Circuit precedent).

CONCLUSION

In sum, the Board committed legal error in its analysis of the proffered particular social groups. This Court should reverse the Board and remand for proper consideration under appropriate and established legal standards.

DATED: February 20, 2026

Respectfully submitted,

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DATED: February 20, 2026

/s/ Sabrineh Ardalan
Sabrineh Ardalan (Bar No. 1161668)
Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2026, I electronically filed the foregoing *Amici Curiae* Brief and all attachments, with the Clerk of the Court for the U.S. Court of Appeals for the First Circuit by using the appellate CM/ECF system. I also certify that the counsel of record for Petitioner and Respondent in this case are both registered CM/ECF users and will therefore be served by the appellate CM/ECF system.

DATED: February 20, 2026

/s/ Sabrineh Ardalan
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Attorney for Amici Curiae

ADDENDUM OF UNPUBLISHED CASES

Add. I

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
TUCSON, ARIZONA

Matters of	Date:
[redacted] **(Lead)**	File Numbers: [redacted]
[redacted] **(Rider)**	[redacted]
Respondents	In Removal Proceedings

Charge: Section 212(a)(7)(A)(i)(I): Not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document at the time of application for admission.

Applications: Asylum, Withholding of Removal, and Protection Under the Convention Against Torture (CAT)

On Behalf of Respondent:
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Goldman & Goldman PC
1575 West Ina Road
Tucson, Arizona 85704

On Behalf of the Department:
Alex Mason, Assistant Chief Counsel
Department of Homeland Security
6431 South Country Club Road
Tucson, Arizona 85706

DECISION OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

On October 22, 2023, Lead Respondent [redacted] (Respondent) applied for admission at the port of entry in [redacted]. Ex. 1A at 1;[1] Ex. 2A at 2; Ex. 10, Tab D-1 at 17; Ex. 14, Tab A at 4–6. Respondent did not possess valid entry documents. Ex. 1A at 1. Subsequently, on October 23, 2023, the Department of Homeland Security (Department) initiated removal proceedings by filing a Notice to Appear (NTA) with the [redacted] Court.[2] *See id.* The NTA alleges that Respondent: (1) is not a citizen or national of the United States; (2) is a native and citizen of [redacted]; (3) applied for admission to the United States at the [redacted] Port of Entry on October 22,

[1] The record of these proceedings is maintained in electronic format through the EOIR Courts and Appeals System. Throughout this decision, the Court will identify specific pages of admitted evidence by citing to the pagination generated when a filing is uploaded to the Electronic Record of Proceedings, which is the official record of these proceedings. *See* 8 C.F.R. §§ 1001.1(cc), 1003.31 (2025).

[2] On March 28, 2025, the [redacted] Court transferred venue of this matter to the Tucson Immigration Court. *See* Ex. 4 at 3.

[redacted]

2023; (4) did not possess a valid, unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document; and (5) was paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (the Act). *Id.* Based on these allegations, the Department charged Respondent as inadmissible and therefore removable pursuant to section 212(a)(7)(A)(i)(I) of the Act. *Id.* at 4.

On March 3, 2025, Respondent admitted the factual allegations in her NTA and conceded the charge of inadmissibility. *See* Ex. 3A at 2. Subsequently, on March 28, 2025, based on Respondent's admissions and concession, a previous Immigration Judge sustained removability as charged and directed [redacted] as the country for removal, should removal become necessary. *See* Ex. 5 at 3.

On October 21, 2024, Respondent timely filed her Form I-589, Application for Asylum and for Withholding of Removal (Form I-589). *See* Ex. 2A. An individual merits hearing was held on July 1, 2025, at which Respondent and her daughter, [redacted] testified.[3] For the following reasons, the Court grants Respondent's application for asylum.

II. EVIDENCE OF RECORD

The Court has fully considered all the admitted evidence regardless of whether it is expressly mentioned in its decision. The evidence of record consists of Respondent's testimony, the testimony of [redacted], and all documentary evidence, including the following exhibits:

Exhibit 1A:	Notice to Appear;
Exhibit 2A:	Form I-589;
Exhibit 3A:	Written Pleadings;
Exhibit 4:	Order granting Motion for Change of Venue;
Exhibit 5:	Scheduling Order;
Exhibit 6:	Respondent's Pretrial Brief;
Exhibit 7:	Witness List;
Exhibit 8:	Respondent's Evidence, Part 1;
Exhibit 9:	Respondent's Evidence, Part 2;
Exhibit 10:	Respondent's Evidence, Part 3;
Exhibit 11:	Respondent's Evidence, Part 4;
Exhibit 12:	Respondent's Evidence, Part 5;
Exhibit 13:	Respondent's Evidence, Part 6;
Exhibit 14:	Department's Evidence; and
Exhibit 15:	Respondent's Evidence, Part 7.[4]

[3] At some point, the cases of [redacted] and her derivative child, [redacted], were consolidated with that of Respondent's adult daughter, [redacted] ([redacted]). On July 1, 2025, the Court ordered the cases severed. *See* Order of the Immigration Judge (July 1, 2025).

[4] The deadline for evidentiary submissions in this case was fifteen days prior to the scheduled individual hearing. Ex. 5 at 4. Respondent submitted the evidence marked as Exhibit 15 on July 1, 2025, the day of her individual hearing. *See* Ex. 15. Exhibit 15 consists of Respondent's revised declaration, the revised declaration of [redacted], and pictures of wounds

[redacted]

III. SUMMARY OF THE EVIDENCE

A. Respondent's Testimony and Evidence

Respondent is a forty-three-year-old native and citizen of [redacted], born on [redacted], in [redacted]. Ex. 1A at 1; Ex. 2A at 2; Ex. 10, Tab E at 21; Ex. 15, Tab A at 4; *see also* Ex. 10, Tab A at 8. Respondent was previously married two times, but she is presently divorced and unmarried. Ex. 2A at 2–3, 15–16. Respondent has two biological children: (1) [redacted], age nineteen, born on [redacted]; and (2) [redacted], age twenty-three, born on [redacted]. *Id.* at 3–4. [redacted] is included as a derivative to Respondent's Form I-589. *Id.*

According to Respondent's Form I-589 and written declaration, when she was growing up, her mother and her sister, [redacted], abused her physically, sexually, and emotionally. Ex. 2A at 16; Ex. 10, Tab E at 21; Ex. 15, Tab A at 4. Respondent's mother beat her and called her "ugly," and her sister began molesting her when she was ten years old. Ex. 10, Tab E at 21; Ex. 15, Tab A at 4.

Respondent stated that she was married to her first husband, [redacted], for approximately two years, and he is [redacted]'s father. Ex. 10, Tab E at 22; Ex. 15, Tab A at 5. She stated that [redacted] was an abusive alcoholic who harmed her physically and psychologically. Ex. 2A at 16; Ex. 10, Tab E at 22; Ex. 15, Tab A at 5. Respondent stated that on one occasion, she attempted to report [redacted] to the police after he hit her, but when officers arrived at her home, they did not treat her seriously, and they refused to take her report. Ex. 10, Tab E at 22; Ex. 15, Tab A at 5. Respondent divorced [redacted] on January 6, 2006. Ex. 10, Tab E at 22; Ex. 15, Tab A at 5; *see also* Ex. 10, Tab H at 62.

Respondent testified that in 2004, she met and began a relationship with [redacted]. Ex. 2A at 15; Ex. 10, Tab E at 22; Ex. 15, Tab A at 5. She said [redacted] worked various jobs for the municipal government of [redacted] and [redacted], including serving as a paramedic and police officer. Ex. 2A at 17–18; Ex. 10, Tab E at 30; Ex. 15, Tab A at 13. Respondent stated that she and [redacted] moved in with [redacted] after "just a few months" of dating, and she married him in 2006. Ex. 2A at 15; Ex. 10, Tab E at 22–23; Ex. 15, Tab A at 5–6; *see also* Ex. 10, Tab G at 56.

Respondent testified that [redacted] is the father of her son, [redacted]. Ex. 10, Tab E at 22–23; Ex. 15, Tab A at 5–6. [redacted] also has two children

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suffered by Respondent. Because the revised declarations differ from Respondent's original submissions only with respect to their certificates of translation and do not contain material differences, the Court admits Exhibit 15 as to these documents. *See* Motion to Accept Untimely Filing at 2 (July 1, 2025). However, the Court admits the photographs in Exhibit 15 for purposes of identification only and does not consider this evidence in its decision. In Respondent's Motion for Late Filing, she failed to explain why this evidence was not available prior to the filing deadline. *See id.* Accordingly, the Court does not find that there is good cause to accept the late submission. *See* EOIR, OCIJ, IMMIGRATION COURT PRACTICE MANUAL ch. 3.1(d)(3) (2025).

[redacted]

from a previous marriage: [redacted] ([redacted]), and [redacted] ([redacted]). Ex. 2A at 3–4; Ex. 10, Tab E at 22; Ex. 15, Tab A at 5.

According to Respondent, after she married [redacted], he "started controlling [and] mistreating [her and] abusing [her] psychologically." Ex. 2A at 15; Ex. 10, Tab E at 21, 23–37; Ex. 15, Tab A at 4, 6–20. She stated that [redacted] called her "demeaning names" and told her she was "stupid." Ex. 2A at 15. She testified that this type of verbal abuse occurred "very frequently."

Respondent also testified that [redacted] abused her physically. Ex. 2A at 15; Ex. 10, Tab E at 21, 23–37; Ex. 15, Tab A at 4, 6–20. According to Respondent, [redacted] punched, slapped, pushed, kicked, strangled, stabbed, and raped her. Ex. 2A at 15; Ex. 10, Tab E at 27–28, 33–34, 37; Ex. 15, Tab A at 10–11, 16–17, 20. Respondent testified that her children observed this abuse.

Respondent stated in her declaration that [redacted] made all the decisions for her household, and she testified that she was not allowed to "do anything without [redacted]s] permission." Ex. 10, Tab E at 24–25; Ex. 15, Tab A at 7–8. She stated that she was not permitted to leave home except to go to work, and she was prohibited from visiting and spending time with her family and friends, including her children. Ex. 2A at 15; Ex. 10, Tab E at 23–24; Ex. 15, Tab A at 6–7. In public, Respondent had to walk with her head down, and if she did not, [redacted] would kick her feet. Ex. 2A at 15; Ex. 10, Tab E at 24; Ex. 15, Tab A at 7.

Respondent stated that [redacted] forced her to work multiple jobs in addition to her responsibilities caring for the home. Ex. 2A at 15; Ex. 10, Tab E at 26; Ex. 15, Tab A at 9. [redacted] also forced Respondent to work his shifts as a hospital security guard when he did not want to go to work. Ex. 2A at 15; Ex. 10, Tab E at 26; Ex. 15, Tab A at 9. Respondent stated that she had to pay all household expenses out of her earnings, and if there was any money left over, she had to give that money to [redacted]. Ex. 2A at 15; Ex. 10, Tab E at 26; Ex. 15, Tab A at 9. [redacted] also locked up any money, jewelry, or other valuables in the house so that Respondent could not access them. Ex. 2A at 15; Ex. 10, Tab E at 24; Ex. 15, Tab A at 7.

According to Respondent, [redacted] told her that because she was a woman, it was her job to "obey" him, and as a man, "he could do whatever he wanted," and she "had to accept that." Ex. 2A at 15; Ex. 10, Tab E at 24, 26–27; Ex. 15, Tab A at 7, 9–10. Knowing that Respondent is religious, [redacted] used her religion against her and told her that, according to the Bible, the man is the head of the family, and the woman has to obey. Ex. 2A at 15; Ex. 10, Tab E at 24–25, 32; Ex. 15, Tab A at 7–8, 15. [redacted] also reminded Respondent that divorce was against her religion, and then he threatened to divorce her if she did not obey him. Ex. 10, Tab E at 24; Ex. 15, Tab A at 7.

Respondent testified that in addition to her own abuse, [redacted] also abused her children, including hitting them. Ex. 2A at 16; Ex. 10, Tab E at 21, 23, 25, 28; Ex. 15, Tab A at 4, 6, 8, 11. She stated in her Form I-589 that on one occasion, [redacted] tried to strangle [redacted]. Ex. 2A at 16; Ex. 10, Tab E at 25; Ex. 15, Tab A at 8. She testified that [redacted] also sexually abused [redacted] throughout her life, starting at age six, but Respondent did not discover this abuse until [redacted] was an adult.

[redacted]

Ex. 2A at 16; Ex. 10, Tab E at 36; Ex. 15, Tab A at 19. Respondent stated that when she tried to protect her children from being abused, [redacted] became angry and beat her. Ex. 2A at 16; Ex. 10, Tab E at 25; Ex. 15, Tab A at 8.

According to Respondent's declaration, over time, she came to believe that [redacted] did not have a right to control and abuse her and her children, and at times, she stood up for herself and told [redacted] that he should not "treat [her] like his property or hit [her] for expressing her opinions." Ex. 10, Tab E at 27; Ex. 15, Tab A at 10. She stated that [redacted] responded violently and sexually assaulted her. Ex. 10, Tab E at 27–28; Ex. 15, Tab A at 10–11.

Respondent stated in her declaration that she tried to leave [redacted] "many times," and on each occasion, [redacted] would become violent and verbally abusive. Ex. 10, Tab E at 28, 31–32; Ex. 15, Tab A at 11, 14–15. Respondent testified that [redacted] told her she "would leave with nothing" if she divorced him. On multiple occasions, Respondent left [redacted]'s house and moved in with others, but [redacted] always found her and forced her to return to his house. Ex. 10, Tab E at 31–32; Ex. 15, Tab A at 14–15. [redacted] threatened to kill Respondent if she left him. Ex. 10, Tab E at 32–33; Ex. 15, Tab A at 15–16.

Respondent testified that in March 2023, she called police to report [redacted]'s abuse for the first time. Ex. 2A at 17; Ex. 10, Tab E at 33; Ex. 15, Tab A at 16. She said [redacted] fled before police arrived, and when the officers came to her house, they accused her of "overreacting." Ex. 2A at 17; Ex. 10, Tab E at 34; Ex. 15, Tab A at 17. She testified that officers told her that "everything was fine" and she was "safe."

Respondent testified that after this incident, she moved out of the home she shared with [redacted] and moved in with a friend. Ex. 10, Tab E at 36; Ex. 15, Tab A at 19. She testified that at some point, she returned home to get her things at a time when she thought [redacted] would not be present, but he was there, and he became violent with her. She testified that [redacted] was "holding [her] down," and hitting her in the face and arms. Respondent testified that she called police on [redacted] for the second time, and although [redacted] fled, police were able to catch him. However, Respondent said that when officers realized who [redacted] was, "they didn't want to take him." Respondent testified that she threatened to report the officers to their supervisor if they did not arrest [redacted], and because of this threat, the officers "had to take" [redacted] into custody. Ex. 2A at 17; Ex. 10, Tab E at 34; Ex. 15, Tab A at 17. She testified that officers took [redacted] to the municipal jail, but he was released "a few hours later." Ex. 2A at 17; Ex. 10, Tab E at 34; Ex. 15, Tab A at 17. No charges were filed. Ex. 2A at 17.

Respondent testified that she next went to the "[redacted]" to file a complaint and request a "restraining order." Ex. 10, Tab E at 35; Ex. 15, Tab A at 18. She said that a prosecutor interviewed her, took her complaint, and then served [redacted] with a restraining order. Ex. 10, Tab E at 35; Ex. 15, Tab A at 18. However, she stated in her declaration that the prosecutor later told her that she "had been exaggerating the entire situation," and the prosecutor urged her not to press charges and to drop the restraining order. Ex. 10, Tab E at 35; Ex. 15, Tab A at 18. Respondent insisted on pressing charges despite the prosecutor's advice to the contrary. Ex. 10, Tab E at 35; Ex. 15, Tab A at 18.

[redacted]

According to Respondent, the day after she made her complaint at the [redacted], she filed for divorce. She testified that [redacted] was notified of the divorce proceedings on April 3, 2023, and he called her on the phone and was very angry. Respondent testified that during this call, she threatened to report [redacted] for sexually abusing [redacted].

According to Respondent's testimony and evidence, on April 20, 2023, [redacted] approached her in a parking lot as she was leaving work, told her she "was about to die," and stabbed her seven times with a knife in the neck, cheek, ear, hand, chest, head, and leg. Ex. 2A at 15, 17; Ex. 10, Tab E at 37; Ex. 15, Tab A at 20. She testified that during the attack, [redacted] cut himself with his knife and then "fled" the scene. Ex. 10, Tab E at 37; Ex. 15, Tab A at 20. Respondent testified that she was taken to the hospital where she spent five days in a coma. Ex. 2A at 15; Ex. 10, Tab E at 37; Ex. 15, Tab A at 20. She stated in her Form I-589 that a doctor told her it was a "miracle" she had survived. Ex. 2A at 15.

Respondent stated in her declaration that when she was recovering in the hospital, a detective from the [redacted] interviewed her. Ex. 10, Tab E at 37; Ex. 15, Tab A at 20. She stated that the detective asked her why she had not previously pressed charges against [redacted], and she told the detective she had done so the previous month. Ex. 10, Tab E at 37; Ex. 15, Tab A at 20. The detective then told Respondent that according to records, she had signed a document stating that she did not wish to press charges—which Respondent did not believe was true. Ex. 10, Tab E at 37; Ex. 15, Tab A at 20. Respondent testified and stated in her declaration that the detective told her she "should not trust anyone," including the police and officials from the [redacted]. Ex. 10, Tab E at 37; Ex. 15, Tab A at 20.

Respondent testified that a warrant was issued for [redacted]'s arrest on the charge of attempted femicide. However, she said that, to date, he has not been arrested. Ex. 2A at 17–18; Ex. 10, Tab E at 21, 37, 44; Ex. 15, Tab A at 4, 20, 27. Respondent does not believe authorities have ever investigated her case.

Respondent testified that after twelve days, she was released from the hospital, and she went to stay with her father. Ex. 10, Tab E at 39; Ex. 15, Tab A at 22. She thought she would be safe at her father's house, because he had recently moved, and [redacted] did not know where he lived. Ex. 10, Tab E at 39; Ex. 15, Tab A at 22. Respondent testified that she stayed with her father for two months, and during this time, she did not personally interact with [redacted].

Respondent testified that when she went to live with her father, [redacted] remained at the home of his paternal grandparents and stepsister, [redacted]. [redacted] told Respondent that [redacted] entered his room in the middle of the night with two "hitmen" armed with icepicks and demanded to know Respondent's whereabouts. Ex. 2A at 16; Ex. 10, Tab E at 40; Ex. 15, Tab A at 23. [redacted] told [redacted] to tell Respondent that if she did not drop charges against [redacted] and get his arrest warrant removed, she would find Respondent and make a "big mess." Ex. 2A at 16, 19; Ex. 10, Tab E at 40; Ex. 15, Tab A at 23. Respondent testified that she is afraid of [redacted] because [redacted] is an "aggressive" person who is very loyal to her father, and Respondent believes that [redacted] and her partner work for the "cartel that controls [their] region." Ex. 2A at 16, 18; Ex. 10,

[redacted]

Tab E at 21, 31; Ex. 15, Tab A at 4, 14. [redacted]'s partner previously told Respondent that he "enjoy[s] killing people, 'disappearing' them, and hearing their cries as he beat[s] torture[s], or kill[s] them." Ex. 2A at 16; Ex. 10, Tab E at 31; Ex. 15, Tab A at 14.

Respondent testified that in June 2023, while she was living with her father, she came to believe that "people that work for the cartel" were watching her. Ex. 10, Tab E at 41; Ex. 15, Tab A at 24. Specifically, Respondent saw a suspicious vehicle parked outside her father's home. Respondent stated in her declaration that her cellphone was still connected to [redacted]'s at this point, and she could see that he had searched for "what would happen to an accused if the victim of a crime could no longer testify in court." Ex. 10, Tab E at 41; Ex. 15, Tab A at 24. Respondent testified that she and her family no longer felt safe in [redacted], and they made a plan to go to the United States. Ex. 10, Tab E at 42; Ex. 15, Tab A at 25.

Respondent testified that on the day she and her children decided to leave, they wore disguises and boarded a bus out of town. Ex. 10, Tab E at 42; Ex. 15, Tab A at 25. She said that she and her family traveled to [redacted], [redacted], on the [redacted]-United States border, where they lived at a migrant shelter for four months while waiting for an appointment to meet with U.S. immigration officials. Ex. 10, Tab E at 42; Ex. 15, Tab A at 25. Respondent testified that while she was at the shelter, she continued to receive phone calls and text messages from [redacted], but she did not respond. She also did not personally interact with [redacted] or [redacted] during this time.

On October 22, 2023, Respondent left [redacted] and entered the United States. Ex. 2A at 2. Respondent testified that since she has been in the United States, [redacted] has continued to try and contact her by telephone. She stated that family members in [redacted] also told her [redacted] has been contacting them, asking for Respondent's location. Ex. 2A at 17; Ex. 10, Tab E at 43; Ex. 15, Tab A at 26. Respondent believes [redacted] is still in [redacted].

Respondent is afraid that if she returns to [redacted], [redacted] or [redacted] will torture and kill her and her children. Ex. 2A at 16–19; Ex. 10, Tab E at 21, 43; Ex. 15, Tab A at 4, 26. Respondent believes [redacted] will be able to locate her wherever she goes in [redacted] because he has connections with government officials. Ex. 2A at 16–18; Ex. 10, Tab E at 43; Ex. 15, Tab A at 26. Specifically, Respondent testified that [redacted] has a brother who is a police officer and another who is a military officer. Ex. 2A at 16, 18; Ex. 10, Tab E at 43; Ex. 15, Tab A at 26. [redacted] once told Respondent that he had previously been accused of stabbing a man in [redacted], and his brother in the military bribed someone in the government to get the charge dropped. Ex. 2A at 17; Ex. 10, Tab E at 43; Ex. 15, Tab A at 26. Respondent believes that [redacted]'s brother will be able to help him locate her because the brother has access to "a lot of databases." Ex. 10, Tab E at 43; Ex. 15, Tab A at 26.

Respondent also believes [redacted] will be able to locate her through his connections to a [redacted] "cartel." Ex. 2A at 16–18; Ex. 10, Tab E at 43; Ex. 15, Tab A at 26. Respondent stated in her declaration that she believes [redacted] is affiliated with a cartel because she previously saw a cartel member trying to recruit him, and because when [redacted] was working for the government, he told her "some of

[redacted]

the things the [c]artel had him do," including beating women who had been accused of stealing. Ex. 10, Tab E at 30–31; Ex. 15, Tab A at 13–14.

Respondent testified that she does not believe she can count on the [redacted] government to protect her "because the [redacted] police d[o not] do anything regarding these cases." Ex. 2A at 17–19. Also, she believes [redacted] still has "contacts" within the police, and she is concerned because the police failed to protect her in the past. *Id.*

B. Testimony of [redacted]

[redacted] testified that she is currently twenty-three years old, and she is Respondent's daughter. She said that when she was "about a year and a half old," her mother married her stepfather, [redacted]. She said she has two stepsisters through this marriage: [redacted] and [redacted].

[redacted] testified that [redacted] abused her "verbally, emotionally, psychologically, and sexually." She testified that he "hit" and "yelled at" her, and he was also verbally and physically abusive towards her mother and her siblings.

[redacted] said that when she was six years old, [redacted] began sexually molesting her, and this abuse lasted until she moved out of his house when she was almost eighteen. She said she did not tell anyone about her sexual abuse while she was a child because [redacted] told her "that no one would believe" her and she would "end up by [her]self." She said she does not know if [redacted] sexually abused her siblings.

[redacted] testified that she identifies as a lesbian, and she believes [redacted] sexually abused her because of her lesbian identity. She said [redacted] frequently commented about the fact that she did not dress in a feminine way, and he asked her directly if she was a lesbian. She said that during incidents of abuse, [redacted] told her that she "had to be with a man so [she] wouldn't be attracted to women."

According to [redacted], after Respondent filed for divorce, [redacted] went to [redacted]'s house to pick up her mother's belongings, and she encountered [redacted] there. [redacted] said [redacted] insulted Respondent, and [redacted] responded by calling him a "pedophile." [redacted] said she never again returned to his house.

[redacted] testified that after Respondent filed for divorce, [redacted] tried to kill Respondent by stabbing her. [redacted] said Respondent called her immediately after the attack, and [redacted] went to see Respondent in the hospital. [redacted] said Respondent had "various wounds on her face, on her chest, and on her leg."

[redacted] testified that when Respondent was in the hospital, [redacted] called [redacted] and told her what [redacted] had done, and [redacted] told [redacted] that if she saw [redacted], she should report him to the police. [redacted] told [redacted] that her "mother deserved what [redacted] had done to her." [redacted] testified that [redacted] called her later and asked about Respondent's location, and [redacted] informed [redacted] that Respondent was "in a coma."

[redacted] testified that the day of Respondent's attack, [redacted] gave a statement to law enforcement and told "the attorney for the prosecutor's office in [redacted]" that [redacted] has sexually abused her. [redacted] also testified that she spoke with a "newscast" called "[redacted]" about her mother's attack, telling the media that she "wanted justice for [her] mother," and that "the police w[ere] doing nothing to stop the guilty party."

[redacted] testified that when Respondent was released from the hospital, "she was very fragile, [and] she couldn't walk or talk much." [redacted] said that at some point, she, Respondent, and [redacted] decided to leave [redacted] and go to the United States because they were afraid that [redacted] would "come back for" Respondent and continue to sexually abuse [redacted]

[redacted] fears that if she returns to [redacted] will hurt or kill her, because he previously warned her not to tell anyone about her sexual abuse. [redacted] is also afraid that [redacted] will physically harm or kill her.

[redacted] does not feel that she could live safely anywhere in [redacted] because she believes [redacted] can locate her wherever she goes in [redacted] through "his relatives." Specifically, [redacted] has family in military and "many friends" in the public sphere.

[redacted] testified that she does not believe the government will protect her in [redacted] because she previously told prosecutors about her sexual abuse, "and the police [are] not interested in it." [redacted] further testified that the police "don't take seriously the harm done to women with the femicides that have happened."

[redacted] testified that since she left her mother's home at age eighteen, she has not been physically or sexually harmed in [redacted].

IV. LAW AND ANALYSIS

A. Credibility

Before evaluating whether Respondent qualifies for asylum and related relief under the Act, the Court must consider the threshold issue of credibility. *See Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). Here, considering the totality of the circumstances, the Court finds Respondent credible and accords her testimony full evidentiary weight. Respondent was candid and forthcoming with the Court, and her testimony was fact specific. Her testimony was generally consistent with documentary evidence in the record, including her Form I-589 and declaration; written statements from [redacted], and [redacted]; [redacted] news reports; and the Criminal Investigation File of the Attorney General of the State of [redacted]. *See* Ex. 2A; Ex. 8 at 137–270; Ex. 10, Tab E at 21–45, Tab I at 69, 71–72, Tab J at 77–79, Tab K at 85–87, Tab N at 146–47, Tab O at 154–55; Ex. 12, Tab D at 16–23; Ex. 15, Tab A at 4–28, Tab B at 30–37. Additionally, Respondent's testimony about the acts of domestic violence she experienced and the subsequent inaction of law enforcement is inherently plausible in consideration of documentary country conditions evidence. *See* Ex. 11, Tab S at 52, 55, 63, 67, 69, 104, Tab T at 115–16, Tab U at 119, 122–24, Tab V at 129–30; Ex. 13, Tab Q at 56, Tab V at 142–43; Ex. 14, Tab E-13 at 153, 155. Accordingly, the Court finds that, by all accounts, Respondent

[redacted]

was forthcoming and testified to the best of her recollection, and the Court deems her credible.

B. Asylum

To qualify for asylum, an applicant must establish that he or she: (1) filed an application within one year of arriving in the United States; (2) is not statutorily barred from relief; (3) is a refugee within the meaning of section 101(a)(42)(A) of the Act; and (4) merits asylum in the exercise of discretion. *See* INA § 208(a)(1), (a)(2)(B), (b)(1)–(2) (2025); 8 C.F.R. § 1208.13 (2025). In this case, the Court finds that Respondent is statutorily eligible for asylum, she qualifies as a refugee based on past persecution on account of a protected ground, and she merits a favorable exercise of discretion.

1. Refugee within the Meaning of INA § 101(a)(42)(A)

A refugee is any person outside his or her country of nationality: (1) who is unable or unwilling to return to that country; (2) who experienced past persecution or has a well-founded fear of future persecution on account of race, religion, nationality, political opinion, or membership in a particular social group (PSG); and (3) who is unable or unwilling to avail him or herself of the protection of that country's government. INA § 101(a)(42)(A) (2025); 8 C.F.R. § 1208.13(b); *Diaz v. Bondi*, 129 F.4th 546, 553 (9th Cir. 2025). For the reasons discussed below, the Court determines Respondent qualifies as a refugee.

a. *Past Persecution*

In this case, Respondent demonstrated that she experienced extreme physical and sexual violence in [redacted], perpetrated by a private actor that the [redacted] government was unable or unwilling to control, on account of her membership in the PSG, "[redacted] women," thus constituting persecution.

i. Harm Rising to the Level of Persecution

Although the term "persecution" is not defined in the Act, the Ninth Circuit Court of Appeals (Ninth Circuit) has stated that "[p]ersecution is . . . the infliction of suffering or harm. . . in a way regarded as offensive." *Diaz*, 129 F.4th at 553 (quoting *Mendoza-Pablo v. Holder*, 667 F.3d 1308, 1313 (9th Cir. 2012)). Persecution might consist of physical violence, torture, forced detention, economic deprivation, or any other act of extreme harm. *Kaur v. Wilkinson*, 986 F.3d 1216, 1222 (9th Cir. 2021); *Sharma v. Garland*, 9 F.4th 1052, 1061–63 (9th Cir. 2021). Persecution is an "extreme concept," and not every act of harm an individual experiences which is generally understood to be offensive rises to the level of persecution. *De Souza Silva v. Bondi*, 139 F.4th 1137, 1142 (9th Cir. 2025) (quoting *Sharma*, 9 F.4th at 1060); *Lapadat v. Bondi*, 128 F.4th 1047, 1056 (9th Cir. 2025) (citing *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995)); *Corpeno-Romero v. Garland*, 120 F.4th 570, 577 (9th Cir. 2024). However, harms that may not individually rise to the level of persecution may nonetheless constitute persecution when considered cumulatively. *De Souza Silva*, 139 F.4th at 1143; *Lapadat*, 128 F.4th at 1056; *Corpeno-Romero*, 120 F.4th at 577.

[redacted]

The Ninth Circuit has defined as a "hallmark[]" of persecutory conduct "the violation of bodily integrity and bodily autonomy." *Singh v. Garland*, 57 F.4th 643, 653 (9th Cir. 2023) (quoting *Kaur*, 986 F.3d at 1222); *see also Kaur*, 986 F.3d at 1222, 1224 (stating that rape is an "'atrocious' form of physical violence" and "one of the most severe forms of persecution[,]" and even attempted rape "almost always constitutes persecution" (quoting *Lopez-Galarza v. INS*, 99 F.3d 954, 962 (9th Cir. 1996))). However, physical injury is not necessarily required for a court to find that an applicant suffered harm rising to the level of persecution. *De Souza Silva*, 139 F.4th at 1143 ("[P]ersecution may be emotional or psychological, as well as physical." (quoting *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004))); *Corpeno-Romero*, 120 F.4th at 579; *Kaur*, 986 F.3d at 1226. Threats to an individual's life or freedom may constitute persecution where "the threats are so menacing as to cause significant actual suffering or harm." *Corpeno-Romero*, 120 F.4th at 579 (quoting *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019)); *see also Mendoza-Pablo*, 667 F.3d at 1314 (finding that being forced to flee one's home in face of immediate threat of death or physical harm may constitute persecution). A court may find threats to be "especially menacing," where they are "combined with confrontation or other mistreatment." *Duran-Rodriguez*, 918 F.3d at 1028 (citing *Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000)).

Courts are generally given deference to decide whether ill treatment is severe enough to rise to the level of persecution. *Lal v. INS*, 255 F.3d 998, 1004 (9th Cir. 2001). However, a court's decision must not be arbitrary or unreasonable, but rather it must be an exercise of common sense. *Id.*

Here, the Court finds that, considered cumulatively, the physical violence, sexual violence, emotional harm, and threats of harm that Respondent experienced in [redacted] were sufficiently severe such that they rise to the level of persecution. Respondent testified that throughout her seventeen-year marriage to [redacted], he viciously abused her. She testified that [redacted] beat, punched, slapped, pushed, kicked, and choked her, leaving marks on her body. She testified that [redacted] also repeatedly raped her. This type of physical violence is a paradigmatic example of persecutory harm.

The most serious incident of physical abuse Respondent endured occurred after she filed for divorce, when [redacted] attempted to murder her by stabbing her with a knife seven times in her head, face, neck, chest, hand, and leg. This incident left Respondent in a coma for five days, and doctors told her that the fact she survived was a "miracle." Respondent still has scars from this incident, and a psychologist diagnosed her with post-traumatic stress disorder (PTSD). *See* Ex. 10, Tab M at 139.

In addition to Respondent's physical and sexual abuse, the Court notes that she suffered severe emotional abuse. [redacted] called Respondent names and forced her to obey his every command, punishing her when she did not do so. Respondent was not allowed to have any money or property of her own, despite the fact that [redacted] forced her to work multiple jobs to support the household. [redacted] also threatened to kill Respondent on multiple occasions. In addition, Respondent had to watch while [redacted] physically abused her children, and when Respondent attempted to intervene, [redacted] punished her with beatings and rape.

[redacted]

Because of the abuse Respondent experienced, she was forced to flee her home on multiple occasions and seek safety with friends and family.

In sum, because Respondent was habitually subjected to physical beatings, rape, and death threats throughout her adult life in [redacted], and because she also experienced her children being similarly abused, the Court finds that the mistreatment she endured rises to the level of persecution. Respondent's past physical and sexual abuse precisely mirrors the violations of bodily integrity that the Ninth Circuit has repeatedly described as persecution. Further, the Court notes that Respondent's past experiences have left her with psychological scars that continue to impact her life to this day.

ii. Nexus to a Protected Ground

To establish that one is a refugee and therefore eligible for asylum, the applicant bears the burden of proving that "one central reason" for which he or she was persecuted was on account of a protected ground. INA § 208(b)(1)(B)(i); 8 C.F.R. § 1208.13(b)(1); *Matter of C-I-R-H- & H-S-V-R-*, 29 I&N Dec. 114, 115 (BIA 2025). This means that one's "race, religion, nationality, membership in a particular social group, or political opinion" must play a significant role in driving the applicant's mistreatment. INA § 208(b)(1)(B)(i); 8 C.F.R. § 1208.13(b)(1); *Kaur v. Garland*, 2 F.4th 823, 834 (9th Cir. 2021). The applicant must prove that the persecutor's motive for harm was a "desire to overcome the protected characteristic" or that it was otherwise "based on 'animus' against the group." *Matter of O-A-R-G-*, 29 I&N Dec. 30, 33 (BIA 2025) (quoting *Matter of M-R-M-S-*, 28 I&N Dec. 757, 760 (BIA 2023)).

According to the Ninth Circuit, a persecutor's motive constitutes a "central reason" for harming an applicant, thus establishing the requisite nexus between the applicant's harm and a statutorily protected ground, "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. 2009). In other words, "[t]he protected ground cannot play a minor role in the [applicant's] past mistreatment or fears of future mistreatment. That is, it cannot be incidental, tangential, superficial, or subordinate to another reason for harm." *Id.* (quoting *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007)). There may be more than one central reason for which a persecutor harmed an applicant, but the applicant must demonstrate that "at least one central reason" for the harm was on account of his or her membership in a protected class. *Id.*; *Kaur*, 2 F.4th at 834.

When claiming eligibility for asylum based on membership in a PSG, an applicant must first prove the alleged group is legally cognizable. *Reyes v. Lynch*, 842 F.3d 1125, 1132 n.3 (9th Cir. 2016) (citing *Matter of W-G-R-*, 26 I&N Dec. 208, 223 (BIA 2014)). In other words, the applicant must demonstrate that his or her proffered PSG 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 K-E-S-G-*, 29 I&N Dec. 145, 147 (BIA 2025) (quoting *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)).

A common immutable characteristic is one that is so fundamental to the identity or conscience of each group member that it cannot or should not be changed, such as sex, family relationship, a shared experience, or some other innate characteristic. *M-E-V-G*, 26

[redacted]

I&N Dec. at 237–38 (citing *Matter of Acosta*, 19 I&N Dec. 211, 233–34 (BIA 1985)). Particularity requires that the group be "discrete and have definable boundaries[,]" and that it not be "amorphous, overbroad, diffuse, or subjective." *K-E-S-G-*, 29 I&N Dec. at 147 (citing *M-E-V-G-*, 26 I&N Dec. at 239); *Macedo Templos v. Wilkinson*, 987 F.3d 877, 882 (9th Cir. 2021) (quoting *W-G-R-*, 26 I&N Dec. at 214). A PSG will not be rejected as insufficiently particular simply because it "represent[s] too large a portion of a population." *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010). Finally, social distinction requires the collective be "perceived as a group by society." *Akosung v. Barr*, 970 F.3d 1095, 1103 (9th Cir. 2020) (citing *M-E-V-G-*, 26 I&N Dec. at 240). In evaluating social distinction, courts look specifically at whether the society in question recognizes a need to provide members of a group with special protection, and whether members of a group are singled out for persecution within larger society. *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014) (citing *M-E-V-G-*, 26 I&N Dec. at 241).

Once the applicant has established the existence of a cognizable PSG, the applicant must demonstrate that he or she is, in fact, a member of the delineated group, and that his or her membership in that group was a central reason for his or her persecution. *Reyes*, 842 F.3d at 1132 n.3 (citing *W-G-R-*, 26 I&N Dec. at 223).

An applicant may demonstrate the existence of a nexus between his or her harm and a statutorily protected ground through direct or circumstantial evidence. *Garcia-Milian v. Holder*, 755 F.3d 1026, 1031 (9th Cir. 2014) (citing *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992)); *C-I-R-H- & H-S-V-R-*, 29 I&N Dec. at 116. Direct evidence of a persecutor's motive includes the applicant's credible testimony about the persecutor's statements to the victim. *Rodriguez Tornes v. Garland*, 993 F.3d 743, 752 (9th Cir. 2021); *Khudaverdyan v. Holder*, 778 F.3d 1101, 1107 (9th Cir. 2015). Circumstantial evidence may consist of indirect evidence of a persecutor's motives, such as evidence of the timing of the persecution or the fact that the persecutor generally regards those similarly situated to the applicant as enemies. *See Garcia v. Wilkinson*, 988 F.3d 1136, 1145 (9th Cir. 2021); *Lopez-Galarza*, 99 F.3d at 959–60.

In this case, the Court finds Respondent met her burden to demonstrate she was harmed on account of her membership in the PSG, "[redacted] women."

As a preliminary matter, the Court acknowledges that where an applicant fears persecution on account of membership in a PSG, it is the applicant's burden "to clearly indicate 'the exact delineation of any particular social group(s) to which [he or] she claims to belong,'" *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018) (quoting *Matter of A-T-*, 24 I&N Dec. 617, 623 n.7 (A.G. 2008)), and in this case, Respondent identified her PSGs as, *inter alia*, "[redacted] women who are unable to leave their domestic relationships," and "[redacted] women who are viewed as property by virtue of their position in the domestic relationship," Ex. 6 at 2. Nevertheless, the Board of Immigration Appeals (Board) has stated that Immigration Judges may help to clarify the exact delineation of an applicant's proposed PSG where he or she was not clear. *Id.* For example, in *Antonio*, where an applicant claimed asylum on the basis of her membership in the PSG, "women in Guatemala who are perceived to have male tendencies and are seen as dangerous to the community," the Ninth Circuit held that the Immigration Judge improperly ignored an

[redacted]

alternate and more compelling PSG implicit in the applicant's testimony and evidence, "women in Guatemala perceived to be lesbian." 58 F.4th at 1075–76 & n.13.

In Respondent's case, the Court finds that it is implicit in Respondent's Form I-589, pretrial brief, and documentary evidence that her claim is based on her sex and nationality. Accordingly, the Court *sua sponte* identifies her PSG as "[redacted] women." Further, in consideration of Ninth Circuit precedent, and based on the particular circumstances of the country in question, the Court finds that this PSG is legally cognizable.

To begin, Ninth Circuit precedent militates in favor of the conclusion that if the facts and evidence of a specific case support it, a PSG defined as sex and nationality can form the basis of a successful asylum claim.[5] *See Perdomo*, 611 F.3d at 662 (stating 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) (same). Furthermore, for the following reasons, the Court finds Respondent independently demonstrated that her PSG is immutable, particular, and socially distinct.

First, Respondent's PSG is defined by two innate, fundamental characteristics: sex and nationality, prototypical examples of characteristics that an individual cannot or should not be required to change. Therefore, this PSG satisfies the immutability requirement.

Second, regarding particularity, although the group, "[redacted] women" is internally diverse, it is discretely defined by two objectively identifiable characteristics. In other words, the PSG's defining terms provide a clear benchmark for determining who is and who is not a member. The fact that [redacted] women make up approximately half the country's population does not render this PSG amorphous or overbroad and does not necessitate a finding that the group is not particular. The Ninth Circuit has often upheld PSGs as cognizable notwithstanding those groups' sizeable memberships. *See, e.g.*, *Perdomo*, 611 F.3d at 669; *Mohammed*, 400 F.3d at 798. The key factor here is not the size or internal diversity of Respondent's proffered PSG, but rather the fact that group members are distinguished from nonmembers by the objective characteristics of gender and nationality.

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[5] The Court acknowledges recent precedent from the Board, stating that "a particular social group defined by the alien's sex or sex and nationality, standing alone, is overbroad and insufficiently particular to be cognizable under the [Act]." *K-E-S-G-*, 29 I&N Dec. at 151. However, there is published precedent from the Ninth Circuit that reaches the opposite conclusion. *See Perdomo*, 611 F.3d at 662. The Court is cognizant that where a federal circuit court disagrees with the Board on a given issue that immigration courts are bound to follow the precedent of the circuit in which a case arises. *Matter of Garcia*, 28 I&N Dec. 693, 698 (BIA 2023) (citing *Abdulai v. Ashcroft*, 239 F.3d 542, 553 (3d Cir. 2001)); *Matter of Anselmo*, 20 I&N Dec. 25, 31 (BIA 1989). To the extent the Board states that the Ninth Circuit applied a previous definition of "particular social group" in *Perdomo*, and therefore, the case is not controlling or persuasive authority on this issue, *K-E-S-G-*, 29 I&N Dec. at 149, the Court notes that the Ninth Circuit has repeatedly affirmed *Perdomo* as supporting the legal principle that a PSG based on sex and nationality may be legally sufficient, *see, e.g.*, *Antonio v. Garland*, 58 F.4th 1067, 1076 (9th Cir. 2023); *Rodriguez v. Garland*, No. 22-170, 2023 WL 2675064, at *1 (9th Cir. Mar. 29, 2023) (unpublished); *Lopez-De Flores v. Barr*, 799 F. App'x 521, 522 (9th Cir. 2020) (unpublished); *Torres Valdivia v. Barr*, 777 F. App'x 251, 252 (9th Cir. 2019) (unpublished); *Ticas-Guillen v. Whitaker*, 744 F. App'x 410 (9th Cir. 2018) (unpublished); *Escobar v. Lynch*, 676 F. App'x 670, 673 (9th Cir. 2017) (unpublished).

[redacted]

Third, Respondent's evidence demonstrates that [redacted] women are uniquely singled out for harm within the country's patriarchal culture, thus showing that [redacted] society sees women as a distinct collective of individuals with a specific group identity. Violence against women, including femicide—the violent killing of women for gender-related reasons—is widespread and systematic in [redacted], and according to one study, seven in ten [redacted] women report being the victims of some type of violence in their lifetimes. Ex. 11, Tab Q at 32, Tab R at 38, Tab S at 52–53, 63, Tab T at 115–16, Tab U at 122, Tab V at 129; Ex. 13, Tab Q at 56, Tab V at 142–43. Currently, an estimated ten women are murdered in [redacted] every day. Ex. 11, Tab S at 52, 69, Tab T at 115, Tab U at 119; Ex. 13, Tab V at 143. Where [redacted] women are killed, the record states that the killings are often especially vicious, evidencing the extreme enmity [redacted] men have for [redacted] women. Ex. 13, Tab V at 143.

The Court additionally notes the [redacted] government has recognized that women in the country are in need of special protection, for example, criminalizing femicide as a separate offense from ordinary murder. Ex. 11, Tab S at 113; Ex. 13, Tab V at 144. The country has also created national sexual assault and domestic violence hotlines, and some municipalities have programs where special electronic "panic buttons" are issued to domestic violence victims. Ex. 14, Tab E-1 at 77–78, Tab E-7 at 125–27, Tab E-10 at 142–43, Tab E-12 at 150–51. In addition, the [redacted] government has established federally funded women's shelters, as well as thirty-five women's justice centers, which provide women with legal, psychological, employment, and protective services. Ex. 14, Tab D at 48, Tab E-13 at 157–58, Tab E-14 at 163–64. Based on the foregoing, the Court finds, Respondent's PSG satisfies the social distinction requirement. Further, because Respondent is a [redacted] woman, the Court finds she is a member of a legally cognizable PSG.

The Court further finds Respondent met her burden to demonstrate through direct and circumstantial evidence that her membership in the group "[redacted] women" was a central reason for her past harm. According to Respondent's testimony, [redacted] frequently told her that it was her duty as a woman to "obey" him and that because he was a man, he had the right to "do whatever he wanted" to her, and she had to "accept that." [redacted] told Respondent that because of her failures to act properly as a woman, she was responsible for her own abuse. Ex. 10, Tab E at 27; Ex. 15, Tab A at 10. These statements directly demonstrate that [redacted]'s abuse was motivated by Respondent's identity as a [redacted] woman, his animus towards [redacted] women, and his expectations for how [redacted] women should be treated.

Circumstantial country conditions evidence also supports finding a nexus between Respondent's harm and a statutorily protected ground. Record evidence shows that the domination and subjugation of women is central to male identity in [redacted]. Specifically, [redacted]'s macho culture perpetuates the social expectation that men be dominant over women, and when women fail to properly behave in a subservient manner, this often exposes them to a high risk of extreme violence. Ex. 11, Tab S at 63, 67, Tab U at 122–24, Tab V at 130; Ex. 14, Tab E-13 at 153. For example, the high incidence of femicide in [redacted] is often attributed to macho cultural expectations. Ex. 11, Tab S at 63, 67, Tab U at 120. Collectively, this evidence demonstrates that [redacted] men typically act towards women in ways that emphasize perceived male power and superiority and corresponding female inferiority.

[redacted]

The specific circumstances under which Respondent was abused also support finding that her abuse was on account of her identity as a woman and her perceived failures to fulfill her expected role. For example, Respondent stated that when she stood up for herself and told [redacted] that he should not "treat [her] like his property or [hit] her for expressing [her] opinions," this especially enraged Respondent, causing him to act out violently against her, including raping her. Ex. 10, Tab E at 27; Ex. 15, Tab A at 10. Respondent also testified that [redacted] became violent and verbally abusive whenever she attempted to exercise autonomy by leaving his house without permission.

The Court acknowledges the Attorney General's statement in *Matter of A-B-* that asylum claims based on domestic violence ordinarily fail to satisfy the nexus requirement because applicants are unable to show that their persecutors were motivated by a desire to overcome a protected characteristic of the victim, and not simply because of a personal relationship. 27 I&N Dec. 316, 329 (2018) (hereinafter "*A-B- I*"); *see also id.* at 320 ("Generally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum."). However, Respondent's case is distinguishable and unique because [redacted] explicitly stated his belief that it is a man's job to subjugate a woman and ensure her absolute obedience to him. Accordingly, in this case, there is evidence that [redacted] attacked Respondent because he was hostile to [redacted] women, broadly, and he did not attack her simply because of their personal relationship.

In sum, the Court finds Respondent met her burden to show that she is a member of a legally sufficient PSG and that one central reason for which [redacted] subjected her to extreme harm was on account of her membership in this group.

iii. Source of Harm

Finally, to qualify as a refugee under section 101(a)(42)(A) of the Act, one must be "unable or unwilling to avail himself or herself of the protection of . . . that country." INA § 101(a)(42)(A). The applicant may establish this by demonstrating that government actors are themselves the ones likely to commit acts of persecution, or by demonstrating that the applicant fears persecution by private actors that the government is unable or unwilling to control. *Plancarte Sauceda v. Garland*, 23 F.4th 824, 832 (9th Cir. 2022) (citing *Baghdasaryan v. Holder*, 592 F.3d 1018, 1023 (9th Cir. 2010)); *Rodriguez Tornes*, 993 F.3d at 751; *Matter of S-S-F-M-*, 29 I&N Dec. 207, 207 (A.G. 2025).

In cases of non-governmental persecution, an applicant may establish eligibility for asylum by demonstrating either that the government of his or her home country is unwilling to offer him or her protection, or that the government is unable to do so. *J.R. v. Barr*, 975 F.3d 778, 782 (9th Cir. 2020). For example, the applicant may meet his or her burden by demonstrating that the government harbors animus toward a particular group, thus evidencing officials' unwillingness to offer group members protection. *Id.* Alternately, even where the government is willing to protect the applicant, he or she may demonstrate that authorities are unable to stop private persecutors "because of a 'lack of . . . resources or because of the character or pervasiveness of the persecution.'" *Id.* (quoting *Afriyie v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010)). Generalized country conditions evidence may by itself be sufficient to establish that the government is unable or unwilling to control private

[redacted]

persecutors. *See Gomez-Saballos v. INS*, 79 F.3d 912, 916–17 (9th Cir. 1996).

Specifically, regarding violence inflicted within the home, "there is no exception to the asylum statute for violence from family members; if the government is unable or unwilling to control persecution, it matters not who inflicts it." *Faruk v. Ashcroft*, 378 F.3d 940, 943 (9th Cir. 2004); *see also Mohammed*, 400 F.3d at 796 n.15.

Where a respondent demonstrates that local law enforcement officials did not effectively respond to a report of persecution, the respondent need not demonstrate that the government is unable or unwilling to protect him or her on a nationwide basis.[6] *Diaz*, 129 F.4th at 554 (citing *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1063 (9th Cir. 2017)). It is sufficient that there is evidence that the government was unable or unwilling to protect the applicant in his or her home city or area. *Id.* at 554–55 (citing *Mashiri*, 383 F.3d at 1122).

The fact that a country may have problems effectively policing certain crimes—e.g., domestic or gang violence—does not in and of itself support finding that the government is broadly unable or unwilling to protect an asylum applicant. *A-B- I*, 27 I&N Dec. at 343 ("No country provides its citizens with complete security from private criminal activity, and perfect protection is not required."); *A-B- II*, 28 I&N Dec. at 204 (citing *Velasquez-Gaspar v. Barr*, 976 F.3d 1062, 1064–65 (9th Cir. 2020)). Furthermore, an applicant cannot satisfy the unable or unwilling standard simply by pointing to the fact that a crime against him or her went unpunished. *A-B- I*, 27 I&N Dec. at 338. There may be more than one reason that law enforcement did not investigate or punish a particular crime, and therefore, that local police did not act on a report or make an arrest does not necessarily indicate the government's general inability of unwillingness to offer protection. *Id.* at 337. On the other hand, the Ninth Circuit has held that some official responsiveness to a complaint, although relevant, does not automatically demonstrate that the government was able and willing to protect an asylum applicant. *Diaz*, 129 F.4th at 555 (citing *J.R.*, 975 F.3d at 782).

Here, Respondent suffered extreme harm from a private individual in [redacted]. Respondent's personal experiences, as well as copious country conditions evidence support finding that the government was unable or unwilling to protect her against this harm.

As a preliminary matter, the Court notes that Respondent has a long history in [redacted] of facing indifference from [redacted] law enforcement authorities when reporting her abuse by male domestic partners. Respondent testified that [redacted] physically and verbally abused her throughout her first marriage, and when she attempted to report him for hitting her, officers did not take her seriously and refused to allow her to file a formal complaint.

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[6] The Court acknowledges conflicting law from the Attorney General stating that where there is evidence of localized police apathy or incompetence, a respondent may nevertheless be ineligible for asylum if evidence indicates he or she could reasonably relocate to a different part of his or her country of origin, where the attitudes of law enforcement may be different. *Matter of A-B-*, 28 I&N Dec. 199, 207 (2021) (hereinafter "*A-B- II*"). However, because the Ninth Circuit disagrees with the Attorney General on this issue, the Court is obligated to follow circuit court precedent. *See Garcia*, 28 I&N Dec. at 698.

[redacted]

Regarding Respondent's abuse by [redacted], she testified that she encountered similar difficulties on multiple occasions when she sought assistance from authorities related to his abuse. Respondent testified that in March 2023 when she first attempted to report [redacted] to the police, responding officers accused her of "overreacting," told her "everything was fine," and that she was "safe." Then, the officers left without making an arrest. Respondent testified that when she called police for a second time shortly thereafter, the officers "didn't want to take" [redacted], and they only agreed to make an arrest when she threatened to report the officers to their superior. Nevertheless, the officers released [redacted] after just "a few hours," and no charges were filed. Respondent testified that she next went to file a complaint with the [redacted], and although that agency originally appeared responsive, serving [redacted] with a restraining order, a prosecutor later told Respondent she "had been exaggerating the entire situation" and urged her to drop the restraining order and not file charges. Respondent testified that even though she refused the prosecutor's request, she later learned that the prosecutor had dropped charges anyway, falsely writing in the file that this had been done at Respondent's request.

The Court acknowledges that after [redacted] stabbed Respondent on April 20, 2023, an investigation into this attack was initiated, and a warrant was issued for [redacted]'s arrest. *See* Ex. 8 at 137–270. However, there is no indication that law enforcement ever followed up on this investigation, and to date, [redacted] has not been arrested. This is despite the fact that Respondent and her family have evidence that [redacted] is still living in [redacted], [redacted] stated in her declaration that she went to the prosecutor's office and told investigators that [redacted] was staying at his parents' house, and still no arrest was made. Ex. 12, Tab D at 20; Ex. 15, Tab B at 34. Instead, [redacted] stated that an official at the agency told her she should stop asking about the case "because they weren't going to look for him." Ex. 12, Tab D at 20; Ex. 15, Tab B at 34. Respondent testified that when she was in the hospital, a prosecutor told her she "should not trust anyone," including officials from the police department and the [redacted].

The Court notes that [redacted] is himself a former police officer and municipal government employee, and although he was not acting in an official capacity when he abused Respondent, it is likely that his government connections have insulated him from repercussions for his actions and prevented Respondent from receiving any type of protection. Respondent testified that when police officers came to her house to respond to her complaint, as soon as the officers realized who [redacted] was, they did not want to arrest him. Respondent further testified that [redacted] told her he had previously been accused of a stabbing, and he was able to bribe someone in the government to drop the charges.

Finally, country conditions evidence support finding that government officials are generally both unable and unwilling to protect women in the country against extreme violence. The Court acknowledges that [redacted] law criminalizes domestic violence, femicide, and rape, and there are some programs in place aimed at eradicating violence against women and providing services to the victims of abuse. *See, e.g.*, Ex. 11, Tab S at 54, 113, Tab U at 121; Ex. 13, Tab V at 144; Ex. 14, Tab D at 47–49, Tab E-1 at 77–78, Tab E-4 at 98–100, 103–06, 108, Tab E-7 at 125–27, Tab E-10 at 142–43, Tab E-12 at 150–51, Tab E-13 at 154, 157–58, Tab E-14 at 163–64. However, viewed cumulatively, evidence of record

[redacted]

suggests that these efforts have not been sufficient to overcome the general problem of criminal impunity in [redacted] or to effectively address and cure violence against women in the country.

According to the record, there is a high rate of impunity for all crimes in [redacted]. Ex. 11, Tab Q at 29, Tab R at 40, Tab S at 104, Tab W at 155; Ex. 13, Tab V at 143; Ex. 14, Tab D at 48. Authorities resolve just 1% of crimes committed in the country, and one third of reported crimes are never investigated. Ex. 11, Tab Q at 29. Evidence of record further states that the [redacted] police have been "almost entirely infiltrated or corrupted by the cartel[s]." Ex. 10, Tab L at 101; *see also id.* at 105, Tab W at 155. Police officers routinely carry out assignments on behalf of drug cartels, including kidnapping and murder, and officers who cooperate with the cartels in this way are rarely investigated or punished. *Id.*, Tab L at 105, 109, Tab W at 155. Evidence states that the [redacted] military and National Guard are also deeply involved with the cartels. *Id.*, Tab L at 101, 103–04.

Specifically with respect to violent crimes against women, including femicide and rape, evidence indicates that such offenses are rarely prosecuted. Ex. 11, Tab S at 52, 55, 104, Tab T at 116; Ex. 14, Tab D at 48, Tab E-13 at 155; Ex 14, Tab E-13 at 155. The complicity and indifference of law enforcement officials and the mismanagement of complaints perpetuate this type of violence. Ex. 11, Tab V at 130. As a result, [redacted] is currently experiencing an epidemic of violence against women, which has been described as a "humanitarian catastrophe." Ex. 13, Tab Q at 56. Currently, sources estimate that ten women are killed in the country every day, and the incidence of femicide is rising. Ex. 11, Tab S at 52, 69, Tab T at 115, Tab U at 119, Tab V at 129; Ex. 13, Tab V at 142–43.

The Court acknowledges precedent from the Attorney General stating that because "'[p]ersecution is something a government does,' either directly or indirectly by being unwilling or unable to prevent private misconduct," it is especially difficult for domestic violence victims or victims of private violence, generally, to prove they experienced persecution that the government was unable or unwilling to address. *A-B- I*, 27 I&N Dec. at 337 (quoting *Hor v. Gonzales*, 400 F.3d 482, 485 (7th Cir. 2005)); *see also S-S-F-M-*, 29 I&N Dec. at 207 ("Although there may be circumstances when a government's failure to control private conduct itself amounts to persecution, . . . those circumstances [are] few and far between."); *A-B- II*, 28 I&N Dec. at 204. Nevertheless, the Court finds that Respondent's case represents a rare instance in which an asylum applicant's protection was so lacking that her persecutor's actions can essentially be attributed to the government itself. *See A-B- I*, 27 I&N Dec. at 317. The Court specifically notes as strong evidence of the unwillingness of local authorities to protect Respondent that when she pressed charges against [redacted] officials either falsified a document stating that she willingly dropped those charges or tricked her into signing the document. A [redacted] official expressly told her that she should not trust anyone from that agency or the local police to protect her. Thereafter, according to Respondent's daughter, [redacted], when she went to the [redacted] to check on the investigation into Respondent's attempted murder, officials there told her not to bother returning because they had no intention of arresting [redacted]. Because [redacted] officials repeatedly indicated their unwillingness to protect Respondent from [redacted]'s abuse, it is irrelevant that officials in some other part of [redacted] may have been more responsive.

[redacted]

In sum, based on the foregoing, the Court finds Respondent met her burden to demonstrate that that she was unable to avail herself of the protection of the [redacted] government.

iv. Conclusion

In conclusion, because Respondent experienced harm rising to the level of persecution on account of her membership in the PSG, "[redacted] women," and because that harm was inflicted by private actors that the government was unable or unwilling to control, Respondent established that she meets the definition of a refugee based on past persecution.

b. *Future Persecution*

If an asylum applicant proves he or she was persecuted in the past, the Court will automatically presume the existence of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1); *De Souza Silva*, 139 F.4th at 1145. The burden then shifts to the Department to prove that there has been a "fundamental change in circumstances such that the applicant no longer has a well-founded fear." 8 C.F.R. § 1208.13(b)(1)(i)(A); *De Souza Silva*, 139 F.4th at 1145. For example, the Department may introduce evidence of changed country conditions, demonstrating that the applicant's specific situation has changed such that, on an individual basis, his or her fear of persecution is rebutted. *Iraheta-Martinez v. Garland*, 12 F.4th 942, 956 (9th Cir. 2021) (citing *Rios v. Ashcroft*, 287 F.3d 895 (9th Cir. 2002)); *Parada v. Sessions*, 902 F.3d 901, 912 (9th Cir. 2018). Alternately, the Department may overcome a presumption of future persecution by proving that the applicant can avoid being persecuted by relocating internally within his or her or his country of nationality. 8 C.F.R. § 1208.13(b)(1)(i)(B); *De Souza Silva*, 139 F.4th at 1145.

Here, because Respondent established that she suffered past persecution in [redacted], *see supra* Part IV.B.1.a, she is entitled to a presumption of a well-founded fear of future persecution. Furthermore, the Department did not rebut this presumption with evidence that conditions in [redacted] have improved such that Respondent no longer has a fear of future harm. According to the most recent evidence of record, the problem of violence against women in [redacted] continues to be a "humanitarian catastrophe," with seven out of ten women reporting that they have been victimized. Ex. 11, Tab S at 52, Tab U at 122, Tab V at 129; Ex. 13, Tab Q at 56. Currently, an estimated ten women are murdered in the country every day, and the rate has risen "significantly" in recent years. Ex. 11, Tab S at 52, 69, Tab T at 115, Tab U at 119, Tab V at 129; Ex. 13, Tab V at 142–43. Evidence also states that [redacted] law enforcement continues to be ineffectual in punishing domestic abusers and protecting women against abuse. Ex. 11, Tab S at 52, 55, 104; Ex. 14, Tab E-13 at 155.

Respondent's evidence and testimony additionally support finding that [redacted] continues to pose a threat of harm notwithstanding the fact that Respondent's last personal interaction with him was over two years ago. Respondent testified that since she left [redacted], [redacted] has continued to attempt to contact her by telephone. Respondent testified that she received calls from [redacted] even after arriving in the United States. Respondent also learned from her parents, uncle, brother, sister, and some of her friends in [redacted] that [redacted] has continued

[redacted]

to contact them seeking her whereabouts. [redacted] stated in her declaration that [redacted] [redacted]'s daughter, [redacted], has been contacting her in the United States, trying to ascertain Respondent's location. Ex. 12, Tab D at 22; Ex. 15, Tab B at 36. And [redacted] stated in his declaration that [redacted] has left him voice messages in the United States. Ex. 10, Tab F at 50. Respondent's father and brother also submitted declarations, stating that they have seen [redacted] pass by their houses on "several occasions," and their neighbors also told them that they continue to see [redacted] [redacted] nearby. *Id.*, Tab N at 147, Tab O at 154–55. This evidence suggests that [redacted] [redacted] continues to be interested in locating Respondent.

The Court further notes that because the warrant for [redacted]'s arrest is still pending, he has an ongoing interest in finding Respondent and preventing her from participating in an investigation and testifying against him.

The Court additionally finds the Department did not meet its burden to demonstrate that Respondent could avoid future harm by relocating internally within [redacted]. The Department cites as support for this argument the fact that Respondent did not personally interact with [redacted] while she was at her father's house following her stabbing or when she was living at a shelter on the border for four months. However, the Court notes Respondent's testimony that she was in hiding at each of these locations. She testified that she was only safe at her father's house because [redacted] did not know where her father lived, and she went to great trouble to ensure that nobody learned her whereabouts. *See, e.g.*, *id.*, Tab E at 39 ("I lived in fear every day when I was in hiding at my parents' house. My mother kept me in a room and did not let anyone see me. Even if my brother or sisters visited, she told them I wasn't there."). Respondent similarly stated about her time at the migrant shelter that she "rarely left the shelter." Accordingly, that [redacted] did not harm Respondent at her father's home and the shelter does not support finding that she was able to live safely elsewhere in [redacted]. *See Akosung*, 970 F.3d at 1102 ("[W]e do not believe that an applicant can be said to have the ability to 'relocate' within her home country if she would have to remain in hiding there.").

Contrary to the Department's argument, evidence supports finding Respondent continues to face a serious risk of harm no matter where she goes in [redacted]. First, country conditions evidence suggests that violence against women is pervasive, affecting all parts of the country. *See, e.g.*, Ex. 11, Tab S at 69–70 (referring to violence against women as a "nationwide scourge" and "nationwide problem"). Second, because of [redacted]'s previous government employment and family connections to government officials, it appears that he would have access to national databases that would enable him to locate Respondent wherever she goes. Third, there is strong evidence [redacted] is affiliated with the [redacted] Cartel, one of the most powerful criminal organizations in [redacted], and the Court presumes he could leverage his cartel connections to locate Respondent upon her removal. *See* Ex. 10, Tab L at 98. Evidence states that [redacted] cartels utilize "[l]ookouts," called "[h]alcones," in the border region to monitor deportees and "watch for new arrivals." *Id.* at 108. Evidence also states that the cartels have corrupted immigration officials to provide them with information. *Id.* For these reasons, it is likely that [redacted] would be able to locate Respondent soon after her deportation to [redacted].

[redacted]

Finally, assuming, *arguendo*, Respondent could be safe in a different part of [redacted], the Court finds it would be unreasonable to require her to relocate. Respondent recently underwent a psychological evaluation, and she was diagnosed with PTSD and unspecified depressive disorder related to her past abuse and murder attempt. *Id.*, Tab M at 139. Because of her condition, Respondent experiences insomnia, nightmares, flashbacks, low energy, "very bad, extreme anxiety," panic attacks, heart palpitations, and depersonalization. *Id.* at 134–35, 139. The psychologist who examined Respondent stated that if Respondent is removed to [redacted] she will suffer additional trauma, exacerbating her symptoms. *Id.* at 140. Because of Respondent's condition, the Court finds it would be unreasonable to require her to relocate to a new part of [redacted] where she has no support from her extended family. *See Knezevic v. Ashcroft*, 367 F.3d 1206, 1214 (9th Cir. 2004) (listing health as a factor to be considered as part of the internal relocation analysis).

In sum, the Court finds Respondent is entitled to a presumed fear of future persecution based on the past persecution she experienced, and the Department did not rebut that presumption. Therefore, Respondent qualifies as a [redacted] refugee based on her well-founded fear of future persecution.

2. Discretion

Finally, to establish eligibility for asylum, an applicant must prove he or she is entitled to relief as an exercise of judicial discretion. *Kalubi v. Ashcroft*, 364 F.3d 1134, 1137 (9th Cir. 2004). In deciding whether the applicant merits discretion, courts must consider all relevant factors, both favorable and adverse. *Id.* at 1140. "There is no definitive list of factors that the [Court] must consider or may not consider. Each asylum application is different, and factors that are probative in one context may not be in others." *Id.* Ultimately, however, the Court's decision must not be "arbitrary, irrational, or contrary to law." *Gulla v. Gonzales*, 498 F.3d 911, 915 (9th Cir. 2007). The Court must "state its reasons and show proper consideration of all factors when weighing equities and denying relief." *Kalubi*, 364 F.3d at 1140 (internal quotation marks omitted).

One specific discretionary factor courts consider is the likelihood that the applicant will be persecuted if he or she is removed to his or her country of nationality. *Kazlauskas v. INS*, 46 F.3d 902, 905 (9th Cir. 1995). A court may choose to deny asylum as a matter of discretion if persecution is possible but unlikely. *Id.* In addition, if the alien suffered past acts of persecution, discrimination, harassment, or violence in his or her country of nationality, courts consider the severity of these acts. *See id.* at 905–06.

Here, in consideration of all relevant factors, the Court determines that Respondent warrants a favorable exercise of discretion. As a preliminary matter, the Department did not present, and the Court does not sua sponte identify any adverse discretionary factors in Respondent's case. On the other hand, there are multiple favorable discretionary considerations.

First, Respondent was the victim of severe past persecution in [redacted]. Throughout her seventeen-year marriage to [redacted], he demeaned, controlled, beat, raped, and strangled her. This abuse culminated in a vicious murder attempt that left Respondent in a coma for five days. The abuse Respondent experienced in [redacted] left her with physical

[redacted]

scars and emotional trauma. She continues to suffer from the symptoms of PTSD. The Court further notes that Respondent had to observe her children experiencing much of the same physical and mental abuse she herself experienced. Most notably, [redacted] sexually molested Respondent's daughter, [redacted], for over a decade. Respondent also watched [redacted] strangle her minor son, [redacted].

Second, should Respondent be removed to [redacted], the Court finds she faces an extremely high likelihood of future harm. [redacted] has demonstrated his commitment to controlling Respondent and punishing her for her perceived slights against him. That he already attempted to kill her in the past is strong evidence that he will attempt to do so again in the future. The Court notes that a warrant for [redacted]'s arrest is pending, and he has a clear motivation to prevent Respondent from testifying against him in Court. As evidence of this, Respondent stated in her declaration that after her stabbing, she saw that [redacted] had searched on his cellphone for "what would happen to an accused if the victim of a crime could no longer testify in court." Ex. 10, Tab E at 41; Ex. 15, Tab A at 24. That [redacted] continues to attempt to contact Respondent and her family, seeking her whereabouts, indicates that he remains interested in harming her.

Finally, the Court notes that Respondent has no criminal history in [redacted] or the United States, and she entered the country lawfully through a port of entry. Based on the foregoing, the Court finds Respondent warrants a favorable exercise of discretion.

3. Conclusion

In conclusion, the Court holds that Respondent is credible, has established statutory eligibility for asylum, and warrants relief as a matter of discretion. Accordingly, the Court will grant her application for relief under section 208 of the Act.

C. Withholding of Removal and Protection under the Convention Against Torture

Respondent additionally claims eligibility for withholding of removal under section 241(b)(3) of the Act and withholding and deferral of removal pursuant to Article III of the Convention Against Torture as codified under 8 C.F.R. § 1208.16(c)(2). However, because the Court is granting Respondent's application for asylum, it is unnecessary to consider the related issue of whether she qualifies for these additional forms of relief. *See INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) ("As 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."). Therefore, the Court shall hold these applications in abeyance.

[redacted]

V. CONCLUSION

In light of the foregoing, the Court shall enter the following Orders:

ORDERS

IT IS HEREBY ORDERED that Respondent be **GRANTED** asylum under INA § 208(a).

IT IS FURTHER ORDERED that Respondent's applications for withholding of removal pursuant to INA § 241(b) and protection under the Convention Against Torture are **HELD IN ABEYANCE**.

GILDA TERRAZAS Digitally signed by GILDA TERRAZAS Date: 2025.09.23 20:26:12 -07'00'

Date

Gilda M. Terrazas
Immigration Judge

APPEAL RIGHTS: Both parties have the right to appeal this decision. A notice of appeal must be filed with the Board of Immigration Appeals within thirty (30) calendar days of the issuance date of this decision. 8 C.F.R. § 1003.38(b) (2025). If the final date for filing the notice of appeal occurs on a Saturday, Sunday, or legal holiday, the time period for filing will be extended to the next business day. *Id.* If the time period expires and no appeal has been filed, this decision becomes final. 8 C.F.R. § 1003.38(d).

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL ( ) PERSONAL SERVICE ( )
ELECTRONIC SERVICE (✓)
TO: ALIEN ( ) ALIEN c/o Custodial Officer ( )
ALIEN'S ATTY/REP (✓) DHS (✓)
DATE: 9/24/25 **BY COURT STAFF:**
ATTACHMENTS: EOIR-33 ( ) EOIR-28 ( ) Legal Services List ( ) Other ( )

Add. II

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

Loyola New Orleans College of Law Law Clinic
Kusuda, Hiroko
7214 St. Charles Avenue
Box 902
New Orleans, LA 70118

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
COURT CLERK
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**
	)	
	)	**File No.:**
	)	
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:
Hiroko Kusuda, Clinic Professor
Loyola University New Orleans College of Law
Law Clinic and Center for Social Justice
7214 St. Charles Ave., Box 902
New Orleans, LA 70118

ON BEHALF OF THE DEPARTMENT:
Robert Weir
Assistant Chief Counsel
Department of Homeland Security
U.S. Immigration & Customs Enforcement
1250 Poydras St., Suite 2100
New Orleans, LA 70113

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY OF THE CASE

The Respondent, (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.

[redacted]

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.

[redacted]

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.*

[redacted]

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

[redacted]

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

Add. III

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Triche, Alicia Jeanine
TRICHE IMMIGRATION APPEALS
PO BOX 3210
Memphis TN 38173

DHS/ICE Office of Chief Counsel - NOL
1250 Poydras Street, Suite 2100
New Orleans LA 70113

Name: [redacted] **A** [redacted]

Date of this Notice: 11/15/2024

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

NOT FOR PUBLICATION

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

MATTER OF:

[redacted]

Respondent

FILED
Nov 15, 2024

ON BEHALF OF RESPONDENTS: Alicia J. Triche, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, New Orleans, LA

Before: O'Connor, Appellate Immigration Judge

O'CONNOR, Appellate Immigration Judge

The respondent,[1] a native and citizen of Honduras, appeals from the Immigration Judge's November 12, 2020, decision denying her application for asylum and withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(a), 1231(b)(3), and for protection under the regulations implementing the Convention Against Torture ("CAT").[2] The record will be remanded.

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

The respondent testified that her former partner physically, verbally and sexually abused her. She claimed past harm and a fear of future harm on account of her membership in the particular social groups defined as "Honduran women" and "Honduran women in a domestic relationship," and on account of her political opinion (IJ at 7-8; Tr. at 24-30, 33-34; Respondent's Br. at 7-15). The Immigration Judge found that neither of the respondent's proposed particular social groups

[1] The respondent's case was previously consolidated with her rider minor son's case ([redacted]), who was a derivative beneficiary on her asylum application. The Board granted the rider's motion to sever and dismiss proceedings, and a decision in that case will be issued separately. Given that the rider's proceedings are being dismissed, we need not address the respondent's argument relating to her son's claims for relief (Respondent's Br. at 17-19).

[2] The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for the United States on Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18.

were cognizable, relying on *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) ("*A-B- I*"), which was then in effect, to support his conclusions (IJ at 9).

We acknowledge and appreciate the Immigration Judge's reasoning and decision; however, remand is necessary for further fact-finding and legal review with respect to the respondent's applications for relief and protection. *See Matter of S-H-*, 23 I&N Dec. 462, 463 (BIA 2002).

During the pendency of the appeal, the Attorney General vacated *A-B- I* in its entirety. *See Matter of A-B-*, 28 I&N Dec. 307, 308-09 (A.G. 2021) ("*A-B- III*"). In *A-B- III*, the Attorney General instructed that, pending forthcoming rulemaking, Immigration Judges and the Board should follow pre-*A-B- I* precedent, including *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014). *See Matter of A-B-*, 28 I&N Dec. at 309.

We acknowledge that the United States Court of Appeals for the Fifth Circuit, in whose jurisdiction this case arises, has addressed asylum claims relating to domestic violence since the issuance of *A-B- III*. *See Jaco v. Garland*, 24 F.4th 395 (5th Cir. 2021). However, since particular social group claims and nexus findings require fact-finding that the Board may not make in the first instance, a remand is necessary to apply this case law for further consideration of the respondent's eligibility for asylum and withholding of removal under the INA. *See* 8 C.F.R. § 1003.1(d)(3)(iv).[3] Both parties should have an opportunity to update the record with evidence and arguments in light of the significant changes in law. *See Jaco*, 24 F.4th at 407 (recognizing that particular social groups involving women who have suffered from domestic violence are not categorically invalid).

On remand, the Immigration Judge should provide factual findings and analysis regarding whether the respondent established that the past harm she experienced rises to the level of persecution, whether her proposed particular social groups are legally cognizable, whether there is a nexus between the harm experienced and feared and a protected ground, and whether the Honduran government is willing and able to protect the respondent from her persecutor in light of the evidence of record she points to on appeal (Respondent's Br. at 16-17). *See Fe v. Ashcroft*, 293 F.3d 899, 908 (5th Cir. 2002) (noting that immigration adjudicators need not "'write an exegesis on every contention,'" but they should "'consider the issues raised and announce [their] decision in terms sufficient to enable a reviewing court to perceive that [they] ha[ve] heard and thought and not merely reacted'") (citation omitted).

Considering the foregoing, we will remand the record to the Immigration Judge for further proceedings and the issuance of a new decision as to the respondent's eligibility for asylum, withholding of removal, and CAT protection. In remanding, we express no opinion on the ultimate outcome of the case. *See Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996).

Accordingly, the following order will be entered.

[3] We also note that the respondent's proposed groups do not appear to have the circularity concerns of being defined "by reference to the very persecution from which [the group members] flee[]" that was central to the Fifth Circuit's decision in *Jaco*. *See* 24 F.4th at 405.

A[redacted]

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