No. 20-70311

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARIA MAURA MARTINEZ CASTRO,
Petitioner,

v.

WILLIAM P. BARR, U.S. Attorney General,
Respondent.

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

UNOPPOSED MOTION FOR LEAVE TO FILE UNTIMELY BRIEF OF AMICI CURIAE CENTER FOR GENDER & REFUGEE STUDIES AND CATHOLIC LEGAL IMMIGRATION NETWORK, INC. IN SUPPORT OF PETITIONER AND REVERSAL

Neela Chakravartula (CA SBN 254746)
Anne Peterson (CA SBN 258673)
Blaine Bookey (CA SBN 267596)
Karen Musalo (CA SBN 106882)
Center for Gender & Refugee Studies
U.C. Hastings College of the Law
200 McAllister Street
San Francisco, California 94102
Telephone: (415) 565-4877
Fax: (415) 581-8824

Attorneys for Amici Curiae

Pursuant to Federal Rule of Appellate Procedure 29, Center for Gender & Refugee Studies, at the University of California Hastings College of the Law (CGRS) and Catholic Legal Immigration Network, Inc. (CLINIC), hereby request leave to appear as amici curiae in the above-captioned matter, and for late filing of the proposed amici briefing. The brief that proposed amici wishes to file in support of Petitioner's Petition for Review and Reversal is submitted contemporaneous with this motion. The parties consent to the late-filing of this brief. In support of its motion, proposed amici state as follows:

1. To be timely filed, an amicus brief supporting Petitioner would have been filed no later than seven days after the Petitioner filed her Opening Brief which was June 8, 2020. Fed. R. App. P. 29(a)(6). As principal drafters of amici's brief, CGRS's ability to evaluate and meaningfully participate in the instant matter was delayed due to the current global pandemic as a small staff with limited resources. As this Court observed, "the national response to the pandemic has disrupted services of all kinds." *United States Court of Appeals for the Ninth Circuit COVID-19 UPDATE (as of 6/29/20)*.[1] CGRS has been without regular access to office space since March 13, 2020, with staff impacted by the shutdown of transportation and other services, including childcare, since the Bay Area

[1] Available online at http://cdn.ca9.uscourts.gov/datastore/general/2020/06/29/covid%20update%20june%2025.pdf

shelter-in-place ordinances went into effect. *See* Bay City News, *Solano County Becomes Last in Bay Area to Issue Shelter in Place Order*, NBC Bay Area (Mar. 18, 2020);[2] Erin Allday, *Bay Area orders 'shelter in place,' only essential businesses open in 6 counties*, San Francisco Chronicle (Mar. 16, 2020).[3] CGRS learned of this pending petition for review in March 2020, and received the record from Petitioner's counsel via email on April 24, 2020. CGRS has been working diligently since then, but due to outstanding obligations and disruptions caused by the pandemic response, was unable to prepare the attached brief to aid this Court's consideration of issues presented until this time. For these reasons and those set forth below, proposed amici respectfully seek leave for late filing. Fed. R. App. P. 29(a)(6).

2. Proposed amici respectfully submit that admitting our organizations to serve as friends of the Court would beneficially serve the purposes of Rule 29. CGRS and CLINIC have a significant interest in the issues presented in this case. Each organization has decades of experience representing asylum seekers and advising other attorneys who do the same, including developing specific guidance around the Attorney General's decisions in *Matter of A-B-*, 27 I&N Dec. 316 (A.G.

[2] *Available online at* https://www.nbcbayarea.com/news/local/north-bay/solano-county-becomes-last-in-bay-area-to-issue-shelter-in-place-order/2257524.
[3] *Available online at* https://www.sfchronicle.com/local-politics/article/Bay-Area-must-shelter-in-place-Only-15135014.php.

2018), and *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019). They have engaged in extensive research and writing on the issues raised in this appeal—the proper interpretation of the term "particular social group" as found in the refugee definition in United States law.

3. CGRS has played a central role in the development of refugee and asylum law nationwide through its litigation, scholarship,[4] and development of policy recommendations. Nationwide and in thousands of asylum cases every year CGRS provides expert technical assistance to attorneys representing asylum seekers at all levels of the immigration and federal court system. CGRS frequently advises on cases involving individuals and their families fleeing domestic violence and gang violence. Through its litigation, CGRS has participated in nearly every major gender-based asylum case resulting in nation-wide precedent in the immigration courts, including serving as counsel of record for the applicant in *Matter of A-B-*, and in her ongoing proceedings, and appearing as amicus in *Matter of A-R-C-G-*, 26 I&N Dec. 388 (B.I.A. 2014). CGRS also appeared as amicus

[4] *See, e.g.*, Blaine Bookey, *Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards and Fair Application of the Law*, 22 Sw. J. Int'l L. 1 (2016); Karen Musalo and Eunice Lee, *Seeking a Rational Approach to a Regional Refugee Crisis: Lessons from the Summer 2014 "Surge" of Central American Women and Children at the US-Mexico Border*, 5 JMHS 137 (2017); Kate Jastram and Sayoni Maitra, *Matter of A-B- One Year Later: Winning Back Gender-Based Asylum Through Litigation and Legislation*, 18 Santa Clara J. Int'l L. 48 (2020)

before the Board of Immigration Appeals (Board) following this Court's remand in *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010). CGRS has submitted briefs, as an amicus party and/or as counsel of record, regarding asylum and related claims in nearly every Court of Appeals, including the Ninth Circuit. *See, e.g.*, *Fuentes-Reyes v. Barr*, No. 18-73434 (9th Cir. argued March 24, 2020); *C.J.L.G. v. Barr*, 923 F.3d 622 (9th Cir. 2019) (en banc); *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051 (9th Cir. 2017) (en banc); *Garay Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016); *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (en banc); *Abebe v. Gonzales*, 432 F.3d 1037 (9th Cir. 2005) (en banc). CGRS has a significant interest in the outcome of this case because the proper interpretation of the term "particular social group" as found in the refugee definition in U.S. law directly implicates CGRS's central mission to advance protections for individuals fleeing persecution.

4. CLINIC is the nation's largest network of nonprofit immigration legal services providers, with almost 400 programs in 49 states and the District of Columbia. Agencies in CLINIC's network employ approximately 2,300 attorneys and accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year. CLINIC's promotion of the dignity and rights of immigrants is informed by Catholic Social Teaching and rooted in the Gospel value of welcoming the stranger. As a Catholic organization, CLINIC believes in

the dignity of women and the primacy of the family as the natural and fundamental group unit of society.

5. CLINIC and its affiliates provide direct representation in asylum matters before the immigration court, the Board, and federal courts of appeals. CLINIC attorneys are recognized national experts on asylum-related issues, especially in analysis of particular social group issues under asylum law. CLINIC staff has developed numerous resources for immigrants and immigration law practitioners, including a practice advisory on formulation of particular social groups following the Attorney General's *Matter of L-E-A-* decision. CLINIC has a significant interest in the outcome of this case because the decision will determine if this Court will continue to recognize women and families as deserving of asylum protections.

6. Proposed amici have a direct and serious interest in the questions under consideration in this case. The proposed brief is not duplicative of the briefing filed by any party. Amici's brief focuses on the proper interpretation of law for asylum seekers, and on the development of gender- and family-based asylum law in the Ninth Circuit and in the United States more generally. The brief further addresses key principles of agency deference and reasons why this Court should reject the Attorney General's decision in *L-E-A-* and reverse the Board's reliance on it in the instant case. Here, the Board rejected the cognizability of the

groups "Honduran women" and "Family of [Petitioner's family members]" among other group formulations, relying on *A-B-* and *Matter of L-E-A-* to deny Petitioner's claim. The Board's inconsistent treatment of groups defined by gender and family is of concern to CGRS and CLINIC.

7. Counsel for Petitioner, Julia Braker, informed the undersigned counsel by email that Petitioner consents to the instant motion.

8. Counsel for Respondent, Brendan Hogan, informed the undersigned counsel by email that Respondent consents to the instant motion.

WHEREFORE, proposed amici curiae respectfully seek the Court's leave to submit the amici curiae brief accompanying this motion.

Dated: July 17, 2020

Respectfully submitted,

s/ Neela Chakravartula

Neela Chakravartula
Anne Peterson
Blaine Bookey
Karen Musalo
Center for Gender & Refugee Studies
UC Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102

Attorneys for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2020, I electronically filed this **UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER AND REVERSAL** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the CM/ECF system, which will automatically send an email notification of such filing to the attorneys of record who are registered CM/ECF users.

Dated: July 17, 2020

/s Neela Chakravartula
Neela Chakravartula

Attorney for Amici Curiae

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Neela Chakravartula (CA SBN 254746)
Anne Peterson (CA SBN 258673)
Blaine Bookey (CA SBN 267596)
Karen Musalo (CA SBN 106882)
CENTER FOR GENDER & REFUGEE STUDIES
UC Hastings College of the Law
200 McAllister Street
San Francisco, California 94102
P: (415) 565-4877
F: (415) 581-8824

Bradley Jenkins
CATHOLIC LEGAL IMMIGRATION NETWORK, INC. (CLINIC)
8757 Georgia Ave., Suite 850
Silver Spring, MD 20910

Attorneys for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, each amicus party certifies that it does not have a parent corporation and no publicly held corporation owns 10 percent or more of the stock of the amicus.

Dated: July 17, 2020

/s Neela Chakravartula
Neela Chakravartula

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STATEMENT OF INTEREST

Amici curiae Center for Gender & Refugee Studies (CGRS) and Catholic Legal Immigration Network, Inc. (CLINIC) submit this brief pursuant to Federal Rule of Appellate Procedure 29(a). Amici have a direct interest and extensive expertise in the proper development of refugee and asylum law.[1] In particular, as relevant here, amici have significant expertise in cases involving domestic violence and gang brutality in Central America. As detailed in the accompanying motion for leave, the questions presented in this petition for review relate directly to amici's core missions to ensure that asylum protections under U.S. law comport with our international obligations.

INTRODUCTION

For over thirty years, the Board of Immigration Appeals (Board) and the courts of appeals, including this Court, have examined the refugee definition and concluded that gender- and family-based particular social groups fit squarely within its protective reach. While the Board has added to the analytical framework for social group cognizability over time—moving from the immutability test to immutability plus social distinction and particularity—at each shift both the Board and the courts have reaffirmed the unremarkable proposition that societies around

[1] The parties consent to this filing. No person or entity other than amici authored or contributed funds intended for the preparation or submission of the instant brief.

the world recognize women and families in a particular country as distinct groups. Such an approach follows international guidance and interpretations of sister signatories to the foundational treaties establishing protections for asylum seekers that guide U.S. interpretation.

In this case, the Board broke from this well-settled precedent and rejected the groups proposed by Petitioner, including "Honduran women"[2] and "Family of [Petitioner's family members]." As to the gender group, the Board reasoned that such a group was too large and nonhomogeneous to be cognizable. However, the decisions of this Court and the Board itself foreclose this reading of the statute. When interpreted in light of the other protected grounds of race, religion, nationality and political opinion, "particular social group" similarly covers potentially numerous and internally diverse groups. The Board's analysis of the family group also fails. The Board reasoned that the family group was not cognizable because Petitioner did not present evidence of her specific family's social distinction and import. However, in doing so, the Board elevated dicta from the decision of the Attorney General (AG) in *Matter of L-E-A-*, which is unreasonable and undeserving of this Court's deference. 27 I&N Dec. 581, 596 (A.G. 2019) [hereinafter *L-E-A- II*]. Requiring evidence of the specific family's

[2] For the purposes of analysis, amici focus on "Honduran women" but the same analysis also applies to "Honduran girls." References to "Honduran women" should be read to apply to both.

distinction, rather than families generally, departs from precedent without explanation and rests on reasoning that cannot be squared with the text, history, or structure of the Immigration and Nationality Act (INA). *See*, *e.g.*, 8 U.S.C. § 1101(a)(42) (refugee definition).

Amici support Petitioner's arguments with respect to other aspects of her claim, including the Board's flawed nexus finding, but submits this brief focused on the cognizability of her proposed groups to draw the Court's attention to the agency's distortion of the "particular social group" term, which has all but rendered it a nullity. Indeed, the Board has not recognized a single social group in a published opinion since establishing its current test, save for *Matter of A-R-C-G-*, 26 I&N Dec. 388 (B.I.A. 2014), a gender case, that has been overruled by the Attorney General in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). Amici respectfully call on the Court to affirm its longstanding recognition of Petitioner's gender- and family- defined groups and ensure the particular social group ground is interpreted in line with Congressional intent.

ARGUMENT

I. SOCIAL GROUPS DEFINED BY GENDER AND FAMILY TIES ARE COGNIZABLE FOLLOWING THE STATUTORY TEXT, BOARD STANDARDS, AND THIS COURT'S PRECEDENTS

A. The Board Has Repeatedly Acknowledged Gender and Family Ties May Bind Group Members Since It First Interpreted the "Particular Social Group" Term in 1985

The Board recognized that "sex" and "kinship ties" may be defining characteristics of a particular social group from its earliest interpretation of the ground in its seminal decision *Matter of Acosta*. 19 I&N Dec. 211, 233 (B.I.A. 1985). Finding neither Congress nor the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees[3] from which the term "particular social group" was adopted provided guidance on the term's meaning, the Board turned to the canon of *ejusdem generis* and construed it in a manner consistent with the meaning of the other enumerated grounds. *Acosta*, 19 I&N Dec. at 233; *see also Fatin v. INS*, 12 F.3d 1233, 1239 (3d Cir. 1993) (providing background on how the 1951 Convention came to include particular social group). Reasoning that each other enumerated ground "describes persecution aimed at an immutable characteristic," the Board held that a particular social group is one defined by a "common, immutable characteristic" which is "one that the members of the group either cannot change, or should not be required to change because it is fundamental to

[3] Collectively referred to as the Refugee Convention.

their individual identities or consciences." 19 I&N Dec. at 233. Sex and kinship ties were among the few examples the Board explicitly provided of characteristics that could meet this definition.[4] *Id.*

Following the *Acosta* framework, the Board has consistently held cognizable groups defined by gender and kinship ties. *See Matter of Kasinga*, 21 I&N Dec. 357, 365 (B.I.A. 1996) (held a social group defined principally by gender "meets the test [it] set forth in *Matter of Acosta*"); *Matter of H-*, 21 I&N Dec. 337, 342 (B.I.A. 1996) ("[C]lan membership is a highly recognizable, immutable characteristic that is acquired at birth and is inextricably linked to family ties.") (internal quotation marks omitted); *Matter of V-T-S-*, 21 I&N Dec. 792, 798 (B.I.A. 1997) (en banc) (analogizing with approval "Filipino[s] of mixed Filipino-Chinese ancestry" to "kinship ties").

Several circuits similarly acknowledged the viability of gender groups following *Acosta*.[5] In particular, then-Judge Alito's decision recognizing that

[4] While earlier cases refer to the characteristic of "sex," later cases more accurately refer to "gender," which has traditionally defined the different roles, privileges, and disadvantages assigned to or expected of individuals based on a socially constructed male/female distinction, and which may be the same or different from the individual's sex assigned at birth.

[5] The Board's *Acosta* standard was accepted by a majority of the courts of appeals including this Court. *See Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir. 2000) (adopting the *Acosta* framework); *see also Castillo-Arias v. U.S. Att'y Gen.*, 446 F.3d 1190, 1196-97 (11th Cir. 2006) (deferring to the *Acosta* formulation, observing that the First, Third, Sixth, Seventh, Eighth, and Ninth Circuits had done so, and that the Fourth and Fifth Circuits had cited it favorably).

"Iranian women" could easily pass muster, proved influential on other circuits and the agency's further development of the law. *Fatin*, 12 F.3d at 1240 (pointing to the Board's use of "sex" as an example of a qualifying innate characteristic); *see also Mohammed v. Gonzales*, 400 F.3d 785, 797-98 (9th Cir. 2005) (Somali females); *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007) (Somali females); *Niang v. Gonzales*, 422 F.3d 1187, 1199-1200 (10th Cir. 2005) (recognizing a group based on gender and tribal affiliation and observing that gender would be sufficient under *Acosta* to define a group). The courts of appeals also uniformly recognized family groups post-*Acosta* (*see* Section I.B.2).

In 2006, the Board changed its analytical framework to add the requirements of social distinction and particularity beyond immutability. *See Matter of C-A-*, 23 I&N Dec. 951, 959-61 (B.I.A. 2006); *Matter of W-G-R-*, 26 I&N Dec. 208, 216-17 (B.I.A. 2014) (renaming "social visibility" "social distinction"). Yet it continued to recognize gender- and family- groups under this framework. In *Matter of C-A-*, adding the new requirements, the Board stated that "groups based on innate characteristics such as *sex* or *family relationship* are generally easily recognizable and understood by others to constitute social groups." 23 I&N at 259 (emphasis added); *see also Matter of M-E-V-G-*, 26 I&N Dec. 227, 240, 246-47 (B.I.A. 2014) (citing with approval prior decisions finding family an easily recognizable social group); *W-G-R-*, 26 I&N Dec. at 216, 218-19 (same). Then, in *Matter of A-R-C-G-*,

the Board recognized the group "married women in Guatemala who are unable to leave their relationship." 26 I&N Dec. at 389. And in *Matter of L-E-A-*, the Board held that the immediate family of the applicant's father met the immutability, particularity, and social distinction requirements. 27 I&N Dec. 40, 42-43 (B.I.A. 2017) [hereinafter *L-E-A- I*] ("We have long recognized that family ties may meet the requirements of a particular social group."), overruled in part by *L-E-A- II*, 27 I&N Dec. at 596.

The Board's recognition of gender- and family-based social groups in the conforms with international guidance, in particular the position of the United Nations High Commissioner for Refugees (UNHCR), as is proper given Congress's intent to align the United States' refugee definition with the Refugee Convention. *Matter of S-P-*, 21 I&N Dec. 486, 492 (B.I.A. 1998); *see also Mohammed*, 400 F.3d at 797-98 (observing the position of UNHCR "provides significant guidance for issues of refugee law" (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 439-40 (1987))). In 1985, UNHCR indicated that women subjected to harsh or inhuman treatment for challenging social norms could be considered a particular social group consistent with the Convention's definition of a refugee.[6]

[6] For more on the development of gender asylum law, *see* Karen Musalo, *A Short History of Gender Asylum in the United States: Resistance and Ambivalence May Very Slowly Be Inching Towards the Recognition of Women's Claims*, 29:2 Refugee Surv. Q. 46 (2010); *see also* Kate Jastram and Sayoni Maitra,

UNHCR, Executive Committee of the High Commissioner's Programme, *Conclusion on Refugee Women and International Protection*, EXCOM Conclusion No. 39 (Oct. 18, 1985). UNHCR has adhered to this position and issued further guidance expressly stating "the refugee definition, properly interpreted . . . covers gender-related claims." UNHCR, Guidelines on Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01 (May 7, 2002). In 1993, UNHCR encouraged countries to develop guidelines addressing women asylum seekers. UNHCR, Executive Committee of the High Commissioner's Programme, *Conclusions on Refugee Protection and Sexual Violence*, Conclusion No. 73, (Oct. 8, 1993).

The Department of Justice (DOJ) responded to UNHCR's call with guidelines two years later. *See* Phyllis Coven, U.S. Dep't of Justice, Considerations for Asylum Officers Adjudicating Asylum Claims From Women, at 4 (May 26, 1995) (Agency Gender Guidelines). As observed by this Court, the Agency Gender Guidelines acknowledged "that gender is an immutable trait that can qualify under the rubric of particular social group." *Mohammed*, 400 F.3d at 797-98. In 2000, further demonstrating its consistent position, the DOJ issued proposed regulations

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Matter of A-B- One Year Later: Winning Back Gender-Based Asylum Through Litigation and Legislation, 18 Santa Clara J. Int'l L. 48 (2020).

which concluded that gender is an immutable characteristic that could give rise to a cognizable particular social group. Proposed Regulations, 65 Fed. Reg. 76,588 (2000).

Similarly, UNHCR has long recognized that family is a protected group under the Refugee Convention. *See, e.g.*, UNHCR, *position on claims for refugee status under the 1951 Convention relating to the Status of Refugees based on a fear of persecution due to an individual's membership in a family or clan engaged in a blood feud* ¶ 18 (Mar. 2006) ("It is the UNHCR's view that a family unit represents a classic example of 'particular social group.'");[7] UNHCR, *Protection of the Refugee's Family, No. 88 (L) – 1999*, Executive Committee 50th session, Executive Committee of the High Commissioner's Programme (Contained in United Nations General Assembly document A/AC.96/928 et document no. 12A (A/54/12/Add.1)), (Oct. 8, 1999) ("[T]he family is the natural and fundamental group unit of society and is entitled to protection by the society and the State.").[8] UNHCR's position is consistent with the international instruments that informed the Refugee Act and with the longstanding position of the Board and the Department of Homeland Security (DHS) that ordinary family groups can be cognizable, discussed *infra*, Section II.B.

[7] *Available at* https://www.refworld.org/docid/44201a574.html.
[8] *Available at* https://www.unhcr.org/excom/exconc/3ae68c4340/protection-refugees-family.html?query=family.

B. The Ninth Circuit Has Held That Groups Defined by Gender and Family Ties Are Cognizable Under a Straightforward Application of Existing Caselaw

1. This Court has recognized gender groups

The term "particular social group" lends itself to recognition of large and broad groups when interpreted in relation to the other enumerated grounds—which often include such groups without controversy. *See De Pena-Paniagua v. Barr*, 957 F.3d 88, 96 (1st Cir. 2020) ("[I]f race, religion, and nationality typically refer to large classes of persons, particular social groups—which are equally based on innate characteristics—may sometimes do so as well."). Accordingly, utilizing the *Acosta* framework, this Court held in 2006 that "the recognition that girls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group is simply a logical application of our law." *Mohammed*, 400 F.3d at 797. Following *Matter of C-A-'s* imposition of social visibility and particularity requirements, the Court again recognized that size and internal diversity do not defeat group existence and "that women in a particular country . . . could form a particular social group." *Perdomo v. Holder*, 611 F.3d 662, 667 (9th Cir. 2010).

The Court has not considered a gender group in a published opinion under the Board's current three-part test, but it has affirmed its viability in numerous unpublished decisions. *See Ticas-Guillen v. Whitaker*, 744 F. App'x 410, 410 (9th

Cir. 2018) ("Under our law, gender and nationality can form a particular social group."); *Silvestre-Mendoza v. Sessions*, 729 F. App'x 597, 598 (9th Cir. 2018) (remanding for consideration of the group "Guatemalan women"); *Torres Valdivia v. Barr*, 777 F. App'x 251, 253 (9th Cir. 2019) (remanding where the Board failed to provide adequate reasons for determining "all women in Mexico" not cognizable). As above, several other circuits have also found such groups constitute a valid protected ground for asylum.

2. This Court has recognized family groups

This Court's precedent has long held family to be a prototypical social group under both the *Acosta* and the *M-E-V-G-* frameworks; most recently applying the latter test to find that "family remains the quintessential particular social group." *Rios v. Lynch*, 807 F.3d 1123, 1128 (9th Cir. 2015); *see also Lin v. Ashcroft*, 377 F.3d 1014, 1028 (9th Cir. 2004) ("[W]e recognize that a family is a social group."); *Pedro-Mateo v. INS*, 224 F.3d 1147, 1151 (9th Cir. 2000) ("[T]he 'prototypical example' of a social group would be 'immediate members of a certain family.'") (citations omitted); *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576 (9th Cir. 1986) (immediate family is "a prototypical example of a 'particular social group'") (abrogated on other grounds as recognized by *Cordoba v. Holder*, 726 F.3d 1106 (9th Cir. 2013)).

The approach of this Court is consonant with its sister circuits. All of the circuits to have considered the question uniformly agree that social groups defined by kinship ties can be cognizable under the most, if not the only, reasonable interpretation of the statutory text. *See, e.g.*, *Villalta-Martinez v. Sessions*, 882 F.3d 20, 26 (1st Cir. 2018) ("[I]t is well established that the nuclear family constitutes a recognizable social group."); *Vanegas- Ramirez v. Holder*, 768 F.3d 226, 237 (2d Cir. 2014) ("[The petitioner's] membership in his family may, in fact, constitute a 'social-group basis of persecution' against him."); *Vumi v. Gonzales*, 502 F.3d 150, 155 (2d Cir. 2007) ("[T]he Board has held unambiguously that membership in a nuclear family may substantiate a social-group basis of persecution."); *S.E.R.L. v. Att'y Gen.*, 894 F.3d 535, 556 (3d Cir. 2018) ("Kinship, marital status, and domestic relationships can each be a defining characteristic of a particular social group."); *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) ("[T]he government correctly acknowledges, that membership in a nuclear family qualifies as a protected ground for asylum purposes."); *Crespin-Valladares v. Holder*, 632 F.3d 117, 124, 126 (4th Cir. 2011) (holding that the Board's rejection of petitioner's family group was "manifestly contrary to law"); *Al-Ghorbani v. Holder*, 585 F.3d 980, 995 (6th Cir. 2009) ("[A] family is a 'particular social group' if it is recognizable as a distinctive subgroup of society."); *Gonzalez Ruano v. Barr*, 922 F.3d 346, 353 (7th Cir. 2019) ("[M]embership in a nuclear family can

satisfy the social group requirement."); *Aguinada-Lopez v. Lynch*, 825 F.3d 407, 409 (8th Cir. 2016) ("[A] nuclear family can constitute a social group").

C. The Attorney General's Recent Decisions Unsuccessfully Attempt to Erode Protections for Asylum Seekers Fleeing Gender- and Family-Based Persecution

In two recent opinions, the Attorney General abruptly departed from U.S. asylum law's decades-long recognition of gender- and family- claims. In 2018, the AG issued *Matter of A-B-*, overruling *Matter of A-R-C-G-*, the Board's landmark social group decision in the context of a domestic violence claim. 27 I&N Dec. at 316, 333. The legal holding of *Matter of A-B-* is narrow; the AG held that the Board did not perform a rigorous analysis of the facts of Ms. A.R.C.G.'s case under the existing legal framework, and faulted the Board for relying on DHS stipulations regarding certain eligibility requirements. *Id*. at 333-34. Beyond overruling *A-R-C-G-*, the AG made additional statements in dicta inviting adjudicators to subject claims brought by domestic violence survivors to heightened scrutiny. *See, e.g.*, *id.*at 335 ("[G]roups defined by their vulnerability to private criminal activity likely lack . . . particularity."); *id.* at 320 ("Generally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum."). Some adjudicators have heeded the AG's call and used *A-B-* as justification to deny claims without conducting a thorough analysis. *See De Pena-Paniagua*, 957 F.3d at 93-94

(remanding where the Board relied on *A-B-* to categorically reject the petitioner's social group without individualized evaluation); *see* AR at 6 (holding the Petitioner's group including the "unable to leave" language failed on particularity and citing *A-B-*).

The following year, in 2019, the AG partially overruled the Board's precedent decision on family groups. *L-E-A- II* reversed the Board's holding in *L-E-A- I* that the immediate family of the applicant's father was a cognizable social group. 27 I&N Dec. at 581, 586. Like *A-B-*, *L-E-A- II* hinges on the AG's criticism that the Board allegedly failed to apply the required three-part analysis to L.E.A.'s proposed group. *Id*. at 586. However, also like the AG in *A-B-*, the AG made several statements in dicta in *L-E-A- II* implying that most family groups will not be cognizable because only families who have "greater social import" will meet the social distinction requirement. *See id*. at 589, 590, 595-96.

These opinions do not foreclose the viability of gender- and family- groups. However, the Board has since used the AG's broad language in *A-B-* and *L-E-A- II* to reject such groups that would be cognizable were it correctly applying its own precedent and that of this Circuit.

II. THE BOARD ERRONEOUSLY CONCLUDED THE PETITIONER'S GENDER- AND FAMILY-BASED SOCIAL GROUPS LACKED COGNIZABILITY

A. The Board's Rejection of the Gender-Defined Groups Flouts Its Own Precedent and the Law of This Circuit

1. The size or breadth of the group is not relevant to cognizability

A decade ago in *Perdomo*, this Court dismissed potential numerosity or internal diversity as undermining a group's existence. 611 F.3d at 668. There, the Court explained that numerosity does not defeat cognizability because an applicant is not "ineligible for asylum merely because all members of a persecuted group might be eligible for asylum," nor does internal diversity destroy cognizability where group members otherwise share innate characteristic(s). *Id.* at 668-69*; see also Garay Reyes v. Lynch*, 842 F.3d 1125, 1135 (9th Cir. 2016) (adhering to "the principle that [internal diversity] may not serve as the *sine qua non* of the particularity analysis" post-*M-E-V-G-*). Yet the Board and immigration judges (IJs) continue to treat the gender-plus-nationality framework inconsistently, sometimes acting in direct contravention of this Court's mandate, as happened in this case. AR at 5, 128 (IJ decision finding "Honduran woman" not cognizable for failure to establish Honduran society would see it as a "distinct, monolithic group"). This case presents an opportunity for the Court to provide clarity by correcting the Board's holdings which contravene *Perdomo* and holding "Honduran women" is a cognizable social group.

2. Petitioner's group "Honduran women" is cognizable

The gender-defined social group proposed by Petitioner meets the standards set by the Board and this Court. The status of gender as an immutable or fundamental characteristic under Board and Ninth Circuit law is beyond dispute. *See Matter of Acosta*, 19 I&N Dec. at 233; *Matter of C-A-*, 23 I&N Dec. at 957; *Perdomo*, 611 F.3d at 667. At issue here are social distinction and particularity, and both requirements are satisfied. *See De Pena-Paniagua*, 957 F.3d at 96 ("it is not clear why . . . 'women' or 'women in country X'" would fail the Board's three-part test).

A group like "X nationality women" (or, also articulated as "women in X country") is socially distinct, as shown through evidence demonstrating that gender is a clear way societies order themselves across the globe. *See W-G-R-*, 26 I&N Dec. at 217 (explaining that social distinction focuses on whether societies "in general perceive[], consider[], or recognize[]" the group). As recently observed by the First Circuit, "[i]n some countries, gender serves as a principal, basic differentiation for assigning social and political status and rights." *De Pena-Paniagua*, 957 F.3d at 96. That a given society identifies women as a distinct group is often readily apparent from "country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies." *M-E-V-G-*, 26 I&N Dec. at 244. Gender is embedded in language structures, or taken into

consideration in special legislation, for example recognizing the need to protect women's rights. *See Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013) (en banc) (observing it is "difficult to imagine" better evidence of social distinction than special laws tailored to the characteristics of a proposed group); *Silvestre-Mendoza*, 729 F. App'x at 598 (observing that Guatemalan attempts to combat pervasive femicide through means like specialized courts and mandatory sentences for perpetrators supported the social distinction of "Guatemalan women" and citing *Henriquez-Rivas*); AR at 576-581 (discussing the failure of legal reforms targeted at protecting women in Honduras, including ineffective investigation of acts of violence against women such as femicide).

A group defined by gender is also particular because it is "discrete and ha[s] definable boundaries." *M-E-V-G-*, 26 I&N Dec. at 239. Indeed, "it is . . . difficult to think of a country in which women do not form a 'particular' and 'well-defined' group of persons." *De Pena-Paniagua*, 957 F.3d at 96. That gender is sufficiently clear to describe who is within the group is evident from the fact that official documents routinely record an individual's gender. *M-E-V-G-*, 26 I&N Dec. at 239; AR at 328-29 (Petitioner's national ID card); AR at 331-33 (Petitioner's birth certificate).

Amici submit that the broader group of "Honduran women" is an appropriate frame for analyzing this case and is the "gravamen" of Petitioner's

claim. *Silvestre-Mendoza*, 729 F. App'x at 598; *see also De Pena-Paniagua*, 957 F.3d at 95 ("[G]rasping for the larger group hardly strikes us as a fool's errand."). Although the Board has not issued a published decision since *A-R-C-G-* recognizing gender groups, it has seemingly recognized gender-only groups in unpublished opinions or remanded for consideration of the validity of such a group.[9] *See* Appendices A-C (unpublished Board decisions). The Board's inconsistency in the treatment of gender groups is troubling given this Court's clear holdings in *Mohammed* and *Perdomo* that women of a nationality can form a social group.

3. Petitioner's other gender-defined groups are also cognizable

Petitioner raises more narrowly defined groups that include gender and other characteristics that center around her relationship status: "Honduran women viewed as property on account of her position in a relationship" and "Honduran women unable to leave a domestic relationship." Pet'r Opening Brief at 34, 39. The Board affirmed the IJ's rejection of both, finding in part that the terms "unable to leave" and "domestic relationship" are ambiguous or amorphous. AR at 5-6, 130-31. In so doing, the Board broke from the longstanding position of both DOJ and DHS that these terms were appropriate in framing social groups for domestic

[9] Without adequate guidance, IJs are likewise inconsistent in their application of the law. While the IJ in this case found the gender group not cognizable, IJs have also recognized the opposite. *See* Appendices D-F.

violence claims, at least until the Attorney General cast doubt on all such claims in *A-B-*.

In background to regulations DOJ proposed in 2000, for example, DOJ acknowledged that intimate relationships, including but not limited to marriage, could be immutable if the victim could not reasonably be expected to leave. Asylum and Withholding Definitions, 65 Fed. Reg. at 76,593-94. And in a highly publicized 2009 case DHS offered "Mexican women in domestic relationships who are unable to leave" and "Mexican women who are viewed as property by virtue of their position within a domestic relationship"—virtually identical to the groups proposed by Petitioner here—as potentially viable under the Board's three-part test. DHS's Supplemental Brief at 14, *Matter of L-R-* (B.I.A. Apr. 13, 2009) (DHS L-R- Brief).[10] DHS provided these group formulations as its official position on gender groups, in an effort to provide "guidance to both adjudicators and litigants" given the uncertainty of the law in this area. DHS L-R- Brief at 14-20[11] The Board followed suit by recognizing the validity of "married women in Guatemala who are

[10] Available at https://cgrs.uchastings.edu/sites/default/files/Matter_of_LR_DHS_Brief_4_13_2009.pdf.

[11] *See also* DHS's Position on Resp't Eligibility for Relief at 21, 26-28, *Matter of R-A-*, 23 I&N Dec. 694 (A.G. 2005) (offering "married women in Guatemala who are unable to leave the relationship"), *available at* https://cgrs.uchastings.edu/sites/default/files/Matter%20of%20R-A-%20DHS%20brief.pdf. For more history on the development of the law in this area, see Musalo, *supra* note 6; *see also* Jastram and Maitra, *supra* note 6.

unable to leave their relationship" in *Matter of A-R-C-G-*, 26 I&N Dec. 388. *See also De Pena-Paniagua*, 957 F.3d at 95 (observing that *A-R-C-G-* held out the narrower "unable to leave" group as a "safe harbor" for women asylum seekers and remanding with possibility for Board to consider broader gender only group).

Although amici contend that gender alone is the appropriate framework for evaluating this case, these narrower formulations should still prevail under a fact-specific analysis. *See Pirir-Boc v. Holder*, 750 F.3d 1077, 1083-84 (9th Cir. 2014); *see also De Pena-Paniagua*, 957 F.3d at 94 (rejecting a categorical preclusion of groups defined by inability to leave a relationship). Amici urge this Court to clearly hold in a published decision that the groups defined by gender or gender plus other immutable characteristics as articulated by Petitioner in this case meet the standard, and the Board erred in its cursory denial.

B. The Board's Rejection of "Ordinary" Families in Reliance on *Matter of L-E-A- II* Unreasonably Construes the INA and Departs from Precedent Without Explanation

1. This Court's opinion in *Rios* still controls

The Board in Petitioner's case erroneously interpreted *L-E-A- II* as abrogating this Court's holding in *Rios*. *See* AR at 4 n.1. In *L-E-A- II*, the AG criticized the decisions of several courts of appeals, including this Court, for recognizing family social groups by relying on "outdated dicta from the Board's early cases." *L-E-A- II*, 27 I&N Dec. at 589-91. And, citing *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967 (2005), he

purported to abrogate any decision "best interpreted as adopting a categorical rule that any nuclear family could constitute a 'particular social group.'" *L-E-A- II*, 27 I&N Dec. at 589, 591-92, 596. The *Rios* Court did not rely on dicta or create a categorical rule, but instead held that family is a cognizable social group under the Board's three-pronged test. *See Rios*, 807 F.3d at 1127-28. Therefore, the decision is not disturbed by *L-E-A- II* and *Brand X* does not require this Court to conclude otherwise. The AG's mischaracterization of the *Rios* Court as unduly relying on Board dicta despite the Court's clear reliance on the Board's current three-part cognizability test alone renders his decision-making in *L-E-A- II* arbitrary and capricious. When he did not engage with this Court's actual reasoning in *Rios*, the Attorney General "entirely failed to consider an important aspect of the problem . . . ." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Under *Brand X*, a court will defer to the agency's interpretations of ambiguous statutory terms even where it has previously held a contrary position. *See Brand X*, 545 U.S. at 980. However, as addressed below, such deference is unwarranted here as many of the statements in *L-E-A- II* are dicta, and "*Brand X* is not a license for agencies to rely on dicta to ignore otherwise binding circuit precedent." *Grace v. Whitaker*, 344 F. Supp. 3d 96, 138 n.22 (D.D.C. 2018), *aff'd in part, vacated in part on other grounds sub nom. Grace v. Barr*, No. 19-5013

(D.C. Cir. Jul. 17, 2020). Moreover, the AG's interpretation of the term must be reasonable which, as also explained below, it is not.

The AG's reliance on *Brand X* to undermine *Rios* fails for another reason. Although amici acknowledge the term "particular social group" has been deemed ambiguous, *see, e.g.*, *Henriquez-Rivas*, 707 F.3d at 1083, this Court has interpreted the term to unambiguously include ordinary families. *Rios*, 807 F.3d at 1128; *see* Section I.B.2, *supra*. This forecloses as a matter of law *L-E-A- II*'s interpretation of the term to generally reject such family social groups. *Brand X*, 545 U.S. at 982-83 ("[A] judicial precedent holding that the statute unambiguously forecloses the agency's interpretation, and therefore contains no gap for the agency to fill, displaces a conflicting agency construction.").

2. The language relied on by the BIA from *L-E-A- II* is dicta

The AG made broad pronouncements far beyond the case at hand, opining that most families will not be socially distinct unless there is evidence that the specific family is distinct. *See, e.g.*, *L-E-A- II*, 27 I&N Dec. at 589 ("in the ordinary case, a nuclear family will not, without more, constitute a 'particular social group' because most nuclear families are not inherently socially distinct"); *see also id*. at 594-95 (suggesting societal recognition of families is not sufficient absent proof of the individual family's importance). Because these sweeping statements and predictions about future cases not before the AG were unnecessary to the

disposition of *L-E-A- II*, they are dicta and, at most, entitled only to *Skidmore* deference. *See Marmolejo-Campos v. Holder*, 558 F.3d 903, 909 (9th Cir. 2009) (en banc) (unpublished opinions or dicta statements are accorded the less-deferential *Skidmore* review); *see also Estrada-Espinoza v. Mukasey*, 546 F.3d 1147, 1157 (9th Cir. 2008) (guidance not entitled to deference); *Velazquez-Herrera v. Gonzales*, 466 F.3d 781, 783 (9th Cir. 2006); *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (considering "all those factors which give it power to persuade, if lacking power to control"). However, as explained below, because *L-E-A- II* does not warrant deference even if analyzed under the more-deferential *Chevron* framework, it would necessarily fail under the less-deferential *Skidmore* standard. *See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984).

3. Interpreting the term "particular social group" to exclude ordinary nuclear families is unreasonable

L-E-A- II does not warrant *Chevron* deference because (1) its interpretation of "particular social group" to exclude families is based on flawed statutory interpretation and is contrary to Congressional intent and binding precedents, and (2) its requirement of proving distinction of the *specific* family rather than family groups *generally* conflicts with the statutory text and departs from Board precedent without acknowledgement or explanation.

a. Rejecting family groups as outside the scope of the refugee definition violates Congressional intent and is an unexplained departure from longstanding precedent

The AG states that "recognizing families as particular social groups would render virtually every [non-citizen] a member of a particular social group" and that "[t]here is no evidence that Congress intended the term . . . to cast so wide a net." *L-E-A- II*, 27 I&N Dec. at 593; *cf. Matter of Acosta*, 19 I&N Dec. at 233. This interpretation of "particular social group" is not "based on a permissible construction of the statute" for at least three reasons. *Marmolejo-Campos*, 558 F.3d at 908.

First, the AG misapplies canons of statutory interpretation in an attempt to justify his narrow construction of the refugee definition. Faithful application of *ejusdem generis* dictates that—just like the protected grounds of race, religion, nationality, and political opinion—"particular social group" can include groups defined by characteristics virtually everyone possesses. *See Acosta*, 19 I&N Dec. at 233-34; *see also* Section I.A, *supra*. But universal possession of a protected characteristic does not lead to universal eligibility for asylum as the Attorney General fears, because only those who face persecution because of their group membership will qualify for protection. *See* Section I.B.1, *supra*; *see also, e.g.*, *Cece v. Holder*, 733 F.3d 662, 673 (7th Cir. 2013) ("Although the category of protected persons may be large, the number of those who can demonstrate the

required nexus likely is not."). The AG's distortion of *ejusdem generis* to arrive at an unreasoned interpretation of the statute deserves no deference. *See Chevron*, 467 U.S. at 844.

Second, the AG's decision thwarts Congressional intent to bring domestic refugee law into line with United Nations standards. *See* Section I.A, *supra*. Since adoption of the Refugee Convention, international law has recognized family as the "natural and fundamental group unit of society." G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 16.3 (Dec. 10, 1948).[12] Therefore, interpreting the statute to exclude family runs afoul of the refugee definition Congress adopted and must be rejected. *See Fed. Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981) ("[Courts] must reject administrative constructions of the statute . . . that frustrate the policy that Congress sought to implement."); *see also Loving v. IRS*, 742 F.3d 1013, 1022 (D.C. Cir. 2014) (declining deference where agency interpretation "is unreasonable in light of the statute's text, history, structure, and context").

[12] The United Nations adopted this language found in the Universal Declaration of Human Rights concurrently with the Refugee Convention, which introduced the term "particular social group," demonstrating the drafters' intent for the term to include families. *See* United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, U.N. Doc. A/CONF.2/108/Rev.1 (July 25, 1951); Geneva Convention Relating to the Status of Refugees, art. 1(A)(2), opened for signature July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137.

Finally, the AG fails to acknowledge, let alone explain, his departure from earlier agency construction of the particular social group provision to encompass groups defined by widely-held characteristics. *See, e.g.*, *Matter of H-*, 21 I&N Dec. at 343-44 ("[T]he fact that almost all Somalis can claim clan membership and that interclan conflict is prevalent should not create undue concern that virtually all Somalis would qualify for refugee status" because applicants must still establish nexus.). The absence of any recognition or explanation for changing the agency's interpretation of the statute renders the departure unreasonable. *See Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (an agency changing its interpretation of a statute must "at least 'display awareness that it is changing position' and 'show that there are good reasons for the new policy'") (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

b. Requiring evidence of a specific family's distinction is legally erroneous and an unreasonable departure from longstanding precedent

In addition to his flawed analysis of the INA to exclude families from protection, the AG predicates the agency's about-face on family groups on his contention that they are unlikely to be sufficiently distinct. *L-E-A- II* states that the fact that families are "widely recognized" and "generally carry societal importance says nothing about whether a *specific* nuclear family would be 'recognizable by society at large'" and suggests that "unless an immediate family carries greater

societal import, it is unlikely that a proposed family-based group will be 'distinct.'" 27 I&N Dec. at 594-95. This reasoning jettisons years of precedent recognizing that social distinction can be proved through a society's legal and cultural understanding of the group alone.

Indeed, the Board's social group analysis has never required individual group members to show their distinction or importance vis-à-vis other group members. *See M-E-V-G-*, 26 I&N Dec. at 239 ("Our precedents have collectively focused on the extent to which the group is understood to exist as a recognized component of the society in question."); *Matter of C-A-*, 23 I&N Dec. at 957. Such a requirement would arbitrarily treat families with greater scrutiny than other social groups. Take the example of individuals fleeing sexual orientation related persecution—the Board has held it is sufficient that a group defined as homosexuals in a particular country is broadly recognized in society and has not required asylum seekers to show they are individually socially distinct. *See Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (B.I.A. 1990).

DHS has also endorsed this understanding of Board precedent. Applying the Board's three-part framework from *M-E-V-G-* to families the U.S. Citizenship and Immigration Services (USCIS) instructed: "The question here is *not* generally whether a specific family is well-known in the society" but "whether the society perceives the degree of relationship shared by group members as so significant that

the society distinguishes groups of people based on that *type* of relationship." USCIS, Refugee, Asylum, and International Operations (RAIO) Directorate—Officer Training: Nexus—Particular Social Group Lesson Plan, July 27, 2015, at 22 (emphasis added).[13] In the *L-E-A- I* litigation, DHS similarly posited that the proper inquiry "is not whether a specific family is famous or 'distinct,'" but rather "a claim based on family membership will depend on the nature and degree of the relationships involved and how those relationships are regarded by the society in question." DHS Supplemental Brief at 5-9, 7 n.7, *L-E-A- I* (Apr. 21, 2016).[14] By claiming to apply *M-E-V-G-* while simultaneously departing from it, the AG fails to even acknowledge, let alone provide reasoned explanation for this change in agency position. *See L-E-A- II*, 27 I&N at 594.

Looking at how the Board has evaluated the other protected grounds underscores the erroneous approach of *L-E-A- II* as interpreted by the Board in this case. When considering claims based on race or religion, for example, the Board has always focused on whether the racial or religious group is recognized as such in the relevant society *not* whether it is prominent or important as compared to

[13] *Available at* https://www.uscis.gov/sites/default/files/files/nativedocuments/Nexus_-_Particular_Social_Group_PSG_LP_RAIO.pdf.
[14] *Available at* https://cliniclegal.org/resources/asylum-and-refugee-law/matter-l-e-board-immigration-appeals-filings-dhs-brief.

other races or religions. *See M-E-V-G-*, 26 I&N at 244 (analogizing the evidentiary burden in social group claims to that of other grounds).

The different, heightened standard proposed by the AG is arbitrary and unreasonable. *See Chevron*, 467 U.S. at 844. The agency's failure to acknowledge its departure from settled understanding of social distinction alone renders that departure undeserving of deference. *See Fox*, 556 U.S. at 515 (an agency may not "depart from a prior policy *sub silentio*"). To the contrary, the AG claims to be adhering to *M-E-V-G-*. *See Allentown Mack Sales and Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998) ("It is hard to imagine a more violent breach of that requirement [of reasoned decision making] than applying a rule . . . which is in fact different from the rule or standard formally announced.").

4. Petitioner's proposed family groups are cognizable

Ordinary families meet the Board's three-part test as invariably recognized by the courts and the agency until *L-E-A- II*.[15] The Board has repeatedly affirmed that kinship ties are an immutable or fundamental characteristic. *See* Section I.A., *supra*. In addition, it is rarely disputed that family groups are sufficiently particular. Their boundaries are easily established by examining the biological,

[15] Though no court has examined the effect of *L-E-A- II* on past precedent recognizing family social groups, at least one has remanded for agency consideration of an ordinary family group. *See, e.g.*, *Enamorado-Rodriguez v. Barr*, 941 F.3d 589, 600 (1st Cir. 2019).

legal, and cultural customs that define families in a given society. *See* Section II.A.2. (citing authorities discussing evidence of particularity).

These groups are also socially distinct because, as discussed, families are universally understood to be the fundamental unit of society. *See, e.g.*, *Matter of C-A-*, 23 I&N Dec. at 959 (family is an easily recognizable group). Family ties are ingrained in naming customs and addressed in legal structures, including family, penal, and intestacy laws. *See* Section II.A.2. (citing authorities discussing evidence of social distinction).

The Board's rejection of Petitioner's family groups cannot stand as it applied a different standard than the *M-E-V-G-* test to which it claimed to adhere. *See* AR at 4-5 (citing *M-E-V-G-*, 26 I&N Dec. at 237). Had it applied the proper framework and this Court's controlling precedents, the record would have compelled recognition of the group's existence.

Amici urge this Court to clarify in a published decision that the AG's broad and improperly restrictive commentary regarding "average" families is dicta undeserving of deference, that this Court's precedent recognizing family as the quintessential particular social group still controls, and that the family-defined groups as articulated by Petitioner in this case meet the Board's three-part standard and the Board erred in holding otherwise.

CONCLUSION

For the foregoing reasons, amici respectfully ask this Court to find that Petitioner's gender- and family-defined social groups are cognizable and remand her case for fair consideration by the agency.

Dated: July 17, 2020

Respectfully submitted,

/s Neela Chakravartula

Neela Chakravartula
Anne Peterson
Blaine Bookey
Karen Musalo
The Center for Gender & Refugee Studies
UC Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102

Attorneys for Amici Curiae

Bradley Jenkins
CATHOLIC LEGAL IMMIGRATION NETWORK, INC. (CLINIC)
8757 Georgia Ave., Suite 850
Silver Spring, MD 20910

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of the Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because, excluding the parts of the document exempted by the Federal Rule of Appellate Procedure 32(f), this document contains 6,998 words. This word count was calculated by Microsoft Word 2016, the word processing system used to prepare this brief.

Dated: July 17, 2020

/s/ Neela Chakravartula
Neela Chakravartula

Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2020, I electronically filed this **BRIEF OF AMICI CURIAE CENTER FOR GENDER & REFUGEE STUDIES AND CATHOLIC LEGAL IMMIGRATION NETWORK (CLINIC) IN SUPPORT OF PETITIONER AND REVERSAL** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the CM/ECF system, which will automatically send an email notification of such filing to the attorneys of record who are registered CM/ECF users.

Dated: July 17, 2020

/s Neela Chakravartula
Neela Chakravartula

Attorney for Amici Curiae

APPENDICES

Page

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

Wilson, Rachel
Rachel Wilson, PLLC
177 N. Church Ave.
Suite 200
Tucson, AZ 85701

DHS/ICE Office of Chief Counsel - TUS
6431 S. Country Club Rd.
Tucson, AZ 85706

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

Date of this notice: 12/20/2018

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

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

Userteam: Docket

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A[redacted]-056 – Tucson, AZ

Date: DEC 20 2018

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rachel Wilson, Esquire

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

APPLICATION: Asylum; withholding of removal; Convention Against Torture

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

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

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

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

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A[redacted]-056

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

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

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

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

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A[redacted]-056

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

Accordingly, the following order will be entered.

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

FOR THE BOARD

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

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Aguirre, Eloy Armando
Law Office of Eloy Aguirre
1214 S. Glendora Ave
West Covina, CA 91790

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

Name: A[redacted], M[redacted] D... **A [redacted]-053**
Riders:[redacted]

Date of this notice: 2/14/2019

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
O'Connor, Blair

[illegible]
Userteam: Docket

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

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

Date: FEB 14 2019

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Eloy A. Aguirre, Esquire

APPLICATION: Asylum; withholding of removal: Convention Against Torture

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

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

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

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

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

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

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

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

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

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

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

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

Accordingly, the following order is entered.

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

FOR THE BOARD

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

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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

Laner, Jehan Marie
Pangea Legal Services
350 Sansome Street
Suite 650
San Francisco, CA 94104

DHS/ICE Office of Chief Counsel - SFR
P.O. Box 26449
San Francisco, CA 94126-6449

Name: A[redacted]-A[redacted], A[redacted] C[redacted]... **A[redacted]-222**

Date of this notice: 11/6/2019

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Liebowitz, Ellen C

Userteam: Docket

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A[redacted]-222 – San Francisco, CA

Date: NOV - 6 2019

In re: A[redacted] C[redacted] A[redacted]-A[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jehan Marie Laner, Esquire

ON BEHALF OF DHS: Vincent D. Pellegrini
Assistant Chief Counsel

APPLICATION: Asylum

The Department of Homeland Security (DHS) appeals from the Immigration Judge's decision dated May 20, 2019, granting the respondent's application for asylum under section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A).[1] The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The DHS's appeal of the Immigration Judge's decision is limited to the Immigration Judge's positive credibility finding and determination that the respondent established the requisite nexus to a ground enumerated in the definition of refugee. *See* section 208(b)(1)(B)(i) of the Act; *Parussimova v. Mukasey*, 555 F.3d 734, 740 (9th Cir. 2009) ("[t]he REAL ID Act requires that a protected ground represent 'one central reason' for an asylum applicant's persecution"); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007). We review these findings for clear error, and do not conclude that there is clear error in either determination. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (observing that the motive of a persecutor is a finding of fact to be determined by the Immigration Judge and reviewed by the Board for clear error).

Specifically, we acknowledge the DHS's arguments regarding the respondent's credibility. While we may have reached a different result if we were the factfinders, we discern no clear error in the Immigration Judge's findings of fact supporting her positive credibility finding. *See Matter of A-B-*, 27 I&N Dec. 316, 341 (A.G. 2018) (the Board may find an Immigration Judge's factual findings to be clearly erroneous only if they are "illogical and implausible") (internal citations omitted); *see also Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.").

[1] The Immigration Judge did not reach the respondent's withholding of removal and Convention Against Torture claims.

A[redacted]-222

Similarly, we discern no clear error in the Immigration Judge's determination that the respondent established persecution on account of her membership in a particular social group. *See Matter of A-B-*, 27 I&N Dec. at 341; *N-M-*, 25 I&N Dec. at 532.

Based on the foregoing, we will dismiss the DHS's appeal. Accordingly, the following orders will be entered.

ORDER: The DHS's appeal is dismissed.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

Ellen Rubowitz
FOR THE BOARD

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

In the matter of

A[redacted] C[redacted] A[redacted]-A[redacted],

Respondent

Date: May 20, 2019

File Number: A[redacted]-222

In Removal Proceedings

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

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

On Behalf of the Respondent:
Jehan M. Laner
Pangea Legal Services
350 Sansome Street, Suite 650
San Francisco, California 94104

On Behalf of the Department:
Vincent D. Pellegrini
Office of the Chief Counsel
630 Sansome Street, Room 1155
San Francisco, California 94104

DECISION OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

These proceedings commenced on December 5, 2013, when the Department of Homeland Security ("the Department") filed a Notice to Appear, thereby placing the respondent, A[redacted] C[redacted] A[redacted]-A[redacted], in removal proceedings and vesting jurisdiction with this Court. Exh. 1; 8 CFR § 1003.14(a). The Department alleges that the respondent is a native and citizen of El Salvador who entered the United States at or near Hidalgo, Texas, on November 16, 2012, who did not then possess a valid entry document, and who was not then admitted or paroled after inspection by an immigration officer. Exh. 1.

On April 24, 2018, the respondent admitted all factual allegations, conceded the charge of removability, and declined to designate a country of removal. Based on the respondent's admissions and concession, the Court sustained the charge of removability and directed El Salvador as the country of removal, should it become necessary. *See* 8 C.F.R. § 1240.10(f). On the same date, the respondent submitted a Form I-589, Application for Asylum and for Withholding of Removal ("Form I-589"), seeking asylum, withholding of removal, and protection under the Convention Against Torture. *See* Exh. 2. She asserts she will be harmed or tortured by her former partner, [redacted] ("Mr. [redacted] gang members, or the

Salvadoran police.[1]

II. EVIDENCE PRESENTED

The evidence of record consists of the testimony of the respondent; nurse practitioner Suzzane Portnoy ("Ms. Portnoy"); Assistant Professor of Political Science, Dr. Mneesha Gellman ("Dr. Gellman"); Associate Professor of Cultural Anthropology, Dr. Miranda Hallett ("Dr. Hallett"); Margaret Thatcher Research Fellow, Dr. Theodore Bromund ("Dr. Bromund"); and the following exhibits:

Exhibit 1:	NTA;
Exhibit 2:	Form I-589;
Exhibit 3:	The respondent's notice of *Mendez Rojas* class membership and motion for order finding her asylum application timely filed;
Exhibit 4:	The respondent's renewed motion;
Exhibit 5:	Form I-213, Record of Deportable/Inadmissible Alien;
Exhibit 6:	The Department's submission of documents, including an Interpol Red Notice ("Red Notice") and arrest warrant for the respondent;
Exhibit 7:	The Department's submission of additional documents, including Form I-867A, Record of Sworn Statement in proceedings under Section 235(b)(1) of the Act, and Form I-870, Record of Determination/Credible Fear Worksheet;
Exhibit 8:	The respondent's motion for extension of time to file supporting documents;
Exhibit 8A:	IJ Order (Feb. 14, 2019) (granting the respondent's motion);
Exhibit 9:	The respondent's declaration;
Exhibit 10:	The respondent's motion for continuance;
Exhibit 10A:	IJ Order (Feb. 27, 2019) (denying the respondent's motion);
Exhibit 11:	The respondent's pre-hearing brief and statement of particular social groups;
Exhibit 12:	The respondent's amended Form I-589;
Exhibit 13:	The respondent's motion to permit telephonic testimony of expert witnesses;
Exhibit 13A:	IJ Order (Mar. 5, 2019) (denying the respondent's motion);
Exhibit 14:	The respondent's documents, Tabs A–EEE, in support of her Form I-589;
Exhibit 15:	The respondent's witness list;
Exhibit 16:	The Department's notice of previously filed documents with amended certificate of translation;
Exhibit 17:	2018 U.S. Department of State Human Rights Report for El Salvador; and
Exhibit 18:	The respondent's additional documents in support of her Form I-589.[2]

The Court has thoroughly reviewed the entire record, whether or not summarized in its decision. The Court incorporates relevant facts into the analysis below.

[1] For clarity, the Court refers to the respondent's former partner as "Mr. [redacted] notwithstanding his subsequent name change to Victor Salvador Corrales Benavides. *See* Exh. 9 at 11.

[2] Exhibit 18 was marked for identification purposes only.

III. CREDIBILITY

A respondent bears the burden of establishing her eligibility for relief from removal and may satisfy this burden through credible testimony. *See* INA § 240(c)(4). In making a credibility finding under the REAL ID Act, the Court may base its credibility determination on the demeanor, candor, or responsiveness of the applicant, the inherent plausibility of her account, the consistency between her written and oral statements, the internal consistency of each such statement, the internal consistency of such statements with other evidence of record, any inaccuracies or falsehoods in such statements, or any other relevant factor. *See* INA § 240(c)(4)(C).

The Court may make a credibility determination without regard to whether any inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim. *See id.* However, a credibility determination "must be assessed under a rule of reason," and the Court may not base an adverse credibility finding on mere trivial inconsistencies. *Shrestha v. Holder*, 590 F.3d 1034, 1043–44 (9th Cir. 2010). The Court must give the respondent an opportunity to explain any discrepancies and assess whether the applicant's explanation is reasonable. *Campos-Sanchez v. INS*, 164 F.3d 448, 450 (9th Cir. 1999) *superseded on other grounds as stated in Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014). If the respondent provides a reasonable and plausible explanation for the discrepancy, the Court must provide "a specific and cogent reason for rejecting it." *Rizk v. Holder*, 629 F.3d 1083, 1088 (9th Cir. 2011) (quoting *Soto-Olarte v. Holder*, 555 F.3d 1089, 1091–92 (9th Cir. 2009)). As set forth below, the Court has numerous concerns with various inconsistencies that bear directly on the heart of the respondent's claim.

First, the Court is troubled by pervasive inconsistencies between the respondent's testimony and the evidentiary record regarding the Salvadoran government's efforts to protect her from Mr. [redacted]. The respondent's testimony became increasingly inconsistent when the Department confronted her with the asylum officer's notes from her Credible Fear Interview ("CFI") in December 2012. As one example, the respondent testified that Mr. [redacted] had never been arrested in connection to his abuse. However, in her CFI, she indicated that he had been arrested on August 28, 2012, due to his abuse. When confronted with her CFI testimony, she replied that she could not remember his arrest or perhaps she or the asylum officer were confused. The Court does not find this explanation sufficiently persuasive because the respondent did not otherwise assert encountering any communication difficulties with the asylum officer.

Second, the Court is concerned by the respondent's numerous inconsistencies and omissions on her applications regarding her criminal history in El Salvador. During direct examination, the respondent testified that she was arrested on two occasions in El Salvador. On the first occasion, her sister called the police after the respondent scolded her niece. The police held her for a few hours then released her. On the second occasion, police arrested the respondent after calling to report Mr. [redacted] abuse. The police detained her then released her later that day. When asked to explain why she told the asylum officer that she had never been arrested or detained, the respondent answered that she thought the arrests were not "official

arrests" because she was only detained for a few hours and no formal charges were filed. On redirect, the respondent added that she did not believe she was arrested because she was not handcuffed or detained in a cell; rather, the police required her to wait in the police station until they released her. The Court is troubled by the respondent's willingness to withhold information detrimental to her case. However, in the totality, the Court finds this explanation minimally sufficient.

In sum, the Court observed troubling inconsistencies between the respondent's testimony and documentary evidence, specifically with regard to the assistance rendered by the Salvadoran government and the respondent's criminal history. Nevertheless, the Court must consider these credibility concerns in light of the respondent's illiteracy, lack of education, and diagnoses of neurocognitive disorder due to traumatic brain injury and Post-traumatic Stress Disorder. *See* Exh. 14 at 15. Although the respondent appeared to consistently try to minimize or omit facts that she perceived as detrimental to her claim, in light of the totality of the circumstances, including the respondent's attempted explanations for her misrepresentations and inconsistencies, the Court finds that the respondent is marginally credible. Therefore, the Court declines to make an adverse credibility finding. *See* INA § 240(c)(4).

The Court also carefully listened to the telephonic testimony of Ms. Portnoy, Dr. Gellman, Dr. Hallett, and Dr. Bromund, assessing their testimony for consistency, detail, specificity, and persuasiveness. Considering the same factors, the Court finds that all four expert witnesses testified credibly and accords their testimony full evidentiary weight.

IV. APPLICATIONS FOR RELIEF

The respondent bears the burden of establishing that she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. *See* INA § 240(c)(4)(A). If the evidence indicates that one or more grounds for mandatory denial of the application for relief apply, the applicant has the burden of proving by a preponderance of the evidence that such grounds do not apply. *See* 8 C.F.R. § 1240.8(d).

A. Bars to Relief

1. One-Year Bar to Asylum

In order to qualify for asylum, a respondent must first demonstrate by clear and convincing evidence that she filed her application within one year after the date of her arrival in the United States. INA § 208(a)(2)(B). A joint stay agreement in *Rojas v. Johnson*, 305 F. Supp. 3d 1176 (W.D. Wash. Mar. 29, 2018), provides an exception to the one-year bar for certain class members. Under *Rojas*, Class A members are individuals who have been or will be released from the Department's custody after having been found to have a credible fear of persecution within the meaning of INA § 235(b)(1)(B)(v) and did not receive notice from the Department of the one-year deadline to file an asylum application. *See* 305 F. Supp. 3d at 1179. Additionally, Class A.II members are individuals who are in removal proceedings and who either have not applied for asylum, or applied for asylum one year after their last arrival. *See id.*

The Court finds that the respondent meets the definition of a *Rojas* Class A.II member. The respondent entered the United States on November 16, 2012. *See* Exh. 1. On December 17, 2012, she was interviewed by an asylum officer and was found to have a credible fear of persecution in El Salvador. Form I-870, Record of Determination/Credible Fear Worksheet. The respondent was released from the Department's custody but the Department did not notify her of the one-year filing deadline. The respondent filed a Form I-589 on April 24, 2018, while in removal proceedings and more than one year after her arrival to the United States. Accordingly, the Court finds that the respondent is a *Rojas* class member and, as such, accepts her asylum application as timely filed. 305 F. Supp. 3d at 1179.

2. Serious Nonpolitical Crime

A respondent found to have committed a serious non-political crime is statutorily ineligible for asylum, withholding of removal under the Act, and withholding of removal under the CAT. INA §§ 208(b)(2)(A)(iii), 241(b)(3)(B)(iii). A serious nonpolitical crime "is a crime that was not committed out of genuine political motives, was not directed toward the modification of the political organization or . . . structure of the state, and in which there is no direct, causal link between the crime committed and its alleged political purpose and object." *McMullen v. INS*, 788 F.2d 591, 595 (9th Cir. 1986) (internal punctuation and citation omitted), *overruled on other grounds by Barapind v. Enomoto*, 400 F.3d 744, 751 n.7 (9th Cir. 2005) (en banc).

The Court must determine whether (1) the offense is a serious nonpolitical crime, and (2) there are serious reasons for believing that the applicant committed the crime. *See Go v. Holder*, 640 F.3d 1047, 1052–53 (9th Cir. 2011). The Ninth Circuit has interpreted the "serious reasons to believe" standard as "tantamount to probable cause." *Silva-Pereira v. Lynch*, 827 F.3d 1176, 1188 (9th Cir. 2016). "[A] serious crime must be a capital crime or a very grave punishable act. Minor offenses punishable by moderate sentences are not within the serious nonpolitical crime ground of exclusion." *Matter of Frentescu*, 18 I&N Dec. 244, 246 (BIA 1982) (internal quotations omitted).

In *Matter of E-A-*, the Board clarified that offenses it considered serious were "not simply minor property offenses, but instead, involve a substantial risk of violence and harm to persons." 26 I&N Dec. 1, 5 n.3 (BIA 2012). The Court considers factors such as the applicant's description of the crime, the turpitudinous nature of the conduct, the value of any property involved, the length of sentence imposed and served, and the usual punishments imposed for comparable offenses in the United States. *See Matter of Ballester-Garcia*, 17 I&N Dec. 592, 595–96 (BIA 1980).

Here, a Red Notice alleges that the respondent committed three crimes in 2012. *See* Exh. 6 at 3. They include an aggravated burglary in July 2012, in which the respondent and two gang members allegedly broke into a school in Caserío Papalambre and stole seven bags of basic grains and eight bottles of oil; an aggravated robbery in August 2012, in which the respondent allegedly was involved in depriving individuals of cash, cell phones, and other valuables at gunpoint; and a second aggravated burglary "around the middle of the year" in 2012, in which an unspecified amount of bags of rice and beans were taken from a school in Cantón Mojones de

Santa Rosa de Lima. *See* Exh. 6 at 3. The Red Notice also asserts generally, without describing a specific offense, that the respondent collaborated "in the trafficking of weapons and drugs" and provided "support to the criminal activities" of the MS-13 gang. *See id.* The underlying Salvadoran arrest warrant, on which the Red Notice relies, states that respondent is an active member of the MS-13 gang who committed an aggravated robbery and two aggravated burglaries. *See id.* at 14. The arrest warrant does not contain any information regarding the date of the alleged crimes nor the extent of the respondent's alleged involvement in the crimes. *See id.*

After reviewing all documents, the Court does not find that the serious nonpolitical crime bar applies to the respondent. *See Silva-Pereira*, 827 F.3d at 1188. The respondent denied participating in any MS-13 activities, being a member of the gang, or committing any crimes. Further, the respondent presented the testimony of Dr. Bromund, who testified regarding his opinion that the Red Notice in this specific case is unreliable and invalid. *See* Exh. 14 at 782–785. However, Dr. Bromund admitted he had not reviewed the El Salvadoran arrest warrant, which the Court finds to be the more reliable representation as to why the respondent may be wanted in connection to certain crimes in El Salvador. Even without the Red Notice, the arrest warrant alone appears to be a reliable and official document issued by a court of law in El Salvador, indicating the respondent may be sought for criminal prosecution.

However, even assuming *arguendo* that the arrest warrant accurately describes crimes the respondent participated in, the Court finds that these crimes do not rise to the level of "serious." *See Frentescu*, 18 I&N Dec. at 246. To the contrary, the charges describe minor property offenses in which provisions and an unspecified amount of cash and valuables were taken. *See Ballester-Garcia*, 17 I&N Dec. at 595–96. While the aggravated robbery charge generally describes an offense where the victim was held at gunpoint, the charge does not indicate that any individuals were harmed or that the respondent personally held the victims at gunpoint. *See* Exh. 6 at 3. Further, the allegation that the respondent collaborated in drug and weapons trafficking is too generally defined to satisfy the probable cause standard. *See Silva-Pereira*, 827 F.3d at 1188. The respondent has not yet been arrested for these alleged offenses or been found guilty. Therefore, based on the foregoing, the Court finds that the respondent did not commit a serious nonpolitical crime. INA § 241(b)(3)(B)(iii). Therefore, the Court finds that the respondent is statutorily eligible to apply for asylum.

B. Asylum

To qualify for asylum, the applicant bears the burden of demonstrating that she meets the statutory definition of a "refugee." INA § 208(b)(1)(A). The Act defines a "refugee" as any person who is outside her country of nationality and who is unable or unwilling to return to, and is unable or unwilling to avail herself of the protection of, that country because of "persecution" or a "well-founded fear of future persecution" on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b). Here, the respondent asserts that she suffered past persecution on account of her membership in a particular social group.

1. Past Persecution

In order to establish past persecution, the applicant must show "(1) an incident, or incidents, that rise to the level of persecution; (2) that is 'on account of' one of the statutorily-protected grounds; and (3) is committed by the government or by forces the government is either 'unable or unwilling' to control." *Navas v. INS*, 217 F.3d 646, 655–56 (9th Cir. 2000).

a. Harm Rising to the Level Necessary to Establish Persecution

Persecution is the infliction of suffering or harm upon those who differ in a way regarded as offensive. *Li v. Ashcroft*, 356 F.3d 1153, 1158 (9th Cir. 2004) (en banc). Physical harm, including assaults, beatings, and torture, "has consistently been treated as persecution." *Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000). Persecution may also include psychological, emotional, or economic abuse. *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004). The Court notes that "age can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted[.]" *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045 (9th Cir. 2007) (internal citation omitted). The Court must assess the alleged persecution from the child's perspective, as the "harm a child fears or has suffered . . . may be relatively less than that of an adult and still qualify as persecution." *Id.* The Court may not consider incidents of harm in isolation but instead must evaluate the cumulative effect of the harms the applicant suffered. *See Krotova v. Gonzales*, 416 F.3d 1080, 1084 (9th Cir. 2005).

The Court finds that the severe physical and psychological harm the respondent's parents inflicted on her rises to the level of persecution. For approximately nine years, the respondent suffered countless beatings in which the respondent's parents hit her repeatedly with their hands, branches, broomsticks, and whips, and threw objects, including plates, at her. During one of the most intense beatings, the respondent's father threw her on the floor and kicked her with his heavy work boots, resulting in bruising all over the respondent's legs. *See Chand*, 222 F.3d at 1073. In addition to physical abuse, her parents inflicted verbal and psychological abuse by frequently calling her derogatory names, forcing her to work from the age of six, and forbidding her to attend school. Considering this severe physical, verbal, and psychological abuse cumulatively, the Court finds that the respondent suffered harm rising to the level of past persecution. *See Hernandez-Ortiz*, 496 F.3d at 1045; *see also Krotova*, 416 F.3d at 1084.

b. On Account of a Protected Ground: Particular Social Group

In addition to showing harm rising to the level of persecution, a respondent must show that the persecution she suffered was on account of one or more of the protected grounds enumerated in the Act. INA § 101(a)(42)(A). A "particular social group" must be (1) composed of members who share a common immutable characteristic; (2) defined with particularity; and (3) socially distinct within the society in question. *See Matter of A-B-*, 27 I&N Dec. 316, 319 (AG 2018) (citing *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)). "To be cognizable, a particular social group *must* 'exist independently' of the harm asserted in an application for asylum or statutory withholding of removal." *Id.* at 334 (quoting *M-E-V-G-*, 26 I&N Dec. at 236 n.11, 243). Here, the respondent asserts that she was persecuted on account of her membership in numerous particular social groups relating to the respondent's status as a Salvadoran female. *See* Exh. 11. In light of the record evidence, the Court understands the essence of the

respondent's proposed groups as comprising the particular social group of "Salvadoran females."

i. Immutability

First, common and immutable characteristics are those attributes that members of the group "either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985) (listing sex, color, kinship, and shared past experiences as prototypical examples of an immutable characteristic). The Ninth Circuit has expressed that females in general may constitute a social group. *See Mohammad v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) ("[a]lthough we have not previously expressly recognized females as a social group, the recognition that girls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group is simply a logical application of our law."). Here, the respondent's social group, "Salvadoran females," satisfies the immutability requirement because it is defined by gender and nationality, innate characteristics that are fundamental to an individual's identity. *See id.*; *see also Perdomo v. Holder*, 611 F.3d 662, 667 (9th Cir. 2010) (reiterating that "women in a particular country, regardless of ethnicity or clan membership, could form a particular social group").

ii. Particularity

Second, to be cognizable, the proposed social group must be sufficiently particular. *M-E-V-G-*, 26 I&N Dec. at 239 (citation omitted). The "particularity" requirement addresses the outer limits of the group's boundaries and requires a determination as to whether the group is sufficiently discrete without being "amorphous, overbroad, diffuse, or subjective." *Id.* However, "not every 'immutable characteristic' is sufficiently precise to define a particular social group." *Id.* In the instant case, the group is sufficiently particular because the membership is limited to a discrete section of Salvadoran society—only female citizens of El Salvador—and is thus distinguishable from the rest of society. *See Perdomo*, 611 F.3d at 667, 669 (rejecting the notion that a persecuted group could represent too large a portion of the population to constitute a particular social group).

iii. Social Distinction

Finally, the respondent must demonstrate that the group is socially distinct within El Salvador. To establish social distinction, a respondent must show that members of the social group are "set apart, or distinct, from other persons within the society in some significant way," *M-E-V-G-*, 26 I&N Dec. at 238, and that they are "*perceived* as a group by society." *Matter of W-G-R-*, 26 I&N Dec. 208, 216 (BIA 2014). A "group's recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor." *A-B-*, 27 I&N Dec. at 330 (quoting *M-E-V-G-*, 26 I&N Dec. at 242). Legislation passed to protect a specific group can be evidence that the society in question views members of the particular group as distinct. *See Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013). Yet, "a social group may not be defined exclusively by the fact that its members have been subjected to harm." *A-B-*, 27 I&N Dec. at 330–31 (citing *M-E-V-G-*, 26 I&N Dec. at 238). "[S]ocial groups must be classes recognizable by society at large" rather than "a victim of a

particular abuser in highly individualized circumstances." *Id.* at 336 (citing *W-G-R-*, 26 I&N Dec. at 217).

The evidence of record establishes that Salvadoran society views members of the particular social group of "Salvadoran females" as socially distinct. *Id.* at 319. Indeed, country conditions evidence describes females as one of the most vulnerable and marginalized groups in El Salvador. *See* Exh. 17 at 1. The acceptance of gender-based violence is deeply entrenched in Salvadoran society. *See, e.g.*, Exh. 14 at 126. Salvadoran women are discriminated against throughout all sectors of society, including in educational and employment settings, political representation, religious organizations, law enforcement and the judiciary, and most notably, the home. *See, e.g.*, Exhs. 17 at 17; 14 at 126, 321. In particular, the social perception that men are superior to women is "reinforced at every stage" as boys transition to manhood, such that males are socialized to display "total control over one's household, especially its women and girls." Exh. 14 at 125.

Violence committed against Salvadoran females is pandemic and cuts across boundaries of class, age, and ethnicity. *See generally* Exh. 14 at 117–755. Gender-based violence against Salvadoran females takes many brutal forms, including gang violence, domestic violence, sexual violence, incest, human trafficking, and femicide. *See id.* In 2017, 469 women were reported killed in El Salvador, an estimated rate of one female killed every 16 hours. *See* Exh. 17; *see also* Exh. 14 at 201. Acknowledging the unique vulnerability of Salvadoran females, the Salvadoran government enacted the 2011 Special Comprehensive Law for a Violence-free Life for Women. *See* Exh. 17 at 209–210. Although this law has not effectively reduced rates of violence or impunity, it demonstrates the government's recognition of the need to provide additional protection to this specific group. *See id.*; *see also Henriquez-Rivas*, 707 F.3d at 1092.

In light of this evidence, the Court finds that Salvadoran society views Salvadoran females as a distinct group from the general population in El Salvador. *See Henriquez-Rivas*, 707 F.3d at 1092. Accordingly, the Court finds that the respondent's particular social group of "Salvadoran females" is cognizable under the Act. *A-B-*, 27 I&N Dec. at 319. Finally, the Court finds that the respondent, as a female of Salvadoran nationality, is a member of this particular social group.

c. Nexus

The respondent must also establish that her membership in the particular social group was "at least one central reason for [her] persecution." INA § 208(b)(1)(B)(i). "A 'central reason' is a reason of primary importance to the persecutors, one that is essential to their decision to act." *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2008). "In other words, a motive is a 'central reason' if the persecutor would not have harmed the applicant if such motive did not exist." *Id.* While the respondent need not show which reason was dominant, the protected ground "cannot be incidental, tangential, superficial, or subordinate" to another reason for harm; it need only be one central reason. *Id.* The applicant may provide either direct or circumstantial evidence to establish that the persecutor was motivated by the applicant's actual or imputed status or belief. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). Proof of motivation may consist of statements made by the persecutor to the victim. *See Sinha v. Holder*, 564 F. 3d 1015,

1021–22 (9th Cir. 2009) (providing that attackers' abusive language showed they were motivated at least in part by a protected ground).

The record is replete with indications that the respondent's parents inflicted physical, verbal, and psychological harm on the respondent because she was a Salvadoran female. Throughout her upbringing, her parents repeatedly made derogatory statements indicating that they believed they could treat the respondent however they wished because, as a female, the respondent must obey them. *See, e.g.*, Exh. 9 at 4–5 ("You're not the one who decides what to do. I am the man of this house, and I am in charge. You're my daughter and you have to do what I say!"); *see also id.* at 2 (describing how the respondent's mother forbid her from attending school because, as a female, she should clean and take care of the house). In the context of Salvadoran society, the respondent's parents' statements and actions are strong evidence that if the respondent were not a Salvadoran female, they would not have harmed her in this manner. *See Sinha*, 564 F. 3d at 1021–22; *Parussimova*, 555 F.3d at 741.

Moreover, the record indicates that the respondent's parents' violence against her is precisely the type of gender-based violence perpetrated in El Salvador due to the widely-shared belief that women are inferior to men. *See* Exh. 14 at 132 (observing that in El Salvador, "girls and women are viewed as the property of first their parents and then their husbands in an macho culture of male domination that is premised on the inferiority of women"). Considering the evidence in its totality, the Court finds that the respondent's membership in the particular social group of "Salvadoran females" was "at least one central reason" for her persecution by her parents. INA § 208(b)(1)(B)(i); *Parussimova*, 555 F.3d at 741.

d. Government Unable or Unwilling to Control Persecutor

Finally, a respondent must demonstrate that the persecution she experienced was inflicted by the government or forces the government was unable or unwilling to control. *Navas*, 217 F.3d at 655–56. Prior unheeded requests for authorities' assistance or showing that a country's laws or customs deprive victims of meaningful recourse to protection may establish governmental inability or unwillingness to protect. *See Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073–74 (9th Cir. 2017) (en banc) (providing that where "ample evidence demonstrates that reporting [persecution to police] would have been futile and dangerous," applicants are not required to report their persecutors"); *Afriyie v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010) (holding that "the authorities' response (or lack thereof)" to reports of persecution provides "powerful evidence with respect to the government's willingness or ability to protect" the applicant and noting that authorities' willingness to take a report does not establish they can provide protection). However, the fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime." *A-B-*, 27 I&N Dec. at 337. Rather, applicants "must show not just that the crime has gone unpunished, but that the government is unwilling or unable to prevent it." *Id.* at 338.

In the present matter, the record indicates that the Salvadoran government is unable or unwilling to control the respondent's persecutors. After one particularly violent beating when the respondent was approximately twelve years old, neighbors called the police to report her mother's abuse. *See* Exh. 9 at 3–4. Notably, the police did not make any attempt to stop the

abuse. *See Afriyie*, 613 F.3d at 931. They talked briefly to the respondent's mother; however, they made no effort to ascertain the status of the respondent or to take any other measures to protect the respondent. *See id.* In addition, country conditions documents indicate that human rights abuses against children and females are pervasive throughout El Salvador. Child abuse in El Salvador remains a "serious and widespread problem[,]" and "more than half of households punished their children physically and psychologically." Exh. 17 at 17–18. Despite laws prohibiting child labor, such laws were not effectively enforced in the informal sector and many children frequently worked "despite the presence of law enforcement officials." *Id.* at 23–24. Furthermore, country conditions evidence overwhelmingly establishes that the Salvadoran government does not adequately protect females from gender-based violence, *see generally* Exh. 14 at 117–755, and that laws prohibiting gender-based violence "remained poorly enforced." Exh. 17 at 16. Indeed, in 2016 and 2017, "only 5 percent of the 6,326 reported crimes against women went to trial." *Id.*

In sum, the Court finds that the respondent suffered persecution by forces the government was unable or unwilling to control on account of her particular social group membership. *Navas*, 217 F.3d at 655–56. Therefore, the Court finds that the respondent suffered past persecution. *See* INA § 101(a)(42)(A).

2. Well-Founded Fear of Future Persecution

Because the respondent has demonstrated that she suffered past persecution in El Salvador, she is entitled to a presumption that she has a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). The Department may overcome this presumption by showing, by a preponderance of the evidence, that (1) there has been a fundamental change in circumstances such that the respondent no longer has a well-founded fear of persecution in El Salvador, or (2) the respondent could avoid future persecution by relocating to another part of the country. *See* 8 C.F.R. § 1208.13(b)(1)(i). Generalized information about country conditions is not sufficient to rebut the presumption of a well-founded fear of future persecution. *Molina-Estrada v. INS*, 293 F.3d 1089, 1096 (9th Cir. 2002). Rather, the Department must introduce evidence that rebuts the applicant's specific grounds for fearing future persecution on an individualized basis. *Id.*

Here, the Court finds that there has been a fundamental change in the respondent's circumstances. Notably, her mother passed away in October 2018. Even though the respondent claims she still fears her father, she is now a 29-year-old woman and it is unclear whether the respondent's father would harm her if she returned. As the respondent testified, she was able to leave his household even while in El Salvador to avoid further harm, and there is no indication she would reside with him in the future. Accordingly, the Court finds that the respondent's circumstances have changed such that she no longer has a well-founded fear of persecution in El Salvador. *See* 8 C.F.R. § 1208.13(b)(1)(ii).

3. Humanitarian Asylum

The Court may grant humanitarian asylum to a victim of past persecution, even where the Department has rebutted the applicant's fear of future persecution, "if the asylum seeker

establishes (1) 'compelling reasons for being unwilling or unable to return to the country arising out of the severity of past persecution,' or (2) 'a reasonable possibility that he or she may suffer other serious harm upon removal to that country.'" *See Belishta v. Ashcroft*, 378 F.3d 1078, 1081 (9th Cir. 2004) (citing 8 C.F.R. § 1208.13(b)(1)(iii)(A)–(B)). In the instant matter, the respondent seeks humanitarian asylum on two separate bases. First, she requests protection due to the severe gender-based violence she suffered in El Salvador. Second, she asserts that she will face "other serious" harm from the Salvadoran police, Mr. [redacted] or the MS-13 gang up on her return to El Salvador.

a. Severity of Past Persecution

The Court finds that the respondent is not eligible for humanitarian asylum based on "compelling reasons" for being unable or unwilling to return to El Salvador out of the severity of past persecution. *See* 8 C.F.R. §1208.13(b)(1)(iii)(A). The Court does not diminish the abuse the respondent suffered as a child. Indeed, it is apparent that this abuse significantly affected her childhood and has had a lasting impact on her life. *See generally* Exh. 14 at 6–20. Nevertheless, the Court concludes that the abuse the respondent suffered as a child does not rise to the level of "atrocious past persecution" such that it would warrant a grant of humanitarian asylum. *Compare Hanna v. Keisler*, 506 F.3d 933, 939 (9th Cir. 2007) (finding past persecution insufficient for humanitarian asylum where applicant was detained and tortured for more than one month); *with Lal v. INS*, 255 F.3d 998, 1009–10 (9th Cir. 2001) (severe past persecution found where applicant was arrested, detained, tortured, urine forced into mouth, cut with knives, burned with cigarettes, and forced to watch sexual assault of wife). For these reasons, the Court finds that the respondent is not eligible for humanitarian asylum under 8 C.F.R. § 1208.13(b)(1)(iii)(A).

b. Other Serious Harm

Humanitarian asylum may be granted where a victim of past persecution has established that there is a reasonable possibility she will suffer "other serious harm" in the country of removal. 8 C.F.R. § 1208.13(b)(1)(iii)(B). Although "other serious harm" may be wholly unrelated to the applicant's past harm, it "must be so serious that it equals the severity of past persecution." *Matter of L-S-*, 25 I&N Dec. 705, 714 (BIA 2012). Eligibility for humanitarian asylum under 8 C.F.R. § 1208.13(b)(1)(iii)(B) is not based on past persecution but on the potential for physical or psychological harm the applicant may suffer in the future. *See id.* Here, the Court finds that the respondent has established that she faces "other serious harm" in El Salvador.

First, the respondent faces a risk of harm from her former partner, Mr. [redacted] The respondent suffered more than seven years of severe physical, sexual, and psychological abuse from Mr. [redacted]. He inflicted knife wounds, machete wounds, broke her wrist, and threatened to kill her on multiple occasions. Even after fleeing El Salvador in 2012, the respondent received threats from Mr. [redacted] in 2016 and January 2018, in which Mr. [redacted] told her that he was going to do everything possible to make her return to El Salvador.

The Court also finds there is a reasonable possibility that the Salvadoran government will

harm her upon her return. In May 2018, approximately six years after the respondent left El Salvador, the Salvadoran government issued an arrest warrant alleging that she was an active member of the MS-13 gang and that she had participated in two aggravated burglaries and one aggravated robbery. *See* Exh. 6 at 14. Additionally, in August 2018, the Salvadoran government issued an Interpol Red Notice requesting that the respondent be detained and extradited to El Salvador. *See id.* at 1–3. The Court finds these documents indicate that the Salvadoran government is interested in locating and detaining the respondent. The existence of the Red Notice also increases the likelihood that the Salvadoran government would identify her upon re-entry to El Salvador and subject her to detention, harm, or torture. Indeed, Dr. Hallett explained that due to increasing governmental pressure to show results in the "war on gangs," deportees designated as gang-affiliated face a high risk of being detained upon entry and suffering human rights abuses by officials acting under color of law. *See id.* at 644–47.

Finally, the respondent also faces potential harm from MS-13 gang members. The gang has multiple reasons to personally target and harm the respondent, including to carry out Mr. [redacted] wishes to punish the respondent and to determine whether the respondent divulged any information about the gang to authorities. *See* Exh. 9 at 21. In addition, country conditions documents indicate that women are uniquely vulnerable to gang violence and are often punished by gangs seeking revenge and retaliation. *See, e.g.*, Exh. 14 at 690 ("Women's bodies are a territory for revenge and control. Not one person interviewed denied the harsh reality for women in gang-controlled areas. . . Women are also killed or otherwise punished by gangs in revenge.").

For these reasons, the Court finds that the respondent has established a reasonable possibility of suffering "other serious harm" in El Salvador. *See* 8 C.F.R. § 1208.13(b)(1)(iii)(B). Therefore, the respondent has established her statutory eligibility for a grant of humanitarian asylum.

4. Discretion

Once an applicant has established statutory eligibility for a grant of asylum, she must further show that she merits such relief as a matter of discretion. INA § 240(c)(4). This determination requires weighing both the positive and negative factors in the respondent's case. *Kalubi v. Ashcroft*, 364 F.3d 1134, 1139–40 (9th Cir. 2004).

The most significant negative factors presented in this matter include the respondent's Red Notice, Salvadoran arrest warrant for aggravated robbery and aggravated burglary, arrest after calling the police regarding Mr. [redacted] abuse in 2011, and arrest after scolding her niece in 2011. The Court notes that the respondent was not convicted of any of these offenses. Moreover, the respondent's case presents numerous positive factors. The respondent has resided in the United States for seven years, she has two United States citizen children, and she has never been convicted of a crime. Accordingly, the Court finds that the respondent merits a favorable exercise of its discretion. *See* INA § 240(c)(4).

Because the Court has granted asylum on a humanitarian basis, the Court will not address the respondent's accompanying applications for withholding of removal or protection under the Convention Against Torture, as they are now moot.

V. ORDERS

In light of the foregoing findings of the Court, the following orders will enter:

IT IS HEREBY ORDERED that the respondent's application for asylum under INA § 208 is **GRANTED**.

Julie L. Nelson
Immigration Judge

***Appeal is Reserved for Both Parties**
Appeal Due: June 19, 2019

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

Matter of M [redacted] M [redacted] Respondent	Date: April 3, 2019 File Number: A [redacted] 937 In Removal Proceedings

Charge: Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, as amended, as amended, as an immigrant who, at the time of application for admission is not in possession of a valid entry document as required under section 211(a) of the Act

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

On Behalf of the Respondent:
Marcia I. Perez
Law Office of Marcia I. Perez
601 Montgomery Street, Suite 665
San Francisco, California 94111

On Behalf of DHS:
Mary J. Hannett
Office of the Chief Counsel
100 Montgomery Street, Suite 200
San Francisco, California 94104

DECISION OF THE IMMIGRATION JUDGE

I. BACKGROUND

On July 19, 2013, the Department of Homeland Security ("DHS") initiated these removal proceedings against the respondent M [redacted] M [redacted] by filing a Notice to Appear ("NTA") with the San Francisco, Immigration Court, after an asylum officer found the respondent demonstrated a credible fear of persecution or torture.[1] Exh. 1. The NTA alleges that the respondent is a native and citizen of Guatemala who entered the United States at or near Hidalgo, Texas, on January [redacted], 2013, who did not possess or present a valid entry document, and who was not then admitted or paroled after inspection by an immigration officer. *Id.* Based on these allegations, DHS charged the respondent as removable under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("Act"). *Id.*

[1] This case was previously before Immigration Judge ("IJ") Laura L. Ramirez. However, IJ Ramirez is no longer available to complete the decision, and I, IJ Laura C. Figueroa, am now completing the decision. *See* 8 C.F.R. § 1240.1(b). As required by the regulations, I have familiarized myself with the complete record of proceeding prior to entering this decision. *Id.*

On July 14, 2015, the respondent filed a Form I-589, Application for Asylum and for Withholding of Removal ("Form I-589") with the San Francisco Immigration Court.[2] Exh. 2, Tab A. On the same date, the respondent admitted the factual allegations in the NTA, conceded removability as charged, and declined to designate a country of removal. Based on the respondent's admissions and concession, the Court found the respondent removable as charged and directed Guatemala as the country of removal, should removal become necessary. *See* 8 C.F.R. § 1240.10(c), (f).

II. EVIDENCE PRESENTED

The Court has reviewed the entire body of evidence in reaching its decision, even if not specifically referenced herein. The evidence of record consists of the respondent's testimony and the following exhibits:

Exhibit 1:	The respondent's NTA;
Exhibit 2:	The respondent's Form I-589 and supporting documents, Tabs A–I;
Exhibit 3:	Supplemental country conditions documents regarding women in Guatemala; and
Exhibit 4:	Declaration of [redacted] regarding the respondent's efforts to obtain medical records.

The Court incorporates relevant portions of the respondent's testimony and documentary evidence into the Findings of Fact and Analysis section below.

III. FINDINGS OF FACT AND ANALYSIS

The respondent is a 33-year-old Guatemalan woman, born in [redacted], Guatemala. The respondent suffered more than seven years of violence at the hands of her ex-partner, W[redacted] M[redacted] ("Mr. M[redacted]").[3] The respondent fled Guatemala in December 2012. She fears that her ex-partner will harm or kill her if she returns to Guatemala.

A. Credibility

A respondent bears the burden of establishing her eligibility for relief from removal and may satisfy this burden through credible testimony. *See* INA § 240(c)(4). In making a credibility finding under the REAL ID Act, the Court may base its determination on the demeanor, candor, or responsiveness of the applicant, the inherent plausibility of her account, the consistency between her written and oral statements, the internal consistency of each such

[2] The respondent attempted to lodge her Form I-589 with the San Francisco Immigration Court on December 31, 2013. The Court deemed the lodging attempt to be evidence of timely filing the Form I-589. Immigration Order ("IJ Order") (Jan. 8, 2014). The respondent also submitted a copy of the Form I-589 with U.S. Citizenship and Immigration Services on January 4, 2014. Exh. 2, Tab D.

[3] Although the respondent refers to Mr. M[redacted] as her "husband" or "ex-husband" throughout the record, the Court notes that they were not legally married.

statement, the internal consistency of such statements with other evidence of record, any inaccuracies or falsehoods in such statements, or any other relevant factor. *See* INA § 240(c)(4)(C).

The Court observed the respondent's demeanor and carefully reviewed her testimony for consistency, detail, specificity, and persuasiveness. The respondent testified in a consistent, believable, and forthright manner. The Court harbors no concerns with respect to her credibility, nor did DHS raise any such concerns. Accordingly, the Court finds that the respondent testified credibly and affords her testimony full evidentiary weight. *See id.*

B. Asylum

To qualify for asylum, the applicant bears the burden of demonstrating that she meets the statutory definition of a "refugee." INA § 208(b)(1)(A); 8 C.F.R. § 1208.13(a). The Act defines a "refugee" as any person who is outside her country of nationality and who is unable or unwilling to return to, and is unable or unwilling to avail herself of the protection of, that country because of "persecution" or a "well-founded fear of future persecution" on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b). Here, the respondent asserts that she suffered past persecution on account of her membership in a particular social group.

1. Past Persecution

In order to establish past persecution, the applicant must show "(1) an incident, or incidents, that rise to the level of persecution; (2) that is 'on account of' one of the statutorily-protected grounds; and (3) is committed by the government or by forces the government is either 'unable or unwilling' to control." *Navas v. INS*, 217 F.3d 646, 655–56 (9th Cir. 2000).

a. Harm Rising to the Level Necessary to Establish Persecution

Persecution is the infliction of suffering or harm upon those who differ in a way regarded as offensive. *Li v. Ashcroft*, 356 F.3d 1153, 1158 (9th Cir. 2004) (en banc). Physical harm, including assaults, beatings, and torture, "has consistently been treated as persecution." *Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000). Persecution may also include psychological, emotional, or economic abuse. *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004). The Court may not consider incidents of harm in isolation but instead must evaluate the cumulative effect of the harms the applicant suffered. *See Krotova v. Gonzales*, 416 F.3d 1080, 1084 (9th Cir. 2005).

The Court finds that the severe physical, sexual, and psychological harm Mr. M[redacted] inflicted on the respondent rises to the level of persecution. *See* Exh. 2 at 14–17. Over seven years, the respondent suffered countless beatings in which Mr. M[redacted] punched, kicked, and pushed her, resulting in bruising, bleeding, sprains, and loss of consciousness. *See Chand*, 222 F.3d at 1073. During one of the most intense beatings, Mr. M[redacted] punched and kicked the respondent while she was eight months pregnant until she lost consciousness; she

required an emergency cesarean section and a subsequent surgery to remove her gallbladder. Mr. M[redacted] also sexually abused the respondent, including raping and sodomizing her frequently. In addition, Mr. M[redacted] repeatedly insulted the respondent and controlled her in various ways, including depriving her of food and forbidding her from using a phone, accessing money, or leaving the house without his permission. Mr. M[redacted] also threatened to kill her and her family members. Considering this severe physical, sexual, and psychological harm, Court finds that the respondent suffered harm rising to the level of past persecution. *See Krotova*, 416 F.3d at 1084.

b. On Account of a Protected Ground: Particular Social Group

In addition to showing harm rising to the level of persecution, a respondent must show that the persecution she suffered was on account of one or more of the protected grounds enumerated in the Act. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b)(1). A "particular social group" must be (1) composed of members who share a common immutable characteristic; (2) defined with particularity; and (3) socially distinct within the society in question. *See Matter of A-B-*, 27 I&N Dec. 316, 319 (AG 2018) (citing *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)). "To be cognizable, a particular social group *must* 'exist independently' of the harm asserted in an application for asylum or statutory withholding of removal." *Id.* at 334 (quoting *M-E-V-G-*, 26 I&N Dec. at 236 n.11, 243).

Here, the respondent asserts that her persecution was on account of her membership in numerous particular social groups regarding the respondent's status as a Guatemalan woman. *See* Resp't's Br. (Nov. 5, 2018) at 10–14. In light of the record evidence, the Court understands the essence of the respondent's proposed groups as comprising the particular social group of "Guatemalan women."

i. Immutability

First, common and immutable characteristics are those attributes that members of the group "either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985) (listing sex, color, kinship, and shared past experiences as prototypical examples of an immutable characteristic). The respondent's social group, "Guatemalan women," satisfies the immutability requirement because it is defined by gender and nationality, innate characteristics that are fundamental to an individual's identity. *Id.*; *see also Perdomo v. Holder*, 611 F.3d 662, 667 (9th Cir. 2010) (reiterating that "women in a particular country, regardless of ethnicity or clan membership, could form a particular social group"); *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) (recognizing that women of a particular nationality may constitute a social group).

ii. Particularity

Second, to be cognizable, the proposed social group must be sufficiently particular. *M-E-V-G-*, 26 I&N Dec. at 239 (citation omitted). The "particularity" requirement addresses the outer

limits of the group's boundaries and requires a determination as to whether the group is sufficiently discrete without being "amorphous, overbroad, diffuse, or subjective." *Id.* However, "not every 'immutable characteristic' is sufficiently precise to define a particular social group." *Id.* Here, the group is sufficiently particular because the membership is limited to a discrete section of Guatemalan society—only female citizens of Guatemala—and is thus distinguishable from the rest of society. *See Perdomo*, 611 F.3d at 667, 669 (rejecting the notion that a persecuted group could represent too large a portion of the population to constitute a particular social group).

iii. Social Distinction

Finally, the respondent must demonstrate that the group is socially distinct within Guatemala. To establish social distinction, an applicant must show that members of the social group are "set apart, or distinct, from other persons within the society in some significant way," *M-E-V-G-*, 26 I&N Dec. at 238, and that they are "*perceived* as a group by society." *Matter of W-G-R-*, 26 I&N Dec. 208, 216 (BIA 2014). A "group's recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor." *A-B-*, 27 I&N Dec. at 330 (quoting *M-E-V-G-*, 26 I&N Dec. at 242). Legislation passed to protect a specific group can be evidence that the society in question views members of the particular group as distinct. *See Henriquez Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013). Yet, "a social group may not be defined exclusively by the fact that its members have been subjected to harm." *A-B-*, 27 I&N Dec. at 330–31 (citing *M-E-V-G-*, 26 I&N Dec. at 238). "[S]ocial groups must be classes recognizable by society at large" rather than "a victim of a particular abuser in highly individualized circumstances." *Id.* at 336 (citing *W-G-R-*, 26 I&N Dec. at 217 (providing that "[t]o have the 'social distinction' necessary to establish a particular social group, there must be evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group")).

The evidence of record establishes that Guatemalan society views members of the particular social group of "Guatemalan women" as socially distinct. *A-B-*, 27 I&N Dec. at 319. Indeed, country conditions evidence describes women as "one of the most vulnerable and marginalized groups in Guatemala." Exh. 2 at 541. Guatemalan women are discriminated throughout all sectors of society, including in educational and employment opportunities, political representation, and most notably, the home. *See id.* at 244 45, 536, 541. Violence committed against Guatemalan women is pandemic and cuts "across boundaries of class, age, and ethnicity." *Id.* at 493. Gender-based violence against Guatemalan women takes many brutal forms, including gang violence, domestic violence, sexual violence, incest, human trafficking, and femicide. *See id.* at 244 45, 452. According to a 2015 report, Guatemala experienced the fourth highest femicide rate in the world, and one Guatemalan woman is estimated to be killed every 12 hours. *Id.* at 577. Recognizing the unique vulnerability of Guatemalan women, the Guatemalan government enacted the 2008 Law Against Femicide and Other Forms of Violence Against Women. *Id.* at 430. Although this law has "not effectively reduced rates of violence or impunity," it demonstrates the government's recognition of the need to provide additional protection for Guatemalan women. *Id.*; *see also Henriquez Rivas*, 707 F.3d at 1092.

Further, the acceptance of gender-based violence is deeply entrenched in Guatemalan society. Reports indicate that this culture of violence against women stems from the country's 36-year-long civil war, during which atrocities were committed against women as a weapon of war. *See, e.g.*, Exh. 2 at 535. Even decades after the end of the civil war, the "prevailing culture of machismo" and "institutionalized acceptance of brutality against women" persist. *Id.* at 535–36. Country conditions evidence describe Guatemala's "deeply rooted patriarchal society" as "one of the biggest challenges" facing Guatemalan women. *Id.* at 536. Beginning in early childhood, women are socialized into behaviors of femininity, submission, weakness, and reservation. *See id.* at 675. Guatemalan society expects women to conform to clear gender roles and to be submissive and deferential to their partners. *See, e.g., id.* at 536 (indicating that 80% of Guatemalan men believed that Guatemalan women need permission to leave the house, and 70% of the women surveyed agreed).

In light of this evidence, the Court finds that Guatemalan society views Guatemalan women as a distinct group from the general population in Guatemala. *See Henriquez-Rivas*, 707 F.3d at 1092. Accordingly, the Court finds that the respondent's particular social group of "Guatemalan women" is cognizable under the Act. *A-B-*, 27 I&N Dec. at 319. The Court finds that the respondent, as a woman of Guatemalan nationality, is a member of this particular social group.

c. Nexus

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

The record is replete with indications that Mr. M[redacted] inflicted severe physical, sexual, and psychological harm on the respondent because she was a Guatemalan woman. Throughout their relationship, Mr. M[redacted] often made derogatory statements indicating that he believed he could treat the respondent how he wished because, as a woman, the respondent belonged to him. *See, e.g.*, Exh. 2 at 16 ("He said he owns me and will kill me if he wants."); *id.* ("He told me I belong to him[,] and he can sexually do with me as he pleases."); *id.* ("He told me he could beat me and kill me[,] and nothing can stop him."). Mr. M[redacted]'s efforts to control nearly every aspect of the respondent's life demonstrate his belief that she must obey him in all respects; he prohibited her from accessing money, using birth control,

communicating with others outside of the home, and leaving the house without his permission. In the context of Guatemalan society, Mr. M[redacted]'s statements and actions are strong evidence that if the respondent were not a Guatemalan woman, he would not have harmed her in this manner. *See Sinha*, 564 F. 3d at 1021–22; *Parussimova*, 555 F.3d at 741.

Moreover, the record indicates that Mr. M[redacted]'s violence against the respondent is precisely the type of gender-based violence perpetrated in Guatemala due to the widely-shared belief that women are inferior to men. *See* Exh. 2 at 675 ("In Guatemalan culture, it is widely accepted that a man has the right to abuse his partner. . . . The abuse stems from a culture that places a man at the top of a hierarchy granting him control over all aspects of a woman's life, from her economic situation, to her politics, to her sexuality.") Considering the record evidence in the totality, the Court finds that the respondent's membership in the particular social group of "Guatemalan women" was "at least one central reason" for her persecution by Mr. M[redacted]. INA § 208(b)(1)(B)(i); *Parussimova*, 555 F.3d at 741.

d. Government Unable or Unwilling to Control Persecutor

Finally, a respondent must demonstrate that the persecution she experienced was inflicted by the government or forces the government was unable or unwilling to control. *Navas*, 217 F.3d at 655–56. Prior unheeded requests for authorities' assistance or showing that a country's laws or customs deprive victims of meaningful recourse to protection may establish governmental inability or unwillingness to protect. *See Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073–74 (9th Cir. 2017) (en banc) (providing that where "ample evidence demonstrates that reporting [persecution to police] would have been futile and dangerous," applicants are not required to report their persecutors"); *Afriyie v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010) (holding that "the authorities' response (or lack thereof)" to reports of persecution provides "powerful evidence with respect to the government's willingness or ability to protect" the applicant and noting that authorities' willingness to take a report does not establish they can provide protection). The fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime." *A-B-*, 27 I&N Dec. at 337. Rather, applicants "must show not just that the crime has gone unpunished, but that the government is unwilling or unable to prevent it." *Id.* at 338.

In the present matter, the record indicates that the Guatemalan government is unable or unwilling to control the respondent's persecutor. The respondent did not report Mr. M[redacted]'s violence to the police because she believed that reporting his abuse would place her in greater danger. *See* Exh. 2 at 17 ("It would be stupid to anger your husband more for no reason."). Indeed, Mr. M[redacted] threatened to kill her and her parents if she attempted to tell anyone about the abuse. *See Bringas-Rodriguez*, 850 F.3d at 1073–74. Even if she were able to report the abuse, the respondent indicated that the police would not protect her because Guatemalan authorities do not view abusing one's partner as a serious crime. *See Afriyie*, 613 F.3d at 931; Exh. 2 at 17 ("If we are murdered or beaten[,] no one cares. No one stops it. Nothing protects us."). In addition, she explained that she simply did not have the ability to contact the police. Mr. M[redacted] forbade her from leaving the house except with his permission, there were no phone lines in the respondent's area of Guatemala, he prohibited her

from owning a cell phone, and the nearest police station was over an hour away. *See id.* at 17–18.

Furthermore, country conditions evidence overwhelmingly establishes that the Guatemalan government does not adequately protect women against gender-based violence. Although federal law criminalizes spousal rape, "[p]olice had minimal training or capacity to investigate sexual crimes or assist survivors of such crimes, and the government did not enforce the law effectively." *Id.* at 244. Similarly, despite appointing a special prosecutor for femicide, it "remained a significant problem." *Id.* at 244–45. Indeed, many prosecutors "often fail to diligently undertake the necessary investigation because . . . they do not see violence against women as a serious problem that warrants their attention, or they express disbelief of women's stories and subject them to 'veracity tests,' despite their impermissibility." *Id.* at 442. Remarkably, a 2013 study indicates that out of 19,463 cases reported under the 2008 Law Against Femicide and Other Forms of Violence Against Women, only 1.88% cases were resolved. *Id.* at 438. Moreover, many police, judges, and prosecutors blame the woman for the abuse and urge domestic violence victims to reconcile with their partner, often placing the victim in greater danger. *Id.* at 441; *see also id.* at 703 (indicating that police officers suggest to victims that the abuse may be avoided by preparing the man's favorite meal). Judges may refuse to issue a protective order, require a perpetrator to leave the home, or order the perpetrator to pay financial support, instead "favoring the aggressor's property interests over the woman's safety." *Id.* at 441.

In light of the evidence of record, the Court finds that the respondent has demonstrated that the government either condoned the actions of private actors or demonstrated a complete helplessness to protect victims like the respondent. *See A-B-*, 27 I&N Dec. at 337. Although the Attorney General stated in *A-B-* that "[g]enerally, claims by aliens pertaining to domestic violence . . . perpetrated by non-governmental actors will not qualify for asylum," he did not foreclose this possibility. *A-B-*, 27 I&N Dec. at 320. As such, the Court finds that, in this particular case, the respondent established that she was persecuted on account of her particular social group membership by an actor the Guatemalan government was unable or unwilling to control. Therefore, the Court finds that the respondent suffered past persecution. *See* INA § 101(a)(42)(A).

2. Well-Founded Fear of Future Persecution

Because the respondent has demonstrated that she suffered past persecution in Guatemala, she is entitled to a presumption that she has a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). DHS may overcome this presumption by showing, by a preponderance of the evidence, that (1) there has been a fundamental change in circumstances such that the respondent no longer has a well-founded fear of persecution in Guatemala, or (2) the respondent could avoid future persecution by relocating to another part of the country. *See* 8 C.F.R. § 1208.13(b)(1)(i). Generalized information about country conditions is not sufficient to rebut the presumption of a well founded fear of future persecution. *Molina-Estrada v. INS*, 293 F.3d 1089, 1096 (9th Cir. 2002). Rather, DHS must introduce evidence that

rebuts the applicant's specific grounds for fearing future persecution on an individualized basis. *Id.*

DHS did not present evidence to indicate a fundamental change in circumstances in this case. *See* 8 C.F.R. § 1208.13(b)(1)(ii). Further, the Court finds that the respondent could not avoid future persecution by relocating to another part of Guatemala. Although the respondent's parents, two children, and two of her siblings live in [redacted] Guatemala, Mr. M[redacted] could easily locate her if she returned to live with her family. Indeed, Mr. M[redacted] continues to look for the respondent, threatening to kill her and her family. In April 2013, Mr. M[redacted] arrived at the respondent's parents' home and attempted to take the respondent's children away from her parents. In addition, Guatemala has extremely limited resources for victims of domestic violence, which would make relocating within Guatemala without family support much more difficult for the respondent. *Id.* at 445. The few shelters that do exist "have limited capacity and provide only temporary reprieve." *Id.*

Accordingly, the Court finds that DHS failed to meet its burden to show that the respondent could relocate within Guatemala and thus, DHS failed to rebut the respondent's presumption of a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1)(ii). Therefore, the Court finds the respondent is statutorily eligible for asylum. *See* INA § 208(b)(1)(A).

3. Discretion

"Asylum is a discretionary form of relief from removal, and an applicant bears the burden of proving not only statutory eligibility for asylum but that she also merits asylum as a matter of discretion." *A-B-*, 27 I&N Dec. at 345 n.12; *see also* INA § 240(c)(4)(A)(ii). This determination requires a weighing of both the positive and negative factors presented in the respondent's case. *Kalubi v. Ashcroft*, 364 F.3d 1134, 1139-40 (9th Cir. 2004). DHS has not raised any adverse factors weighing against a discretionary grant of asylum, nor has the Court identified any such negative factors. Indeed, the respondent has no criminal history. Accordingly, the Court finds that the respondent merits a favorable exercise of its discretion. INA § 240(c)(4)(A)(ii). Having reached this conclusion, the Court will not analyze the respondent's eligibility for withholding of removal or protection under the CAT.

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

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

ORDER

IT IS HEREBY ORDERED that the respondent be and hereby is **GRANTED** asylum under section 208(a) of the Act.

Laura C. Figueroa
Immigration Judge

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

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

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

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

APPEARANCES

ON BEHALF OF THE RESPONDENTS:
Mark Stevens, Esq.
Murray Osorio PLLC
4103 Chain Bridge Road, Suite 300
Fairfax, VA 22030

ON BEHALF OF THE DHS:
[redacted], Esq.
Assistant Chief Counsel
U.S. Department of Homeland Security
1901 South Bell Street, Suite 900
Arlington, VA 22202

DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

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

In the Matters of [redacted]
A [redacted]

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

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

II. SUMMARY OF THE EVIDENCE

A. Documentary Evidence

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

B. Testimonial Evidence

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

[redacted]

In the Matters of [redacted];
A [redacted]

[redacted]

In the Matters of [redacted];
A [redacted]

[redacted]

III. LAW, ANALYSIS, AND FINDINGS

A. Credibility and Corroboration

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

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

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

B. Asylum

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

1. One Year Deadline

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

2. Past Persecution

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

a. Past Harm

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

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

b. Government Unable or Unwilling to Control

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

3. Nexus to a Protected Ground

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

c. Women in Honduras

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. On Account Of

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

In the Matters of [redacted];
A [redacted]

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

4. Presumption of Future Persecution

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

5. Discretion

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

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

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

IV. CONCLUSION

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

ORDERS

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

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

[redacted] 2018
Date

D Nadkarni
Deepali Nadkarni[1]
Immigration Judge

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

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