

# I-589, Solicitud de Asilo y para Exención de Expulsión

INICIE AQUI- Llenar o Imprimir en tinta negra. Vea las instrucciones para obtener información sobre cómo completar y presentar esta solicitud y la elegibilidad. No hay ningún cobro por la presentación para esta aplicación.

NOTA: Marque esta casilla si desea solicitar la exención de expulsión conforme la Convención contra la tortura ☐

## Apartado A. I. Información acerca de usted.

1. Número de Registro del Extranjero (s)(A-Número)(en su caso)		2. Número de Seguro Social (en su caso)	
3. Apellido Completo		4. Primer Nombre	5. Segundo Nombre
6. Cuáles otros nombres ha utilizado? (incluyendo nombre de soltera o alias.)			
7. Lugar de residencia en los Estados Unidos (donde reside físicamente.) C/O		Número de teléfono ( )	
Nombre de la Calle y número		Departamento Numero	
Ciudad	Estado	Código Postal	
8. Domicilio de Correo en los Estados Unidos (en caso de ser diferente al del No. 7)  A la atención de (en su caso):		Número de teléfono ( )	
Nombre de la Calle y Número		Departamento Numero	
Ciudad	Estado	Código Postal	
9. Sexo: <input type="checkbox"/> Masculino <input type="checkbox"/> Femenino		10. Estado Civil: <input type="checkbox"/> Soltero <input type="checkbox"/> Casado <input type="checkbox"/> Divorciado <input type="checkbox"/> Viudo	
11. Fecha de Nacimiento (mes/día/año)		12. Ciudad y País de Nacimiento	
13. Nacionalidad Actual (Nacionalidad)		14. Nacionalidad al Nacimiento	15. Raza, Grupo Étnico o Tribu
16. Religión			
17. Marque la casilla a hasta c, según corresponda: a. <input type="checkbox"/> Nunca he estado en proceso judicial de Inmigración. b. <input type="checkbox"/> Ahora estoy en proceso judicial de Inmigración c. <input type="checkbox"/> Ahora no estoy en proceso judicial de inmigración, pero he estado en el pasado.			
18. Completar del 18 a hasta c. a. Cuando fue la última vez que salió de su país? (mes/día/año) _____ b. Cuál es su actual número I-94, en su caso? _____ c. Enliste cada una de las entradas a los Estados Unidos, comenzando con la entrada más reciente. Lista de fechas (mes/día/año), lugar y categoría de cada entrada. (Agregue hojas adicionales si es necesario.)  Fecha _____ Lugar _____ Categoría _____ Fecha de vencimiento de categoría _____ Fecha _____ Lugar _____ Categoría _____ Fecha de vencimiento de categoría _____ Fecha _____ Lugar _____ Categoría _____ Fecha de vencimiento de categoría _____			
19. Que país expidió su último pasaporte o documento de viaje?		20. Pasaporte #  Documento de Viaje #	21. Fecha vencimiento (día/mes/año)
22. Cual es su idioma natal (incluyendo dialecto, en su caso) ?		23. Domina usted el Inglés? <input type="checkbox"/> Si <input type="checkbox"/> No	
24. Que otros idiomas domina usted?			
<b>Para uso exclusivo de EOIR.</b>		<b>Para uso de USCIS</b>	
		<b>Decisión:</b> Fecha de aprobación: _____ Fecha negación: _____ Fecha referencia: _____	
		Acción:  Fecha de entrevista: _____  ID del Oficial de Asilo #: _____	

## Apartado A. II. Información de tu esposa e hijos.

**Esposa.** ☐ No estoy casado. (Omitir hasta **Tus Hijos**, a continuación.)

1. Número de Registro del Extranjero (A-Numero) (en su caso)	2. Pasaporte/Núm. de identificación (en su caso)	3. Fecha de nacimiento (mes/día/año)	4. No. de Seguro Social (en su caso)
5. Apellido Completo	6. Primer Nombre	7. Segundo Nombre	8. Nombre de Soltera
9. Fecha de matrimonio (mes/día/año)	10. Lugar de matrimonio	11. Ciudad y País de Nacimiento	
12. Nacionalidad (Nacionalidad)	13. Raza, Grupo Étnico o Tribu	14. Sexo <input type="checkbox"/> Masculino <input type="checkbox"/> Femenino	
15. Esta persona se encuentra en los Estados Unidos? <input type="checkbox"/> Si (Completar bloques del 16 al 24.) <input type="checkbox"/> No (Especifique ubicación) _____			
16. Lugar de la última entrada a los Estados Unidos?	17. Fecha de la última entrada a Estados Unidos (mes/día/año)	18. Número I-94 (en su caso)	19. Categoría de cuando fue admitido (Clase de Visa, en su caso)
20. Cuál es la categoría actual de su esposa?	21. Cuál es la fecha de vencimiento de la autorización de permanencia, en su caso? (mes/día/año)	22. Su esposa se encuentra en proceso judicial de Inmigración? <input type="checkbox"/> Sí <input type="checkbox"/> No	23. Si ha estado en los Estados Unidos con anterioridad, fecha de entrada anterior (mes/día/año)
24. Si se encuentra en los Estados Unidos, su esposa será incluida en la presente solicitud? (Marque la casilla apropiada.) <input type="checkbox"/> Si (Adjunte una fotografía de su esposa en la esquina superior derecha de la Pagina 9 de la copia extra de la solicitud presentada por esta persona.) <input type="checkbox"/> No			

## Información de Sus Hijos. Enliste todos sus hijos, independientemente de la edad, ubicación o estado civil.

- ☐ No tengo ningún hijo. (Pase a la Apartado A. III., Información sobre sus antecedentes.)
- ☐ Si tengo hijos. Número total de hijos: \_\_\_\_\_

(NOTA: Utilice la Forma I-589 Suplementaria A o adjunte hojas y documentación adicional si usted tiene más de cuatro hijos.)

1. Número de Registro de Extranjero (A-Numero) (en su caso)	2. Pasaporte/Tarjeta de Identificación No. (en su caso)	3. Estado Civil (Casado, Soltero, Divorciado, Viudo)	4. No. de Seguro Social (en su caso)
5. Apellidos completos.	6. Primer Nombre	7. Segundo Nombre	8. Fecha de Nacimiento (mes/día/año)
9. Ciudad y País de Nacimiento	10. Nacionalidad (Nacionalidad)	11. Raza, Grupo Étnico o Tribu	12. Sexo <input type="checkbox"/> Masculino <input type="checkbox"/> Femenino
13. Su hijo se encuentra dentro de los Estados Unidos? <input type="checkbox"/> Si (Completar bloques 14 al 21.) <input type="checkbox"/> No (Especificar ubicación) _____			
14. Lugar de la última entrada a los Estados Unidos?	15. Fecha de la última entrada a Estados Unidos (mes/día/año)	16. Número I-94 (en su caso)	17. Categoría de cuando fue admitido (Clase de Visa, en su caso)
18. Cuál es la categoría actual de su hijo?	19. Cuál es la fecha de vencimiento de la autorización de permanencia, en su caso? (mes/día/año)	20. Su hijo se encuentra en proceso judicial de Inmigración? <input type="checkbox"/> Sí <input type="checkbox"/> No	
21. Si se encuentra en los Estados Unidos, éste hijo será incluido en la presente solicitud? (Marque la casilla apropiada.) <input type="checkbox"/> Si (Adjunte una fotografía de su hijo en la esquina superior derecha de la Pagina 9 de la copia extra de la solicitud presentada por esta persona.) <input type="checkbox"/> No			

**Apartado A. II. Continuación de Información de su esposa e hijos**

1. Número de Registro de Extranjero (A-Numero) (en su caso)	2. Pasaporte/Tarjeta de Identificación No. (en su caso)	3. Estado Civil (Casado, Soltero Divorciado, Viudo)	4. No. de Seguro Social (en su caso)
5. Apellidos completos.	6. Primer Nombre	7. Segundo Nombre	8. Fecha de Nacimiento (mes/día/año)
9. Ciudad y País de Nacimiento	10. Nacionalidad (Nacionalidad)	11. Raza, Grupo Étnico o Tribu	12. Sexo <input type="checkbox"/> Masculino <input type="checkbox"/> Femenino
13. Su hijo se encuentra dentro de los Estados Unidos? <input type="checkbox"/> Si (Completar bloques 14 al 21.) <input type="checkbox"/> No (Especificar ubicación) _____			
14. Lugar de la última entrada a los Estados Unidos?	15. Fecha de la última entrada a Estados Unidos (mes/día/año)	16. Número I-94 (en su caso)	17. Categoría de cuando fue admitido (Clase de Visa, en su caso)
18.Cuál es la categoría actual de su hijo?	19.Cuál es la fecha de vencimiento de la autorización de permanencia, en su caso? (mes/día/año)	20. Su hijo se encuentra en proceso judicial de Inmigración? <input type="checkbox"/> Si <input type="checkbox"/> No	
21. Si se encuentra en los Estados Unidos, éste hijo será incluido en la presente solicitud? (Marque la casilla apropiada.) <input type="checkbox"/> Si (Adjunte una fotografía de su hijo en la esquina superior derecha de la Pagina 9 de la copia extra de la solicitud presentada por esta persona.) <input type="checkbox"/> No			

1. Número de Registro de Extranjero (A-Numero) (en su caso)	2. Pasaporte/Tarjeta de Identificación No. (en su caso)	3. Estado Civil (Casado, Soltero Divorciado, Viudo)	4. No. de Seguro Social (en su caso)
5. Apellidos completos.	6. Primer Nombre	7. Segundo Nombre	8. Fecha de Nacimiento (mes/día/año)
9. Ciudad y País de Nacimiento	10. Nacionalidad (Nacionalidad)	11. Raza, Grupo Étnico o Tribu	12. Sexo <input type="checkbox"/> Masculino <input type="checkbox"/> Femenino
13. Su hijo se encuentra dentro de los Estados Unidos? <input type="checkbox"/> Si (Completar bloques 14 al 21.) <input type="checkbox"/> No (Especificar ubicación) _____			
14. Lugar de la última entrada a los Estados Unidos?	15. Fecha de la última entrada a Estados Unidos (mes/día/año)	16. Número I-94 (en su caso)	17. Categoría de cuando fue admitido (Clase de Visa, en su caso)
18.Cuál es la Categoría actual de su hijo?	19.Cuál es la fecha de vencimiento de la autorización de permanencia, en su caso? (mes/día/año)	20. Su hijo se encuentra en proceso judicial de Inmigración? <input type="checkbox"/> Si <input type="checkbox"/> No	
21. Si se encuentra en los Estados Unidos, éste hijo será incluido en la presente solicitud? (Marque la casilla apropiada.) <input type="checkbox"/> Si (Adjunte una fotografía de su hijo en la esquina superior derecha de la Pagina 9 de la copia extra de la solicitud presentada por esta persona.) <input type="checkbox"/> No			

1. Número de Registro de Extranjero (A-Numero) (en su caso)	2. Pasaporte/Tarjeta de Identificación No. (en su caso)	3. Estado Civil (Casado, Soltero Divorciado, Viudo)	4. No. de Seguro Social (en su caso)
5. Apellidos completos.	6. Primer Nombre	7. Segundo Nombre	8. Fecha de Nacimiento (mes/día/año)
9. Ciudad y País de Nacimiento	10. Nacionalidad (Nacionalidad)	11. Raza, Grupo Étnico o Tribu	12. Sexo <input type="checkbox"/> Masculino <input type="checkbox"/> Femenino
13. Su hijo se encuentra dentro de los Estados Unidos? <input type="checkbox"/> Si (Completar bloques 14 al 21.) <input type="checkbox"/> No (Especificar ubicación) _____			
14. Lugar de la última entrada a los Estados Unidos?	15. Fecha de la última entrada a Estados Unidos (mes/día/año)	16. Número I-94 (en su caso)	17. Categoría de cuando fue admitido (Clase de Visa, en su caso)
18.Cuál es la Categoría actual de su hijo?	19.Cuál es la fecha de vencimiento de la autorización de permanencia, en su caso? (mes/día/año)	20. Su hijo se encuentra en proceso judicial de Inmigración? <input type="checkbox"/> Si <input type="checkbox"/> No	
21. Si se encuentra en los Estados Unidos, éste hijo será incluido en la presente solicitud? (Marque la casilla apropiada.) <input type="checkbox"/> Si (Adjunte una fotografía de su hijo en la esquina superior derecha de la Pagina 9 de la copia extra de la solicitud presentada por esta persona.) <input type="checkbox"/> No			

### Apartado A. III. Información de sus antecedentes

1. Mencione el último domicilio donde vivió antes de venir a los Estados Unidos. Si este no es el país donde teme persecución, también mencione el último domicilio en el país donde se teme persecución (*Enliste domicilio, Ciudad/Pueblo, Departamento, Provincia o Estado y País*)

(NOTA: Utilice la Forma I-589 Suplemento B o agregue hojas adicionales de ser necesario.)

Calle y Número (Proporciónelo en caso de ser posible)	Ciudad/Pueblo	Departamento/Provincia o Estado	País	Fechas De (Mes/Año) A (Mes/Año)	

2. Proporcione la siguiente información acerca de sus lugares de residencia durante los últimos 5 años. Proporcione primero en la lista su domicilio actual.

(NOTA: Utilice la Forma I-589 Suplementaria Forma B o agregue hojas adicionales de ser necesario.)

Calle y Número (Proporciónelo en caso de ser posible)	Ciudad/Pueblo	Departamento/Provincia o Estado	País	Fechas De (Mes/Año) A (Mes/Año)	

3. Proporcione la siguiente información relativa a su educación, empezando con la más reciente.

(NOTA: Utilice la Forma I-589 Suplementaria Forma B o agregue hojas adicionales de ser necesario.)

Nombre de la Escuela	Clase de Escuela	Ubicación (Domicilio)	Acudió De (Mes/Año) A (Mes/Año)	

4. Proporcione la siguiente información acerca de sus empleos durante los últimos 5 años. Empiece por listar primero su empleo actual.

(NOTA: Utilice la Forma I-589 Suplementaria Forma B o agregue hojas adicionales de ser necesario.)

Nombre y Domicilio del Empleador	Puesto desempeñado	Fechas De (Mes/Año) A (Mes/Año)	

5. Proporcione la siguiente información relacionada a su familia y hermanos (hermanos y hermanas). Marque la casilla que corresponde si su familiar ha fallecido.

(NOTA: Utilice la Forma B Suplementaria I-589 o agregue hojas adicionales de ser necesario.)

Nombre Completo	Ciudad/Estado y País de Nacimiento	Ubicación Actual
Madre		<input type="checkbox"/> Fallecido
Padre		<input type="checkbox"/> Fallecido
Hermanos		<input type="checkbox"/> Fallecido
Hermanos		<input type="checkbox"/> Fallecido
Hermanos		<input type="checkbox"/> Fallecido
Hermanos		<input type="checkbox"/> Fallecido

## Apartado B. Información relacionada con su solicitud.

(NOTA: Utilice la Forma I-589 Suplementaria Forma B o agregue hojas adicionales de ser necesario para completar sus respuestas a las preguntas contenidas en este Apartado B.)

Al contestar el siguiente cuestionario relacionado con su solicitud de asilo político u otro tipo de protección (exención de expulsión según el artículo 241(b)(3) de la INA o exención de expulsión bajo la Convención en Contra de la Tortura) deberá proporcionar cuenta detallada y específica de los actos por los cuales solicita el asilo o cualquier otra protección. Según lo mejor de su capacidad, deberá proporcionar descripciones sobre cada evento o describir cada acción, lugares y fechas específicas. Asimismo, debe adjuntar documentos que acrediten las condiciones generales en el país de los que buscan asilo u otra clase de protección y las circunstancias concretas en las que se apoya para sustentar la presente solicitud de apoyo. Si esta documentación no está disponible o si esta documentación no es proporcional junto con su solicitud, explique los motivos porqué en las respuestas a las siguientes preguntas.

Consulte las instrucciones de llenado del Apartado 1: presentación de instrucciones, Sección II, "Bases de Elegibilidad," Apartados A - D, Sección V, "Llenado del Formulario," Apartado b y Sección VII, "Pruebas adicionales que Debe Proporcionar" para obtener más información sobre cómo completar esta sección del formulario.

1. Porqué está solicitando asilo político o exención de expulsión conforme a la Sección 241(b)(3) del INA, o exención de expulsión según la Convención en Contra de la Tortura? Marque la(s) casilla(s) que se mencionan a continuación y que considere apropiada(s) y proporcione detalles en las respuestas a las preguntas de la A a la B siguientes:

Busco asilo político o protección para no ser deportado por motivos de:

☐ Racismo

☐ Opinión Política

☐ Religión

☐ Miembro de un grupo social en particular

☐ Nacionalidad

☐ Convención de Tortura

A. ¿Usted o algún miembro de su familia, o algún amigo cercano ha sufrido daños o maltrato o amenazas en el pasado por cualquier persona?

☐ No

☐ Si

Si su respuesta es "Si," explique con detalle:

- (1) Qué sucedió;
- (2) Cuando se sufrió o sucedió el daño, amenazas o maltrato;
- (3) Quién le causó daño, maltrato o amenazas; y
- (4) A qué atribuye usted el daño, maltrato o amenaza.

B. Teme usted de daño o amenazas si regresa usted a su país?

☐ No ☐ Si

Si su respuesta es "Si," explique con detalle:

- (1) Que tipo de daño o amenazas teme usted;
- (2) Quién cree usted que puede dañarlo o amenazarlo; y
- (3) Porqué considera usted que pudiera o podrá ser dañado o amenazado.

## Apartado B. Información relacionada con su solicitud.

2. Usted o algún miembro de su familia ha sido acusado, condenado, arrestado, detenido, interrogado, ha sido convicto y sentenciado o encarcelado en algún país diferente de los Estados Unidos?

☐ No

☐ Si

Si su respuesta es "Si," explique las circunstancias y motivos que generaron dicha acción.

3.A. Usted o algún miembro de su familia ha pertenecido o se ha afiliado a cualquier organización o grupo en su país, tales como y sin limitar a, partidos políticos, grupos de estudiantes, sindicato, asociación religiosa, militar o grupo parlamentario, patrulla civil, guerrilla, grupo étnico, grupo de derechos humanos, o la prensa o medios de comunicación?

☐ No ☐ Si

Si su respuesta es "Si," describir para cada persona el nivel de participación, cualquier liderazgo o de otros cargos y el periodo de tiempo que usted o los miembros de su familias estuvieron involucrados en cada organización o grupo.

B. Usted o algún miembro de su familia continua participando de cualquier forma en alguna de estas organizaciones o grupos?

☐ No ☐ Si

Si su respuesta es "Si," describa por cada personal, usted o algún miembro de su familia, el nivel actual de su participación, cualquier liderazgo u otra posición desempeñada y el periodo de tiempo que usted o los miembros de su familias estuvieron involucrados en cada organización o.

4. Teme ser sometida a tortura en su país de origen o cualquier otro país al que pudiera ser devuelto?

☐ No ☐ Si

Si su respuesta es "Si," explique porque teme usted y describa los motivos que sustentan su temor a ser torturado, así como por quién, y porque podría ser inflingido.

### Apartado C. Información Adicional sobre su solicitud.

(NOTA: Utilice la Forma I-589 Suplementaria Forma B o agregue hojas adicionales de ser necesario para completar las respuestas del cuestionario contenido en el Apartado C.)

1. Usted, su esposa, su(s) hijo(s)(as), sus padres, o sus hermanos han solicitado en alguna ocasión la Categoría de refugiado, asilo político o exención de expulsión por el Gobierno de los Estados Unidos? ☐ No ☐ Si

Si su respuesta es "Si" explique su decisión y que sucedió con su Categoría, el de su esposa, su(s) hijo(s), sus padres, o sus hermanos, si acaso fue recibido. Indique si fue o no incluido en la solicitud de sus padres o en la solicitud de su esposa. De ser afirmativo, incluya el número de solicitud de su padre o esposa y su respuesta. Si el asilo político le fue negado por la Corte de Inmigración. Si le han denegado asilo político por un juez de inmigración o la Junta de Apelaciones de Inmigración, describa los cambios en las condiciones en su país o sus circunstancias personales desde la fecha de la negación que pueda afectar su elegibilidad de asilo político.

2. A. Después de dejar el país desde el cual están pidiendo asilo político, usted o su cónyuge o hijos que están ahora en los Estados Unidos, han viajado o residido en cualquier otro país antes de entrar en los Estados Unidos

☐ No ☐ Si

- B. Usted, su esposa, su(s) hijo(s) o algún miembro de su familia como sus padres o sus hermanos, nunca solicitado o recibieron cualquier condición legal en un país distinto de los que ahora están pidiendo asilo político?

☐ No ☐ Si

Si la respuesta es "Si" a cualquiera de las preguntas (2A y/o 2B), proporcione por cada una de estas personas lo siguiente: el nombre del país y el periodo de estancia; la Categoría de la persona durante su estancia en ese país; los motivos de su salida; ya sea que la persona esté facultada para regresar con fines de residencia legal; y ya sea que la persona haya solicitado la Categoría de refugiado o asilo político durante su estancia ahí, de lo contrario, motivos por los que no lo hizo.

3. Usted, su cónyuge o hijos en alguna ocasión ordenó, incitó, asistió o participó de cualquier manera en causar daño o sufrimiento a cualquier persona debido a su raza, religión, nacionalidad, pertenencia a un determinado grupo social o su tendencia política?

☐ No ☐ Si

Si su respuesta es "Si," describa en detalle cualquier incidente y su propia participación o la de su esposa o la de sus hijos.

**Apartado C. Información adicional sobre su solicitud. (Continuación).**

4. Después de haber dejado el país en donde fue usted dañado o amenazado de ser dañado, regresó usted a ese País?

☐ No ☐ Si

Si su respuesta es "Si", describa detalladamente las circunstancias de su visita (por ejemplo, la(s) fecha(s) del viaje(s), los fines del(los) viajes) y el periodo de tiempo que permaneció en ese País de visita (s)).

5. Está presentando la solicitud un año después de su última estancia en los Estados Unidos?

☐ No ☐ Si

Si su respuesta es "Si," explique por qué no presentó solicitud dentro del primer año de haber llegado. Usted deberá estar preparado para explicar lo anterior en su entrevista de audiencia el por qué no presentó solicitud para su asilo político dentro del primer año de haber llegado. Para asesoría en como contestar a esta pregunta, vea las instrucciones del Apartado 1: Instrucciones de Llenado, Sección V. "Llenado de Forma," Apartado C.

6. Usted o algún miembro de su familia ha sido acusado, condenado, arrestado, detenido, interrogado, ha sido convicto y sentenciado o encarcelado en los Estados Unidos?

☐ No ☐ Si

Si la respuesta es "Si," para cada instancia, especifique en su respuesta lo ocurrido y las circunstancias; fechas; duración de la sentencia recibida; ubicación; la duración de la detención o prisión; la razones para la detención o la condena; los gastos oficiales que fueron presentados contra usted o sus familiares en su caso; la razones para liberarlo. Adjuntar documentos refiriéndose a estos incidentes, si están disponibles, o una explicación de por qué los documentos no están disponibles.



## Apartado D. Firma.

Certifico, bajo pena de perjurio conforme a las leyes de los Estados Unidos de América, que la presente solicitud y la pruebas que se adjuntan a la misma son verdaderas y correctas. El Título 18 del Código de los Estados Unidos, sección 1546, establece entre otros que: Quien conscientemente jura bajo protesta, o según lo permitido bajo pena de perjurio de conformidad con la Sección 1746 título 28, del Código de los Estados Unidos, declara como verdadera, cualquier información falsa con respecto a un hecho relevante en alguna solicitud, declaración jurada, u otro documento exigido por las leyes de inmigración o reglamentos prescritos en virtud del mismo, o presenta deliberadamente cualquier solicitud, declaración jurada u otro documento que contenga afirmación falsa o que no contienen ninguna base razonable de iure o de facto - será multado según lo establecido en el presente Título o encarcelado durante 25 años. Autorizo la divulgación de cualquier información de mis antecedentes de inmigración que los Servicios de Ciudadanía y de Inmigración de los Estados Unidos (USCIS) consideren necesarios para determinar la elegibilidad para el beneficio que estoy buscando.

Engrapar aquí su fotografía o la fotografía del miembro de su familia que se incluirán en la copia extra de la solicitud presentada por esta persona.

**Advertencia:** Los solicitantes que están ilegalmente en los Estados Unidos están sujetos a eliminación si su asilo o exención de expulsión no fue otorgada por un funcionario de asilo o por un juez de inmigración. Cualquier información proporcionada al llenar la presente solicitud podrá ser utilizada como base por la institución de, o como prueba en procedimientos de eliminación incluso si la solicitud es retirada posteriormente. Determinados solicitantes que teniendo conocimiento de causa hicieron una solicitud frívola de asilo serán permanentemente inelegibles de cualquier beneficio bajo la Ley de Inmigración y Acto de Nacionalidad. Usted no puede evitar que su solicitud sea encontrar frívola simplemente porque alguien le aconsejó proporcionar información falsa en su solicitud de asilo. Si la USCIS, lo considera conveniente, le pedirá comparecer a una cita para proporcionar datos biométricos (como las huellas digitales) y su información biográfica; en el plazo previsto puede dar lugar a un funcionario de asilo rechazar su petición de asilo o referir dicha solicitud a un juez de inmigración. Cualquier omisión por buena causa de proporcionar al DHS datos biométricos u otra información biográfica durante el proceso de eliminación puede causar que su solicitud sea abandonada por el juez de inmigración. Consulte las secciones 208(d)(5)(A) y 208(d)(6) del INA y 8 CFR, secciones 208.10, 1208.10, 208.20, 1003.47(d) y 1208.20.

Nombre complete impreso.

Escriba su nombre en su idioma natal.

Fue usted ayudado por su esposa, padre, o hijo(s), en el llenado de la presente solicitud? ☐ No ☐ Si (Si su respuesta es "Si," proporcione el nombre de la persona y su relación con la misma.)

(Nombre)

(Relación)

(Nombre)

(Relación)

Alguna persona diferente a su esposa, padre, o hijo(s) preparó por usted la presente solicitud? ☐ No ☐ Si (si es "Si," complete el Apartado E)

Los solicitantes de asilo pueden ser representados por un abogado. Le ha sido proporcionada una lista de las personas que pueden estar disponibles para ayudarle a bajo costo o sin costo alguno, con su solicitud de asilo?

☐ No ☐ Si

Firma del Solicitante (La persona mencionada en el Apartado A. I.)

| \_\_\_\_\_ |  
Firme con su nombre dentro del recuadro marcado con corchetes

\_\_\_\_\_  
Fecha (mes/día/año)

## Apartado E. Declaración de la persona que prepara el formato, en caso de ser persona diferente al solicitante, ya sea esposa, padre o hijo.

Declaro que he preparado la presente solicitud a petición de la persona mencionada en el Apartado D, y que las respuestas contenidas en la presente se basan en toda la información de la cual tengo conocimiento, o que me fue proporcionada por el solicitante, y que la solicitud debidamente llenada fue leído al solicitante en su idioma natal o en un idioma que entienda con el fin de verificar antes de que él o ella firme esta solicitud en mi presencia. Estoy consciente de que el proporcionar información falsa en el Formato I-589 también podrá hacerme acreedor de sanciones civiles según la sección 8 U.S.C. 1324c y/o sanciones penales bajo la sección 18 U.S.C. 1546(a).

Firma de quien prepara la solicitud.

Nombre complete de la persona que prepara la solicitud debidamente impreso.

Número de Teléfono durante el día.  
( )

Domicilio de quien prepara la solicitud: Nombre de la Calle y Número

No. Departamento

Ciudad

Estado

Código Postal

**Apartado F. A ser utilizado en la entrevista de asilo, en su caso..**

**NOTA:** Se le pedirá para completar este apartado cuando comparezca al examen ante un funcionario de asilo del Departamento de Seguridad Nacional, Ciudadanía de Estados Unidos y Servicios de Inmigración (USCIS).

Juro (afirmo) que conozco el contenido de esta solicitud que estoy firmando, incluyendo los documentos adjuntos y suplementos del mismo, que ☐ todos son verdaderos o ☐ no todos son verdaderos, según mi conocimiento y que correcciones numeradas del \_\_\_\_ al \_\_\_\_ se hicieron por mí o a mi petición. Asimismo, estoy consciente de que si estoy decidida a sabiendas de hacer una solicitud frívola de asilo podré quedar inelegible permanentemente de los beneficios bajo la Ley de Inmigración y Nacionalidad y que no puedo evitar encontrarme actuando frívolamente simplemente porque alguien me aconsejó proporcionar información falsa en mi solicitud de asilo político.

Firmado y jurado ante mí por el solicitante antes mencionado:

\_\_\_\_\_  
Firma del Solicitante

\_\_\_\_\_  
Fecha (mes/día/año)

\_\_\_\_\_  
Escriba su nombre en su Idioma Natal

\_\_\_\_\_  
Firma del Funcionario de Asilo Político

**Apartado G. A ser llenado en la audiencia de retiro, en su caso.**

**NOTA:** Se le pedirá completar este apartado cuando comparezca ante un juez de Inmigración del Departamento de Justicia de los Estados Unidos, Oficina Ejecutiva para Revisión de Inmigración (EOIR), para una audiencia.

\_\_\_\_\_  
Firma del Solicitante

\_\_\_\_\_  
Fecha (mes/día/año)

\_\_\_\_\_  
Escriba su nombre en su Idioma Natal

\_\_\_\_\_  
Firma del Funcionario de Asilo Político

A-Número (si está disponible)	Fecha
Nombre del Solicitante	Firma del Solicitante

**Enliste Todos Sus Hijos, independientemente de la edad, ubicación o estado civil.**

(NOTA: Utilice este formato y adjunte páginas adicionales y documentos según sea necesario, (si usted tiene mas de cuatro hijos.)

1. Número de Registro de Extranjero (A-Número) (en su caso)	2. Pasaporte/Tarjeta de Identificación No. (en su caso)	3. Estado Civil (Casado, Soltero Divorciado, Viudo)	4. No. de Seguro Social (en su caso)
5. Apellidos completos.	6. Primer Nombre	7. Segundo Nombre	8. Fecha de Nacimiento (mes/día/año)
9. Ciudad y País de Nacimiento	10. Nacionalidad (Nacionalidad)	11. Raza, Grupo Étnico o Tribu	12. Sexo <input type="checkbox"/> Masculino <input type="checkbox"/> Femenino
13. Su hijo se encuentra dentro de los Estados Unidos? <input type="checkbox"/> Si (Completar bloques 14 al 21.) <input type="checkbox"/> No (Especificar ubicación) _____			
14. Lugar de la última entrada a los Estados Unidos?	15. Fecha de la última entrada a Estados Unidos (mes/día/año)	16. Número I-94 (en su caso)	17. Categoría de cuando fue admitido (Clase de Visa, en su caso)
18. Cuál es la Categoría actual de su hijo?	19. Cuál es la fecha de vencimiento de la autorización de permanencia, en su caso? (mes/día/año)	20. Su hijo se encuentra en proceso judicial de Inmigración? <input type="checkbox"/> Si <input type="checkbox"/> No	
21. Si se encuentra en los Estados Unidos, éste hijo será incluido en la presente solicitud? (Marque la casilla apropiada.) <input type="checkbox"/> Si (Adjunte una fotografía de su hijo en la esquina superior derecha de la Pagina 9 de la copia extra de la solicitud presentada por esta persona.) <input type="checkbox"/> No			

1. Número de Registro de Extranjero (A-Número) (en su caso)	2. Pasaporte/Tarjeta de Identificación No. (en su caso)	3. Estado Civil (Casado, Soltero Divorciado, Viudo)	4. No. de Seguro Social (en su caso)
5. Apellidos completos.	6. Primer Nombre	7. Segundo Nombre	8. Fecha de Nacimiento (mes/día/año)
9. Ciudad y País de Nacimiento	10. Nacionalidad (Nacionalidad)	11. Raza, Grupo Étnico o Tribu	12. Sexo <input type="checkbox"/> Masculino <input type="checkbox"/> Femenino
13. Su hijo se encuentra dentro de los Estados Unidos? <input type="checkbox"/> Si (Completar bloques 14 al 21.) <input type="checkbox"/> No (Especificar ubicación) _____			
14. Lugar de la última entrada a los Estados Unidos?	15. Fecha de la última entrada a Estados Unidos (mes/día/año)	16. Número I-94 (en su caso)	17. Categoría de cuando fue admitido (Clase de Visa, en su caso)
18. Cuál es la Categoría actual de su hijo?	19. Cuál es la fecha de vencimiento de la autorización de permanencia, en su caso? (mes/día/año)	20. Su hijo se encuentra en proceso judicial de Inmigración? <input type="checkbox"/> Si <input type="checkbox"/> No	
21. Si se encuentra en los Estados Unidos, éste hijo será incluido en la presente solicitud? (Marque la casilla apropiada.) <input type="checkbox"/> Si (Adjunte una fotografía de su hijo en la esquina superior derecha de la Pagina 9 de la copia extra de la solicitud presentada por esta persona.) <input type="checkbox"/> No			

**Información Adicional Sobre Su Solicitud de Asilo Político.**

A-Numero (si está disponible)

Fecha

Nombre del Solicitante

Firma del Solicitante

**NOTA:** Utilice esta página como hoja de continuación de cualquier información solicitada. Copie y llene según sea necesario.

**Parte** \_\_\_\_\_

**Pregunta** \_\_\_\_\_

U.S. Homeland Security  
Arlington Asylum Office  
1525 Wilson Blvd Suite 300 Mailstop 2500  
Arlington, VA 20598-2500  
Arlington.Asylum@uscis.dhs.gov



U.S. Citizenship  
And Immigration  
Services

**INQUIRY FORM**

INQUIRY BY: ☐ APPLICANT ☐ ATTORNEY ☐ OTHER

A# \_\_\_\_\_

DATE: \_\_\_\_\_

NAME: \_\_\_\_\_  
LAST NAME FIRST NAME MIDDLE

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE NUMBER: ( ) \_\_\_\_\_ EMAIL: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_ COUNTRY OF BIRTH: \_\_\_\_\_

DATE ASYLUM APPLICATION WAS FILED (I-589): \_\_\_\_\_

DATE NACARA APPLICATION WAS FILED (I-881): \_\_\_\_\_

HAVE YOU HAD AN INTERVIEW? ☐ YES ☐ NO

DATE OF INTERVIEW: \_\_\_\_\_

**Case Status Updates**

- ☐ Interview Scheduling (no date)
- ☐ Recommended Approval
- ☐ Final Approval
- ☐ EAD Card Missing
- ☐ Approval/I-94 not received
- ☐ APSO
- ☐ ABC's Check
- ☐ Updating Address
- ☐ Other \_\_\_\_\_

\*\*\*\*\*DO NOT WRITE BELOW FOR USCIS PERSONNEL ONLY\*\*\*\*\*

ACTION TAKEN:

INQUIRY ANSWERED BY: \_\_\_\_\_

ON: \_\_\_\_\_

# NOTICE FOR ASYLUM SEEKERS ABOUT THE FILING DEADLINE FOR ASYLUM APPLICATIONS<sup>1</sup>

If you are an asylum seeker who has filed, or will be filing, an asylum application more than one year after you arrived in the United States, you may benefit from a recent court decision. Under U.S. law, an asylum seeker generally must file an asylum application within one year of arriving in the United States or the application may be denied. Following a recent court decision in *Mendez Rojas v. Johnson*, 305 F. Supp. 3d 1176 (W.D. Wash. Mar. 29, 2018), the parties have entered into a joint stay agreement. Under this agreement, the government has agreed, on an interim basis, to treat pending or newly filed asylum applications by certain asylum applicants as though they were filed within the one-year deadline, if the application is adjudicated while the agreement is in effect. This means that while the agreement is in effect, Asylum Officers, Immigration Judges, and the Board of Immigration Appeals will not refer or deny certain asylum applications because the applicant did not file the application within one year of arriving in the United States. The agreement does not apply to asylum seekers whose asylum application has already received a final denial decision. This agreement will last until further notice.<sup>2</sup>

## TO BENEFIT FROM THIS AGREEMENT, YOU MUST:

1. **Depending on where your application is pending, notify the USCIS asylum office, EOIR immigration judge, or the Board of Immigration Appeals (if your case is before the Board on appeal) that you are a *Mendez Rojas* class member.** For example, you can do this by filing a motion or notice of class membership. Information and samples provided by class counsel are available at: [https://www.americanimmigrationcouncil.org/sites/default/files/mendez\\_rojas\\_v\\_johnson\\_faq.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/mendez_rojas_v_johnson_faq.pdf).
2. **Be a member of one of the following classes of individuals:**

<p style="text-align: center;"><b>Class A.I</b></p> <p>Individuals who</p> <ol style="list-style-type: none"> <li>1) have been or will be released from DHS custody after having been found to have a credible fear of persecution within the meaning of 8 U.S.C. § 1225(b)(1)(B)(v);</li> <li>2) did not receive notice from DHS of the one-year filing deadline for asylum applications;</li> <li>3) have not filed an asylum application, or filed an asylum application more than one year after their arrival in the United States; and</li> <li>4) are not in removal proceedings.</li> </ol>	<p style="text-align: center;"><b>Class B.I</b></p> <p>Individuals who</p> <ol style="list-style-type: none"> <li>1) have been or will be detained by DHS upon their arrival into the country;</li> <li>2) express a fear of return to their home country to a DHS official;</li> <li>3) have been or will be released from DHS custody without a credible fear determination;</li> <li>4) are issued a Notice to Appear;</li> <li>5) did not receive notice from DHS of the one-year filing deadline for asylum applications;</li> <li>6) have not filed an asylum application, or filed an asylum application more than one year after their arrival in the United States; and</li> <li>7) are not in removal proceedings.</li> </ol>
<p style="text-align: center;"><b>Class A.II</b></p> <p>Individuals who</p> <ol style="list-style-type: none"> <li>1) have been or will be released from DHS custody after having been found to have a credible fear of persecution within the meaning of 8 U.S.C. § 1225(b)(1)(B)(v);</li> <li>2) did not receive notice from DHS of the one-year filing deadline for asylum applications;</li> <li>3) have not filed an asylum application, or filed an asylum application more than one year after their arrival in the United States; and</li> <li>4) are in removal proceedings.</li> </ol>	<p style="text-align: center;"><b>Class B.II</b></p> <p>Individuals who</p> <ol style="list-style-type: none"> <li>1) have been or will be detained by DHS upon their arrival into the country;</li> <li>2) express a fear of return to their home country to a DHS official;</li> <li>3) have been or will be released from DHS custody without a credible fear determination;</li> <li>4) are issued a Notice to Appear;</li> <li>5) did not receive notice from DHS of the one-year filing deadline for asylum applications;</li> <li>6) have not filed an asylum application, or filed an asylum application more than one year after their arrival in the United States; and</li> <li>7) are in removal proceedings.</li> </ol>

<sup>1</sup> The information contained in this notice is not a substitute for independent legal advice supplied by a lawyer familiar with a client's case.

<sup>2</sup> Further questions regarding this notice can be addressed to class counsel from the Northwest Immigrant Rights Project at [mendezrojas@nwirp.org](mailto:mendezrojas@nwirp.org)

## **Asylum Affidavit Checklist**

Client's Name:

Affiant's Name:

1. How does the affiant know the client? (ie what is their relationship)
2. Why is the client's life at risk? (i.e. family ties, domestic violence, LGBTI, political)
3. What is the persecution has the client suffered in home country? (death threats, actual physical harm, extortion)
4. What is the persecution the client faces in home country? (death threats, actual physical harm, extortion)
5. Why can't the police and/or government protect the client? (has the client filed a police report? If so, what was outcome? If not, why not? Is there personal knowledge of a connection between the government and the persecutor?)
6. Why can't the client relocate within home country? (tried relocating, but found? Gangs control country? Government is persecutor? Went into hiding, but can't live like that)

<b><u>MOTIVO</u></b> (Parte de su Identidad)		
<b>Algo Que No DEBE Cambiar</b>		<b>Algo Que No PUEDE Cambiar</b>
1. Religión 2. Opinión Política		3. Nacionalidad 4. Raza
	5. Membresía en un Grupo Social (No Tiene Definición)	
Orientación Sexual		<ul style="list-style-type: none"> <li>• Acciones de Familiares (alguien molesto los pandilleros, alguien trabaja en la política, alguien coopero con la policía)</li> </ul>

<b><u>TIPO DE DAÑO</u></b>
<p>Tiene que ser mas de peligro mínimo. Ejemplos:</p> <ul style="list-style-type: none"> <li>• Amenazas de Muerte</li> <li>• Extorción</li> <li>• Ciertas Formas de Abuso Físico</li> </ul> <p><b>**EL DANO TIENE QUE SER BASADO EN EL MOTIVO</b></p>

<b><u>HAY QUE APLICAR DENTRO DE UN AÑO QUE USTED ENTRÓ EL PAÍS</u></b>
<p><u>Excepciones</u> (si uno de estos califica, hay que aplicar dentro de seis meses):</p> <p>Circunstancia Cambiada</p> <p>Alguna circunstancia extraordinaria (fallecimiento, depresión, etc)</p>

<b><u>NO PUEDE VIVIR SIN PELIGRO EN OTRA PARTE DE SU PAÍS</u></b>
Que la persona quien le va a hacer daño va a encontrar a usted en todo el país

<b><u>EL GOBIERNO NO LE PUEDE O QUIERE AYUDAR</u></b>
El gobierno no le puede o quiere ayudar a usted (por ejemplo por la corrupción)





**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] O [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.

Case # [REDACTED]  
User team: Docket

For more unpublished decisions, visit  
[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)

*[Handwritten signature]*

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).

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

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.<sup>1</sup>

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

---

<sup>1</sup> 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

**Stratton, James Jay  
Stratton Immigration, PLLC  
811 1st Ave., Suite 261  
Seattle, WA 98104**

**DHS/ICE Office of Chief Counsel - SEA  
1000 Second Avenue, Suite 2900  
Seattle, WA 98104**

**Name: C [REDACTED]-D [REDACTED], X [REDACTED] Q [REDACTED]... A [REDACTED]-474**

**Date of this notice: 12/11/2018**

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

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

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

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Falls Church, Virginia 22041

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File: A █████ -474 - Seattle, WA

Date:

**DEC 11 2018**

In re: X █████ Q █████ C █████ -D █████

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James J. Stratton, Esquire

ON BEHALF OF DHS: Mark Hardy  
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Mexico, appeals from the decision of the Immigration Judge, dated August 16, 2017, denying her applications for asylum and withholding of removal pursuant to sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and protection under the Convention Against Torture. *See* 8 C.F.R. §§ 1208.16-.18. The Department of Homeland Security has submitted a brief in opposition to the appeal. The record will be remanded.

We review the findings of fact made by the Immigration Judge, including determinations as to credibility and the likelihood of future events, for clear error. 8 C.F.R. § 1003.1(d)(3)(i); *see also Ridore v. Holder*, 696 F.3d 907 (9th Cir. 2012); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent's removability is undisputed. Therefore, the issue on appeal is whether the Immigration Judge properly denied her applications for asylum, withholding of removal, and protection under the Convention Against Torture. The respondent claims that she experienced two types of harm prior to departing Mexico. First, she claims that she was sexually abused on five occasions (IJ at 4-5). The respondent testified that she was twice assaulted by her uncle as a child, once by her manager at her place of employment, and once by a romantic partner of her mother, and lastly by another uncle just prior to leaving Mexico (IJ at 4-5). The respondent claims that she experienced this harm on account of her membership in a particular social group of "women in Mexico." Second, she claims to have been extorted by a criminal gang in relation to her employment at a furniture store (IJ at 3-4). The respondent asserts that she experienced this harm on account of her membership in a particular social group of "imputed business owners." She fears she will be subjected to additional harm if she returns to Mexico. The respondent also asserts that she is eligible for protection under the Convention Against Torture.

The Immigration Judge concluded that the respondent did not establish eligibility for asylum or withholding of removal under the Act because she did not establish a nexus between the harm she experienced and fears and a ground protected under the Act (IJ at 5-6). With regard to protection under the Convention Against Torture, the Immigration Judge concluded that the

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

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

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

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

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

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

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

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

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

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

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

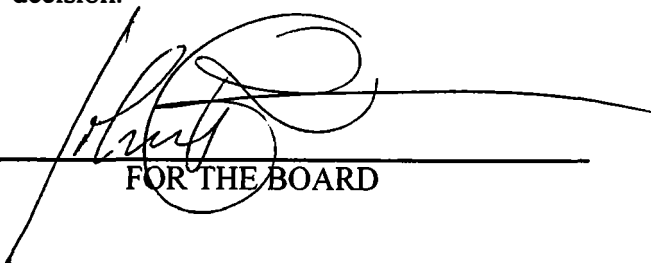
<sup>2</sup> In considering this issue, the Immigration Judge should apply the appropriate standard applicable to the respective forms of relief. *See Parussimova v. Mukasey*, 555 F.3d 734, 740 41 (9th Cir. 2009) (stating that the REAL ID Act requires that a protected ground represent “one central reason”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



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

Accordingly, the following order will be entered.

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

  
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FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
KANSAS CITY, MISSOURI

File: A [REDACTED] )  
 )  
In the Matter of [REDACTED] )  
 ) IN REMOVAL PROCEEDINGS  
P [REDACTED] B [REDACTED], and [REDACTED] )  
 [REDACTED] )  
 )  
Respondents )  
 )

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

APPLICATIONS: Asylum; Withholding of Removal; Protection under the United Nations Convention Against Torture<sup>1</sup>

ON BEHALF OF RESPONDENTS:

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ON BEHALF OF THE DHS:

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**IMMIGRATION JUDGE'S DECISION AND ORDERS**

The Respondents, a mother and son, have sought asylum, withholding of removal under the Act, and CAT protection, given their fear of returning to Honduras. For the reasons detailed below, the Court grants asylum.

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<sup>1</sup> See United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. A/39/51 (Dec. 10, 1984); Pub. L. 105-277 (1998) (CAT).

## **BACKGROUND**

The lead Respondent is a 27-year-old single woman and Honduran citizen. Her son, K[REDACTED], is also a Honduran citizen.<sup>2</sup> The United States Department of Homeland Security (Department or DHS) instituted these removal proceedings by serving both Respondents with a Notice to Appear (NTA) and subsequently filing the NTAs with the Immigration Court on February 3, 2016. Exhs. 1, 1A. The lead Respondent subsequently filed her application for asylum, withholding of removal, and CAT protection. Exh. 2. Although the application listed K[REDACTED] as a rider to the claim, he later filed a separate asylum application based upon his mother's claim. Exh. 2A. On April 10, 2018, the Court held an individual hearing on the merits of their applications.

## **CLAIM AND EVIDENCE PRESENTED**

The evidentiary record on the issue of relief from removal includes the Respondent's testimony and documentary evidence. The Court considered all the evidence identified below in its entirety regardless of whether specifically mentioned in the text of this decision.

### **1. Testimony**

The Respondent testified as the sole witness at the final hearing. She left Honduras on November 16, 2015, fleeing gang violence. Previously, Mara 18 gangsters assaulted her after she refused to continue paying them extortion.

Together with her mother, the Respondent opened a store in November 2013 after her father died of natural causes. The Respondent's mother "felt forced" to open the business because her husband with the sole financial provider. Business was good for several months. Then, about two months after the store opened, the gangsters began extorting the Respondent in January 2014.

The Respondent described this first encounter with the gang. A well-dressed man waited for the other customers to leave before approaching her. Because the man was initially polite, the Respondent first pegged him as a salesman. But after identifying himself as a Mara 18 gangster,

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<sup>2</sup> This Decision refers to the lead Respondent as "the Respondent," and to her son by his first name unless otherwise noted.

he demanded the Respondent pay a monthly “war tax” of 800 Lempiras. If she refused to pay the extortion, the man threatened to kill them, warning that the gang was monitoring “their comings and goings.”

The Respondent and her mother made several payments to the gang. Given their business’ success, they could afford to pay the monthly amount. The gangsters arrived each month to collect the money. During these encounters, the gangsters insulted the Respondent and spoke vulgarly to her, but they did not assault her. The family continued paying the 800 Lempiras each month for approximately one year.

Sometime later, however, the gangsters raised the tax to 1,000 Lempiras per month. A gangster reiterated the earlier threat to kill them if the family refused to pay. Further, the gangsters also threatened to rape the Respondent and her mother, drag them from their house, and steal their car. Despite the financial burden, the family could afford to pay the increased amount. The gangsters continued arriving at the store to collect the extortion. The business lost customers because they wanted to avoid problems with the thugs.

The gangsters later doubled the demanded extortion, requiring the family to pay 2,000 Lempiras each month. The Respondent and her mother struggled to pay the increased amount. The gangsters threatened the Respondent and smashed store goods when she failed to pay. In December 2014, a gangster confronted the Respondent at the store. The man grabbed her by the hair and threw her to the ground while she was pregnant with K[REDACTED]. The trauma sent the Respondent to the hospital where doctors performed an emergency C-section to birth K[REDACTED]

The Respondent’s mother sought loans to pay the extortion. The business continued struggling under the increased debt. Eventually, the Respondent’s mother decided to shutter the business.

One weekend, the Respondent’s mother left town for a church retreat. The Respondent stayed inside their home with her son. A friend phoned the Respondent, saying that the family car was set ablaze in a nearby town. The Respondent rushed to the town and identified her car. She concluded that the Mara 18 gangsters had stolen her car and destroyed it, given the family’s problems paying the extortion and the business’ closure.

So, the Respondent reported the incident to the local police. When she arrived at the station, she described the family's ongoing problems with the gang and she requested protection. The police, however, advised her to hire private security guards, saying they could not guarantee her protection.

After filing the police report, the Respondent returned home. About two hours later, she heard yelling and pounding on the front door. The gangsters were screaming "bitch, bitch! Where are you?" The Respondent took K [REDACTED] into her room where they hid under her bed. The gangsters broke into the house and searched for her. As they rummaged through the house, the gangsters destroyed several things. A gangster drug her from under the bed by her hair. Another gangster held a knife to her neck, threatening to decapitate her and hang her head over a bridge with a note indicating "that's what happens to the rats." Frightened, the Respondent urinated in her pants. The gangsters eventually left the home after the Respondent begged them to spare her life. Given the timing of the incident, the Respondent concluded that corrupted police leaked her report to the Mara 18.

The Respondent's mother returned home sometime later and shuttered the business. Nevertheless, the gangsters continued harassing and threatening them. Sometimes, the gangsters would arrive and shout at her, while other times they would push the Respondent and show her their guns. As time passed, the Respondent's mother opted to reopen the business, hoping repay the outstanding loans.

Two weeks later, in October 2015, the gangsters arrived and demanded more extortion. The Respondent told them that she lacked the money to pay them. Angered, the gangsters barged into the home and kidnapped her baby son, K [REDACTED]. They said that K [REDACTED] "was a piece of trash" before taking him. The Respondent's mother ran after the men for five blocks, begging for K [REDACTED]'s return. For some unknown reason, the gangster relented and returned K [REDACTED] to the Respondent's mother.

On November 9, 2015, the Respondent's mother again reported their problems with the gang to the police. But the authorities advised them to leave the country. The family lacked enough money to send everyone to the United States. So, the Respondents traveled to the United States,

while the Respondent's mother fled to a small village in the countryside. The Respondent and her son arrived in the United States on December 26, 2015. According to the Respondent, she could not live with her mother because the host lacked enough room for her and K[REDACTED]. Further, the Respondent did not have any significant family ties elsewhere in Honduras. The Respondent does not believe that she could safely relocate in Honduras because the gangs operate nationwide. Perhaps, the Respondent acknowledged, she could avoid the gangs by hiding in the rural mountains, but she has no one to shelter her in those areas. So, she fears that the gangsters will kill her if she returns to Honduras.

The Respondent thinks that the gangsters began targeting her because of the business. She knew other business owners who were extorted by the gangs. The Respondent reiterated that the gangsters never physically assaulted her as long as the family paid the extortion. But the gangsters grew more violent after she reported the car's arson to the police. Consequently, the Respondent thinks that the gangsters harmed her because she "was a rat, a snitch."

The Department questioned the Respondent during cross-examination. The Respondent provided more information about her mother's situation in Honduras. When the Respondent left Honduras for the United States, her mother moved about five or six hours away from their town to a small village in the mountains. The Respondent does not know how long her fifty-one-year-old mother plans on living in the village.

Next, the Respondent gave more details about her store. The business sold household appliances, like stoves, blenders, and furniture. The Respondent restated that the gangsters also extorted other business owners in the area. According to the Respondent, all of the business owners paid the "war tax" because they feared dying if they refused. In her town, the gang only targeted business owners for extortion. She does not know if the gang would target a "wealthy" person for extortion in her town. The Respondent thinks that the gangs survive on the money they earn through extortion. Further, she does not think that the gangsters would have "left her alone" if she could continue paying them.

The Respondent also described her interactions with the police. She approached the police once to file the report. The officers “always say they investigate,” but she does not know if they ever truly investigated her problems with the gang. The officers said that they “were not private security” and advised her to hire security guards. Otherwise, the Respondent has never had any other problems with the police. The Respondent has never been threatened or harmed by anyone in Honduras’ police or government. Regardless, she feels that the police failed to provide an “adequate answer” to her situation with the gang.

D[REDACTED] is the father of her two children. After she told D[REDACTED] about her pregnancy with K[REDACTED], he left and ended the relationship. Regardless, she reunited with him in the United States for some time. But presently, she’s not in a relationship with him.

The Respondent has some extended family remaining in Honduras. They live two blocks away from her family home. The Respondent does not have any contact with them. Although she has three siblings, they have moved to Oaxaca, Mexico. The Respondent asked if she could live with them, but her sister said that she couldn’t stay with them.

Next, the Respondent answered the Court’s brief questions. Since arriving in the United States, the Respondent has received surgery to remove her gall bladder. Doctors have told her that higher stress caused her condition with the gall bladder, a condition which the Respondent links to her stress in Honduras. The Respondent also suffers from stress, anxiety, and sleep loss. She frequently awakes with nightmares of the gangsters pounding on the door. So, the Respondent has attended a therapy session with Kathy Julio, a local psychologist. At the conclusion of the evaluation, Ms. Julio diagnosed the Respondent with post-traumatic stress disorder (PTSD). Ms. Julio advised her to attend therapy, and later seek medication as needed. Though the Respondent has discontinued therapy, she plans on continuing treatment once she gathers enough money to pay for it.

Since the Respondent arrived in the United States, she has not heard anything about the gangsters. The Respondent has cut ties with everyone in Honduras because she “just wanted to disappear.” Occasionally, the Respondent speaks with her mother by phone; their last phone call occurred on April 1, 2018.

The Respondent knew two people who were killed after reporting the gang to the police. The gangsters killed the mother of one of her classmates after she reported them to the police for attempting to recruit her son into the gang. Also, the gangsters killed a family friend after he reported them to authorities. The Respondent has also heard similar accounts in the news. According to the Respondent, the gangsters often target witnesses to their crimes and those who report them to the police. They do not grant witnesses the same leniency. The gangsters kill witnesses against the gang, from what she's witnessed personally and heard in the news.

In Honduras, the Respondent graduated from high school and attended one year of university studies. The Respondent worked at a bank as a teller. She does not believe that she could find work as a teller now in Honduras because she was searching for another job given the country's high unemployment rate. The Respondent lacks any cash savings or other assets to finance her resettlement. Further, given their financial difficulties, the Respondent's mother lost the house after the bank covered the mortgage. The Respondent's mother relies on help from her family friend for financial support. She's now a subsistence farmer. The Respondent reiterated that she could not relocate to the same area with her children because, in part, it lacks schools and hospitals. Consequently, the Respondent does not believe that she could financially support herself and her children.

Next, the Court questioned the Respondent about the documents that she submitted to support her claim. The Respondent explained that she contacted her mother to gather the documents, along with the help of an attorney in Honduras. The attorney traveled to the Respondent's hometown to record the statements from her friend, neighbors, and mother. Using a power of attorney, the attorney also gathered the police reports from the authorities that she submitted. And, he obtained a copy of the business record.

## **2. Documentary Evidence**

The Court has considered all of the record's documentary evidence, including the following exhibits:

1. NTA for Respondent; 1A. NTA for K [REDACTED];
2. Respondent's asylum application (Form I-589); 2A. K [REDACTED]'s Form I-589;



3. Respondent's Additional Exhibits in Support of Asylum Part 1 (Tabs A-H);
4. Respondent's Additional Exhibits Part 2 (Tabs I-R);
5. Respondent's Additional Exhibits Part 3 (Tabs S-T);
6. United States Department of State Human Rights Report – Honduras 2016.

The Department objected to the Respondent's filing of Ms. Julio's psychological evaluation. Exh. 3 at 40. The Department contested the admission of the evaluation because Ms. Julio did not appear in Court and thus, was unavailable for cross-examination. Further, the Respondent submitted the evaluation without including a copy of Ms. Julio's curriculum vitae. The Court admitted the evaluation over the Department's objection explaining that the presence and availability for cross-examination of a report's author "are not absolute requirements in immigration proceedings." *Tun v. Gonzales*, 485 F.3d 1014, 1028 (8th Cir. 2007) (internal citations omitted). Further, Ms. Julio indicated in her evaluation that she's a licensed professional counselor, and she provided her State license number.

Additionally, the Department made similar objections to the Respondent's submissions of the Declarations prepared by the Center for Gender and Refugee Studies. Exh. 4 at 67, 259. The Department argued that the Declarations should not be admitted into evidence because the individuals who prepared them did not appear in Court to testify as to how their knowledge applies specifically to the Respondent's case. Since the Respondent offered the Declarations as country condition evidence rather than evidence specifically relating to her case, the Court admitted the Declarations into evidence over the Department's objections. Lastly, the Court admitted Exhibits 1, 2, 5-6 without objection from the parties.

### **FINDINGS AND ANALYSIS**

Having considered the Respondent's testimony and the record in its entirety, the Court finds that the Respondent presented credible testimony. Further, the Court concludes that the Respondent timely filed her asylum application with the Court. And, for the reasons detailed below, the Court grants asylum after determining that the Respondent met her burden of proof.

#### **1. Credibility and Corroboration**

In all applications for asylum and withholding of removal, the Court must make a threshold

credibility finding. *See Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). Because the Respondent filed her application after May 11, 2005, the credibility and corroboration provisions of the REAL ID Act apply. The REAL ID Act provides that an applicant's testimony alone is sufficient to satisfy her burden of proof only if the Court determines that the testimony is credible, persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. INA § 208(b)(1)(B)(ii).

After reviewing the Respondent's testimony and documentary submissions, the Court finds her testimony credible. The Court may evaluate the alien's credibility "using whatever combination of considerations seems best in the situation at hand." *Id.* In assessing the applicant's credibility, the Court may consider the following factors: demeanor, candor, responsiveness, inherent plausibility of the claim, the consistency between oral and written statements, the internal consistency of such statements, the consistency of such statements with evidence of record, and any inaccuracy or falsehood in such statements, even if they stray beyond the heart of the applicant's claim. INA § 208(b)(1)(B)(iii).

Here, the Respondent asks the Court to accept her testimony as credible. The Respondent's testimony about her troubles in Honduras was internally consistent. Further, her testimony was also consistent with her written statement, and the record's other documentary evidence. *See Exhs. 3, 4, and 5.* The Respondent also exhibited the appropriate demeanor, which was consistent with the context of her claim. The Court, therefore, finds the Respondent's testimony credible, and turns to review the substance of her claim.

## **2. Asylum**

In all asylum cases, the applicant "shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion." 8 C.F.R. § 1240.8(d). To qualify for asylum under section 208 of the Act, an applicant bears the burden of proving that she is a refugee within the meaning of section 101(a)(42) of the Act. The applicant must demonstrate that she is unable or unwilling to return to the country of origin because of persecution or a well-founded fear of persecution on account of her race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A).

If an asylum applicant presents specific facts establishing that she has actually been the victim of persecution based on one of the five enumerated grounds, then she is entitled to a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13. Absent this presumption, the applicant must demonstrate a fear that is subjectively genuine and objectively reasonable, meaning that a reasonable person in her circumstances would fear future persecution on account of one of the five enumerated grounds. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *Kratchmarov v. Heston*, 172 F.3d 551, 553 (8th Cir. 1999) (citation omitted). An applicant must also establish that she merits asylum as a matter of discretion. INA § 208(a).

- **Timeliness of application**

To be eligible for asylum, an applicant must show by clear and convincing evidence that she applied for asylum within one year of her last arrival in the United States. *See* INA § 208(a)(2)(B)-(D); 8 C.F.R. § 1208.4(a)(2). Here, the Respondent entered the country on December 26, 2015, and submitted her asylum application to the Court on August 26, 2016. Further, the Department stipulated that the Respondent timely filed her application. The Court, therefore, finds that the Respondent indeed filed her application within one year of her arrival in the United States.<sup>3</sup> Consequently, the Court turns to consider the merits of her asylum claim.

- **Past Persecution**

The Respondent asserts that she endured past persecution in Honduras. The Eighth Circuit has defined past persecution as “the infliction or threat of death, torture, or injury to one’s person or freedom on account of on account of race, religion, nationality, membership in a particular social group, or political opinion.” *Litvinov v. Holder*, 605 F.3d 548, 553 (8th Cir. 2010) (quoting *Davila-Mejia v. Mukasey*, 531 F.3d 624, 628 (8th Cir. 2008)). Persecution within the meaning of the INA “does not encompass all treatment that society regards as unfair, unjust, or even unlawful or unconstitutional.” *Matter of V-T-S-*, 21 I&N Dec. 792, 798 (BIA 1997). Rather, “persecution is an extreme concept.” *Eusebio v. Ashcroft*, 361 F.3d 1088, 1090 (8th Cir. 2004).

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<sup>3</sup> On April 10, 2018, K█████ filed a separate I-589 application with the Court. Exh. 2A. Although his application was untimely, the issue is moot because he also qualifies as a rider on his mother’s timely filed asylum application. Exh. 2.

Even minor beatings or limited detentions do not usually rise to the level of past persecution. *Bhosale v. Mukasey*, 549 F.3d 732, 735 (8th Cir. 2008); *Kondakova v. Ashcroft*, 383 F.3d 792, 797 (8th Cir. 2004). But rape and severe beatings do rise to the level of persecution. *Matter of D-V-*, 21 I&N Dec. 77, 78 (BIA 1995). Persecution does not normally include unfulfilled threats of physical injury. *Setiadi v. Gonzales*, 437 F.3d 710, 713 (8th Cir. 2006). And, threats that “are exaggerated, nonspecific, or lacking in immediacy” may fail to establish persecution. *La v. Holder*, 701 F.3d 566, 571 (8th Cir. 2012). But “numerous and credible threats” combined with attempts to fulfill those threats may establish past persecution, as the asylum standard does not require the applicant “to wait for [her] persecutors to finally carry out their death threats before [she] could seek refuge here.” *Sholla v. Gonzales*, 492 F.3d 946, 952 (8th Cir. 2007). “It is also important to consider whether an act of violence is an isolated occurrence, or part of a continuing effort to persecute on the basis of a factor enumerated in the statute.” *Ngure v. Ashcroft*, 367 F.3d 975, 990 (8th Cir. 2004). Moreover, persecution is not limited to physical harm, and it may include emotional or psychological harm, the deliberate imposition of severe economic disadvantages, or deprivation of liberty or essentials for life such as food, water, employment, or housing. *Matter of T-Z-*, 24 I&N Dec. 163, 171-173 (BIA 2007)

In this case, the Court finds that the Respondent has described harm that constitutes persecution. For almost two years, the Mara 18 routinely threatened and harassed the Respondent. Sometimes, gang members would confront the Respondent and her mother at the family’s store. The gangsters would threaten to rape and kill them if they failed to pay extortion fees. They would also regularly push the Respondent, flash their weapons, and smash items in the store. In December 2014, a gang member assaulted the Respondent at the store. He grabbed her by the hair and threw her to the ground. At the time, the Respondent was pregnant with her son. The trauma was so severe that doctors had to perform an emergency C-section so that she could give birth.

In October 2015, gang members broke into the Respondent’s home. Before entering the home, the men pounded on her front door, yelling “bitch.” Once inside, the men searched for the Respondent and found her hiding under a bed. One gangster drug her from under the bed by her hair. Then, he held a knife to the Respondent’s neck while threatening to decapitate her. The

gangster warned that he would “hang her head over a bridge” with a message saying, “this is what happens to rats.” The threat frightened the Respondent so much that she urinated in her pants. In addition to the physical harm suffered by the Respondent, this threat would also constitute persecution.

About two weeks later, Mara 18 gangsters arrived at her house again. The gang members demanded extortion money, but the Respondent had no money. Then, they kidnapped her son K[REDACTED] and left the house. The Respondent’s mother chased the gangsters for five blocks before they eventually released K[REDACTED]

Lastly, the Respondent suffers from stress, anxiety, and sleep loss. She frequently awakes with nightmares of the gang members invading her home in Honduras. The Respondent attended a therapy session with a local psychologist regarding her problems. *See Mambwe v. Holder*, 572 F.3d 540, 547 (8th Cir. 2009) (holding that courts may consider “evidence of psychological trauma resulting from the harm” when evaluating the severity of the alleged persecution). The psychologist evaluated the Respondent’s condition and diagnosed her with post-traumatic stress disorder (PTSD). She advised the Respondent to attend therapy and, if unfruitful, to visit a psychiatrist for medication. The Respondent submitted a copy of her psychological evaluation to the Court. Exh. 3 at 39-54.

For these reasons, the Court finds that the Respondent established past persecution.

- **Particular Social Group and Nexus**

To qualify for asylum, the persecution in question must be inflicted on account of at least one of the above-noted protected grounds, which include membership in a particular social group. INA § 101(a)(42)(A). The Board of Immigration Appeals (Board or BIA) has clarified the elements required to establish a cognizable particular social group. *See Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014); *see also Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014). A valid social group must include members who share a common immutable characteristic; it should be defined with particularity; and the group must be socially distinct within the society in question. *Ngugi v. Lynch*, 826 F.3d 1132, 1137-38 (8th Cir. 2016).

An immutable characteristic is one “that the members of the group either cannot change, or should not be required to change because it’s fundamental to their individual identities or consciences.” *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985), *overruled in part on other grounds*. To satisfy the particularity requirement, a group must be discrete with definable boundaries. *W-G-R-*, 26 I&N Dec. at 214. The social distinction prong requires that the group be perceived as a group by society, regardless of whether people can identify the group’s members by sight. *Id.* at 216-17. To demonstrate social distinction, an applicant must provide evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. *Id.* at 217.

For an applicant to show that she has been targeted on account of a protected ground, she must demonstrate that her claimed ground was at least “one central reason” for the claimed harm. INA § 208(b)(1)(B)(i); *Matter of N-M-*, 25 I&N Dec. 526 (BIA 2011). The protected ground cannot be “incidental, tangential, superficial, or subordinate to another reason.” *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212-14 (BIA 2007). An applicant may show a persecutor’s motives through direct or circumstantial evidence. *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). Such evidence may include statements by persecutors, or treatment of other similarly situated people. *See Matter of S-P-*, 21 I&N Dec. 486, 494 (BIA 1996).

Here, the Respondent seeks asylum based on her membership in a proposed social group articulated as “Honduran victims of gang crime who reported the crime or act as a witness to gang crime.” The Court must determine the validity of each social group on a case-by-case basis by applying a fact-based inquiry. *Matter of L-E-A-*, 27 I&N Dec. 40, 42 (BIA 2017). As a threshold matter, the Court finds that the Respondent has proven membership in this group because she was a victim of gang crime and she reported the crime to Honduran authorities. *Fuentes-Erazo v. Sessions*, 848 F.3d 847, 852 (8th Cir. 2017) (requiring asylum applicants to first prove actual membership in their proposed social group).

Next, the Court considers whether this group is immutable. A group’s characteristic is immutable when it’s permanent. *See W-G-R-*, 26 I&N Dec. at 212. Here, the characteristic of being a victim of gang crime in the past constitutes an unchangeable, shared past experience. *Ngengwe*

*v. Mukasey*, 543 F.3d at 1034 (holding that past experiences qualify as an immutable characteristic because a past experience cannot be undone) (internal citation omitted). Thus, the proposed group satisfies the immutability requirement.

The Court now turns to determine if the group satisfies the particularity requirement. The Respondent's proposed group combines numerous characteristics when drawing its boundaries. First, the group limits its membership to Honduran nationals. Second, the group narrows the list to Hondurans who have been victims of gang crime. Third, a Honduran victim of gang crime cannot belong to the group unless he or she reported the crime or acted as a witness to the crime. With these limitations, the group limits its potential members to a discrete and finite number. Consequently, the Court finds that the proposed social group is sufficiently particular.

Next, the Court analyzes the social group to determine if it satisfies the social distinction requirement. To prove social distinction, the Respondent must provide evidence showing that Honduran society perceives, considers, or recognizes her proposed social group as a distinct group of people. *See W-G-R-*, 26 I&N Dec. at 217. Several Circuit Courts have approved other witness-based social groups. *See, e.g., Gashi v. Holder*, 702 F.3d 130, 137 (2d Cir. 2012) (finding "the group of cooperating witnesses on which basis Gashi claimed eligibility was socially visible to potential persecutors and the wider Kosovar society"); *Escobar v. Holder*, 657 F.3d 537, 542 (7th Cir. 2011) (finding that a group articulated as "truckers who resisted the FARC and collaborated with law enforcement" is a cognizable social group); *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (holding that witnesses who testify against gang members qualify as members of a valid social group); *Garcia v. Attorney General of U.S.*, 665 F.3d 496, 504 (3d Cir. 2011) (finding that witnesses who testify against gang members have an immutable characteristic); *Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011) (granting petition for review and recognizing family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses against the gangs as members of a particular social group); *Zelaya v. Holder*, 668 F.3d 159, n.4 (4th Cir. 2012) (noting that the group "prosecution witnesses against gangs" would satisfy the social visibility requirement).

The Department challenges the validity of the Respondent's social group based on the

Attorney General’s reasoning in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). First, in its Reply Brief, the Department alleges that the proposed group does not “exist independently of the harm asserted,” but fails to explain how it reached that conclusion. *See* the Department of Homeland Security’s Reply Brief (Sept. 4, 2018) at 3. Regardless, the Court finds that the Respondent’s social group does exist independently of the harm asserted because it is not defined solely by the persecution of its members. *See Matter of A-B-*, 27 I&N Dec. at 335. For instance, membership in the proposed group requires more than the characteristic of being a gang crime victim. A victim of or a witness to gang crime cannot be considered a member of the group unless he or she reported the crime to the authorities. Second, the Department also argues that the Respondent’s social group lacks the requisite social distinction. The Court acknowledges that the Board and the Eighth Circuit have previously rejected witness-based particular social groups for lack of social distinction. But for the reasons detailed below, the Court distinguishes the Respondent’s situation from those cases.

In *Matter of C-A-*, the Board rejected a social group of confidential informants because, as secret informants, members of the group necessarily could not satisfy the “social visibility” standard.<sup>4</sup> 23 I&N Dec. at 960 (finding that a group of confidential informants against a drug cartel lacked social visibility because, in part, confidential informants remain unknown to the cartels). Here, the Court first distinguishes the Respondent’s witnesses-based group from the confidential informants group in *Matter of C-A-*, 23 I&N Dec. at 960. The Respondent’s group consists of readily identifiable witnesses who report crimes to the authorities, not confidential informants.

In *Ngugi v. Lynch*, the Eighth Circuit rejected a similar group – “witnesses to criminal activities of the Mungiki” – because the record lacked evidence showing that Kenyan society viewed it as socially distinct. 826 F.3d at 1137-38. But here, the Respondent has submitted ample evidence showing that Honduran society recognizes her social group as distinct. She presented country conditions reports explaining that individuals who report or act as witnesses to gang crime are routinely targeted for retaliation by gangs in Honduras. In fact, the Public Ministry of Honduras provides a Witness Protection Program (the Program) for persons who have acted as witnesses

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<sup>4</sup> The social visibility standard was later replaced with the requirement for social distinction.



against organized crime and violence. Exh. 4 at 441. *See Gonzalez Cano v. Lynch*, 809 F.3d 1056, 1059 (8th Cir. 2016) (when analyzing social distinction, the Court may consider whether the society in question recognizes the need to offer protection for individuals sharing a defining characteristic). Nonetheless, individuals who are in the Program remain at risk for many dangers, including death. *See id.* Further, the U.N. High Commissioner for Refugees has reported that:

“Witnesses and victims of crimes committed by gangs and other organized criminal groups in Honduras have reportedly been killed perpetrators to ensure their silence, even when they have not sought to formally denounce those crimes to the authorities. Those who do denounce the crimes, or who otherwise cooperate with the authorities against the gangs or other organized crime groups as ‘informants,’ are reportedly routinely pursued for their ‘betrayal,’ often along with their family members, even when placed in a witness protection program.”

*Id.* at 213.

Additionally, the record contains several reports demonstrating the visibility and vulnerability of witnesses within Honduran society. Exh. 4 at 209, 213; Exh. 6 at 29 (detailing reports of gangs murdering witnesses and victims of crime to ensure their silence; explaining that gangs often target individuals perceived to be passing information along to authorities; reporting that death threats for witnessing criminal activity committed by gangs is a leading cause contributing to the forced displacement of youth epidemic in Honduras). Notably, one report emphasizes that witnesses of gang crime, or individuals who have reported gang crime to the authorities “become vulnerable to violence [inflicted by gang members] as a form of deterrence or retribution.” Exh. 4 at 240-41.

Moreover, the Respondent testified that gang members often target witnesses to their crimes and those who report them to the police. She explained that she knew two people who were killed by Mara 18 members after they reported the gang to the police – the mother of one of her classmates and a family friend. The Respondent also stated that she has heard similar stories on the news.

The Court notes that after *Ngugi*, the Eighth Circuit recently considered a similar witness-based social group in *Miranda v. Sessions*, 892 F.3d 940, 943 (8th Cir. 2018). In that case, the

Eighth Circuit found that a group proposed as “former taxi drivers from Quezaltepeque who have witnessed a gang murder” failed the social distinction element because the group lacked a requirement for its members to actually testify against the gangsters. *Id.* No dispute exists that publicly testifying against persecutors may be *one* way of establishing social distinction. See *Henriquez-Rivas v. Holder*, 707 F.3d at 1091–92 (holding that witnesses who testified in court against cartel members fulfilled the social distinction prong because significant evidence showed Salvadoran society recognized such witnesses, including through the passage of legislation to protect them). But given the fact-specific test for social distinction, the Court declines to broadly extend the holdings in the above-noted cases to bar other witness-based groups from demonstrating the requisite distinction. Indeed, nothing in *Miranda* or *Ngugi* precludes applicants from satisfying the social distinction requirement by presenting other evidence of social distinction beyond witness testimony.<sup>5</sup> Rather, social distinction evidence can vary depending on specific cases. *M-E-V-G-*, 26 I&N Dec. at 244 (“the evidence available in any given case will certainly vary”).

Additionally, in analyzing the social distinction element, the Court may consider “evidence such as country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies, historical animosities, and the like....” *Id.* Thus, the Court must consider the evidence of social distinction in *this* specific record. *Matter of L-E-A-*, 27 I&N Dec. at 42. As detailed above, the Respondent submitted substantial evidence showing that Honduran society views her proposed group as socially distinct. And, even though the proposed group does not require its members to testify, it nevertheless satisfies the particularity and distinction requirements. See *Gashi v. Holder*, 702 F.3d at 136–38 (after analyzing the facts of the relevant society, the Second Circuit held that a group consisting of “potential witnesses” was legally cognizable). Accordingly, the Court finds that evidence in this case demonstrates that the proposed group is a legally cognizable.

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<sup>5</sup> Similarly, the Eighth Circuit recently rejected another witness-based social group after finding that the group lacked social distinction. See *De Rivas v Sessions*, \_\_\_ F.3d \_\_\_, No. 17-1123 (8th Cir. 2018). Again, the Eighth Circuit declined to impose a complete bar to witness-based groups. *Id.* Rather, the Eighth Circuit found that there was no evidence in that case that showed how Salvadoran society viewed the proposed group. *Id.* at 6.

Next, the Respondent must show that the gang targeted her, or would do so in the future, on account of her membership in the proposed social group. For an applicant to show that she has been targeted on account of a protected ground, she must demonstrate that her claimed ground was at least “one central reason” for the claimed harm. INA § 208(b)(1)(B)(i); *Matter of N-M-*, 25 I&N Dec. 526 (BIA 2011). The protected ground cannot be “incidental, tangential, superficial, or subordinate to another reason.” *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212-14 (BIA 2007). An applicant may show a persecutor’s motives through direct or circumstantial evidence. *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). Such evidence may include statements by persecutors, or treatment of other similarly situated people. See *Matter of S-P-*, 21 I&N Dec. 486, 494 (BIA 1996).

Here, the Respondent’s testimony reflects that the Mara 18 gang identified her as a reporter of gang crime and targeted her accordingly. For instance, she stated that gangsters broke into her home two hours after she reported the torching of her family’s car. During the invasion, the gangsters ransacked the Respondent’s home, yelling “snitch” and “big mouth.” One gangster threatened to decapitate her and hang her head over a bridge with a note saying: “this is what happens to rats.” Both the timing of the home invasion and the gangsters use of the terms “snitch,” “big mouth,” and “rat” show that the gang recognized the Respondent as a witness of gang crime who reported it to the police. Further, as previously discussed, the record’s documentary evidence shows that the gangs (and Honduran society) recognize witnesses to its crimes as a group. Exh. 4 at 183, 209, 213, 240-41. So, on balance, the evidence certainly shows that the Respondent’s status as a witness was at least one of the gangsters’ central motivations.

The Court, therefore, finds that the Respondents have established past persecution or, as detailed below, a well-founded fear of future persecution on account of their membership in the witness-based social group. Because the Court grants relief upon these two social groups, it declines to consider the Respondents’ other proposed social groups or protected grounds.

- **Government Action**

The Respondents assert that they warrant asylum because Honduras’ government failed to protect them from the Mara 18 gang. The asylum applicant must show that the persecution was

inflicted by the government or by persons that the “government [was] unwilling or unable to control.” *Cubillos v. Holder*, 565 F.3d 1054, 1057 (8th Cir. 2009); *see also Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985) (holding same). To prove persecution based on the misconduct of a private actor, the applicant “must show more than just a difficulty controlling private behavior.” *Salman v. Holder*, 687 F.3d 991, 995 (8th Cir. 2012) (internal quotation omitted). Rather, she must show that the government condoned the private behavior “or at least demonstrated a complete helplessness to protect the victims.” *Id.* (quotation omitted). “Without this imprimatur of government officials, asylum claims based on the conduct of nongovernmental parties fail.” *Guillen-Hernandez v. Holder*, 592 F.3d 883, 887 (8th Cir. 2010). But evidence of “ineffectiveness and corruption do not, alone, require a finding that the government is ‘unable or unwilling’” to control the alleged persecutor where evidence indicates to the contrary. *Khilan v. Holder*, 557 F.3d 583, 586 (8th Cir. 2009) (*per curiam*).

Here, the Respondents assert that Honduras’ government remains unwilling or unable to protect them from the Mara 18. The gang is one of the country’s most powerful criminal organizations, committing “murders, extortion, kidnappings, human trafficking, and acts of intimidation against police” across Honduras. Exh. 6 at 4. The documentary evidence shows that gangs, such as the Mara 18, enjoy a high level of impunity within Honduras. Exh. 4 at 204-5, 228, 389; Exh. 6 at 10. The State Department has reported that “corruption and impunity remain serious problems within [Honduras’] security forces.” *Id.* Further, “some members of the police committed crimes, including crimes linked to local and international criminal organizations.” *Id.* Also, the State Department listed “widespread impunity due to corruption and institutional weaknesses in the investigative, prosecutorial, and judicial systems” as a serious human rights problem in Honduras. *Id.* at 1.

The record contains other country conditions reports explaining that in certain areas of Honduras, “the [g]overnment has lost effective control to gangs and other organized criminal groups and is unable to provide protection to inhabitants.” Exh. 4 at 228. The government’s nominal ability to control gang activity is exacerbated by widespread collusion between the police and gangs. *Id.* at 205. For instance, there have been reports of the gangs and the police working

together to extort the population; the police are paid off to “allow gangs to extort without interference” or, sometimes, to “collect extortion money for the gangs.” *Id.* Although Honduras’ government has made numerous attempts to reform its police force, the attempts have “largely failed.” *Id.* at 204. Reports show that the government rarely prosecutes criminal cases involving police officers and that a number of officers, including high-ranking officials, remain members of the force despite having known ties to organized criminal groups. *Id.*

Moreover, the testimonial evidence largely parallels the background reports. The Respondent testified that that Mara 18 extorted all of the business owners in the area. She explained that the gang forced her mother’s business, as well as the neighboring business owners, to pay a monthly “war tax.” The Respondent asserted that both her family and the other business owners complied with the gang’s demands out of fear that they would be killed for failing to pay. The Respondent’s testimony illustrates the gang’s powerful grip on her community, especially given her statements indicating that the police have failed to intervene.

Further, the record evidence shows that the Honduran police repeatedly failed to protect the Respondent’s family. When the Respondent reported the torching of her family’s car by the gang to the police, the officers informed her that they were not “private security” and advised her to hire security guards. The police claimed that they would investigate the incident, but they never confirmed any follow-up efforts with the Respondent. The record reflects that the Respondent’s mother also reported the Mara 18 to the authorities. But once again, police declined to offer assistance. Rather, they advised the Respondent’s mother to leave the country with her family. Taken together, these incidents show that the police simply threw their hands in the air, admitting that they could not protect her. These facts indeed prove that the government remains unable, if not unwilling, to protect the Respondents.

In *Matter of A-B-*, the Attorney General concluded that the failure of local police to investigate a particular report does not, standing alone, prove that the government remains unwilling or unable to control crime. 27 I&N Dec. at 337. The Court acknowledges that a government’s failure to investigate or prosecute a crime may occur for many reasons. *Id.* Still, applicants ultimately bear the burden to “show not just that the crime has gone unpunished, but

that the government is unwilling or unable to prevent it.” *Id.* at 338. The present case, however, involves more than merely an unpunished crime. Taken together with the country conditions reports, the totality of the evidence shows that the government was unable to protect the Respondents. Here, the Respondent reported the Mara 18 to the police and the officers offered her zero assistance. Just two hours later, Mara 18 gangsters arrived at her home, ransacking the house and violently threatening her family. The Respondent’s testimony that a gangster held her at knifepoint while calling her a rat proves that the home invasion was a direct consequence of her reporting the gang to the police. The record, therefore, provides some circumstantial evidence indicating that the police may have leaked her report to the gang. Additionally, the Respondent’s mother received no help when reporting the Mara 18 to the police on a later occasion.

Given the above-noted documentary evidence as well as their family’s troubling experiences with law enforcement, the Court finds that the Respondents have established that the Honduran government remains unwilling or unable to protect them from the Mara 18 gang.

- **Well-Founded Fear of Future Persecution**

Because the Respondents have proven past persecution, the law provides a presumption of future persecution. *See* 8 C.F.R. § 1208.13(b)(1); *Kondakova v. Ashcroft*, 383 F.3d 792, 798 (8th Cir. 2004), *cert. denied*, 543 U.S. 1053 (2005). The burden shifts to the Department to establish by a preponderance of the evidence that there has been a fundamental change in circumstances or that the Respondent reasonably could avoid the persecution by relocating to a different part of the country. 8 C.F.R. §§ 1208.13(b)(1)(i)-(ii).

In this case, the Department asserts that the Respondent could reasonably avoid the gang in Honduras. To rebut the presumption of persecution, the Department “must demonstrate that there is a specific area of the country where the risk of persecution to the respondent falls below the well-founded fear level.” *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33-34 (BIA 2012). In particular, the Court looks at if another area of the country is “practically, safely, and legally accessible.” *Id.* The location must also “present circumstances that are substantially better than those giving rise to a well-founded fear of persecution on the basis of the original claim.” *Id.* The Eighth Circuit held that when an applicant establishes past persecution “it shall be presumed that

internal relocation would not be reasonable” unless the Department establishes that, “under all the circumstances, it would be reasonable for the applicant to relocate.” *Yang v. Gonzales*, 427 F.3d 1117, 1122 (8th Cir. 2005). Criteria for the reasonableness of relocation include whether the Respondent would face other serious harm in place of relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints such as age, gender, health and social and familial ties. 8 C.F.R. § 1208.13(b)(3).

Here, the Court finds that the Department failed to meet its burden of establishing by a preponderance of the evidence that the Respondent could reasonably relocate. The Department declined to present any rebuttal evidence. Rather, the Department argues that the Respondent could relocate to a rural, mountainous area to avoid the gang. The Department also alleges that her relocation would not be unreasonable because the harm she fears is “primarily from individuals residing in a relatively small community in Honduras rather than from government officials with nationwide reach.” Department’s Reply Brief at 7. To support this argument, the Department relies on the following excerpt from *Matter of A-B-*:

“When the applicant has suffered personal harm at the hands of only a few specific individuals, internal relocation would seem more reasonable than if the applicant was persecuted, broadly, by her country’s government.”

27 I&N Dec. at 345. For the reasons outlined below, the Court remains unpersuaded by the Department’s arguments.

Contrary to the Department’s position, the record contains substantial evidence proving that it would be unreasonable to require the Respondent to relocate in Honduras. First, the Respondent’s testimony shows that moving in with her mother is not a viable option. Specifically, she explained that the house hosting her mother lacks enough room for her and K [REDACTED]. Indeed, the Respondent acknowledged that she could possibly avoid the gangs by “hiding” in the mountains. Nonetheless, she affirmed that she would not have anyone to shelter her in that area. The Court does not consider hiding in the wilderness without housing a reasonable relocation option for a mother and her young child such as the Respondents.

Second, the Respondent's mother is her only immediate relative remaining in Honduras. Her three siblings departed Honduras and moved to Oaxaca, Mexico. The Respondent asserted that her siblings would not let her stay with them; but even if they did, the evidence fails to suggest that she has lawful immigration status in Mexico. Further, the record reflects that the Respondent has some extended family remaining in Honduras, but she does not have any contact with them. Regardless, the Respondent testified that her extended family members live in her hometown, which eliminates their residence as a potential relocation choice.

Third, the Respondent lacks the financial resources necessary to fund her resettlement. She affirmed that she lacks the requisite cash savings and other assets to support a potential move. Despite previously working as a bank teller in Honduras, the Respondent does not believe that she would be able to find a job if she returns, given the country's high unemployment rate. Further, she discussed her family's financial struggles in Honduras, explaining that her mother lost their home for failure to pay the mortgage. The Respondent's mother now relies on a family friend for financial help. As previously noted, the Respondent's mother currently lives in a countryside village and works as a subsistence farmer. The Respondent, however, does not believe she could sufficiently raise and financially support her son in the same village, given its lack of industry, hospitals, or schools.

Fourth, the Respondent testified that she could not safely relocate anywhere in Honduras because the gangs operate nationwide. The record's country condition evidence supports her claim. Exh. 4 at 204-5, 228, 389; Exh. 6 at 4, 10. The Court acknowledges that the Respondent's problems with the gangs in Honduras occurred in her hometown. Although her hometown is only one area of Honduras, the documentary evidence shows that the gangs inflict widespread crime and violence across the country. In fact, the country conditions reports link the Mara 18 gang to crimes executed in various areas of Honduras. Exh. 4 at 389; Exh. 6 at 4. The gang's widespread presence throughout Honduras wholly contradicts the Department's argument that she only fears harm from a small group of localized gangsters. The Court recognizes that the Mara 18 consists of private actors rather than public officials. But as detailed above, the record contains substantial evidence showing that Honduras' government fails to provide its citizens with adequate protection from the



gangs. Although ineffective law enforcement does not necessarily equal persecution, it does support the Respondent's argument that she could not avoid the gangs by relocating to another area of Honduras.

The Department, therefore, did not rebut the presumption of future persecution. Consequently, the Court finds that the Respondents have shown a well-founded fear of future persecution.

- **Discretion**

Finally, asylum is a discretionary form of relief. An Immigration Judge may deny asylum even if the applicant remains otherwise statutorily eligible. *See* INA § 208(a); *Ibrahim v. Gonzales*, 434 F.3d 1074 (8th Cir. 2006). In determining whether to grant asylum as a matter of discretion, courts must consider the totality of the circumstances in each case. *See Matter of Pula*, 19 I&N Dec. 467 (BIA 1987). In this case, the Respondent has endured significant persecution and violence in her country. She has lived in the United States without any other arrests. The Respondent remains dedicated to raising her son and providing a better life for him in the United States. Beyond the initial immigration violation for entering the country without permission, the record contains no evidence of any more significant negative factors. On balance, the Court finds that the Respondent merits discretionary relief. The Court, therefore, grants asylum as a matter of discretion.<sup>6</sup>

### **3. Withholding of Removal and CAT Protection**

Because the Court has granted asylum, it declines to address the Respondents' applications for withholding of removal under section 241(b)(3) of the Act and CAT protection.

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<sup>6</sup> The Court grants the lead Respondent's asylum application without reaching her son K [REDACTED]'s separately filed application. As her minor child, he qualifies for asylum as a derivative applicant to her claim.

### ORDERS

It is ORDERED that the Respondent's application for asylum be **granted**.

It is ORDERED that the Respondent's application for withholding of removal under the Act and CAT protection be **withdrawn**.

Date: November 1, 2018

  
Justin Howard  
Immigration Judge

\* The Court has reserved appeal for both parties. Any appeal is due at the Board of Immigration Appeals within thirty days of this Decision.

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#### CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)  
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ATTACHMENTS: ( ) EOIR-33 ( ) EOIR-28 ( ) LEGAL SERVICES LIST ( ) OTHER