

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203

Harvard Immigration & Refugee Clinic
Albun, Zachary A
6 Everett Street
#3109
Cambridge, MA 02138

In the matter of [REDACTED]

File [REDACTED]

DATE: Sep 18, 2019

- Unable to forward - No address provided.
- Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041
- Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203
- Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.
- Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

— Other: IJ Decision is Attached.

COURT CLERK
IMMIGRATION COURT

FF

cc: PRATT, PETER
ASSISTANT CHIEF COUNSEL
BOSTON, MA, 022030000

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Respondents

)
)
)
)
)
)
)

In Removal Proceedings

CHARGE:

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

APPLICATIONS:

Asylum, pursuant to INA § 208
Withholding of Removal, pursuant to INA § 241(b)(3)
Protection under the United Nations Convention Against Torture (“Convention Against Torture” or “CAT”)

ON BEHALF OF THE RESPONDENT

Zachary A. Albus, Esq.
Harvard Immigration and Refugee Clinic
6 Everett Street, Suite 3109
Cambridge, Massachusetts 02138

ON BEHALF OF DHS

Joceline Rocha, Assistant Chief Counsel
Office of the Chief Counsel
JFK Federal Building, Room 425
Boston, Massachusetts 02203

DECISION OF THE IMMIGRATION COURT

I. PROCEDURAL HISTORY

The Respondents are [REDACTED], a thirty-six-year-old woman, and her son, [REDACTED], aged eleven.¹ Both are natives and citizens of El Salvador. The Respondent is alleged to have entered the United States at Hidalgo, Texas on August 9, 2015, at which time she was not admitted or paroled after inspection by an immigration officer. Consequently, the Department of Homeland Security (“DHS”) personally served the Respondent with a Notice to Appear (“NTA”) on September 4, 2015, and initiated removal proceedings by filing that NTA with the Boston Immigration Court on October 16, 2015. Exh. 1.

¹ The Court will hereinafter refer to the lead Respondent, [REDACTED], simply as “the Respondent.” Her son [REDACTED] is a minor and a derivative of her application.

At the initial master calendar hearing on November 2, 2015, the Respondent was present. She was not represented by counsel. The Court explained to the Respondent her rights, which she indicated that she understood, and continued her case in order to obtain counsel. At a subsequent master calendar hearing on July 13, 2016, the Respondent was present and represented. Through counsel, she submitted her written pleading, admitting all five factual allegations, conceding the sole charge of removability in the NTA, and declining to designate a country of removal. At the individual merits hearing on September 20, 2018, the Respondent was again present and represented, and the Court heard her testimony.

II. DOCUMENTARY EVIDENCE

- | | |
|------------------------|--|
| Exhibit 1 | Notice to Appear. |
| Exhibit 2 | Written pleading. |
| Exhibit 3 | Form I-589, Application for Asylum and for Withholding of Removal ("I-589"). |
| Exhibit 4 | Pre-Trial Order of the Immigration Judge. |
| Exhibit 5 | Notice of Privilege of Counsel and Consequences of Knowingly Filing a Frivolous Application for Asylum. |
| Group Exhibit 6 | Supplemental Documentation in Support of Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture, Tabs A-AAA. |
| Group Exhibit 7 | Further Supplemental Documentation in Support of Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture, Tabs BBB-SSSS. |
| Exhibit 8 | Witness List. |
| Exhibit 9 | Pre Hearing Statement. |
| Exhibit 10 | Errata Sheet for Originally Filed I-589 Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture. |
| Exhibit 11 | Form I-867A, Record of Sworn Statement of Proceedings under section 235(b)(1) of the Act. |

III. STANDARDS OF LAW

A. Credibility

In all applications for asylum and withholding of removal under the Act, the Court must make a threshold determination of the alien's credibility. *See Matter of O-D-*, 21 I&N Dec. 1079 (BIA 1998); *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987). The provisions of the REAL ID Act of 2005 apply to the Court's credibility analysis in asylum applications filed on or after May 11, 2005. Pub. L. No. 109-13, 119 Stat. 302 (2005), codified at section 208(b)(1)(B)(iii) of the Act. Considering the totality of the circumstances and all relevant factors, the Court may base a credibility determination on:

the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor.

REAL ID Act § 101(d)(2); INA § 208(b)(1)(B)(iii) (2017). Accordingly, inconsistencies between statements in an asylum application and testimony during the asylum proceedings may lead to a finding that the applicant is not credible. *Phal v. Mukasey*, 524 F.3d 85, 89 (1st Cir. 2008).

An applicant's testimony alone will only be sufficient to sustain her burden of proving eligibility for asylum without corroboration if the Court is satisfied 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); 8 C.F.R. § 1208.13(a) (2017); *see Guta-Tolossa v. Holder*, 674 F.3d 57, 62 (1st Cir. 2012). Credibility determinations must be "reasonable" and "take into consideration the individual circumstances of the applicant." *Lin v. Mukasey*, 521 F.3d 22, 28 n.3 (1st Cir. 2008). The Court must provide "specific and cogent reasons why an inconsistency, or a series of inconsistencies, renders the alien's testimony not credible." *Jabri v. Holder*, 675 F.3d 20, 24 (1st Cir. 2012) (*quoting Kartasheva v. Holder*, 582 F.3d 96, 105 (1st Cir. 2009)).

Unreasonable demands are not placed on an applicant to present evidence to corroborate particular experiences. *Soeung v. Holder*, 677 F.3d 484, 488 (1st Cir. 2012). However, where it is reasonable to expect corroborating evidence for certain alleged facts, such evidence should be provided. *Id.* at 487-88; *see* INA § 208(b)(1)(B)(ii). If such evidence is unavailable, the applicant must explain its unavailability, and the Court must ensure that the applicant's explanation is included in the record. *Soeung*, 677 F.3d at 488. The absence of such corroboration can lead to a finding that an applicant has failed to meet her burden of proof. *Id.*; *Guta-Tolossa*, 674 F.3d at 62

(“[A]n IJ can require corroboration whether or not she makes an explicit credibility finding.”); *see Matter of S-M-J-*, 21 I&N Dec. 722, 725 (BIA 1997).

B. Asylum

The Court may grant asylum to an alien who timely files an application and meets the definition of a refugee. INA § 208(b)(1)(A). An alien is a “refugee” within the meaning of INA § 101(a)(42)(A) if she is unwilling or unable to return to her country of nationality because of persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The applicant bears the burden of establishing that she is a refugee within the meaning of INA § 101(a)(42)(A) and that she merits a favorable exercise of discretion. 8 C.F.R. § 1208.13(a); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987).

1. Persecution

Persecution is “a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive.” *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). Persecution does not encompass general conditions of violence shared by many others in a country or the harm an individual may experience as a result of civil strife. *Tay-Chan v. Holder*, 699 F.3d 107, 112-13 (1st Cir. 2012). Rather, to qualify as persecution, a person’s experience must “rise above unpleasantness, harassment, and even basic suffering” and consist of systemic mistreatment rather than a series of isolated events. *Rebenko v. Holder*, 693 F.3d 87, 92 (1st Cir. 2012) (quoting *Nelson v. INS*, 232 F.3d 258, 263 (1st Cir. 2000)). The “severity, duration, and frequency of physical abuse” are relevant factors to this determination. *Topalli v. Gonzales*, 417 F.3d 128, 133 (1st Cir. 2005); *Vasili v. Holder*, 732 F.3d 83, 89 (1st Cir. 2013) (“Infrequent beatings, threats, or periodic detention . . . do not rise to the level of persecution, and the nature and extent of an applicant’s injuries are relevant to the ultimate determination”). “[C]redible, specific threats can amount to persecution if they are severe enough . . . Threats of murder fit squarely within this rubric.” *Javed v. Holder*, 715 F.3d 391, 395–96 (1st Cir. 2013) (internal quotation omitted). Physical violence is not required for a finding of past persecution, but “makes a threat more likely to constitute persecution,” *id.* at 396, but “threats standing alone constitute past persecution in only a small category of cases, and only when the threats are so menacing as to cause significant actual suffering or harm.” *Bonilla v. Mukasey*, 539 F.3d 72, 77 (1st Cir. 2008) (internal citation omitted).

An applicant who has suffered past persecution on account of a statutorily protected ground is presumed to have a well-founded fear of future persecution on account of that same protected ground. 8 C.F.R. § 1208.13(b)(1). This presumption may only be rebutted if DHS establishes, by a preponderance of the evidence, that there has been a “fundamental change in circumstances” in the country at issue, such that the applicant no longer has a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1)(i)(A).

2. Basis and Nexus

The applicant must establish that a statutorily-protected ground – race, religion, nationality, membership in a particular social group, or political opinion – is “at least one central reason” for the applicant’s persecution. INA §§ 101(a)(42)(A), 208(b)(i); *Sugiarto v. Holder*, 586 F.3d 90, 95 (1st Cir. 2009); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212-15 (BIA 2007). Persecution on account of the statutorily protected grounds refers to persecution motivated by the victim’s traits, not the persecutor’s. *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992). While the applicant need not identify the persecutors with certainty or prove that the alleged persecutors targeted her solely because of a protected characteristic, the applicant must provide some evidence, direct or circumstantial, to establish “that the persecution was based, ‘at least in part,’ on an impermissible motivation.” *Ivanov v. Holder*, 736 F.3d 5, 12 (1st Cir. 2013) (quoting *Sompotan v. Mukasey*, 533 F.3d 63, 69 (1st Cir. 2008)); *J-B-N- & S-M-*, 24 I&N Dec. at 216-217.

An applicant for asylum or withholding of removal seeking relief based on their political opinion must show more than “mere opposition” to gangs or refusal to join a gang is insufficient to constitute a political opinion. *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992); *see also Alvizures-Gomes v. Lynch*, 830 F.3d 49, 52-53 (1st Cir. 2016) (finding that refusal to join a gang is not an expression of a political opinion, and that no nexus had been established because gangs “may have a nearly infinite variety of reasons for targeting a particular individual, including greed or an aspiration to increase their membership” and thus “mere refusal to join a gang, without more, does not compel a conclusion that the alleged persecutor viewed the alien’s resistance as an expression of a political opinion”) (internal citations omitted); *Mayorga-Vidal v. Holder*, 675 F.3d 9, 18 (1st Cir. 2012) (holding that “mere refusal to join” a gang does not constitute “an expression of an anti-gang, pro-establishment political opinion”) (internal citation omitted); *Mendez-Barrera v. Holder*, 602 F.3d 21, 27 (1st Cir. 2010) (holding that “particular religious or political beliefs, without more, is not sufficient to show persecution on account of those beliefs. ... There must be evidence that the would-be persecutors knew of the beliefs and targeted the belief holder for that reason”) (internal citation omitted) (emphasis in original). In order to prevail on a claim based on political opinion, there “must be evidence that the gang knew of [the applicant’s] political opinion and targeted [the applicant] because of it.” *Valdiviezo-Galdamez v. Att’y Gen. of U.S.*, 663 F.3d 582, 609 (1st Cir. 2011). Where the applicant started a prayer group, “helped people in social projects,” and claimed to be vocally opposed to criminal enterprises, the First Circuit affirmed the denial of her applications for relief and held that “mere opposition to crime, without more, does not constitute a political opinion.” *Giraldo-Pabon v. Lynch*, 840 F.3d 21, 25 (1st Cir. 2016).

An applicant for asylum or withholding of removal seeking relief based on “membership in a particular social group” must establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. *Matter of W-G-R-*, 26 I&N Dec. 208, 221 (BIA 2014). *See also Matter of A-B-*, 27 I&N Dec. 316, 319 (A.G. 2018). Family has been recognized as a cognizable social group for purposes of withholding of removal. *See, e.g., Aldana-Ramos v. Holder*, 757 F.3d 9, 15 (1st Cir. 2014) (“[A] family may be a particular social group simply by virtue of its kinship ties, without requiring more”); *Perlera-Sola v. Holder*, 699 F.3d 572, 576 (1st Cir. 2012) (a family is a particular social group only where “the motivation for persecution is kinship”); *Gebremichael v. INS*, 10 F.3d 28, 36 (1st Cir. 1993) (“There can ... be no plainer example of a social group based on common, identifiable, and immutable characteristics than that of the nuclear family”). *See also*

Matter of W-G-R-, 26 I. & N. Dec. 208, 212-18 (BIA 2014) (a particular social group is cognizable when it is (1) comprised of members who share a common immutable or fundamental characteristic; (2) socially distinct within the society in question; and (3) defined with particularity); *see also Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014). For family membership to be a cognizable particular social group, the family must be cognizable to society, and not simply cognizable only to the persecutor. *Matter of L-E-A-*, 27 I&N Dec. 581, 586 (A.G. 2019); *see also Pena Oseguera v. Barr*, *_F.3d_*, No. 17-60339; 2019 WL 3980184 at *2 (5th Cir. 2019) (holding that “*Matter of L-E-A-* stands for the proposition that families *may* qualify as social groups, but the decision must be reached on a case-by-case basis.”)

With respect to gang activity, “[a] national community may struggle with significant societal problems resulting from gangs, but not all societal problems are bases for asylum.” *Matter of M-E-V-G-*, 26 I&N Dec. at 251. Specifically, “although certain segments of a population may be more susceptible to one type of criminal [gang] activity than another, the residents all generally suffer from the gang’s criminal efforts to sustain its enterprise in the area.” *Id.* at 250 – 251. Thus, an asylum applicant basing his or her claim on a factual scenario involving gangs must establish membership in a cognizable particular social group and prove that he or she has been targeted on that basis. *See id.* at 250 – 251; *Matter of S-E-G-*, 24 I&N Dec. 579, 587 – 588 (BIA 2008).

While the applicant need not identify the persecutors with certainty or prove that the alleged persecutors targeted him or her solely because of a protected characteristic, the applicant must provide some evidence, direct or circumstantial, to establish “that the persecution was based, ‘at least in part,’ on an impermissible motivation.” *Ivanov v. Holder*, 736 F.3d 5, 12 (1st Cir. 2013) (quoting *Sompotan v. Mukasey*, 533 F.3d 63, 69 (1st Cir. 2008)); *see also Matter of J-B-N- & S-M-*, *supra* at 215 – 217. But see *Matter of A-B-*, 27 I&N Dec. at 338-339 (“When private actors inflict violence based on a personal relationship with a victim, then the victim’s membership in a larger group may well not be “one central reason” for the abuse”). Where a petitioner presents “no evidence other than his own speculation” to forge the statutorily required “link,” no nexus is established. *Guerra-Marchorro v. Holder*, 760 F.3d 126, 129 (1st Cir. 2014) (quoting *Khalil v. Ashcroft*, 337 F.3d 50, 55 (1st Cir. 2003)); *see also Sugiarto*, *supra* 95 – 96 (no nexus where record contained no evidence supporting petitioner’s stated belief she was targeted because of her religion).

3. Government Action

The persecution that the applicant experienced or fears must be the direct result of government action, government-supported action, or the government’s unwillingness or inability to control private conduct. *Ivanov*, 736 F.3d at 12 (quoting *Sok v. Mukasey*, 526 F.3d 48, 54 (1st Cir. 2008)). “Action by non-governmental actors can undergird a claim of persecution only if there is some showing that the alleged persecutors are in league with the government or are not controllable by the government.” *Da Silva v. Ashcroft*, 394 F.3d 1, 7 (1st Cir. 2005). To establish that the government is unable to control a private actor, an applicant “must show more than difficulty . . . controlling private behavior.” *A-B-*, 27 I&N Dec. 316, 337 (A.G. 2018) (quoting *Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005) (internal quotations and citations omitted)). That “local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime,” and a showing that

the crime has gone unpunished is insufficient to show that the government is unwilling or unable to prevent it. *Id.* at 337-38.

4. Discretion

An applicant for asylum has the burden of establishing that a favorable exercise of discretion is warranted. INA § 208(b)(1)(B); *Pula*, 19 I&N Dec. at 473-74 (superseded by regulation on other grounds); 8 C.F.R. § 1208.14(a). In exercising discretion, the Court must examine the totality of the circumstances. *Pula*, 19 I&N Dec. at 473-74.

C. Withholding of Removal Pursuant to INA Section 241(b)(3)

Section 241(b)(3) of the Act is a non-discretionary provision requiring the Court to withhold removal of an individual upon proof that her life or freedom would be threatened in the proposed country of removal on account of the alien's race, religion, nationality, political opinion, or membership in a particular social group. *See also* 8 C.F.R. § 1208.16(b). To be eligible for withholding of removal, an applicant must establish either (1) that she has experienced past persecution on account of a protected ground, or (2) that it is "more likely than not" that her life or freedom would be threatened in the future on account of a protected ground. 8 C.F.R. § 1208.16(b)(1)-(2).

D. Protection Under the Convention Against Torture

Under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, as implemented by 8 C.F.R. §§ 1208.16–1208.18, an applicant is eligible for withholding of removal if she establishes that it is "more likely than not" that she would be tortured in the proposed country of removal by, or at the instigation of, or with the consent or acquiescence of a public official. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1); *see also* Convention Against Torture, art. 3, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988). "Torture" is defined, in part, as the intentional infliction of severe pain or suffering by, or at the instigation of, or with the consent or acquiescence of a public official. 8 C.F.R. § 1208.18(a)(1).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has considered all admitted evidence and testimony in its entirety, even if not specifically mentioned further in the text of this decision.

A. Credibility

The Court finds the Respondent to have testified credibly, notwithstanding certain inconsistencies between her testimony and other evidence of record. For one, the transcript from the Respondent's interview with an immigration officer indicates that she said that she came to the United States to work and that she had no fear of returning to El Salvador. However, before the Court, she denied telling the officer that she came to the United States to work and that she did not fear being persecuted or tortured. Exh. 11. When asked to explain this inconsistency, she maintained that she told the officer she feared returning to El Salvador.

In another, the Respondent testified that she did not plan to leave El Salvador, for the United States or otherwise, prior to July 2015. However, she later testified that prior to July 2015, she had planned to go to Guatemala with the other members of the *directiva*, the town council, but cancelled those plans when she was informed that she would have to get her husband's consent to bring [REDACTED].² The Respondent's explanation that her plans changed and that she no longer planned to leave El Salvador was persuasive and credible. Although the Court found the Respondent's testimony that, despite the fact that her husband [REDACTED] and her son [REDACTED] were in the United States, she had no plans to come to the United States to reunite with her family implausible, it is not inherently so and is not held against her.

The Respondent's testimony was otherwise consistent with her application and the other evidence of record. It was detailed and plausible in light of country conditions. She did not appear to embellish her account, and even admitted information that was not helpful to her claim. For example, she admitted that other members of the *directiva* were not targeted to the extent that she was, despite engaging in the same type of work. The Respondent's claim was also corroborated, including a medical report finding that an exam of her left shoulder was consistent with her report of "having fractured her clavicle and having her shoulder anteriorly dislocated twice." Exh. 7 at 706.

B. Asylum pursuant to INA § 208

The Respondent's application was timely filed within one year of her arrival in the United States. Her claim is based on her religion, political opinion, imputed membership in the particular social group of informants against gangs in El Salvador, and actual membership in two social groups, articulated as: (1) her family, and (2) women living in El Salvador without male protection. The Court finds that the Respondent has established that she suffered past persecution on account of her political opinion and her family membership.³

1. Harm Rising to the Level of Persecution

The Respondent suffered harm rising to the level of persecution, which included increasing levels of violence and threats against her life. These occurred when the Respondent attended the soccer matches that she organized and in her home. On one occasion, gang members shot firearms at the soccer field during a match that she attended. Exh. 7 at 671. In 2013, after the Respondent was elected to a formal position within the *directiva*, an MS-13 gang member broke into the Respondent's home, stripped off his clothes and took a bath." *Id.* at 681. When MS-13 learned that the Respondent was working with the United States Agency for International Development ("USAID") to build a community center, gang members complained that the Respondent was keeping the neighborhood children away from the gangs. They told the president of the *directiva* that they knew about the well in the Respondent's backyard and said that it would be her "and [REDACTED]'s tomb." *Id.* at 681. The threats resulted in actual suffering. The Respondent continues to [REDACTED] "symptoms of mental distress consistent with someone who has survived significant traumatic experiences." Exh. 7 at 706. These symptoms "meet diagnostic criteria for post-

² The Respondent's husband was living in the United States at the time.

³ The Court does not reach the Respondent's alternative claims.

traumatic stress disorder.” *Id.* Following the opening of the center in 2015, gang members smashed the windows and vandalized the building. *Id.* at 682. Also in 2015, the Respondent was attacked by members of a rival gang, Barrio 18. Soon after, in an attack ordered by an MS-13 member, her arm was “yanked” “so hard that it came out of the socket again.” The Respondent was badly injured enough to return to the hospital. It took three people to set her arm back in its socket. *Id.* at 683; *see also id.* at 692. In another attack, her son [REDACTED]’s dog was poisoned by MS-13 to send a message and to ensure that the dog could not warn her if they were breaking in again. *Id.* at 683. The Respondent continues to experience pain in her left shoulder. Her shoulder locks and clicks. Exh. 7 at 703.

The Court takes into account in the aggregate the aforementioned threats and acts of violence, and notes their increasingly violent nature. The Respondent suffered repeated and personalized threats against her life and the lives of her children. Gang members demonstrated the credibility of those threats by breaking into the Respondent’s home on at least two occasions – on one occasion stripping naked, and on another killing the family pet. These threats were combined with confrontations and physically attacking her such that she continues to suffer. These increasingly violent threats and attacks are more than a “series of somewhat vague verbal threats.” *Abdelmalek*, 540 F.3d at 23. Further, the harm and fear suffered because of this persecution are not negated simply because there is general violence by the gangs and disorder in El Salvador. *Ordonez-Quino v. Holder*, 760 F.3d 80, 88-90 (1st Cir. 2014) (explaining that a group can be intentionally targeted during a war); *see also Matter of H-*, 21 I&N Dec. 337, 343 (BIA 1996) (finding that persecution “can and often does take place in the context of civil war”) (internal citation omitted).

2. Basis and Nexus

a. Political Opinion

One central reason that the Respondent was persecuted was on account of her political opinion. She has shown more than “a generalized ‘political’ motive” underlying the persecution. *Elias-Zacarias*, 502 U.S. at 482; *see also Alvizures-Gomes*, 830 F.3d at 52-53. Here, the Respondent not only opposed the gangs, she affirmatively sought to disrupt their recruitment of children. To further these ideals, the Respondent worked as a community activist and organizer in El Salvador through the *directiva*, the town council of elected representatives, of which she was a member. She organized soccer tournaments and “the Day of the Child.” She also worked with USAID to build a community center in order to keep children involved in activities and away from the gangs. The gang members were aware of her views and activities, and targeted her because of them. Upon her election to the position of “vocal, someone who serves as a voice for the community” within the *directiva*, gang members began harassing the Respondent “wherever [she] went.” Exh. 7 at 678. These events go beyond “mere opposition to crime,” and constitute affirmative statements and actions.

b. Particular Social Group

The Respondent’s family membership was another central reason for her persecution by the gang and, more specifically, her relationship to her sons [REDACTED], who witnessed

the MS-13 murder someone. They began to “more aggressively threaten [REDACTED] because they thought he might have told the police about the murder he had witnessed.” Exh. 7 at 680. They then began threatening the Respondent “even more than they did before the murder,” told her to watch her children, called her a rat, and accused her and [REDACTED] of reporting what [REDACTED] and [REDACTED] witnessed to police. *Id.* The threats “never stopped for the rest of the time [she] was in El Salvador.” *Id.* Even after the murderer was arrested, a gang member went to the Respondent’s house, threatened her, demanded to see her phone to see if she called police, and accused [REDACTED] of being “the rat who had informed on [REDACTED],” the murderer. *Id.* After [REDACTED] fled to the United States, gang members continued to harass the Respondent about [REDACTED], “in the street, in the store, and everywhere [she] went.” *Id.* at 681. In July 2015, other gang members told the Respondent that “he knew that [REDACTED] had ratted them out to the police.” He demanded that she pay him \$ [REDACTED] or smuggle a [REDACTED] into the jail. *Id.* at 684. She refused and the gang member told her that the well in her backyard would become “a tomb for [the Respondent] and [REDACTED].” *Id.*

While [REDACTED] was targeted as an informant, a group that is generally not protected under the Act, the Respondent’s family membership is a well-recognized, established, cognizable group.⁴ *Aldana-Ramos*, 757 F.3d at 15. Here, however, the MS-13 targeted the Respondent and [REDACTED] because of their familial relationship to [REDACTED]. Their motive to harm the Respondent and [REDACTED] because they are members of [REDACTED]’s family is not incidental, but is rather “one central reason” for the persecution she fears. 27 I&N Dec. at 46; *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208. Gang members repeatedly threatened to kill the Respondent and broke into her home on at least two occasions, specifically because of her relationship to [REDACTED]. The Court finds that the Respondent established that MS-13 sought to harm the family members because of an animus against the family itself. The Respondent and [REDACTED] were well known in their community because the Respondent was an anti-gang activist, and she and [REDACTED] were often seen together. Thus the Respondent, [REDACTED], and their nuclear family were well-known and socially distinct within their community. *Matter of L-E-A-*, 27 I&N Dec. at 586.

In *Aldana-Ramos*, gang members kidnapped the owner of a successful used car business, and extorted his sons for his return. 757 F.3d at 12-13. Even after the gang members murdered the business owner, they continued to pursue his sons. *Id.* at 13. The fact that the gang members may have targeted the father only because of his wealth did not matter. *Id.* at 18. What mattered in the sons’ case was the fact that they were targeted because of their familial relationship with their father, as they would not have been targeted if this protected characteristic did not exist. *Id.* at 16. In this case, even if the [REDACTED] was targeted because he witnessed a murder, the Respondent was persecuted on account of her membership in the particular social group of her

⁴ “Informants” are not sufficiently visible to constitute a cognizable particular social group for purposes of asylum or withholding of removal under the Act. See, e.g., *Scatambuli v. Holder*, 558 F.3d 53, 60 (1st Cir. 2009) (rejecting “informants” as a particular social group because such a group failed to meet the social visibility requirement); *Matter of C-A-*, 23, I&N Dec. 951, 960 (BIA 2006) (rejecting “confidential informants” as a particular social group because members of such a group are “generally out of the public view”). The Court also notes that the Respondent’s case is distinguishable from *Marin-Portillo v. Lynch*, 834 F.3d 99 (1st Cir. 2016), to which the Board cited favorably in *L-E-A-*. In *Marin-Portillo v. Lynch*, the First Circuit held that “the persecutor, who was jailed for murdering the applicant’s father, threatened the applicant and his family in order to retaliate or to deter them from seeking revenge against him, rather than because of their family membership.” *L-E-A-*, 27 I&N Dec. 40, 45 (A.G. 2017), overruled by *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019) (explaining *Marin-Portillo v. Lynch*, 834 F.3d 99).

nuclear family. As in *Aldana-Ramos*, the gang members who attacked [REDACTED] would not have treated the Respondent the same way if the protected characteristic of her nuclear family membership did not exist. The Respondent's membership in her nuclear family was "one central reason" for the persecution. *Aldana-Ramos*, 757 F.3d at 15, 18; *Matter of J-B-N- & S-M-*, 24 I&N Dec. at 214. Therefore, the Court finds that the Respondent met her burden of establishing that her nuclear family constituted a particular social group, and the nexus between that group and the persecution she suffered.

3. Government Action

The Respondent has established that the Salvadoran government is either unwilling or unable to protect her. *Rosales Justo v. Sessions*, 895 F.3d 154, 166 n.9 (1st Cir. 2018) (an applicant can establish that the government of their home country is unable to protect her if she can "produce competent and sufficient evidence that the failures by the police ... went well beyond a government's failure to protect its citizens from all crime") (internal citations omitted). There are high levels of corruption among the police in El Salvador, and, particularly in San Salvador and [REDACTED], where the Respondent resided, they are unable to control organized crime. *Rosales Justo*, 895 F.3d at 159; *see also* Exh. 7 at 716 (noting "high levels of gang infiltration and overall corruption within the Salvadoran police and government" and that many "Salvadoran police officers in units across the country are complicit or actively engaged with gangs"), and at 1127 (noting that one of the principal human rights abuses in El Salvador was "widespread corruption," and that a "weak rule of law ... contributed to high levels of impunity and government abuse" despite attempts to "dismiss and prosecute" corrupt officials). Although the Salvadoran police arrested the individual who committed the murder witnessed by the Respondent's sons, this merely shows that "the police were willing to take on organized crime, not that the government is able to protect its citizens from organized crime." *Rosales Justo*, 895 F.3d at 159. [REDACTED], the Respondent's rural community, "is itself specifically known for gang violence." Exh. 7 at 727. *See also* Exh. 7 at 324 (noting that in 2015, San Salvador was ranked "as one of the most violent cities in the world"), at 578, 580 (stating that San Salvador "is the world's most homicidal city"); and at 726 (indicating that [REDACTED] is "considered one of the most violent [municipalities] in the country," and that San Salvador has been called the "murder capital of the Americas"). Impunity, even for homicide, is the norm. *See, e.g.*, Exh. 7 at 324, 578, 580, and 726.

El Salvador has a long history of attempting to combat gang violence without success. *See, e.g.*, Exh. 7 at 993 ("After fifteen years of failed security policies, the government of El Salvador and criminal gangs are deadlocked in an open confrontation. Efforts aimed at tackling the deep-rooted social issues behind the gang phenomenon have not produced desired results due to a lack of political commitment and social divisions that gangs use to their advantage"). In many neighborhoods, gangs have "created a climate of fear that the authorities were not capable of restoring to normal." Exh. 7 at 1139. While El Salvador has taken steps to combat gang violence, the results are limited to the point that a "senior government official said that authorities were fighting a war that cannot be won." Exh. 7 at 1012 (internal citations and quotation marks omitted).

Finally, the Court notes that the failure to make a police report "is not necessarily fatal" to the Respondent's claim if she can "demonstrate that reporting private abuse to government authorities would have been futile." *Rosales Justo*, 895 F.3d at 165 (quoting *Morales-Morales v.*

Sessions, 857 F.3d 130, 135 (1st Cir. 2017)). Given the discussion of the documentary record above, the Court finds that it would have been futile for the Respondent to make a police report, and that her failure to do so does not impact the Court's finding that the Salvadoran government is unable to protect her.

4. Well-Founded Fear of Future Persecution

Having found that the Respondent suffered past persecution, she enjoys a presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). This presumption may be rebutted if DHS establishes that there has been a “fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution” in the country at issue or that the applicant “could avoid future persecution by relocating to another part” of that country. *Id.* § 1208.13(b)(1)(i)(A), (B). The Court finds that DHS has not rebutted this presumption by offering evidence under either prong of the regulation.

5. Discretion

There are no adverse discretionary factors in the record and the Respondent merits the favorable exercise of its discretion.

6. Derivative Asylum

The Respondent's son, [REDACTED], co-Respondent, is included in her application and, as the Court grants the Respondent's application for asylum, the Court also grants derivative asylum to the co-Respondent.

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

Because the Respondent has established her eligibility for asylum pursuant to INA § 208, the Court does not reach her application for withholding of removal pursuant to INA § 241(b)(3).

D. Convention Against Torture

Because the Respondent has established her eligibility for asylum pursuant to INA § 208, the Court does not reach her application for protection under the CAT.

For the foregoing reasons, the Court enters the following orders:

ORDERS

IT IS ORDERED that the Respondents' applications for Asylum, pursuant to INA § 208, be **GRANTED**.

The Respondents' applications for withholding of removal under section 241 of the Act and for protection under the Convention Against Torture are **NOT REACHED**.

If any party elects to appeal this decision, the Notice of Appeal must be received by the Board of Immigration Appeals within thirty (30) days of this decision.

Date

9/16/19

Goek

ROBIN E. FEDER
United States Immigration Judge