

IN THE MATTERS OF:

Respondents.

File Nos.:

The respondents—[REDACTED] (“[REDACTED]”) and [REDACTED] (“[REDACTED]”), a mother and daughter, respectively—are natives and citizens of Honduras. *See* Ex. 1; Ex. 1A. They entered the United States at or near Laredo, Texas, on May 9, 2015, and were not then admitted or paroled after inspection by an immigration officer. *Id.* On June 1, 2015, the Department of Homeland Security (“DHS”) filed a Notice to Appear (“NTA”) against each respondent, charging them as inadmissible pursuant to INA § 212(a)(6)(A)(i). Ex. 1; Ex. 1A. On February 25, 2016, the respondents admitted the factual allegations contained in their NTAs and

conceded inadmissibility as charged. Accordingly, the Court finds inadmissibility has been established. *See* 8 C.F.R. § 1240.10(c).

On February 25, 2016, [REDACTED] filed an Application for Asylum and for Withholding of Removal (Form I-589) with the Court, claiming [REDACTED] as a derivative asylum applicant. Ex. 2. Subsequently, on October 15, 2019, [REDACTED] filed an amended asylum application. Ex. 5, Tab H. On October 29, 2019, the Court held an individual hearing on the merits of [REDACTED] applications for relief. For the following reasons, the Court grants her application for asylum and, as a result, also grants [REDACTED]'s derivative application for asylum.

II. SUMMARY OF THE EVIDENCE

A. Documentary Evidence

- Exhibit 1: NTA for [REDACTED] filed June 1, 2015;
- Exhibit 1A: NTA for [REDACTED] filed June 1, 2015;
- Exhibit 2: Form I-589 and Supporting Documents, including Tabs B-D,¹ filed February 25, 2016;
- Exhibit 3: Additional Documents in Support of Form I-589, including Tabs E-F, filed August 24, 2016;
- Exhibit 4: [REDACTED]'s Sworn Statement, filed September 26, 2017;
- Exhibit 5: Additional Documents in Support of Form I-589, including Tabs G-M, filed October 15, 2019; and
- Exhibit 6: [REDACTED]'s Statement on Qualifying Particular Social Groups, filed October 15, 2019.²

B. Testimonial Evidence

On October 29, 2019, the Court heard testimony from [REDACTED]. The testimony provided in support of her applications for relief, although considered by the Court in its entirety, is not fully repeated herein as it is already part of the record. Rather, her testimony is summarized below to the extent it is relevant to the subsequent analysis.

[REDACTED] was born in San Pedro Sula, Honduras, and was twenty-six years old at the time of her individual hearing. She and her partner, [REDACTED] ("[REDACTED]"), have two children together: [REDACTED], who was six years old at the time of the individual hearing, and [REDACTED] ("[REDACTED]"), a U.S. citizen who was one year old. [REDACTED]'s mother and two sisters still reside in Honduras.

¹ [REDACTED] filed Exhibit 2, with her Form I-589 marked as Tab A, at a master calendar hearing on February 25, 2016. Ex. 2, Tab A. However, the presiding immigration judge at that hearing inadvertently failed to stamp the Form I-589 to indicate that she filed it on that date. Thus, the Court here notes that [REDACTED] timely filed her Form I-589 on February 25, 2016, as the audio recording of proceedings in this matter clearly reflects, despite the fact the document bears a stamp indicating she filed it on August 24, 2016. *See* INA § 208(a)(2)(B).

² The Court marked [REDACTED]'s Statement on Qualifying Particular Social Groups for identification purposes only as it is not evidence, but rather legal argument. *See* Ex. 6.

██████████ and Driana Nicols ██████████ GARCIA
██████████ 1-202-202-5112, 1-202-202-5111

Prior to departing Honduras, ██████████ attended high school and worked in the accounting department at Imagen Global, a company that manufactured billboards. Around 2012, when she was eighteen years old, she met a man named ██████████ ("Long"). ██████████ claimed to be very well connected, wealthy, and powerful; he was related to the owners of Imagen Global, as well as Natividad's landlord. ██████████'s parents owned their own company called Cable Sula, which supposedly provided cable and internet services. However, those services were merely a façade for their criminal enterprises, including money laundering and drug trafficking schemes.

██████████ harassed ██████████ at work nearly every day, telling her that he so frequently visited the company because he wanted to see her. He told her that he desired to date her because she was an attractive "chick," unlike the other women he "had before." When she rejected his advances, he claimed that "nobody says no" to him and, if she did not oblige, he would "do it the bad way." He also bragged to ██████████ about his family's illicit dealings, encouraging her to work for his family because he could "profit" off her. He explained that his family paid the police for protection and impunity. When she declined to join his family's black-market businesses, he repeated that "nobody says no" to him. Nevertheless, ██████████ continued to reject his aggressive advances.

One day, while ██████████ waited in front of Imagen Global after work for her bus home, ██████████ approached her in his car. He pointed a gun at her and demanded that she enter the car, threatening to shoot her. She complied. He continued to point the gun at her as he drove the car to nearby secluded hills. He stopped the car, brandished a blade, and then raped her. He cut her multiple times, resulting in deep gashes on her arm, leg, and back. Afterwards, he left her in the street, and she hitchhiked home. As a result of the rape and beating, she was severely bruised, bloodied, and lacerated.

Two days after this rape, ██████████ and two other men approached ██████████ at their home and threatened to kill him if he did not end his relationship with ██████████. Thereafter, one of ██████████'s associates repeatedly and menacingly rode past ██████████'s home on a motorcycle. ██████████ recognized the associate, as he had previously approached her at a store and told her that she was going to receive "a little surprise" from ██████████.

Following the abuse, ██████████ filed a police report against ██████████. However, she was hesitant to do so because the Honduran police are corrupt and only protect affluent individuals. As she reported ██████████'s abuse, the police officer who took the report asked her whether she knew what she was "getting into" when she identified ██████████ as the perpetrator. She felt compelled to omit or distort certain details of the event in order to mitigate any retaliation that could arise from her complaint, as ██████████ indicated his family bribed the police for protection and impunity. For example, she inaccurately told the police officer that ██████████ had abandoned her. She also declined to explicitly mention that ██████████ raped her and instead only claimed that he "touched" her. While she was at the police station, the police officer input ██████████'s name into the police database, which revealed multiple complaints against him related to his mistreatment of other women.

Subsequently, ██████████ forcibly entered ██████████'s home and kidnapped her. He forced her into a car and, accompanied by three other men and a woman, brought ██████████ to an unknown location. He held her there for about three days and repeatedly raped her. The other men and woman watched as he raped her. He cursed at her and beat her, punching and kicking her face and head. He reminded her that he told her he would "do things the bad way" if she did not "accept"

him. He threatened to kill [REDACTED], and, eventually, the woman helped to convince [REDACTED] to allow [REDACTED] to leave.

Thereafter, [REDACTED] left her home to seek protection at various other locations. She moved to her mother's home in Loma Larga, San Antonio de Cortes, Honduras, about three hours away from her home. She stayed there for a few days, before moving to a friend's home in Siguatepeque, Comayagua, Honduras. She also spent some time at a hospital during and after [REDACTED]'s birth. Meanwhile, [REDACTED] sent her text messages indicating that he was looking for her and intended to kill her. He also repeatedly called her, as well as [REDACTED], and posted threatening messages on her Facebook page; for example, he claimed that he was going to find her and kill her "wherever" she was, referring to her as a "bitch." She believes he was searching for her in order to traffic her to Guatemala and force her to join his prostitution and drug distribution businesses. Shortly thereafter, she fled Honduras.

In May 2015, [REDACTED] entered the United States with [REDACTED]. Immigration officials apprehended her and [REDACTED] upon their arrival. Although documents filed by DHS suggest [REDACTED] told immigration officials she did not fear return to Honduras, she claimed that she did indeed state a fear of harm upon her return due to the abuse she suffered, as well as the rampant crime in the country. Nevertheless, the immigration officials allegedly responded to her claim with rebuffs, retorting that "all immigrants lie" and provide the same narrative underlying their requests for protection. After her arrival, [REDACTED] learned that [REDACTED] was murdered.

She fears returning to Honduras because of the abuse she suffered and lack of government protection she was provided. Every time she looks at the scars on her body, she remembers the times [REDACTED] raped her and beat her. On two occasion, she unsuccessfully attempted to commit suicide. Six months prior to the individual hearing in this matter, [REDACTED] sister received threatening text messages, menacingly asserting that [REDACTED] would soon return to Honduras. Honduras is rife with crime and corruption and the authorities do not protect women, in part due to cultural *machismo*. [REDACTED] believes that, regardless of where they lived in the country, the government would not protect her or her children from violence. Indeed, multiple members of [REDACTED]'s family have been murdered. Men wearing police uniforms murdered [REDACTED]'s pregnant sister-in-law. [REDACTED]'s father was also murdered. The police neither performed an autopsy on her father nor pursued any suspects of the two murders. For those reasons, [REDACTED] requests protection in the United States.

III. LAW, ANALYSIS, AND FINDINGS

The Court has reviewed all evidence and testimony in the record, even if not specifically addressed in this decision, and has given the evidence appropriate weight. *See generally Orellana v. Barr*, 925 F.3d 145, 153 (4th Cir. 2019); *Alvarez Lagos v. Barr*, 927 F.3d 236, 251 (4th Cir. 2019).

A. Credibility and Corroboration

When an applicant offers testimonial evidence to support an application for relief, the Court must assess credibility. *See* INA § 240(c)(4)(B). The REAL ID Act of 2005 governs the credibility analysis for cases in which the applicant filed for relief on or after May 11, 2005. *Matter*

[REDACTED]
[REDACTED]
[REDACTED]
of *S-B-*, 24 I&N Dec. 42, 42-43 (BIA 2006). In making a credibility determination, a court must consider the totality of the circumstances and all relevant factors. INA § 240(c)(4)(C); see *Matter of J-Y-C-*, 24 I&N Dec. 260, 266 (BIA 2007). Generally, a witness must provide detailed, plausible, and consistent testimony. INA § 240(c)(4)(B). To be credible, the witness's testimony should satisfactorily explain any material discrepancies or omissions. INA § 240(c)(4)(C). A court may also base a credibility determination on a witness's demeanor, candor, or responsiveness, and the inherent plausibility of the witness's account. *Id.* Additionally, a court may consider the consistency between a witness's written and oral statements; the internal consistency of each such statement; the consistency of such statements with other evidence of record; 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. *Id.*

An applicant also "bears the burden to provide reasonably available supporting evidence for material facts that are central to [her] claim," and the absence of "corroborating evidence [can] lead to a finding that an applicant did not meet [her] burden of proof." *Matter of L-A-C-*, 26 I&N Dec. 516, 519 (BIA 2015) (citing *Matter of S-M-J-*, 21 I&N Dec. 722, 725-26 (BIA 1997)). However, an applicant's own testimony, without corroborating evidence, may be sufficient proof to support an application if that testimony is believable, consistent, and detailed enough to provide a plausible and coherent account of the basis for the fear of persecution. *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987); 8 C.F.R. § 1208.13(a).

Considering the totality of the circumstances and all relevant factors, the Court finds [REDACTED]'s testimony generally credible. See INA § 240(c)(4)(C). The Court notes some areas of concern, but finds that she satisfactorily explained them, or that they are too minor to warrant an adverse credibility finding. DHS did not explicitly contest the credibility of [REDACTED] testimony but did inquire as to certain inconsistencies in the record during cross-examination.

It is true that some of [REDACTED]'s testimony regarding the events occurring before and after the abuse she suffered were inconsistent with her written statements. For example, her declaration states that her landlord's son introduced her to [REDACTED], while she testified that she met [REDACTED] at Imagen Global. Ex. 2, Tab B at 13. However, she credibly explained that [REDACTED] was related to both her landlord and the owners of Imagen Global; thus, it is not inconceivable that she had interactions with [REDACTED] both by virtue of her employment at Imagen Global as well as through her relationship with her landlord. Additionally, the police report indicates that [REDACTED] informed the police officers that [REDACTED] had abandoned her after learning about the rape, while she testified that such abandonment never occurred. Ex. 5, Tab L at 232-36. Yet, this inconsistency is minor, and [REDACTED] adequately explained that she believed she needed to distort her account of the abuse to mitigate any possible retaliation arising from her contact with the authorities, in light of government corruption. Notably, moreover, she explained that [REDACTED] had connections with law enforcement and also explicitly threatened to kill [REDACTED]. See also Ex. 5, Tab I at 221 (stating that [REDACTED] "had friends in the police"). Thus, it is plausible that [REDACTED] dishonestly informed the police that [REDACTED] abandoned her in order to protect him from [REDACTED] and his criminal associates. Such inconsistencies do not merit an adverse credibility finding. INA § 240(c)(4)(C).

Finally, there were inconsistencies within [REDACTED]'s accounts of the repeated rapes and beating from which she suffered. However, it has long been documented that victims of severe

[REDACTED]
[REDACTED]
[REDACTED]

abuse often struggle to recall certain details of the traumatizing events.³ Moreover, victims of sex crimes often suffer “from further trauma and embarrassment” when discussing the harm they suffered and, thus, may be reluctant to fully describe the abuse, instead providing different details during different retellings. *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 607 (1982). Relatedly, DHS stipulated that [REDACTED] could provide cursory testimony regarding the abuse she suffered in order to avoid retraumatization. [REDACTED] also credibly explained that her descriptions of the attacks differed because of the emotional distress such retellings induce. Based on the foregoing, the Court finds that the inconsistencies in [REDACTED] testimony and written statements are excusable.⁴ INA § 240(c)(4)(C).

As such, the Court finds that [REDACTED] testified credibly. Her testimony generally provides a plausible, coherent, and sufficiently consistent and detailed basis for her claims. *Mogharrabi*, 19 I&N Dec. at 445; 8 C.F.R. § 1208.13(a). It was also largely consistent with her Form I-589 and the objective evidence in the record. *See generally* Ex. 2, Tab D at 24-124; Ex. 3, Tab F at 128-88; Ex. 5, Tab M at 244-441. She was candid and forthright, even as to unfavorable facts. The Court observed her demeanor as she testified and did not identify any effort to obfuscate the truth in order to bolster her claims. Additionally, she was responsive to DHS’s questions and honestly attempted to address inconsistencies in the record. She also provided some corroborating evidence, including a declaration from her sister, the police report, and an article about [REDACTED]. *See* Ex. 5, Tab L at 232-43. Accordingly, the Court finds [REDACTED]’s testimony both credible and generally corroborated. INA § 240(c)(4)(B).

B. Asylum

To qualify for asylum, an applicant must demonstrate she is a “refugee” within the meaning of INA § 101(a)(42). INA § 208(b)(1)(B)(i). To satisfy the “refugee” definition, an applicant must demonstrate that she is unable or unwilling to return to her country of origin because of a “well-founded fear” of future persecution on account of one of the five statutory grounds: race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). If an applicant establishes that she suffered past persecution on account of a protected ground, then she benefits from a rebuttable presumption that she also has a well-founded fear of future persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). An applicant must also establish that the persecution was or will be at the hands of the applicant’s government or a private actor the government is unwilling or unable to control. *See Crespin-*

³ See Robert Timothy Reagan, *Scientific Consensus on Memory Repression and Recovery*, 51 Rutgers L. Rev. 275 (1999); Sheree L. Toth & Dante Cicchetti, *Remembering, Forgetting, and the Effects of Trauma on Memory: A Developmental Psychopathology Perspective* (1998); Maura Dougherty, *Evaluating Recovered Memories of Trauma as Evidence*, 25-JAN Colo. Law. 1 (1996).

⁴ With regard to the encounter between [REDACTED] and immigration officials at the border, the Court does not find that the contradictory statements [REDACTED] allegedly made to them undercut the credibility of her statements in her testimony and declaration. Indeed, such interviews at ports of entry “are brief affairs given in the hours immediately following long and often dangerous journeys into the United States.” *Qing Hua Lin v. Holder*, 736 F.3d 343, 352-53 (4th Cir. 2013). [REDACTED]’s testimony and demeanor also clearly show she genuinely fears return to Honduras, notwithstanding the immigration officials’ record stating she did not express such a fear. The Court declines to comment on the propriety of any alleged derogatory statements made by the immigration officials and instead cites generally to 5 C.F.R. § 2635.101.

~~_____~~
~~_____~~
Valladares v. Holder, 632 F.3d 117, 128 (4th Cir. 2011). The applicant also must demonstrate that one of the protected ground was or will be at least one central reason for her persecution. INA § 208(b)(1)(B)(i). Finally, the applicant must show that the court should favorably exercise its discretion to grant asylum. INA § 208(b)(1)(A); 8 C.F.R. § 1208.14(a).

~~_____~~ claims that she suffered past persecution at the hands of ~~_____~~ and his criminal associates on account of her membership in the particular social group composed of "Honduran women." See Ex. 6 at 5.⁵ For the following reasons, the Court grants ~~_____~~ asylum application.

1. Past Persecution

Persecution within the meaning of the Act is harm surpassing the level of "mere harassment," and occurring at the hands of the applicant's government or an agent the government is unwilling or unable to control, on account of a protected ground. *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (quoting *Dandan v. Ashcroft*, 339 F.3d 567, 573 (7th Cir. 2003)); *Crespin-Valladares*, 632 F.3d at 128; see *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985).

a. Harm Rising to the Level of Persecution

"Persecution involves the infliction or threat of death, torture, or injury to one's person or freedom, on account of one of the enumerated grounds in the refugee definition." *Baharon v. Holder*, 588 F.3d 228, 232 (4th Cir. 2009) (quoting *Li*, 405 F.3d at 177). In determining whether mistreatment rises to the level of persecution, the Fourth Circuit has observed that persecution is systematic, whereas less-severe mistreatment is generally limited to isolated incidents. *Id.* Thus, when the alleged mistreatment is in the form of brief detentions, repeated interrogations, or "[m]inor beatings," courts generally do not regard it as persecution. *Li*, 405 F.3d at 177 (quoting *Kondakova v. Ashcroft*, 383 F.3d 792, 797 (8th Cir. 2004)). In contrast, the Fourth Circuit has expressly held that "the threat of death alone constitutes persecution," even without more. *Tairou v. Whitaker*, 909 F.3d 702, 707-08 (4th Cir. 2018); *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) (quoting *Crespin-Valladares*, 632 F.3d at 126); but see *Cortez-Mendez v. Whitaker*, 912 F.3d 205, 209 n. (4th Cir. 2019) (a death threat may not always rise to the level of persecution if it is too "distant," "unspecific," or remote in time and place). Rape may also rise to the level of persecution. See *Matter of D-V-*, 21 I&N Dec. 77, 79-80 (BIA 1993). A court must consider all of the threats and harm "[i]n the aggregate" to determine whether an applicant has suffered past persecution. *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1998).

The Court finds ~~_____~~ has established that she suffered past harm rising to the level of persecution. DHS does not argue otherwise. The credible testimonial and documentary evidence in the record show that ~~_____~~ kidnapped, repeatedly raped, and beat ~~_____~~. See Ex. 2, Tab B at 14. Such abuse constitutes persecutory mistreatment. *D-V-*, 21 I&N Dec. at 79-80. Jorge then

⁵ ~~_____~~ also argues that she suffered past persecution and has a well-founded fear of future persecution on account of other alleged protected grounds; however, for the sake of administrative efficiency, the Court declines to address those asserted grounds as ~~_____~~ has met her burden to show that she has a fear of future persecution on account of her membership in the cognizable social group composed of "Honduran women." See *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040 (1984) (noting removal hearings "provide a streamlined determination of eligibility to remain in this country").

continually lodged credible threats—including death threats—against Natividad, which also constitute harm rising to the level of persecution. *Tairou*, 909 F.3d at 707-08; *Hernandez-Avalos*, 784 F.3d at 949; *see also* Ex. 2, Tab B at 14; Ex. 5, Tab I at 221. [REDACTED] and his associates' persistent pursuit of [REDACTED] was not contained to isolated incidents; they repeatedly threatened to kill her, [REDACTED], and [REDACTED]. *Baharon*, 588 F.3d at 232; Ex. 2, Tab B at 15; Ex. 5, Tab I at 221. Thus, [REDACTED] has met her burden to establish past harm of sufficient severity to constitute persecution. *Crespin-Valladares*, 632 F.3d at 128.

b. Government Unwilling or Unable to Control

An applicant for asylum must show she fears persecution by the government or an agent the government is unwilling or unable to control. *Hernandez-Avalos*, 784 F.3d at 950; *Acosta*, 19 I&N Dec. at 222. Whether the government is unable or unwilling to control private actors must be determined on a case-by-case basis. *See Crespin-Valladares*, 632 F.3d 117, 128-29 (4th Cir. 2011). “[T]he mere fact that a country may have problems effectively policing certain crimes . . . cannot itself establish an asylum claim.” *Matter of A-B-*, 27 I&N Dec. 316, 320 (A.G. 2018), *abrogated on other grounds by Grace v. Whitaker*, 344 F.Supp.3d 96 (D.D.C. Cir. 2018). Moreover, in *Orellana v. Barr*, the Fourth Circuit explained that an applicant’s failure to report abuse “does not prove the availability of government protection.” 925 F.3d 145, 153 (4th Cir. 2019). Even if an applicant sought government protection, mere “access to a nominal or ineffectual remedy,” or “empty or token ‘assistance,’” is not sufficient to establish that the government is able to control a private persecutor—a separate and distinct question from whether it is willing to do so. *Id.* at 151-52 & n.3 (citing *Rahimzadeh v. Holder*, 613 F.3d 916, 921 (9th Cir. 2010)). Finally, an applicant need not have persisted in seeking government protection if doing so would have been futile or resulted in further abuse. *Id.* at 153 (citing *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1058 (9th Cir. 2006)).

The Court finds that [REDACTED] has met her burden of proving that the Honduran government is unable or unwilling to protect her. Importantly, she credibly testified that she contacted law enforcement and filed a police report, a copy of which she provided to the Court. Ex. 5, Tab L at 232-36. She further explained that the police officer who documented her complaint asked her whether she knew what she was “getting into” when she identified [REDACTED] as the perpetrator. *See also* Ex. 2, Tab B at 15. In spite of her effort to report the abuse, the record suggests that the Honduran government took no action at all. *Id.* at 14-15; Ex. 5, Tab K at 230.

DHS argues that, because [REDACTED] only filed one police report, whereas the petitioner in *Orellana* contacted law enforcement multiple times, the Court should find that [REDACTED] failed to show that the government is unwilling or unable to protect her. It further argues that she failed to meet her burden because, when she did actually file a police report, she lied about the relevant events. First, the Court does not read into the relevant law any requirement regarding the number of police reports an asylum applicant must file to show that a government is unwilling or unable to control a persecutor. Indeed, an applicant is not required to show that she filed even one complaint, particularly if doing so would be futile or risk further abuse. *Orellana*, 925 F.3d at 153. Futility and risk were high in [REDACTED]’s decision to report [REDACTED]; she credibly testified that [REDACTED] told her that his family bribed the police for protection and impunity, an assertion which is supported by his family’s elevated social status. *See* Ex. 5, Tab I at 221 (stating that [REDACTED] “had friends in the police”); *id.*, Tab L at 239 (referring to [REDACTED] as the son of “entrepreneurs” and

owners of Cable Sula); *id.*, Tab M at 244 (noting “widespread government corruption” and impunity). Second, while it is true that [REDACTED] did not accurately describe to the police the traumatic abuse she suffered, her dishonesty was justified. As explained above, she distorted the relevant events in an attempt to mitigate any potential retaliation arising from her complaint, as well as to protect [REDACTED]. *Id.* at 233-34. Her reasonable decision to do so is supported by objective evidence showing government corruption, as well as her testimony that the officer who took the report suggested that reporting the abuse was unwise. *See also* Ex. 2, Tab B at 15; Ex. 5, Tab I at 221; *id.*, Tab M at 239, 331.

Nevertheless, regardless of the number of complaints [REDACTED] filed or the contents therein, she did report clearly criminal conduct to the police, yet the authorities took no action at all. *See* Ex. 5, Tab L at 233-34. Such inaction aligns with [REDACTED]’s credible testimony that Honduran law enforcement is corrupt and only protects wealthy individuals. In fact, “[t]he police force is reported to be one of the most corrupt and mistrusted in Latin America.” *Id.*, Tab M at 331. For example, there have been “several reports that the government or its agents committed arbitrary or unlawful killings.” *Id.* at 245. Numerous government officials have also been exposed for their illicit dealings, including “attempted murder” and “premediated killings.” *Id.* at 246. Relatedly, many police officers have “faced prosecution or were convicted in the United States for involvement in organized crime.” *Id.* at 283. Nevertheless, such corruption in the government is “reported to continue to contribute to widespread impunity for crimes committed by members of drug smuggling structures.” *Id.* at 332.

As a result of rampant crime and government corruption, “there are no areas in major urban cities free of violent crime.” *Id.* at 286. Indeed, “[v]iolent crime is rampant in Honduras,” and women and girls in particular “face high levels of gender-related violence.” *Id.* at 283, 281. Passengers on public transportation are often raped, robbed, kidnapped, and murdered. *Id.* at 287. The corrupt government even struggles to control crime in its prisons, which are saturated with “pervasive gang-related violence.” *Id.* at 249. Moreover, abundant independent evidence in the record generally shows that “[o]rganized criminal elements,” such as those in which [REDACTED]’s family and associates were involved, were “significant perpetrators of violent crimes and committed acts of murder, extortion, kidnapping, torture, [and] human trafficking,” often targeting “members of vulnerable populations,” including “women.” *Id.* at 244, 247, 252, 263. Thus, the record reflects that the Honduran government does not merely “have problems” policing “certain crimes.” *A-B-*, 27 I&N Dec. at 320. Instead, it is a significant part of the broader problem itself. *See* Ex. 5, Tab M at 405 (reporting that “[t]he Honduran government has been unable and unwilling to protect women from various forms of violence through direct action, such as engaging in their persecution and killings”). Finally, while the record does show that some sectors of the government make some efforts to protect residents, “nominal or ineffectual” assistance is insufficient to demonstrate that the government is willing or able to protect [REDACTED]. *Orellana*, 925 F.3d at 152.

In light of the foregoing, the Court concludes that [REDACTED] has shown that the government of Honduras is unable or unwilling to protect her. *Hernandez-Avalos*, 784 F.3d at 950.

c. Membership in a Cognizable Particular Social Group

An applicant for asylum alleging persecution on account of membership in a particular social group must show that she is a member of a cognizable “particular social group” within the

[REDACTED]
A 200-000 [REDACTED]
meaning of the Act. See INA § 101(a)(42)(A). A cognizable particular social group must be “(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.” *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014); see *Temu v. Holder*, 740 F.3d 887, 892 (4th Cir. 2014).

[REDACTED] argues that she suffered persecutory abuse on account of her membership in the particular social group composed of “Honduran women.” See Ex. 6 at 5. For the reasons that follow, the Court concludes this is a cognizable particular social group under the Act.

First, the Court finds Honduran women share an immutable characteristic—the fact that they are Honduran women. One’s sex and nationality are so fundamental to identity that one should not be required to change them in order to avoid persecution. See *Acosta*, 19 I&N Dec. at 233 (recognizing that sex is an immutable characteristic); *Matter of Kasinga*, 21 I&N Dec. 357, 366 (BIA 1996) (“The characteristic[] of being a ‘young woman’ . . . cannot be changed.”); see also *Perdomo v. Holder*, 611 F.3d 662, 666-67 & n.5 (9th Cir. 2010); see also INA § 101(a)(42)(A) (listing nationality, *inter alia*, as protected grounds). Accordingly, the Court finds that the group “Honduran women” is comprised of members who share a common immutable characteristic. *M-E-V-G-*, 26 I&N Dec. at 237.

Next, the Court finds that the group “Honduran women” is defined with sufficient particularity. To satisfy the particularity requirement, a proposed group “must be defined by characteristics that provide a clear benchmark for determining who falls within the group.” *M-E-V-G-*, 26 I&N Dec. at 239; accord *Alvarez Lagos*, 927 F.3d at 253. “The group must also be discrete and have definable boundaries—it must not be amorphous, overbroad, diffuse, or subjective.” *M-E-V-G-*, 26 I&N Dec. at 239; see also *Zelaya v. Holder*, 668 F.3d 159, 165 (4th Cir. 2012) (stating that a particular social group must “be defined with sufficient particularity to avoid indeterminacy”).

“[T]he size and breadth of a group alone does not preclude a group from qualifying as [a particular] social group.” *Alvarez Lagos*, 927 F.3d at 253 (quoting *Perdomo*, 611 F.3d at 669) (internal quotation marks omitted); see also *Reyes v. Lynch*, 842 F.3d 1125, 1135 (9th Cir. 2016). This is in keeping with the other protected grounds in the statutory series—for example, there may be tens of millions of members of a certain race or religion in a given country, but this fact does not preclude any one of those members from qualifying for asylum if they can show persecution on account of race or religion. See INA § 101(a)(42)(A); see also *M-E-V-G-*, 26 I&N Dec. at 234 (applying the *ejusdem generis* canon of construction to construe the statutory phrase “membership in a particular social group” harmoniously with the other four protected grounds). Indeed, the Board of Immigration Appeals (“Board”) has held cognizable numerous particular social groups that have a high number of members. See, e.g., *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990) (finding that the grouping of homosexuals in Cuba is sufficiently particular); *Matter of H-*, 21 I&N Dec. 337, 343 (BIA 1996) (concluding that members of the Marehan subclan in Somalia belong to a sufficiently particular group); *Matter of V-T-S-*, 21 I&N Dec. 792, 798 (BIA 1997) (finding that Filipinos of mixed Filipino-Chinese ancestry are members of a sufficiently particular group). Moreover, a group need not have “an element of ‘cohesiveness’ or homogeneity among group members” for it to satisfy the particularity requirement. *Matter of C-A-*, 23 I&N Dec. 951, 957 (BIA 2006).

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In *Matter of A-M-E- & J-G-U-*, the Board ruled that “affluent Guatemalans” are not members of a cognizable particular social group, holding that “[t]he terms ‘wealthy’ and ‘affluent’ standing alone are too amorphous to provide an adequate benchmark for determining group membership.” 24 I&N Dec. 69, 74 (BIA 2007). In *Temu*, the Fourth Circuit commented that the group in *A-M-E- & J-G-U-*, “affluent Guatemalans,” was not defined with particularity “because the group changes dramatically based on who defines it.” 740 F.3d at 895. The Fourth Circuit explained that “[a]ffluent might include the wealthiest 1% of Guatemalans, or it might include the wealthiest 20%,” and that the group therefore “lacked boundaries that are fixed enough to qualify as a particular social group.” *Id.*

Unlike the group “affluent Guatemalans,” the group “Honduran women” does not change based on who defines it, and therefore it has boundaries that are fixed enough to meet the particularity requirement. There is a clear and unambiguous benchmark to determine who is a member of the group—Honduran women are members; Honduran men and people of other nationalities are not. This is not a subjective or amorphous criterion. *See Temu*, 740 F.3d at 895. Nor do the size or internal diversity of the group “Honduran women” imply that the group is not particular, any more than the size or internal diversity of the groups “homosexuals in Cuba” or “Filipinos of mixed Filipino-Chinese ancestry” defeated the particularity of those groups. *Toboso-Alfonso*, 20 I&N Dec. at 822-23; *V-T-S-*, 21 I&N Dec. at 798; *see Alvarez Lagos*, 927 F.3d at 253 (quoting *Perdomo*, 611 F.3d at 669) (noting that a large group can be particular); *C-A-*, 23 I&N Dec. at 957 (explaining that intra-group homogeneity or cohesiveness is not required). The group “Honduran women” is “at least as ‘particular and well-defined’ as other groups whose members have qualified for asylum,” such as “former gang members,” “the educated, landowning class of cattle farmers,” and “Iranian women who advocate women’s rights or who oppose Iranian customs relating to dress and behavior.” *See Crespin-Valladares*, 632 F.3d at 125 (collecting cases). Therefore, the Court finds that the articulated group satisfies the particularity requirement.

Finally, the Court finds that the group composed of “Honduran women” is socially distinct. The social distinction inquiry turns on whether the proposed group is “perceived as a group by society”—specifically, “the society in which the claim for asylum arises.” *M-E-V-G-*, 26 I&N Dec. at 240-41. A group need not be ocularly visible to others in society for it to be socially distinct. *Id.* at 240. “Although the society in question need not be able to easily identify who is a member of the group, it must be commonly recognized that the shared characteristic is one that defines the group.” *Matter of W-G-R-*, 26 I&N Dec. 208, 217 (BIA 2014). The dispositive reference point in the social distinction analysis is the perception of the society in question, as opposed to the perception of the persecutor. *M-E-V-G-*, 26 I&N Dec. at 241-42. However, the perception of the persecutor “may be relevant, because it can be indicative of whether society views the group as distinct.” *Id.* at 242. Evidence that is probative on the issue of social distinction may include “country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies, historical animosities, and the like.” *Id.* at 244-47. The fact that members of the proposed group are singled out for greater persecution than the general population is also “highly relevant” to the social distinction analysis. *Temu*, 740 F.3d at 894.

~~CONFIDENTIAL~~ has shown that women in Honduras are “set apart” and “distinct” from other persons in Honduras in “some significant way,” and are therefore socially distinct. *M-E-V-G-*, 26 I&N Dec. at 238. Generally, the record reflects that, because women in Honduras are seen as subordinate to the rest of society, they are significantly set apart from the public at large. The

Even when not reported in the media, the record reveals that the subordination of Honduran women—and violence against them—is inescapably perceptible. In fact, Honduras “has the highest recorded rate of femicide in Latin America, and also one of the highest rates of femicide among girls . . . in the world.” *Id.* at 345, 404; *Temu*, 740 F.3d at 894 (explaining that whether a group “is singled out for greater persecution than the population as a whole” is a “highly relevant factor” in determining social distinction). Such “widespread and systematic” violence against women and girls is carried out by a diverse array of members of the public, including “members of gangs and other organized criminal groups, the security services[,] and other individuals.” *Id.* at 345, 244, 247. The ubiquity of the problems Honduran women face is only increasing, as there has been a “recent spiral of violence in the lives of women.” *Id.* at 405. For example, one of the many forms of gender-based abuse, domestic violence, is widespread, “as is impunity for the perpetrators.” *Id.* at 347. “Large numbers of Honduran girls and women . . . are also reported to be forced into prostitution in Honduras and trafficked into sex slavery in Mexico, Guatemala, El Salvador, the United States[,] and elsewhere.” *Id.* at 346. The subordination of women results in obvious barriers to women’s fundamental participation in civil society, such as accessing adequate employment and voting in election, further setting them apart in the margins of society. *Id.* at 276, 278, 263; *id.* at 267 (noting that, notwithstanding that “the law accords women and men the same legal rights and status . . . , many women did not fully enjoy such rights”).

Accordingly, the Court concludes that ~~Indefinite~~ is a member of the cognizable particular social group composed of “Honduran women.”⁶ See INA § 101(a)(42)(A).

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d. Nexus

An asylum applicant must demonstrate that a protected ground, such as membership in a particular social group, was “at least one central reason” for the persecution she suffered or fears she would suffer. INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212-14 (BIA 2007). “The applicant need not prove that the protected ground was the central reason or even a dominant central reason for the persecution; she need only show that the protected ground was more than an incidental, tangential, superficial, or subordinate reason underlying the persecution.” *Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 247 (4th Cir. 2017) (quoting *Quinteros-Mendoza v. Holder*, 556 F.3d 159, 164 (4th Cir. 2009)) (internal quotation marks omitted). In conducting the nexus analysis, a court must consider not only the “articulated purpose” of a persecutor’s threats, but also the “intertwined reasons” for those threats. *Id.* at 248 (quoting *Cantillano Cruz v. Sessions*, 853 F.3d 122, 129 (4th Cir. 2017)). A court should consider both direct and circumstantial evidence of a persecutor’s motive, and is free to make reasonable inferences from that evidence. *Matter of L-E-A-*, 27 I&N Dec. 40, 44 (BIA 2017), *overruled in part on other grounds*, 27 I&N Dec. 581 (A.G. 2019).

The Court finds [REDACTED] has met her burden of proving that her status a Honduran woman was at least one central reason why [REDACTED] and his associates targeted her. DHS argues that she failed to establish the requisite nexus because the record merely shows that [REDACTED] was a stalker who pursued her because he was obsessed with her. While DHS’s theory may be one part of the aggressors’ broader motive, the record clearly reflects that Natividad’s sex and inseparably attendant vulnerability was at least one central reason for the mistreatment. *Zavaleta-Policiano*, 873 F.3d at 247. Indeed, the evidence and testimony in this case establish that the abuse [REDACTED] suffered goes beyond a simple case of gender-based mistreatment within a personal relationship. See *Velasquez v. Sessions*, 866 F.3d 188, 195 (4th Cir. 2017).

As discussed above, there is a belief in Honduras that a man can “do anything” he wants to a women; thus, “[b]ecause of his machismo,” he will willfully carry out horrific acts of abuse—on account of the fact that the victim is a Honduran woman is therefore largely helpless. Ex. 5, Tab M at 364. This gendered motivation is present [REDACTED] and his associates’ pursuit of [REDACTED]. In fact, [REDACTED] credibly testified that law enforcement informed her that [REDACTED] had engaged in such abuse before, revealing his awareness that he could harm Honduran women with impunity on account of the cultural gender bias in Honduran society. Ex. 2, Tab B at 15. Of course, this awareness was not at all misguided; indeed, the government took no action against [REDACTED], and he and his associates continued to pursue [REDACTED]. Moreover, the language [REDACTED] used when speaking to [REDACTED] evinces his gender-based motive and recognition of her perceived inferior status, repeatedly referring to her possessively and as a “bitch,” as well as asserting that he could mistreat her without punishment. *Id.* at 13-15. Importantly, he also told her he could “profit” off her, again suggesting he targeted her because of her identity as a woman. It could be argued that [REDACTED] was targeted in order to enrich the Canahuati criminal enterprise, but her status as a Honduran woman is inextricably intertwined with any such motive, as the record clearly shows

that, under *Acosta*, “to the extent that the petitioner in this case suggests that she would be persecuted or has a well-founded fear that she would be persecuted in Iran simply because she is a woman,” she has articulated a cognizable particular social group. 12 F.3d 1233, 1240 (3d Cir. 1993). This Court is aware of no precedential opinion of the Board or of any circuit court holding that a group made up of all the women in a given country cannot be a particular social group.

[REDACTED]
[REDACTED]
[REDACTED]
that her sex was a crucial factor in [REDACTED]'s and his associates' decision to pursue her. *Zavaleta-Policiano*, 873 F.3d at 247. Based on the foregoing, the record clearly corroborates the notion that [REDACTED] and his associates pursued [REDACTED] because of her identity, as it demonstrates that women in Honduras are widely subject to unpunishable mistreatment due to their subordination to men. *See, e.g.*, Ex. 5, Tab M at 263, 276, 278, 345-47, 362, 364, 404-05.

As such, the Court finds that [REDACTED] has shown by a preponderance of the evidence that at least one central reason [REDACTED] and his criminal associates targeted her, rather than another person, is that she is Honduran woman. *Hernandez-Avalos*, 784 F.3d at 949-50. Therefore, the Court concludes that she has demonstrated the requisite nexus. INA § 208(b)(1)(B)(i).

2. Rebuttable Presumption of Well-Founded Fear of Future Persecution

Because [REDACTED] has demonstrated that she suffered past persecution on account of membership in a particular social group, she benefits from a rebuttable presumption that she has a well-founded fear of future persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). DHS bears the burden of rebutting this presumption by proving by a preponderance of the evidence that, *inter alia*, there has been a fundamental change in circumstances such that she no longer has a well-founded fear of persecution in Honduras on account of a protected ground. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B).

DHS argues that [REDACTED]'s death is a fundamental change in circumstances that rebuts the presumption of a well-founded fear of future persecution. It is true that [REDACTED], one of the aggressors who pursued [REDACTED], has died. Ex. 5, Tab L at 238-43. However, the record shows that multiple criminal associates affiliated with [REDACTED] and his family likewise pursued [REDACTED]. Indeed, [REDACTED] informed [REDACTED] that "his family has orders to kill" her and his bodyguards were searching for her. Ex. 2, Tab B at 14-15. She also credibly explained that his family is well connected and powerful. Ex. 5, Tab I at 222. [REDACTED] threateningly asserted that he had "a lot of friends in the police" and that his boss, a high-ranking drug trafficker, would target [REDACTED]. Ex. 5, Tab I at 221-22; Ex. 2, Tab B at 14-15. His associates also made their presence known in the lives of [REDACTED]'s family. For example, suspicious cars and a motorcycle frequently drove by [REDACTED]'s home. Ex. 2, Tab B at 15. Importantly, moreover, [REDACTED]'s sister has received numerous threatening phone calls from "various numbers," as well as text messages. *See* Ex. 5, Tab I at 221. In fact, only two months prior to the individual hearing in this matter, [REDACTED]'s sister received text messages that menacingly claimed that [REDACTED] would soon return to Honduras. Similarly, men recently approached [REDACTED]'s mother at her business to inquire about [REDACTED]'s whereabouts, asserting they will find [REDACTED] because they have numerous "contacts" in Honduras. Ex. 2, Tab B at 15. Therefore, even though [REDACTED] is dead, [REDACTED] would face abuse at the hands of [REDACTED]'s family and criminal associates if she were returned to Honduras.

As such, the Court finds DHS has not met its burden to prove a fundamental change in circumstances sufficient to rebut the presumption of a well-founded fear of future persecution.

3. Humanitarian Asylum

In the alternative, the Court grants [REDACTED]'s asylum application due to the severity of the past persecution she suffered. Even where an applicant might not be able to establish a well-

[REDACTED]

founded fear of future persecution, if she has established particularly severe past persecution, then a court may grant asylum in an exercise of its discretion. See 8 C.F.R. § 1208.13(b)(1)(iii)(A); *Matter of Chen*, 20 I&N Dec. 16, 21 (BIA 1989). Under Fourth Circuit precedent, “[e]ligibility for asylum based on severity of persecution alone is reserved for the most atrocious abuse.” *Naizgi v. Gonzales*, 455 F.3d 484 (4th Cir. 2006) (quoting *Gonahasa v. INS*, 181 F.3d 538, 544 (4th Cir.1999)) (internal quotation marks omitted); see also *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1072 (9th Cir. 2004) (noting that rape may constitute atrocious abuse to support a grant of humanitarian asylum). Thus, a court may only grant humanitarian asylum when the past persecution was “so severe that it would be inhumane to return the [applicant] even in the absence of any risk of future persecution.” *Gonahasa*, 181 F.3d at 544 (quoting *Vaduva v. INS*, 131 F.3d 689, 690 (7th Cir. 1997)) (internal quotation marks omitted).

The Court finds that [REDACTED] has established past persecution so severe that she merits a grant of humanitarian asylum. 8 C.F.R. § 1208.13(b)(1)(iii)(A). The record reflects that she was kidnapped, violently raped, and brutally beaten multiple times. Ex. 2, Tab B at 14; *Garcia-Martinez*, 371 F.3d at 1072. On at least one occasion, other people watched while she was raped. The beatings to which she was subjected left her bruised and bloodied. She was cut multiple times on her arm, leg, and back. Following this abuse, she, [REDACTED], and [REDACTED] were threatened with death several times. Ex. 2, Tab B at 14; see also Ex. 5, Tab I at 221. When [REDACTED] attempted to escape harm, her aggressors incessantly pursued her. Ex. 5, Tab I at 221. As a result of this repeated, prolonged abuse, [REDACTED] suffers from severe emotional trauma. *Id.* She has twice attempted to commit suicide. She is constantly reminded of attacks she endured due to the scars left on her body. The Court observed her demeanor during the individual hearing and does not doubt that she suffered extreme, inhumane mistreatment that permanently affected her life.

The severity of the abuse [REDACTED] suffered is largely unparalleled by the harm discussed in Fourth Circuit decisions addressing requests for humanitarian asylum. In *Naizgi*, for example, the Fourth Circuit affirmed the Board’s denial of humanitarian asylum, concurring that harm in the form of expatriation as well as the loss of livelihood and property was insufficient to warrant a grant of humanitarian asylum. 455 F.3d at 487. The atrocious abuse that [REDACTED] experienced, resulting in her enduring trauma, is certainly more deplorable and depraved than the terrible mistreatment the petitioner in *Naizgi* suffered. Again, she was sequestered and repeatedly raped and beaten, resulting in lasting physical and emotional damage. Therefore, the Court concludes that this is such a case where the past persecution was so severe that it would be inhumane to remove [REDACTED] to Honduras, even if there were an absence of a risk of future persecution. *Gonahasa*, 181 F.3d at 544.

As such, the Court grants [REDACTED]’s request for humanitarian asylum in the alternative. 8 C.F.R. § 1208.13(b)(1)(iii)(A).

IV. CONCLUSION

The Court concludes that [REDACTED] has shown she faced past persecution on account of a protected ground and, thus, benefits from the presumption of a well-founded fear of future persecution on the same basis. DHS has not rebutted that presumption. Therefore, the Court will

[REDACTED]

grant her application for asylum in an exercise of its discretion.⁷ Alternatively, the Court finds that she warrants a grant of humanitarian asylum based on the severity of the past harm she experienced. As such, the Court also grants [REDACTED]'s derivative application for asylum.

Accordingly, the Court enters the following order:

ORDERS

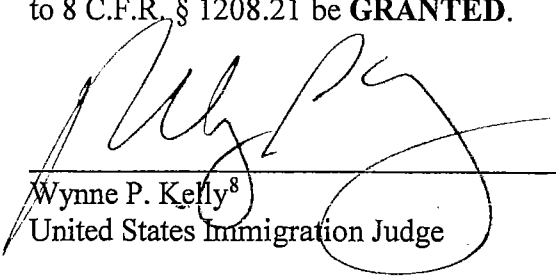
It Is Ordered that:

[REDACTED] application for asylum be **GRANTED**.

It Is Further Ordered that:

[REDACTED]'s derivative application for asylum pursuant to 8 C.F.R. § 1208.21 be **GRANTED**.

5/1/2020
Date


Wynne P. Kelly⁸
United States Immigration Judge

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

⁷ Once an applicant has shown her statutory eligibility for asylum, a court must consider whether to grant or deny asylum in its discretion. 8 C.F.R. § 1208.14(a). The Fourth Circuit has recognized that discretionary denials of asylum are “exceedingly rare” and require “egregious negative activity by the applicant.” *Zuh v. Mukasey*, 547 F.3d 504, 507-14 (4th Cir. 2008) (quoting *Huang v. INS*, 436 F.3d 89, 92 (2d Cir. 2006)). [REDACTED] merits a favorable exercise of discretion. She has a well-founded fear of persecution in Honduras on account of membership in a particular social group. There is no evidence she has any criminal history or any previous violations of U.S. immigration law. Notably, [REDACTED]'s removal would profoundly negatively affect the life of her both of her minor children: [REDACTED] and [REDACTED], a U.S. citizen who is currently two years old. Ex. 5, Tab J at 226. As detailed above, violence and crime is widespread in Honduras, so there is a high likelihood [REDACTED] and her children will face harm. Thus, a grant of asylum would advance humanitarian interests. Under the totality of the circumstances, the Court concludes this is not the exceedingly rare case in which a discretionary denial of asylum is warranted.

⁸ The signing Immigration Judge was transferred this matter for resolution. Pursuant to 8 C.F.R. § 1240.1(b), the signing Immigration Judge has familiarized himself with the record.