

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
FLORENCE IMMIGRATION COURT
3260 NORTH PINAL PARKWAY
FLORENCE, ARIZONA 85132**

IN THE MATTER OF:

RESPONDENT

IN REMOVAL PROCEEDINGS

File No.

CHARGE: INA § 212(a)(7)(A)(i)(I)

APPLICATIONS: Asylum pursuant to INA § 208
Withholding of Removal pursuant to INA § 241(b)(3)
Protection under the Convention Against Torture

FOR RESPONDENT:

FOR THE DEPARTMENT:

Jeffrey Lindsay, Esquire
Assistant Chief Counsel
Department of Homeland Security
3250 North Pinal Parkway
Florence, Arizona 85132

MEMORANDUM ORDER AND DECISION OF THE IMMIGRATION COURT

I. PROCEDURAL HISTORY

Respondent is a twenty-six-year-old native and citizen of Brazil. (Ex. 1, Form I-862; *see also* Ex. 2, Form I-589.) On January 21, 2019, the Department of Homeland Security ("DHS" or "Department") served Respondent with a Notice to Appear ("NTA"), alleging:

1. You are not a citizen or national of the United States;
2. You are a native of Brazil and a citizen of Brazil;
3. On or about January 21, 2019, you applied for admission into the United States from Mexico at the DeConcini Port of Entry in Nogales, Arizona;
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

(*Id.*) Based on these allegations, DHS charged Respondent as subject to removal from the United States pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("Act"), as an alien who, at the time of application for admission, was not in possession of a valid entry document. *Id.* On January 28, 2019, DHS filed the NTA with the Florence Immigration Court, which initiated

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removal proceedings against Respondent and vested this Court with jurisdiction. (*See id.*; *see also* 8 C.F.R. § 1003.14(a).)

At a hearing on February 4, 2019, Respondent admitted the factual allegations set forth in the NTA, conceded removability, and declined to designate a country of removal. (Hr'g (Feb. 4, 2019).) Based on Respondent's admissions and concession, the Court sustained the charge of removability under INA § 212(a)(7)(a)(i)(I), and directed Brazil as the country of removal. *See* INA § 240(c)(1)(A); *see also* 8 C.F.R. § 1240.10(c). On March 21, 2019, Respondent filed a Form I-589, Application for Asylum and for Withholding of Removal, with the Court, thereby applying for asylum under INA § 208, withholding of removal under INA § 241(b)(3), and protection under the Convention Against Torture ("CAT"). (Ex. 2, Form I-589.) Respondent testified in support of his Form I-589 at an individual hearing on May 3, 2019.

II. REMOVABILITY

At a hearing on February 4, 2019, Respondent admitted the four factual allegations set forth in the NTA. Specifically, Respondent admitted that he is a native and citizen of Brazil, and that he is not a citizen of the United States. Respondent also admitted that he last arrived in the United States on or about January 21, 2019, and that he was not then in possession of a valid entry document required by the Act. Based on the evidence of record, including Respondent's admissions, the Court finds that clear, convincing, and unequivocal evidence supports a finding that Respondent is subject to removal pursuant to INA § 212(a)(7)(A)(i)(I). Thus, the Court sustains the sole charge of removability.

III. EVIDENTIARY RECORD

In reviewing Respondent's applications for relief, all admitted evidence and testimony was considered in its entirety, regardless of whether specifically referenced in the text of this decision. The admitted evidence and testimony is incorporated as part of the factual basis and substantial evidence upon which this Court bases this instant decision.

During the course of the proceedings, the Court admitted the following exhibits into the record:

- Exhibit 1: Notice to Appear, Form I-862 (dated January 21, 2019)
- Exhibit 2: Application for Asylum and for Withholding of Removal, Form I-589
- Exhibit 3: DHS Exhibit List for Evidentiary Hearing (Tabs A-D)
- Exhibit 4: Respondent's Documents in Support of Hearing (received April 23, 2019)

In addition to the documentary evidence contained in the record, the Court also considered Respondent's testimony before the Court on May 3, 2019.

IV. BURDEN OF PROOF AND CREDIBILITY

The alien bears the burden to establish that he is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. *See* INA § 240(c)(4)(A). If the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the alien shall have the burden of proving by a preponderance of the evidence that such

grounds do not apply. See 8 C.F.R. § 1240.8(d); see also *Matter of M-B-C-*, 27 I&N Dec. 31 (BIA 2017).

To determine if the respondent has met his burden, the Court will assess whether his testimony is credible, persuasive, and fact-specific. See INA § 240(c)(4)(B). In applying a “totality of the circumstances” approach, the Court assesses:

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 . . . the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other relevant factor.

INA § 240(c)(4)(C). There is no presumption of credibility. *Id.* When the Court deems it necessary, corroborating evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain it. See *Matter of S-M-J-*, 21 I&N Dec. 722, 724–26 (BIA 1997); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 518 (BIA 2015). Furthermore, any minor inconsistencies or incidental misstatements that do “not go to the heart of an applicant’s claim does not support an adverse credibility determination.” *Li v. Holder*, 559 F.3d 1154, 1158 (9th Cir. 2011).

Upon review of the totality of the circumstances, the Court finds Respondent credible. Notably, the Court finds that Respondent’s testimony was detailed, consistent, and specific. In particular, Respondent’s account of the numerous threats he received was consistent with Respondent’s prior submitted written statement in his I-589 application. (See Hr’g (May 3, 2019); see also Ex. 2, Form I-589.) Furthermore, Respondent thoroughly explained the discrepancies between his written declaration and his in-court testimony. As Respondent’s testimony was credible, persuasive, and fact-specific, he has met his burden of proof and persuasion in connection with his claim and need not corroborate it further. See INA § 208(b)(1)(B)(I); 8 C.F.R. § 1208.13; see also *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987).

Although the Court finds Respondent’s testimony to be credible without corroboration, the Court notes that Respondent submitted documents and articles to further support his claim. (See Ex. 4, Resp’t Docs. in Support of Hr’g.) The Court also acknowledges that at Respondent’s hearing on May 3, 2019, DHS Counsel (“Counsel”) inquired as to several aspects of Respondent’s testimony. The Court addresses these inquiries below.

Counsel first cross-examined Respondent regarding the police report he filed following the third threat when two men showed up at his home in Ipaba. Counsel asked Respondent why the gun brandished by the men during the threat was not mentioned in the police report. (See Ex. 4; Resp’t Docs. in Support of Hr’g, Civil Police Report.) Respondent explained that he told the policeman about the gun, but the police were not willing to help him, and they detailed what they wanted to mention in the report. In addition, Respondent said that he believes the police are paid by the Brazilian government who is attempting to harm both Respondent and the Movimiento Sen Terra, or Movement without Earth (“MST”) Party. As such, Respondent stated that it would not be

harmful for the police to write all the details about the car included in the report, but it would be harmful for them to mention the gun.

Counsel also questioned Respondent regarding the actions of the MST Party. During his testimony, Respondent stated that the MST Party assists the poor with acquiring land in Brazil. (Hr'g (May 3, 2019).) However, Counsel pointed out that in documents submitted by Respondent, a report calls into question whether the actions of the Party are legal. Respondent stated that he was not exactly sure how land was taken or given away. Respondent said his role was simply to pass out pamphlets with information about the Party, and it was simple work.

Though some of Respondent's past recollections of events during his in-court testimony were slightly inconsistent with other evidence of record, Respondent explained the discrepancies to the satisfaction of the Court. Because Respondent's testimony was detailed, consistent, and plausible, the Court finds, based on the totality of circumstances, that Respondent is credible. *See* INA § 240(c)(4)(C); *see also J-Y-C-*, 24 I&N Dec. at 265. As Respondent's testimony was credible, the Court finds that he met his burden of proof and persuasion in connection with his application for relief and need not corroborate his claim further. *See* INA § 208(b)(1)(B)(I); 8 C.F.R. § 1208.13; *Mogharrabi*, 19 I&N Dec. 445.

V. ASYLUM

To qualify for asylum, the alien must establish that: (1) his application was filed timely within one year of his last arrival in the United States; (2) he is not statutorily barred from relief; (3) he is a refugee within the meaning of INA § 101(a)(42)(A); and (4) he merits asylum as a matter of discretion. INA § 208(b)(1)–(2); *Matter of Acosta*, 19 I&N Dec. 211, 218–19 (BIA 1985), *modified on other grounds by Mogharrabi*, 19 I&N Dec. at 446; 8 C.F.R. § 1208.13(a).

Here, Respondent timely filed his application: he last arrived in the United States on or about January 21, 2019, and filed his Form I-589 on March 21, 2019. (*See* Ex. 1, Form I-862; *see also* Ex. 2, Form I-589.) Moreover, DHS does not allege, and the Court has not found, that any of the statutory bars to relief apply. *See* INA § 208(b)(2)(A). Thus, the only issues before the Court are whether Respondent is a “refugee” within the meaning of the INA and whether he merits relief as a matter of discretion.

A. “Refugee” as Defined under INA § 101(a)(42)(A)

A respondent may qualify as a refugee because he has suffered past persecution or because he has a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). If the respondent establishes past persecution, he shall be presumed to have a well-founded fear of future persecution. *See id.* That presumption may be rebutted if DHS proves by a preponderance of evidence that either: (1) there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution; or (2) the respondent could avoid future persecution by relocating to another part of his country of nationality or country of last habitual residence, and under all the circumstances, it would be reasonable to do so. *See* 8 C.F.R. § 1208.13(b)(1)(i)(A)–(B). The respondent must also establish that the alleged persecution or well-founded fear of persecution was or will be “on account of [his] race, religion, nationality, membership in a particular social group, or political opinion.” *See* INA §§ 101(a)(42)(A), 208(b)(1)(B)(i).

i. Past Persecution

In order to establish past persecution, a respondent must show: (1) harm that rises to the level of persecution; (2) which was inflicted "on account of" one of the statutorily-protected grounds; and (3) was committed "by the government or forces the government is either 'unable or unwilling' to control." See *Navas v. INS*, 217 F.3d 646, 655–56 (9th Cir. 2000); see also *Rahimzadeh v. Holder*, 613 F.3d 916, 920 (9th Cir. 2010). For a respondent to establish that he was persecuted on account of a protected ground, the respondent must show proof of a nexus between the protected ground and the persecution suffered. See *Smolniakova v. Gonzales*, 422 F.3d 1037, 1049–50 (9th Cir. 2005); *Kebede v. Ashcroft*, 366 F.3d 808, 812 (9th Cir. 2004). To show proof of the required nexus, the respondent must demonstrate that the persecutors knew of the protected ground and persecuted him *because* of it. See *Deloso v. Ashcroft*, 393 F.3d 858, 865–66 (9th Cir. 2005); see also *Kebede*, 366 F.3d at 812. The respondent is not required to provide direct proof of his persecutor's motives, but rather just provide "some evidence of it, direct or circumstantial." *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992); *Lopez v. Ashcroft*, 366 F.3d 799, 804 (9th Cir. 2004); *Matter of N-M-*, 25 I&N Dec. 526, 529 (BIA 2011). However, the protected ground cannot be incidental, tangential, superficial, or subordinate to another reason for the harm. *Matter of S-P-*, 21 I&N Dec. 486, 490 (BIA 1996).

There is no universally accepted definition of "persecution." The Board has defined "persecution" as "either 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." *Acosta*, 19 I&N Dec. at 222. In addition, "persecution" under the Act "contemplates that harm or suffering must be inflicted upon an individual in order to punish him for possessing a belief or characteristic a persecutor seeks to overcome." *Id.* at 223. A respondent may be subjected to acts which individually would not amount to persecution; however, the combination of factors may establish persecution based on a cumulative ground. *Id.* at ¶ 52; see also *Korablina v. INS*, 158 F.3d 1038, 1044 (9th Cir. 1998) (finding persecution where Ukrainian Jew witnessed violent attacks, and suffered extortion, harassment, and threats by anti-Semitic ultra-nationalists). The court "look[s] at the totality of the circumstances in deciding whether a finding of persecution is compelled." *Guo v. Ashcroft*, 361 F.3d 1194, 1203 (9th Cir. 2004) (finding persecution where Chinese Christian was arrested, detained twice, physically abused, and forced to renounce religion); see, e.g., *Vitug v. Holder*, 723 F.3d 1056, 1065–66 (9th Cir. 2013) ("[N]o reasonable factfinder could conclude that the harm Vitug suffered did not rise to the level of persecution in light of the cumulative effect of multiple instances of physical harm and victimization. Thus, we presume that Vitug is eligible for withholding of removal relief."); see also *Guo v. Sessions*, 897 F.3d 1208, 1212 (9th Cir. 2018).

Threats of serious harm, particularly when combined with confrontation, may constitute persecution. See, e.g., *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120–21 (9th Cir. 2004). Threats on an individual's life, "within a context of political and social turmoil or violence, have long been held sufficient to satisfy a petitioner's burden of showing an objective basis for fear of persecution." *Kaiser v. Ashcroft*, 390 F.3d 653, 658 (9th Cir. 2004). What is important "is whether the group making the threat has the will or the ability to carry it out." *Id.* Courts have also consistently held that being forced to flee from one's home due to an immediate threat of either severe physical violence or death is within the definition of persecution, "as long as the persecutors' actions are motivated by the victim's race or some other protected consideration." See *Mendoza-Pablo v. Holder*, 667 F.3d 1308, 1314 (9th Cir. 2012) (recognizing that being forced to flee home in face

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of immediate threat of violence or death may constitute persecution.); *see also Knezevic v. Ashcroft*, 367 F.3d 1206, 1211 (9th Cir. 2004); *see also Khup v. Ashcroft*, 376 F.3d 898, 903 (9th Cir. 2004). In addition, while unfulfilled threats are generally not enough to establish past persecution, an individual who has been threatened and “closely confronted” may suffer past persecution. *See Ruano v. Ashcroft*, 301 F.3d 1155, 1160 (9th Cir. 2002) (Individual who was “closely confronted” and actively chased by men he knew were armed suffered past persecution.)

In the case at hand, Respondent credibly testified that he was threatened on three different instances. (Ex. 2, Form I-589; *see also* Hr’g (May 3, 2019).) In the first incident, Respondent received a note under the gate to his home in Belo Horizonte. The note stated that both Respondent and his wife would lose their lives if he continued to participate in the MST Party. (*Id.*) After he received the threatening note, Respondent moved to Vitoria, Espirito Santo. (*Id.*) While in Espirito Santo, Respondent continued to attend MST Party meetings and events. (*Id.*) Respondent received his second threat by phone in 2018. (*Id.*) An anonymous caller stated that if Respondent continued to help the MST Party, he was going to lose his life. (*Id.*) The caller also told Respondent that they knew his address, and his work license plate for his cab. (*Id.*) Following that threat, Respondent again moved to his in-law’s home in Ipaba with his pregnant wife. (*Id.*) On January 2, 2019, two men showed up at the home. (*Id.*) The men came out of a car, pointed a gun at Respondent and his wife, and stated that Respondent had a week to leave or he will die due to his support of the MST Party. (Ex. 2, Form I-589, pg. 5.)

The medium of the threats against Respondent appear to be increasing in aggression, as a note turned into a phone call, and a phone call turned into a face-to-face confrontation in which Respondent was “closely confronted” with a weapon. *See Khup*, 376 F.3d at 903. In addition, Respondent was forced to flee his home with his wife on three separate occasions due to the threats against both Respondent and his wife’s lives. *See Mendoza-Pablo*, 667 F.3d at 1314. Furthermore, as Respondent stated in his testimony, he fears for his life and he believes the men will follow through on their threats as they have found him in three different Brazilian cities. (*Id.*) Considering the persecutory acts in their totality, and viewing the cumulative effect of all the alleged acts, the Court finds that Respondent has established that he suffered past persecution in Brazil. *See* INA § 101(a)(42)(A); *see also* 8 C.F.R. § 1208.13(b)(1).

ii. Well-Founded Fear of Future Persecution

If a respondent demonstrates past persecution on account of a protected ground, he will benefit from a rebuttable presumption of a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). However, even if past persecution is not found, a respondent may still be eligible for asylum due to a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b). Here, even if the Court finds that Respondent has not established past persecution in Brazil, the Court would still find that Respondent has established a well-founded fear of future persecution.

A well-founded fear must be subjectively genuine and objectively reasonable. *See Parada v. Sessions*, 902 F.3d 901, 909 (9th Cir. 2018). A “well-founded fear” ... can only be given concrete meaning through a process of case-by-case adjudication.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 448 (1987). A respondent can demonstrate a well-founded fear of persecution if: (1) he has a fear of persecution in her country; (2) there is a reasonable possibility of suffering such persecution; and (3) he is unable or unwilling to return to that country because of such fear. *See* 8 C.F.R. § 1208.13(b)(2)(i).

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First, the subjective prong of the well-founded fear test is satisfied by a respondent's credible testimony that he genuinely fears harm. *See Parada*, 902 F.3d at 909. Looking at Respondent's testimony, he clearly testified that he genuinely fears harm in Brazil. (Hr'g (May 3, 2019); *see also* Ex. 2, Form I-589.) Respondent stated that he is scared to be tortured both physically and mentally. (*See* Ex. 2, Form I-589.) He also fears that he and his wife could be taken by surprise by the opposition members, especially after he was threatened at gunpoint. (*Id.*)

Second, the objective prong of the test can be met in two different ways. One way is to "prove persecution in the past, giving rise to a rebuttable presumption that a well-founded fear exists." *Ladha v. INS*, 215 F.3d 889, 897 (9th Cir. 2000) (internal citations and quotation marks omitted), *overruled on other grounds by Abebe v. Mukasey*, 554 F.3d 1203, 1208 (9th Cir. 2009) (en banc). The second way "is to show a good reason to fear future persecution by adducing credible, direct, and specific evidence in the record of facts that would support a reasonable fear of persecution." *Id.* This requirement can be met by either the production of specific documentary evidence, or by a respondent's credible and persuasive testimony." *Id.* In addition, "[e]ven a ten percent chance of persecution may establish a well-founded fear." *Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001). A respondent may demonstrate a well-founded fear by showing that he has been targeted for persecution. *See, e.g., Marcos v. Gonzales*, 410 F.3d 1112, 1119 (9th Cir. 2005) (Philippine applicant demonstrated well-founded fear based on credible death threats by members of the New People's Army.)

Here, Respondent can show at least "a ten percent chance of persecution." *Al-Harbi*, 242 F.3d at 888. Respondent endured three sets of threats that appear to be increasing in violence. (*See* Hr'g (May 3, 2019); *see also* Ex. 2, Form I-589.) Furthermore, documents submitted by Respondent demonstrate that the MST Party is targeted by numerous Brazilian citizens, including supporters of the Brazilian President Jair Bolsonaro. (*See* Ex. 4, Resp't Docs. in Support of Hr'g, at Reportagem 02.) For example, one of the leaders of the MST Party was attacked by supporters of the President. (*Id.*, at Reportages 03.) Respondent also submitted two news articles which reported the deaths of MST Party activists by armed men. (*Id.*, *Land rights activist shot dead in Brazilian Amazon hospital*, THE GUARDIAN, Mar. 21, 2018; *Two Members of Brazil's MST Landless Movement Murdered*, TELESUR ENGLISH, Dec. 9, 2018.)

Finally, Respondent is unwilling or unable to return to Brazil. Respondent has expressed his fear of death or bodily injury if returned to Brazil. (*See* Hr'g (May 3, 2019); *see also* Ex. 2, Form I-589.) Respondent stated that he feared torture or death due to the series of threats, especially the third threat with a weapon. (*Id.*)

Respondent has established a well-founded fear of future persecution in Brazil. Respondent has shown both a subjective and objective fear of persecution in Brazil. In addition, Respondent has demonstrated that he is unwilling or unable to return to Brazil. Thus, even if the Respondent has not demonstrated past persecution, the Court finds he is still eligible for asylum. 8 C.F.R. § 1208.13(b).

iii. On Account of a Protected Ground

In addition to demonstrating harm rising to the level of persecution, the respondent bears the burden of establishing that establish that "race, religion, nationality, membership in a particular

social group, or political opinion was or will be *at least one central reason* for persecuting the” respondent. 8 U.S.C. § 1158(b)(1)(B)(i) (emphasis added).

[A] motive is a “central reason” if the persecutor would not have harmed the applicant if such motive did not exist. Likewise, a motive is a “central reason” if that motive, standing alone, would have led the persecutor to harm the applicant. ... [P]ersecution may be caused by more than one central reason, and an asylum applicant need not prove which reason was dominant. Nevertheless, to demonstrate that a protected ground was “at least one central reason” for persecution, an applicant must prove that such ground was a cause of the persecutors’ acts.

Parussimova v. Mukasey, 555 F.3d 734, 741 (9th Cir. 2009); *see also Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1062 (9th Cir. 2017) (en banc); *Regalado-Escobar v. Holder*, 717 F.3d 724, 732 (9th Cir. 2013) (“Under the REAL ID Act, the applicant bears the burden to show nexus by showing that a protected ground was “one central reason” for his persecution.”); *Zetino v. Holder*, 622 F.3d 1007, 1015 (9th Cir. 2010) (“The REAL ID Act of 2005 places an additional burden on Zetino to demonstrate that one of the five protected grounds will be at least one central reason for his persecution.”).

In order to show that a respondent was persecuted “on account of” a political opinion, two requirements must be shown. First, a respondent must show that he held, or his persecutors believe he held, a political opinion. *Navas*, 217 F.3d at 656; *see also Khudaverdyan v. Holder*, 778 F.3d 1101, 1106 (9th Cir. 2015). Second, the respondent must show that his persecutors persecuted him, or that he faces the prospect of such persecution, because of his political opinion. *Navas*, 217 F.3d at 646. In other words, that a respondent holds a political opinion “is not, by itself, enough to establish that any future persecution would be ‘on account’ of this opinion. He must establish that the political opinion would motivate his potential persecutors.” *Njuguna v. Ashcroft*, 374 F.3d 765, 770 (9th Cir. 2004). A respondent may exhibit his political opinion by membership or participation in an organization with a political purpose or goals. *See, e.g. Montoya-Ulloa v. INS*, 79 F.3d 930, 931 (9th Cir. 1996) (membership in political group opposing the Sandinistas); *see also Mendoza Perez v. INS*, 902 F.2d 760 (9th Cir. 1990) (involvement with Salvadoran land reform organization).

In order to establish nexus, a respondent’s uncontroverted credible testimony as to the persecutor’s motivations may be sufficient to establish nexus. *See, e.g. Antonyan v. Holder*, 642 F.3d 1250, 1254 (9th Cir. 2011); *see also Shoafera v. INS*, 228 F.3d 1070, 1074-75 (9th Cir. 2000) (Ethiopian applicant established through her credible testimony and witness testimony that the perpetrator was motivated to rape her based, in part, on her Amhara ethnicity). Furthermore, direct proof of motivation may consist of evidence concerning statements made by the persecutor to the respondent, or by respondent to persecutor. *See, e.g., Kebede*, 366 F.3d at 812 (soldiers stated that rape was because of Kebede’s family’s position in prior Ethiopian regime); *see also Duarte de Guinac*, 179 F.3d at 1162 (noting that motivation was on account of ethnicity where persecution was “coupled with explicit expressions of ethnic hatred”).

Here, Respondent asserts that his political opinion was at least one central reason for his persecution. *See, e.g., INA* § 208(b)(1)(B)(i); (*See also Ex. 2, Form I-589.*) In support of his claim, he credibly testified that he was a member of the MST Party. (Hr’g (May 3, 2019); *see also Ex. 2, Form I-589.*) The political party fights for poor citizens that do not have a home or place to

live. (*Id.*) The MST Party locates land without an owner, and then attempts to secure the land for poor Brazilian citizens. (*Id.*) This is at odds with the Brazilian government, who obtains the land for wealthy Brazilian citizens. (*Id.*) Respondent was a member of the MST Party for about four years, and as a member delivered pamphlets and documents with the Party's message in various Brazilian towns. (*Id.*) Respondent also participated in a party committee during meetings. (*Id.*) Respondent credibly testified that he received three sets of threats. (*Id.*) Respondent stated that he received a threatening note at his home telling him to stop spreading the word of his party, or he would lose his life. (*Id.*) Respondent next testified that he received a threatening phone call after moving to Vitoria. (*Id.*) The men on the phone stated that if he continued to participate in the MST Party, Respondent would lose his life. (*Id.*) Finally, the threats concluded in two men showing up to Respondent's in-laws home in Iqaba, where they threatened both Respondent and his wife with a weapon. (*Id.*) The men told Respondent that he had a week to leave or he would die, because he still continued to support the MST Party. (*Id.*)

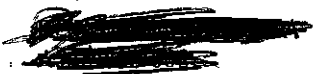
In light of Respondent's credible testimony regarding the circumstances surrounding the harm he suffered in Brazil, the Court finds that Respondent has demonstrated that he was persecuted on account of a protected ground—namely his political opinion. *See* INA § 101(a)(42)(A); *see, e.g., Kebede*, 366 F.3d at 812; *see, e.g., Duarte de Guinac*, 179 F.3d at 1162. Consequently, the Court finds that the Respondent has established that he suffered past persecution on account of a protected ground. *See* INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b)(1).

iv. Whether the Government is Unable or Unwilling to Control the Prosecution

A respondent must further establish that the persecution he suffered was either at the hands of the government or by persons that the government is unable or unwilling to control. *Acosta*, 19 I&N Dec. at 222. In other words, the persecution must be inflicted under government sanction or by groups the government is unable or unwilling to control. *See Baghdasaryan v. Holder*, 592 F.3d 1018, 1023 (9th Cir. 2010); *see also Rahimzadeh v. Holder*, 613 F.3d 916, 923 (9th Cir. 2010) (substantial evidence supported the determination that Dutch authorities were willing and able to control extremists that attacked the alien); *see also Desir v. Ilchert*, 840 F.2d 723, 727–28 (9th Cir. 1988) (persecution by quasi-official Haitian security force).

Furthermore, when the government is responsible for the persecution, there is no need to inquire whether a respondent sought help from the police. *See Baballah v. Ashcroft*, 367 F.3d 1067, 1078 (9th Cir. 2004); *see also Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1088 (9th Cir. 2005); *see also Vitug v. Holder*, 723 F.3d 1056, 1063–64 (9th Cir. 2013) (“While Vitug did not report these attacks, he credibly testified that it is well known in the Philippines that police harass gay men and turn a blind eye to hate crimes committed against gay men.”). In cases where the respondent failed to file a report, there is not a heightened burden of proof requirement. *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1069–70 (9th Cir. 2017) (en banc).

The Court notes that Respondent has identified his persecutors in numerous ways, such as members of an opposition political party, people paid by members of an opposition political party, government actors, and mercenaries paid by the opposition political party. (Hr’g (May 3, 2019); Ex. 2, Form I-589.) However, at the core of his asylum claim is that he was harmed by Brazilian government actors, or people closely associated with the Brazilian government, either hired as mercenaries or connected to high-level government officials. Given that the Court has found Respondent credible, the Court finds through his cumulative experiences that Respondent has

 established that his fear of persecution is of Brazilian government actors, or of agents the Brazilian government is unable or unwilling to control. Notably, when questioned Respondent recalled that the persecution he suffered was at the hands of members of the Brazilian government, such as mayors and council members. (Hr'g (May 3, 2019).)

In his testimony, Respondent stated that if he returns to Brazil, he will either be tortured or killed by government actors. (*Id.*) This claim is supported by Respondent's credible testimony regarding the numerous threats against his life that were increasing in violence. (*Id.*) Respondent testified that he received three threats. (*Id.*) In each of the three threats, Respondent was told he had to stop his participation in the MST Party, or he would be killed. (*Id.*)

Respondent submitted multiple news articles which highlight the violence MST Party members face in Brazil. (See Ex. 4, Resp't Docs. in Support of Hr'g.) According to a TeleSur English news article, the Brazilian President strongly opposes the MST. (*Two Members of Brazil's MST Landless Movement Murdered*, TELESUR ENGLISH, (Dec. 9, 2018).) The articles demonstrate that the MST Party is targeted by numerous Brazilian citizens, including supporters of the President. (See Ex. 4, Resp't Docs. in Support of Hr'g, at Reportagem 02.) For example, one of the leaders of the MST Party was attacked by supporters of the President. (*Id.*, at Reportages 03.) Respondent also submitted two news articles which reported the deaths of MST Party activists by armed men. (*Id.*, *Land rights activist shot dead in Brazilian Amazon hospital*, THE GUARDIAN, Mar. 21, 2017; *Two Members of Brazil's MST Landless Movement Murdered*, TELESUR ENGLISH, (Dec. 9, 2018).) Further, the articles state that "Brazil has become one of the world's most dangerous countries for land rights activists," which is a tenet of the MST Party. (*Land rights activist shot dead in Brazilian Amazon hospital*, THE GUARDIAN, Mar. 21, 2017.)

After the second telephonic threat, Respondent attempted to file a report with police in Vitoria. (Hr'g (May 3, 2019); see also Ex. 2, Form I-589.) On this occasion, Respondent was told the police station system was not working. (*Id.*) Instead, police officers took Respondent's information and telephone number; however, they never contacted Respondent again. (*Id.*) The police officers also did not allow Respondent to file any type of document at the station during this first visit. (*Id.*) After the third incident, in which two men threatened Respondent and his wife at gunpoint, Respondent again reported the incident to the police. (*Id.*) On this occasion, Respondent was able to file a police report. (*Id.*; see also Ex. 4, Police Report.) The police officers took Respondent's information, and told him they would research the incident, but Respondent never heard from the police again.

In addition, Respondent also presented articles which discuss police corruption within Brazil. (Ex. 4, Resp't Docs. in Support of Hr'g.) Several articles submitted by Respondent suggest that police often accept bribes or other kinds of payment. (See *id.*, at Reportages 06; Reportages 07.) This leads police to not fully investigate crimes, or to insert false data into police information systems. (*Id.*)

Overall, the evidence of record demonstrates that the persecution Respondent suffered was either at the hands of the Brazilian government, or by agents the Brazilian government is unable or unwilling to control. Thus, Respondent has demonstrated past persecution on account of a protected ground by the Brazilian government, or by persons the Brazilian government is unable or unwilling to control. See INA § 101(a)(42)(A); see also 8 C.F.R. § 1208.13(b)(1).



B. Discretion

Once a respondent has established that he is statutorily eligible for a grant of asylum, he must further show that he merits such relief as a matter of discretion. INA § 240(c)(4); 8 C.F.R. § 1240.8(d); *see also Kalubi v. Ashcroft*, 364 F.3d 1134, 1137 (9th Cir. 2004). Here, the Court finds that Respondent merits a favorable exercise of discretion. The Court believes that the Respondent sincerely fears for his life in Brazil, and finds that general humanitarian considerations militate in Respondent's favor. *See id.* Moreover, the Court believes that Respondent is capable of finding employment and becoming a contributing member of society in the United States. Finally, Respondent has not engaged in any activities indicating that he would not be a desirable member of society. In addition, both Respondent's wife and his newborn baby are present in the United States. (*See Hr'g* (May 3, 2019).) Consequently, the Court concludes that Respondent warrants a favorable exercise of discretion. *See* INA § 240(c)(4)(A).

VI. WITHHOLDING OF REMOVAL UNDER INA § 241(b)(3)

As the Court will grant Respondent's application for asylum under INA § 208, the Court will not address Respondent's concurrent application for withholding of removal under INA § 241(b)(3) and will hold a decision on Respondent's application for such relief in abeyance. *See Mogharrabi*, 19 I&N Dec. at 449; *see also INS v. Bagamasbad*, 429 U.S. 24, 25 (1976).

VII. PROTECTION UNDER THE CONVENTION AGAINST TORTURE

As the Court will grant Respondent's application for asylum under INA § 208, the Court will not address Respondent's concurrent application for protection under the Convention Against Torture ("CAT"). In light of the Court's decision to grant Respondent's application for asylum, the Court will hold a decision on Respondent's application for protection under the CAT in abeyance.

VII. CONCLUSION

For the foregoing reasons, the Court finds that Respondent is credible, that he has established his eligibility for asylum, and that he warrants relief as a matter of discretion. *See* INA §§ 208(a), 241(b)(3). As the Court will grant Respondent's application for asylum, it will hold his concurrent application for withholding of removal and protection under CAT in abeyance.¹ *See Mogharrabi*, 19 I&N Dec. at 449; *see also Bagamasbad*, 429 U.S. at 25 ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

In light of the above, the Court will enter the following orders:

¹ The Court notes that Respondent's spouse is listed on his application, as a derivative applicant. As a result of this Court's grant of Respondent's application, his spouse's application, as a derivative asylee, would also be granted.

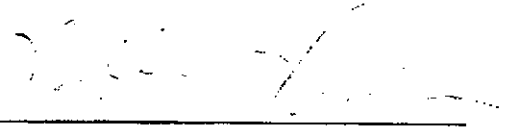
ORDERS:

IT IS HEREBY ORDERED THAT Respondent's application for Asylum under section 208 of the Act is **GRANTED**.

IT IS FURTHER ORDERED THAT Respondent's application for Withholding of Removal under section 241(b)(3) of the Act is **HELD IN ABEYANCE**.

IT IS FURTHER ORDERED THAT Respondent's application for protection under Article III of the Convention Against Torture is **HELD IN ABEYANCE**.


Date


Molly S. Frazer
Immigration Judge

RIGHT OF APPEAL PRESERVED: Any right of appeal is reserved to both parties, Respondent and DHS, with any Notice of Appeal due to be filed with and received at the Board of Immigration Appeals (BIA), in Virginia, within 30 days of this Order.

CERTIFICATE OF SERVICE

THIS DOCUMENT SERVED BY: (M) MAIL (P) PERSONAL SERVICE

TO: () ALIEN () ALIEN c/o Custodial Officer () ALIEN'S ATTY () DHS

DATE: **BY COURT STAFF:**

Attachments: () EOIR-33 () EOIR-28 () Appeal Forms () Other

