

3-21-19

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1901 S. BELL STREET, SUITE 200
ARLINGTON, VA 22202

3/19

Montagut and Sobral PC
Ham Pong, Ashley Shea
5693 Columbia Pike
Suite 201
Falls Church, VA 22041

In the matter of _____ File A _____ DATE: Mar 21, 2019

✓ Unable to forward - No address provided.
Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to:

Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

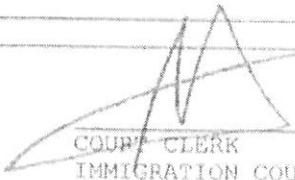
— Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:

IMMIGRATION COURT
1901 S. BELL STREET, SUITE 200
ARLINGTON, VA 22202

— Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.

— Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

Other: _____



COURT CLERK
IMMIGRATION COURT

cc: CHARLOTTE LUCKSTONE, ESQ.
1901 SOUTH BELL STREE, 9TH FL.
ARLINGTON, VA, 22202

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

IN THE MATTERS OF:)	IN REMOVAL PROCEEDINGS
)	
Lead Respondent;)	File No. A
)	
Rider Respondent; and)	File No. A
)	
Rider Respondent.)	File No. A
)	

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

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

APPEARANCES

ON BEHALF OF THE RESPONDENTS:
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ON BEHALF OF THE DHS:
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DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

The respondents—a mother and her son and daughter—are natives and citizens of El Salvador. See Exh. 1; Exh. 1A; Exh. 1B. They entered the United States on or about June 10, 2014, and were not then admitted or paroled. See Exh. 1; Exh. 1A; Exh. 1B. On August 8, 2014,

¹ [redacted]'s name appears with different spellings in different portions of the record. The Court will use the spelling on her Notice to Appear for the sake of consistency.

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the Department of Homeland Security ("DHS") filed Notices to Appear ("NTA") charging the respondents with inadmissibility pursuant to INA § 212(a)(6)(A)(i). *See* Exh. 1; Exh. 1A; Exh. 1B. At a preliminary hearing on March 23, 2016, the respondents admitted the factual allegations in their Notices to Appear and conceded the charge of inadmissibility. The Court finds the respondents inadmissible as charged. *See* 8 C.F.R. § 1240.10(c).

As relief from removal, the lead respondent, _____, seeks asylum, withholding of removal under the Act, and relief under the CAT. Exh. 2; Exh. 4, Tab A. Ms. _____'s son _____ and her daughter _____ seek asylum as her derivative, and have also filed their own independent applications for asylum, withholding of removal, and relief under the CAT. Exh. 2; Exh. 4, Tabs A-C. For the reasons set forth below, the Court grants Ms. _____'s application for asylum and _____'s applications for derivative asylum, and does not reach the other applications for relief.

II. DOCUMENTARY EVIDENCE

- Exhibit 1: NTA of Ms. _____, filed August 8, 2014;
- Exhibit 1A: NTA of _____, filed August 8, 2014;
- Exhibit 1B: NTA of _____, filed August 8, 2014;
- Exhibit 2: Application for Asylum and for Withholding of Removal (Form I-589) of Ms. _____, as Tab A, filed March 23, 2016;
- Exhibit 3: Documents in support of the respondents' applications for relief, including Tabs B-U, filed December 4, 2018; and
- Exhibit 4: Amended Form I-589 of Ms. _____, and Forms I-589 of _____ and _____, as Tabs A-C, filed December 20, 2018.

III. SUMMARY OF THE CLAIM

On December 20, 2018, the Court heard testimony from Ms. _____ was also available to testify at the hearing, but in lieu of his testimony the Court accepted the DHS's stipulation that he would have testified consistently with his Form I-589. Exh. 4, Tab B. The testimony provided in support of the respondents' applications, although considered by the Court in its entirety, is not repeated fully herein as it is part of the record. Rather, the claims raised during the testimony are summarized below to the extent they are relevant to the Court's analysis of the applications for relief.

Ms. _____ testified she is a native and citizen of El Salvador. She has three children: _____, age twenty-four; _____, age ten; and _____, age five. _____, _____, and _____ are all natives and citizens of El Salvador. _____ still lives in El Salvador. _____ and _____ entered the United States with their mother on June 10, 2014.

Ms. _____'s asylum claim centers on the domestic violence and abuse she suffered at the hands of _____, the father of _____ and _____. In or about December 2002, when Ms. _____ was twenty-five years old, she met Mr. _____ at the gas station where she was working. He was thirty-six years old. They soon began dating, and

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Ms. _____ to became pregnant with Ms. _____ was living with her mother at that point, and Mr. _____ was helping to support her financially. Once _____ was born, Ms. _____'s mother moved to the United States. Ms. _____ kept living in the same house with her sister for about three more years.

Over time, Mr. _____ became violent towards Ms. _____. Ms. _____ testified it was hard for her to remember exactly when the abuse began or when specific incidents occurred, because the mistreatment was more or less "constant" throughout their relationship. She testified, however, that Mr. _____ raped her repeatedly over the course of many years, beginning as early as 2003. In or about 2004, he began physically abusing her. She testified he hit her "every day." On one occasion in 2004 or 2005, he struck her on the right side of her neck, leaving a purple bruise. His violence left her with bruises "many times" over the years. In 2004, Ms. _____ felt she could not go on living under the abuse. She attempted suicide by drinking a bottle of liquor and taking pills. Mr. _____ found her and took her to the hospital. He later told her that she was a disaster and that she should be ashamed of herself for attempting suicide.

In or about 2006, Ms. _____ moved to Ilobasco, and for the first time, Mr. _____ moved in with her, _____ and Mr. _____ would often come home drunk. He would shout and curse at Ms. _____, calling her an asshole or the daughter of a whore. The violence continued as well. He continued to hit her; he would strike her with whatever he had at hand, such as a water bottle or juice bottle. As he would hit her, he would say that she was good for nothing and that she was "subject to him." He would also tell her that he had to support her because she was worth nothing. He often told her he would kill her, and threatened her with a gun and with a machete. In one instance, he pointed a shotgun at her, but _____ stepped in front of the gun and threatened to call the police. Mr. _____ said he would shoot _____ if she called the police, and told Ms. _____ he would blow her head off.

Eventually, Mr. _____ stopped living with Ms. _____ full-time. He would still come to the house periodically, and whenever he would, he would demand sex from Ms. _____ and rape her when she would try to refuse. He would say she "had to belong to [him]" or else he would not help her financially. _____ was conceived as a result of one of these incidents of rape.

Mr. _____ abused his children as well. When _____ was just three or four years old, Mr. _____ would force him to eat a portion of food appropriate for an adult, even to the point that _____ would vomit. He would hit _____ and would shout and curse at him. He would also yell at _____ and hit her, even when she was very young. When _____ would cry from all the shouting, he would hit her and send her to her room.

In the shadow of Mr. _____'s threats to cut off financial support, Ms. _____ decided to look for a job. She found a job at the market and hoped things would change for the better. Instead, things got worse. Mr. _____ began monitoring her closely. He began to restrict her movements and tried to keep her at home. He would call her and tell her that he knew where she was. When he could not watch her personally, he made his friends watch her. Ms. _____ testified that these friends were self-described MS-13 gang members with tattoos.

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They would watch her when she worked at the market, although they never approached her directly. Mr. [redacted] spent time with these gang members every day; he would often give them rides in his car or buy them beer. One of the gang members went by the nickname [redacted]. Mr. [redacted] also tried to prevent Ms. [redacted] from having any friends. He would get jealous, or say that her friends were gay.

On different occasions, Mr. [redacted] abused Ms. [redacted] in front of her sister, and in front of a young woman named [redacted] who would watch the children when Ms. [redacted] went to work.

Ms. [redacted] testified she tried to end the relationship with Mr. [redacted] "many times." Every time she would try to kick him out of the house, he would be gone for a week or so, but he would always return.

Ms. [redacted] never reported Mr. [redacted]'s threats and violence to the police. She explained she did not do so because she was afraid of him, and also because she believed the police "don't give any heed" to issues of domestic violence. For instance, Ms. [redacted] had a female neighbor named [redacted] who was suffering similar domestic abuse. [redacted] reported the violence to the police. The police showed up, but they just told [redacted]'s abuser to stay away from her and took no further action. The abuser continued to abuse [redacted] just as before.

In 2014, Ms. [redacted] came to a point where she felt she could not stand any more mistreatment. [redacted] encouraged her mother, saying "Mom, you have to leave." [redacted] was afraid of what would happen otherwise. Ms. [redacted] felt unable to relocate within El Salvador for fear that Mr. [redacted] would be able to find her anywhere within the country by using his MS-13 connections. So she came to the United States instead, by way of Guatemala and Mexico.

After Ms. [redacted] left, Mr. [redacted] went looking for her. He even traveled to Guatemala to search for her there. In November of 2014, after Ms. [redacted] had arrived in the United States, she had to contact Mr. [redacted] in order to try to get passports for [redacted] and [redacted]. Speaking angrily and with foul language, Mr. [redacted] refused to help her get the passports. After that, in 2016 or 2017, Mr. [redacted] spoke with Ms. [redacted]'s sister and asked her "Where is that son-of-a-bitch [redacted]?"

Ms. [redacted] believes Mr. [redacted] would be able to find her if she were removed to El Salvador. He always used to tell her that she would never be rid of him, and that he would look for her until he killed her. She believes he would abuse, mistreat, rape, or kill her. She also fears he would "take his revenge" on [redacted] and [redacted], perhaps killing them as well. She testified she does not believe the Salvadoran authorities would be able to protect them, because they "show up after things have already happened."

IV. LAW, FINDINGS, AND ANALYSIS

A. Credibility and Corroboration

When an applicant offers testimonial evidence to support an application for relief, the Court must determine whether such testimony is credible. *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 of S-B-*, 24 I&N Dec. 42, 42-43 (BIA 2006). In making a credibility determination, the Court considers 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). The 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.* The 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.* The Court may also consider "any other relevant factor." *Id.*

The DHS does not contest credibility, and under the totality of the circumstances, the Court finds Ms. [redacted] credible. She testified plausibly, responsively, and in sufficient detail. Her demeanor during her testimony, which was emotional at times, supports a finding of credibility in the Court's view. Her testimony was also substantially consistent with her Form I-589, her affidavit, and other evidence of record. *See generally* Exh. 3, Tabs B-K; Exh. 4, Tab A. Although at times her statements were inconsistent with respect to the specific dates or timeline of certain events, the Court finds this unsurprising in light of the psychological trauma she has endured, and makes no adverse credibility inference from those inconsistencies. *See* Exh. 3, Tab B, ¶ 24 ("It is very difficult for me to remember what happened, especially to remember dates, because the time kind of blurs together."); *see also* Exh. 3, Tab C, at 20, 22 (Ms. [redacted]'s psychological evaluation notes her difficulties with memory, among other symptoms). Any uncertainty regarding the dates of events does not warrant an inference that the events themselves did not occur. Finally, the Court finds Ms. [redacted]'s testimony adequately corroborated by the proffered testimony of [redacted], the other affidavits in the record, and the country conditions evidence. Exh. 4, Tab B; *see, e.g.,* Exh. 3, Tabs C-U. The Court credits Ms. [redacted]'s testimony.

B. Asylum

To qualify for asylum, an applicant bears the burden of demonstrating she is a refugee within the meaning of INA § 101(a)(42)(A). *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987); 8 C.F.R. § 1208.13(a). A refugee is a person who is unwilling or unable to return to her country of origin because she suffered past persecution or has a well-founded fear of future persecution on account of a protected ground—race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). After an applicant establishes her statutory eligibility for asylum, the Court may exercise its discretion to grant or deny asylum. 8 C.F.R. § 1208.14(a);

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see also INA § 208(b)(1)(A); *Cardoza-Fonseca*, 480 U.S. at 427-28; *Matter of Pula*, 19 I&N Dec. 467, 473 (BIA 1987).

1. One-Year Bar

Ordinarily, an applicant for asylum must file her application within one year of her most recent entry into the United States, or show that she qualifies for an exception to that deadline. See INA § 208(a)(2)(B), (D); 8 C.F.R. § 1208.4(a)(2), (4)-(5); *Lizama v. Holder*, 629 F.3d 440, 444-45 (4th Cir. 2011). Ms. [redacted] last entered the United States on June 10, 2014, and filed her application for asylum at her first master calendar hearing on March 23, 2016, more than one year later. Exh. 1; Exh. 2.

Ms. [redacted] asserts she is a member of the class certified in *Mendez Rojas v. Johnson*, 305 F. Supp. 3d 1176, 1179 (W.D. Wa. 2018)—specifically, a member of Subclass B.II. See Resp't Notice of *Mendez Rojas* Class Membership (Dec. 4, 2018).² As relevant here, the Court is required to accept as timely filed an asylum application from such a class member. See *Mendez Rojas*, 305 F. Supp. 3d at 1188. The DHS initially declined to take a position on Ms. [redacted]'s *Mendez Rojas* claim, saying it first wanted to hear testimony on the issue. Ms. [redacted]

indicated during her testimony that she was detained upon entering the United States and expressed a fear of returning to El Salvador; however, she was released before ever having a credible fear interview. See *id.* at 1179. Just before closing arguments, the Court asked the DHS if it was arguing that any statutory bars to relief apply. The DHS said it was not. The Court concludes that Ms. [redacted] is a *Mendez Rojas* Subclass B.II member, and thus, her application for relief is not barred by the one-year deadline. See *id.*

2. Past Persecution

Persecution within the meaning of the Act is harm surpassing the level of “mere harassment,” *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (quoting *Dandan v. Ashcroft*, 339 F.3d 567, 573 (7th Cir. 2003)); see also *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), and occurring at the hands of the applicant’s government or an agent the government is unwilling or unable to control, see *Crespin-Valladares v. Holder*, 632 F.3d 117, 128 (4th Cir. 2011); *Acosta*, 19 I&N Dec. at 222. Persecution is an extreme concept that “does not encompass all treatment that our society regards as unfair, unjust, or even unlawful or unconstitutional.” *Matter of A-B-*, 27 I&N Dec. 316, 337 (A.G. 2018) (quoting *Fatin v. INS*, 12 F.3d 1233, 1240 (3d Cir. 1993)). “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 on the order of sporadic threats, 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 “the threat of death qualifies as persecution.” *Hernandez-Avalos v.*

² The rider respondents also claim membership in *Mendez Rojas* Subclass B.II, but the Court need not address these claims in light of the disposition below.

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). The Court will 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 Ms. _____ has met her burden of proving she suffered harm of sufficient severity to constitute persecution. Mr. _____ repeatedly beat her and raped Ms. _____ over the course of at least eight years. *See, e.g.*, Exh. 3, Tab B, ¶¶ 10, 12. He hit her on her face and arms with his hands, with plastic water carafes, or with juice bottles, leaving bruises that would last for days. *Id.* ¶ 10. He threatened to hit her with his belt, although he never did so. *Id.*; *see also* Exh. 3, Tab B, ¶ 15 (he did hit _____ with the belt). He credibly threatened to kill her on multiple occasions, including pointing a gun at her and threatening to “blow [her] head off,” as well as menacing her with a machete. *See* Exh. 3, Tab B, ¶ 14. He abused her in front of her children, her sister, and even non-relatives such as her domestic employee. Exh. 3, Tab G. He restricted her movements and had his gang member friends keep tabs on her. Exh. 3, Tab B, ¶ 17. He prevented her from having friends. *Id.* ¶ 16. He also verbally abused her: he called her names such as “asshole” and “daughter of a whore,” and told her she was worth nothing. He told her he would kill her if she ever reported his abuse to the police or if she ever left him. *See id.* ¶¶ 14, 17. Mr. _____’s abuse led her to attempt suicide. *Id.* ¶ 11. The Court finds the harm Ms. _____ suffered was both severe and systematic, and it included credible, specific, and immediate death threats. In the aggregate, the Court finds and concludes Ms. _____ suffered harm rising to the level of past persecution. *Hernandez-Avalos*, 784 F.3d at 949; *Baharon*, 588 F.3d at 232; *O-Z- & I-Z-*, 22 I&N Dec. at 25-26.

In addition, Ms. _____ has met her burden to establish that the government of El Salvador is unable or unwilling to protect her from Mr. _____. It is well-documented that El Salvador is “one of the most dangerous countries [in which] to be a woman.” Exh. 3, Tab Q, at 156. Although domestic violence and rape are illegal in El Salvador, the laws prohibiting them are not effectively enforced, and “violence against women, including domestic violence, remain[s] a widespread and serious problem.” Exh. 3, Tab M, at 72; *see also* Exh. 3, Tab N, at 122 (“Domestic violence is reportedly considered the leading form of violence against women and girls in El Salvador, followed closely by violence perpetrated by gang members.”); Exh. 3, Tab P, at 140, 142 (noting “[e]ndemic levels of sexual abuse and gender[-]based violence” in the country and ineffective enforcement of laws prohibiting it). “Fear, shame[,] and lack of confidence in what is generally considered an ineffective and unsupportive justice system reportedly come together to prevent many women from reporting domestic or gang violence.” Exh. 3, Tab N, at 110. With up to ninety percent of crimes against women going unpunished, many perpetrators believe—often correctly—that they can commit domestic and sexual violence with impunity. Exh. 3, Tab T, at 178; Exh. 3, Tab U, at 181 (describing an estimated seventy-seven percent impunity rate for femicide in El Salvador). Ms. _____’s neighbor _____ received no meaningful help when she reported domestic violence to the police—the officers did not even take a report and just told the abuser to stay away, but he promptly ignored them and continued abusing _____ with no apparent consequences. Exh. 3, Tab B, ¶ 19. Mr. _____’s behavior demonstrates that he was not concerned about possible prosecution either: he was brazen in abusing Ms. _____.

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in front of numerous eyewitnesses, even non-relatives. *See, e.g.*, Exh. 3, Tab G, at 35-36; Exh. 3, Tab B, ¶ 7.

In addition to pyrrhic enforcement of criminal laws against domestic violence, El Salvador is also unable or unwilling to provide adequate protection to survivors of domestic violence. At the end of 2014, there was just one government-run domestic violence shelter in El Salvador; it could accommodate up to thirty-five women and children. Exh. 3, Tab P, at 144. Moreover, victims of domestic abuse at the hands of gang members were not eligible for admission even to that shelter. *Id.*; *see also* Exh. 3, Tab B, ¶¶ 8, 23 (Ms. [redacted] has reason to believe that Mr. [redacted] “has ties to the MS-13 gang”).

In light of the foregoing, the Court finds Ms. [redacted] has met her burden of proving the government of El Salvador is unable or unwilling to protect her from Mr. [redacted]. Thus, she has established that she suffered past persecution at the hands of an agent the government is unable or unwilling to control.

3. *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 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).

In 2014, the Board of Immigration Appeals (“Board”) issued a precedential decision holding that “married women in Guatemala who are unable to leave their relationship” could constitute a particular social group, depending on the specific facts and evidence in a particular case. *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), *overruled by Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). During the litigation in *A-R-C-G-*, the DHS conceded that the particular social group was cognizable, and the Board accepted that concession. *Id.* at 390.

Four years later, the Attorney General overruled *A-R-C-G-*. *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). In so doing, the Attorney General expressly did not disturb the background particular social group cognizability standards articulated in *M-E-V-G-*, 26 I&N Dec. at 237, and other Board cases; rather, he held only that the Board in *A-R-C-G-* had not applied those standards correctly. *A-B-*, 27 I&N Dec. at 317. The Attorney General stated that *A-R-C-G-* never should have been a precedential decision, “because [the] DHS conceded most of the relevant legal questions” therein, such as the cognizability of the particular social group. *A-B-*, 27 I&N Dec. at 331-34. “Parties may not stipulate to the legal conclusions to be reached by the court,” he emphasized. *Id.* at 334 (quoting *TI Fed. Credit Union v. DelBonis*, 72 F.3d 921, 928 (1st Cir. 1995)). *A-B-* also asserted—in dicta and without citation—that “[g]enerally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum.” *Id.* at 320. The opinion further suggested that the particular social group the Board had considered in *A-R-C-G-* was improper because it was “effectively” circular and did not exist independently of the harm asserted. *A-B-*, 27 I&N Dec. at 335 (the group in *A-R-C-G-* “was effectively defined to consist of women in Guatemala who are victims of domestic abuse because

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the inability 'to leave' was created by harm or threatened harm"); *see generally* *M-E-V-G-*, 26 I&N Dec. at 242-43 ("a particular social group cannot be defined exclusively by the claimed persecution").

After *A-B-* was issued, a group of plaintiffs sued in federal district court seeking an injunction against enforcement of various aspects of the decision. *Grace v. Whitaker*, 344 F. Supp. 3d 96, 111-12 (D.D.C. 2018), *appeal filed* (Jan. 30, 2019). One day before the merits hearing in the instant case, the United States District Court for the District of Columbia issued an order granting in relevant part the plaintiffs' cross-motion for summary judgment. *Id.* at 146. Several of the district court's holdings are relevant in the instant case.

First, the district court concluded "there is no legal basis for an effective categorical ban on domestic violence and gang-related claims," because the INA requires that asylum claims "be resolved based on the particular facts and circumstances of each case." *Id.* at 126. The court held *A-B-* is arbitrary and capricious to the extent it suggests otherwise, in violation of the INA, the Refugee Act, and the Administrative Procedure Act. *Grace*, 344 F. Supp. 3d at 126.

Second, the district court clarified that *A-B-* overruled *A-R-C-G-* strictly "based on the BIA's reliance on [the] DHS's concession on the issue." *Grace*, 344 F. Supp. 3d at 133. Accordingly, the district court observed that most of *A-B-* is dicta—and in fact, the district court noted that the government had admitted as much during the *Grace* litigation. *Grace*, 344 F. Supp. 3d at 138 n.22.

Finally, the district court reaffirmed the rule of *M-E-V-G-* that "'persecutory conduct alone cannot define [a particular social] group.'" *Grace*, 344 F. Supp. 3d at 132 (quoting *M-E-V-G-*, 26 I&N Dec. at 242). The *Grace* plaintiffs had not challenged *A-B-*'s articulation of this rule against circularity—only the articulation of the rule against circularity in a subsequent United States Citizenship and Immigration Services ("USCIS") policy memorandum that had purported to implement *A-B-*. *Grace*, 344 F. Supp. 3d at 133. The district court held the USCIS policy memo invalid for two reasons: (1) there can be no general rule that social group formulations premised upon inability to leave a relationship are always impermissibly circular, because the adjudicator must account for "the independent characteristics presented in each case"; and (2) contrary to the USCIS memo, "if [a] proposed social group definition contains characteristics independent from the feared persecution," then the social group does not necessarily violate the rule against circularity. *Id.* at 133 (citing *M-E-V-G-*, 26 I&N Dec. at 242). The district court's analysis implies that *A-B-* did not alter the rule against circularity as set forth in *M-E-V-G-*. *See Grace*, 344 F. Supp. 3d at 133 (observing that the USCIS policy memo "[was] unmoored from the analysis in *Matter of M-E-V-G-* and ha[d] no basis in *Matter of A-B-*").

With that overview of the current state of the law, the Court turns to the facts and circumstances of the particular claim before it. Ms. [redacted] has articulated numerous potential particular social groups with respect to her own claim for asylum.³ *See* Resp't Br. at 1-

³ These groups include "immediate family members of [redacted]"; "women in El Salvador," "single women from El Salvador," "Salvadoran women who lack effective male protection," "single Salvadoran women who lack effective male protection," "Salvadoran women who are viewed as property by others," and "single Salvadoran women who are viewed as property by others." *See* Resp't Br. at 1-2, 19. Counsel clarified at the merits hearing that

2, 12-25 (Dec. 4, 2018). The Court need not address whether any of these groups are cognizable, however, because the record reveals an even more straightforward particular social group of which Ms. [redacted] is a member—namely, “Salvadoran women in domestic relationships who are unable to leave the relationship.” For the following reasons, and based on the particular facts and circumstances in this record, the Court finds and concludes that “Salvadoran women in domestic relationships who are unable to leave the relationship” is a cognizable particular social group and that Ms. [redacted] is a member of that group.

a. Members Share a Common Immutable Characteristic

The Court finds that members of the group “Salvadoran women in domestic relationships who are unable to leave the relationship” share a common immutable characteristic—their gender. *M-E-V-G-*, 26 I&N Dec. at 237. It is well settled that gender cannot be changed or is so fundamental to identity that one should not be required to change it 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). *A-B-* does not purport to disrupt this settled law. Indeed, *A-B-* quotes with approval *Acosta*’s language indicating that sex is immutable. *A-B-*, 27 I&N Dec. at 318 (quoting *Acosta*, 19 I&N Dec. at 233). Accordingly, the Court finds Ms. [redacted] has met her burden to establish that “Salvadoran women in domestic relationships who are unable to leave the relationship” share in common the immutable characteristic of their gender.

b. Defined with Particularity

The Court also concludes the group “Salvadoran women in domestic relationships who are unable to leave the relationship” 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. “The group must also be discrete and have definable boundaries—it must not be amorphous, overbroad, diffuse, or subjective.” *Id.* It is legal error for a court to break a proposed particular social group into pieces and then reject each piece as not cognizable—instead, the court must analyze the proposed group as a whole, lest it “miss[] the forest for the trees.” *See Tenru*, 740 F.3d at 894-96 (the applicant’s proposed group “individuals with bipolar disorder who exhibit erratic behavior” met the particularity requirement, even if the group “individuals with bipolar disorder” might have been overbroad by itself, and the group “individuals who exhibit erratic behavior” might have been amorphous or subjective by itself).⁴

Ms. [redacted] also claims persecution on account of a feminist political opinion, and that [redacted] and [redacted]’s independent asylum claims are based on membership in the particular social group of “immediate family members of [redacted].”

⁴ The Attorney General made a similar point in *A-B-*, saying:

In accepting [the] DHS’s concession that [the] proposed particular social group was defined with particularity, the Board [in *A-R-C-G-*] limited its analysis to concluding that the terms used to describe the group—“married,” “women,” and “unable to leave the relationship”—have commonly accepted definitions within Guatemalan society. *A-R-C-G-*, 26 I&N Dec. at 393. But that misses the point.

The Court concludes the articulated group has a set of clear benchmarks for determining who is a member—nationality, gender, and inability to leave a domestic relationship. These criteria—considered not piecemeal, but together as a cohesive whole, as *Temu* instructs—adequately distinguish members of the group from non-members. *See id.* Even assuming *arguendo* that a group simply consisting of “Salvadoran women” might be impermissibly overbroad or diffuse standing alone, the articulated group is limited to the discrete and narrower subcategory of Salvadoran women who are in domestic relationships and who are unable to leave those relationships. *Cf. id.* Conversely, even assuming *arguendo* that assessing a person’s ability to leave a domestic relationship could be a subjective or amorphous task in the abstract, the assessment becomes sufficiently objective and concrete when it is grounded in a particular sociocultural context—namely, the experience of a *Salvadoran woman* in a domestic relationship, who finds herself against the backdrop of El Salvador’s prevailing norms and expectations regarding gender, family, relationships, and sexuality. *Cf. id.*

The potentially large membership of the articulated group does not defeat its particularity. *See, e.g.,* Exh. 3, Tab Q, at 150. 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 member 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 in the same statutory series). Indeed, the Board has held cognizable numerous particular social groups that have a high number of members. *E.g., Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990) (homosexuals in Cuba); *Matter of H-*, 21 I&N Dec. 337, 343 (BIA 1996) (members of the Marchan subclan in Somalia); *Matter of V-T-S-*, 21 I&N Dec. 792, 798 (BIA 1997) (Filipinos of mixed Filipino-Chinese ancestry).

The group “Salvadoran women in domestic relationships who are unable to leave the relationship” 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.” *Crespin-Palladares*, 632 F.3d at 125 (collecting cases). The articulated group satisfies the particularity requirement, the Court finds and concludes.

c. Social Distinction within the Society in Question, and the Rule Against Circularity

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

To say that each term has a commonly understood definition, standing alone, does not establish that these terms have the requisite particularity in identifying a distinct social group as such, or that people who meet all of those criteria constitute a discrete social group.

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. The social distinction analysis is highly fact-specific. *See id.* at 241 (the same group might be socially distinct in one society but not in another). 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 “highly relevant” to the social distinction analysis as well. *Temu*, 740 F.3d at 894. Furthermore, a social group definition that contains characteristics independent from the feared persecution can be cognizable even if “a sense of ‘group’” only really coalesces upon the event of the members’ mistreatment. *See Grace*, 344 F. Supp. 3d at 132 (citing *M-E-V-G-*, 26 I&N Dec. at 243) (discussing the Board’s hypothetical example in *M-E-V-G-* of “former employees of an attorney general” who later begin to experience persecution on account of such status).

The Court finds the group “Salvadoran women in domestic relationships who are unable to leave the relationship” is socially distinct within Salvadoran society, based on the specific facts and circumstances of this particular case. El Salvador has laws criminalizing gender-based violence, domestic violence, rape, and femicide. *See generally* Exh. 3, Tab P. El Salvador has also recognized a need to offer assistance to victims of intimate partner violence as such. The government operates one domestic violence shelter, and nongovernmental organizations operate a handful of others. *See* Exh. 3, Tab P, at 144. While these laws and efforts have not solved the country’s serious problems with domestic violence, they tend to prove that Salvadoran society regards Salvadoran women unable to leave intimate partner relationships as a distinct and discernable segment of society with unique needs. *See W-G-R-*, 26 I&N Dec. at 217.

The United Nations High Commissioner for Refugees (“UNHCR”) has also identified a discrete subcategory of Salvadoran women who are in domestic relationships they are unable to leave, including for reasons very similar to Ms. _____’s:

There are reported cases of domestic violence [in El Salvador] by gang members against their wives and other female members of their own household; women and girls in this situation are often trapped as any attempt to report the violence or to escape the situation in the home would likely lead to targeting for violence by gang members, and may also put the woman’s family members at risk.

Exh. 3, Tab N, at 122. As UNHCR suggests, Ms. _____’s story unfortunately is not unique, but rather is part of a broader phenomenon in Salvadoran society. *Accord* Exh. 3, Tab Q, at 150 (a quarter of all Salvadoran women have been victims of sexual or physical violence). Even

within Ms. [redacted]'s own social network—which was severely circumscribed due to Mr. [redacted]'s jealousy and attempts to isolate her—there was at least one other apparent member of the articulated group: her neighbor [redacted]. See Exh. 3, Tab B, ¶ 19. The sheer ubiquity of domestic violence in El Salvador means that everyday Salvadorans are likely to encounter or hear about multiple women in domestic relationships who are not able to leave, and thus are likely to begin to see these women not only as isolated individual victims of mistreatment and abuse, but as part of a larger narrative implicating gender, sex, and power in El Salvador. See Exh. 3, Tab Q, at 150.

The articulated group also is not impermissibly circular. The Attorney General in *A-B-* expressed concern that the Board in *A-R-C-G-* never considered that the group articulated therein “was effectively defined to consist of women in Guatemala who are victims of domestic abuse because the inability ‘to leave’ was created by harm or threatened harm.” 27 I&N Dec. at 335. However, the Attorney General’s reasoning in *A-B-* is at risk of making a logical leap of its own by assuming that domestic violence itself is the only reason members of a similarly-defined group will be unable to leave the relationship. See *id.* As *Grace* recognizes, that assumption may or may not be warranted depending on the “independent characteristics presented in each case.” See 344 F. Supp. 3d at 131-33.

Based on the particular facts and circumstances presented in this case, such an assumption is not warranted. The evidence instead shows that various sociocultural and economic factors constrain and prevent many Salvadoran women from leaving domestic relationships even before they experience intimate partner violence, and indeed, even if they never experience such violence. See *id.* at 132-33 (a proposed group that contains characteristics independent from the feared persecution may not violate the rule against circularity). In the event that a Salvadoran woman unable to leave her domestic relationship is also subjected to domestic violence, the fear of such violence becomes just one more factor compounding her inability to leave the relationship. *Cf. id.* at 131-33.

Women in Salvadoran society have diminished ability to leave domestic relationships due to entrenched objectification of women in Salvadoran culture. For example, “[w]omen and girls may be seen by gang members as their partners, even when a woman or girl has never consented to being in a couple.” Exh. 3, Tab N, at 122-23. Ms. [redacted]’s experience is a case in point—she “tried to get [Mr. [redacted]] to move out many times, but he wouldn’t.” Exh. 3, Tab B, ¶ 9. Ms. [redacted] explains that Mr. [redacted] “abused [her] because he thought [she] belonged to him.” *Id.* ¶ 10. She testified that he used to tell her she was “subject to him.” Mr. [redacted]’s view of women—and of Ms. [redacted] in particular—as objects both preceded and fomented his physical persecution of Ms. [redacted]. *Accord* Exh. 3, Tab S, at 170-71 (domestic abuse in El Salvador “stems from how men see women”—“men feel that women must conform with traditional values, [and] if they do not, they must face the consequence of physical violence”).

Women’s ability to leave sexual relationships in El Salvador is further constrained by patriarchal norms constraining women’s sexual autonomy. There is less of a social stigma surrounding promiscuity by men than promiscuity by women in Salvadoran culture. See Exh. 3, Tab B, ¶¶ 6-7, 9, 22; Exh. 3, Tab S, at 170. Mr. [redacted]’s fierce jealousy toward Ms. [redacted]

for no reason—even as he himself was sleeping with at least two other women, including sexual encounters with other women at Ms. [redacted]’s own house—illustrates this double standard to the point of absurdity. Exh. 3, Tab B, ¶¶ 6-7, 9, 22; Exh. 3, Tab F, at 33; Exh. 3, Tab G, at 35. His jealousy further demonstrates that he himself regarded Ms. [redacted] as unable to leave her domestic relationship with him. Exh. 3, Tab B, ¶ 17 (“[Mr. [redacted]] always said he would kill me if I ever left him.”); see *M-E-V-G-*, 26 I&N Dec. at 241-42 (the persecutor’s perceptions are relevant to social distinction, although not dispositive). Additionally, in El Salvador a woman choosing to leave a domestic relationship with a man is often seen as an insult to the man or a threat to his very masculinity. *E.g.*, Exh. 3, Tab B, ¶ 11 (after her suicide attempt, Mr. [redacted] said that Ms. [redacted] was “an embarrassment”). This helps explain the drastic lengths to which Mr. [redacted] went to find Ms. [redacted] once he realized she was gone, including traveling to Guatemala to look for her. Exh. 3, Tab B, ¶ 21. Women in Salvadoran culture do not have equal liberty to leave sexual relationships as men in Salvadoran culture have, whether or not the women are ever physically abused.

“While the law [of El Salvador] prohibits discrimination based on gender, women suffer[] from cultural, economic, and societal discrimination” as well, which further inhibits their ability to leave domestic relationships. See Exh. 3, Tab M, at 73; Exh. 3 Tab O, at 138. Mr. [redacted] exploited Ms. [redacted]’s economic vulnerability and financial inability to leave the relationship. He tried to prevent her from working outside the home and earning money, and he insisted that she and the children be financially dependent on him alone. *E.g.*, Exh. 3, Tab I, at 41 (Mr. [redacted] kept Ms. [redacted] “locked up in the house with her two kids”); Exh. 3, Tab B, ¶ 7. He told her that she could not support herself and that she needed him in order to survive, because “he was the man.” Exh. 3, Tab B, ¶ 6. She also testified that he demanded sex from her and threatened to stop supporting her financially if she did not acquiesce. Ms. [redacted] did not have the economic ability to leave her domestic relationship, separate and apart from Mr. [redacted]’s physical abuse toward her. See *id.*

Finally, under El Salvador’s cultural phenomenon of *machismo*, a perceived threat to a man’s masculinity is often met with violence. See, *e.g.*, Exh. 3, Tab N, at 122-23 (a woman’s attempt to reject the sexual advances of a male gang member often results in rape, abuse, or murder); Exh. 3, Tab P, at 140 (citing *machismo* culture as one factor leading to “a continuum of multiple violent acts” committed against women in El Salvador); see also Exh. 3, Tab T, at 176 (noting El Salvador has the highest femicide rate in the world). One writer has gone so far as to describe violence as a major “component of male identity” in Salvadoran culture. Exh. 3, Tab S, at 160. Violence serves to reassert or shore up the perpetrator’s own masculinity, and reinforce established norms of masculinity in general.⁵ *Id.* at 160, 171. At the same time, violence is used to punish women who “wander from acceptable constructions of femininity.” *Id.* at 169-70. *Machismo* culture further dictates that women are the ones blamed for the violence they suffer. Exh. 3, Tab T, at 178. Women’s ability to leave a domestic relationship in El Salvador is constricted by *machismo* cultural norms, including but not limited to violence.

⁵ Mr. [redacted]’s toxic masculinity infected his interactions not only with females, but also with males. Most notably, he sought to impose his sexist worldview on the next generation by forcing his son [redacted] to “learn to be a man” and eat inappropriate quantities of food for his age, to the point of vomiting. Exh. 4, Tab B, at 19; Exh. 3, Tab B, ¶ 13; see also Exh. 3, Tab S, at 169-70. He also often used gendered insults to belittle his son, calling him a “fag” or a “little girl.” Exh. 4, Tab B, at 19.

In the final analysis, based on the specific facts and circumstances presented in this case, the Court finds and concludes the group "Salvadoran women in domestic relationships who are unable to leave the relationship" is socially distinct in Salvadoran society.

d. Membership in the Group

It is also an applicant's burden to show she is a member of the cognizable particular social group. *W-G-R-*, 26 I&N Dec. at 223. Here, the record shows that Ms. [redacted] is a member of the group. She testified that she repeatedly tried to end the relationship with Mr. [redacted] but that he would always return. He told her she would never be rid of him, and said he would look for her until he killed her. Even after she arrived in the United States, he attempted to exert power and control over her by refusing to sign off on [redacted] and [redacted]'s passports. He has also continued to threaten and harass Ms. [redacted] via phone calls and text messages during her time in the United States. Exh. 3, Tab B, ¶ 22; Exh. 3, Tab C, at 21. As recently as 2017, he asked her sister about "that son-of-a-bitch" [redacted]'s whereabouts. Exh. 3, Tab B, ¶ 23.

In addition to the ongoing threats from Mr. [redacted], Ms. [redacted] continues to suffer lasting mental health effects from his abuse. See Exh. 3, Tab C; Exh. 3, Tab B, ¶ 24. She exhibits signs and symptoms of post-traumatic stress disorder with delayed expression, as well as generalized anxiety disorder. Exh. 3, Tab C, at 23. Her symptoms include lack of attention, concentration, and memory; difficulty making decisions; constant worrying; flashbacks; anxiety; lack of energy; tremors; constant sweating; insomnia; nervousness; impaired ability to function at work; and feelings of sadness, hopelessness, guilt, worthlessness, pessimism, and irritability. *Id.* at 20. To this day, she "does not have romantic relationships," and is prone to isolating herself as a response to her emotional and mental problems. *Id.* at 19, 21. Notwithstanding Ms.

[redacted]'s physical separation from Mr. [redacted], the record shows she is mentally unable to leave the relationship with him. Ms. [redacted] has shown by a preponderance of the evidence that she is a member of the articulated group.

4. 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 a 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)).

The Court finds Ms. [redacted] has demonstrated that Mr. [redacted] persecuted her in the past on account of her being a Salvadoran woman in a domestic relationship who was unable to leave the relationship. He raped and abused her because he regarded her as his property forever.

Ms. [redacted] traveling as far as Guatemala to find her after she fled. Exh. 3, Tab B, ¶ 21.
Mr. [redacted] used to tell Ms. [redacted] that she would never be rid of him and that he would look for her until he killed her. There is strong circumstantial evidence that Mr. [redacted] is himself is a member of MS-13, but even if he is not, the record is very clear that he has close connections with the gang and a demonstrated ability to call in favors from gang members. See, e.g., *id.* ¶¶ 8, 17. UNHCR has noted that due to El Salvador's small size and the nationwide reach of MS-13, "a viable [internal relocation alternative] is unlikely to be available to individuals at risk of being pursued by such actors." Exh. 3, Tab N, at 130; see also Exh. 3, Tab N, at 122 (discussing the predicament in which victims of domestic violence by gang members find themselves). In many cases, targets of gang threats looking to relocate internally "have little choice but to relocate to areas that are also controlled by gangs. If they move to an area controlled by the same gang, their problems are likely to follow them to the new location," whereas if they move to territory controlled by a rival gang, they may face new problems from the rival gang as perceived sympathizers of the original gang. Exh. 3, Tab N, at 111-12; see also Exh. 3, Tab M, at 65 (gangs created a "climate of fear" across "many neighborhoods" in El Salvador that the authorities were not able to remedy). Having considered all the evidence, the Court finds the DHS has not met its burden to prove a reasonable internal relocation alternative. Thus, the presumption that Ms. [redacted] has a well-founded fear of persecution on account of a protected ground remains un rebutted.

6. Discretion

Once an applicant has shown statutory eligibility for asylum, the Court will consider whether to grant or deny asylum in its discretion. 8 C.F.R. § 1208.14(a); see also INA § 208(b)(1)(A); *Cardoza-Fonseca*, 480 U.S. at 427-28, *Pula*, 19 I&N Dec. at 473. A decision to deny asylum as a matter of discretion should be based on the totality of the circumstances. See *Pula*, 19 I&N Dec. at 473. The Fourth Circuit has recognized that discretionary denials of asylum are "exceedingly rare" and require "egregious negative activity by the applicant." *Zuh v. Mukasey*, 547 F.3d 504, 507-14 (4th Cir. 2008) (quoting *Huang v. INS*, 436 F.3d 89, 92 (2d Cir. 2006)). In *Zuh*, the Fourth Circuit provided a non-exhaustive list of factors the Court should consider as part of the "totality of the circumstances analysis." *Id.* at 511. The Court is not required to "analyze or even list every factor," but must demonstrate it has "reviewed the record and balanced the *relevant* factors and must discuss the positive or adverse factors" supporting the decision. *Id.* (citing *Casalena v. INS*, 984 F.2d 105, 107 (4th Cir. 1993) and *Matter of Marin*, 16 I&N Dec. 581, 585 (BIA 1978)) (emphasis in original).

Having considered the totality of the circumstances and all relevant factors, the Court will grant Ms. [redacted]'s application for asylum in its discretion. She has a well-founded fear of persecution on account of membership in a particular social group in El Salvador, as discussed above. Granting her application will ensure family unity by (1) allowing [redacted] and [redacted] to receive asylum as her derivatives, and (2) allowing all of the respondents to stay in the United States where Ms. [redacted]'s parents and some of her siblings reside. See Exh. 3, Tab B, ¶ 24. Ms. [redacted] has filed taxes in the United States. *Id.*: Exh. 4, Tab A, at 4; Exh. 3, Tab L. She has no known criminal history. See Exh. 3, Tab B, ¶ 24. Her former domestic employee attests that she is "an excellent person, [e]ducated, [i]friendly, [i]ntelligent, with desires of overcoming." Exh. 3, Tab G, at 35; accord Exh. 3, Tab J, at 44 (affidavit of [redacted] also praising Ms. [redacted]'s character); Exh. 3, Tab K, at 45. The only negative

and he therefore felt entitled to exert total dominion and control over her. He regarded her consent to a continuing relationship as unnecessary, even irrelevant. He refused to move out despite her repeated requests that he do so. In fact, he used to tell her she would never be rid of him. Exh. 3, Tab B, ¶ 9. He abused her casually and openly, with no expectation of any consequences. The Court finds at least one central reason he treated her this way was that he knew she would have no recourse and no meaningful way to leave him no matter how terribly he treated her. *See Zavaleta-Policiano*, 873 F.3d at 247. Whatever other reasons may have motivated his conduct, her membership in the aforementioned particular social group was more than an incidental or superficial reason for his abuse and threats. *Id.* Accordingly, she has met her burden of proving the requisite nexus between the persecution and a protected ground. *Id.*

5. *Rebuttable Presumption of Well-Founded Fear of Future Persecution*

Because Ms. _____ has demonstrated 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). The DHS bears the burden of rebutting this presumption by proving by a preponderance of the evidence that either: (1) there has been a fundamental change in circumstances such that she no longer has a well-founded fear of persecution in El Salvador on account of one of the enumerated grounds; or (2) she could avoid future persecution by relocating to another part of El Salvador and under the circumstances, it would be reasonable to expect her to do so. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B); *see also* 8 C.F.R. § 1208.13(b)(3)(ii) (where the government is the persecutor, or where past persecution is established, internal relocation is presumptively unreasonable).

a. *Fundamental Change in Circumstances*

The DHS has not shown a fundamental change in circumstances that rebuts the presumption of a well-founded fear of future persecution. Mr. _____'s death threats continued even after he returned from his trip to Guatemala looking for Ms. _____. *See* Exh. 3, Tab I, at 41. Since she arrived in the United States, he has called and texted her repeatedly, accusing her of living with another man. Exh. 3, Tab B, ¶ 22. One such text message said: "First, your husband. Second, you. Accidents happen. Get flowers and be prepared to meet the Saint of Death." *Id.* Mr. _____ recently asked Ms. _____'s sister in El Salvador "where . . . that son-of-a-bitch" was. *Id.* ¶ 23. The DHS has offered no evidence to suggest that Mr. _____'s interest in harming Ms. _____ has subsided or abated. Nor have the Salvadoran government's efforts to address violence against women fundamentally changed the situation on the ground. Violence against women, including domestic violence, remains "a widespread and serious problem" across El Salvador. Exh. 3, Tab M, at 72; *see* Exh. 3, Tab Q, at 150 (a quarter of all Salvadoran women have been victims of sexual or physical violence). The Court finds the DHS has not met its burden of proving a fundamental change of circumstances overcoming the presumption that Ms. _____ has a well-founded fear of persecution.

b. *Internal Relocation*

The DHS also has not established that internal relocation would be a safe and reasonable alternative for Ms. _____. Mr. _____ already has gone to great lengths to pursue

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consideration is her entry without inspection, but this factor does not outweigh her many positive equities. In short, this is not the exceedingly rare case in which a discretionary denial is warranted. The Court grants Ms. [redacted]'s asylum application in its discretion.

V. CONCLUSION

Ms. [redacted] has shown she suffered past persecution on account of her membership in a particular social group, and she thus benefits from a presumption that she has a well-founded fear of persecution on the same basis. The DHS has not rebutted that presumption. Because she merits a favorable exercise of discretion, the Court grants her application for asylum. The Court also grants [redacted]'s and [redacted]'s applications for asylum as her derivatives. The Court need not address Ms. [redacted]'s alternative theories of relief, nor does it reach any other applications for relief.

Accordingly, the Court enters the following orders:

ORDERS

It Is Ordered That:

[redacted]'s application for asylum under INA § 208 is **GRANTED**.

It Is Further Ordered That:

[redacted]'s application for derivative asylum under 8 C.F.R. § 1208.21 is **GRANTED**.

It Is Further Ordered That:

[redacted]'s application for derivative asylum under 8 C.F.R. § 1208.21 is **GRANTED**.

21 Mar 19
Date


Vance H. Spath
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 calendar days from the date of service of this decision.