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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1961 STOUT STREET, SUITE 3101
DENVER, COLORADO 80294

In the Matters of:

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IN REMOVAL
PROCEEDINGS

Respondents.

File Nos.:

CHARGE: Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA or the Act), as amended, in that at the time of application for admission, the alien was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document as required by the Act.

APPLICATIONS: Asylum pursuant to INA § 208; Withholding of Removal pursuant to INA § 241(b)(3); Relief under the United Nations Convention Against Torture (CAT) pursuant to 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18.

ON BEHALF OF RESPONDENT:
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ON BEHALF OF THE DEPARTMENT:
Cara Cutler, Assistant Chief Counsel
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12445 East Caley Avenue
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WRITTEN DECISION

I. Facts and Procedural History

(Lead Respondent) is a thirty-two-year-old native and citizen of Mexico. Lead Respondent and her two daughters, and [redacted] also party to these proceedings (collectively referred to as "Respondents"), applied for admission to the United States on [redacted] at the [redacted] port of entry. Exhibits 1, 1a, 1b (Notices to Appear) (NTAs). They did not

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then possess valid entry documents. *Id.* Lead Respondent expressed fear of returning to Mexico, and on [redacted], an Asylum Officer (AO) interviewed her and found her fear credible. Exhibit 2 (Credible Fear Worksheet). Accordingly, the Department of Homeland Security (DHS or the Department) served Respondents with NTAs, charging them as inadmissible to the United States under section 212(a)(7)(A)(i)(I) of the Act. Exhibits 1, 1a, 1b. On [redacted], the Department filed Respondents' NTAs with the immigration court, which in turn served Respondents with Notices of Hearing on [redacted], thereby vesting jurisdiction with the Court and initiating removal proceedings. 8 C.F.R. § 1003.14; *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018).

On [redacted], Lead Respondent filed a Form I-589, Application for Asylum and for Withholding of Removal (I-589), listing her children as derivative applicants under section 208(3)(a) of the Act.¹ On [redacted] Respondents, through counsel, admitted the allegations in their NTAs and conceded the charge of removability. The Court directed Mexico as the country of removal, should removal be necessary. Lead Respondent appeared for a merits hearing on [redacted], and testified in support of her application. Lead Respondent's mother, [redacted], also testified on Lead Respondent's behalf. The Department did not call any witnesses.

For the reasons set forth below, the Court grants Respondent's I-589 application.

II. Documentary Evidence

The Record of Proceeding includes fifteen exhibits. The Court has given thorough consideration to all evidence submitted, regardless of whether that evidence is specifically named in this decision.

III. Testimony

As the Court finds Lead Respondent and her mother credible, it presents their testimony here in narrative form.

A. Lead Respondent's Testimony

Lead Respondent grew up in [redacted] Mexico. In [redacted], she came to the United States to attend [redacted] in [redacted]. While in the United States, Lead Respondent had two children, though she did not marry their father. After Lead Respondent graduated [redacted] and she returned to Mexico with her children to study [redacted] college. However, she was forced to drop out [redacted] when her son, who was less than [redacted] year old at the time, became ill.

Around this time, in [redacted], Lead Respondent met [redacted] and began a relationship with him. Initially, he was respectful, kind, and courteous with her and her children. On [redacted], Lead Respondent moved in with [redacted]. Shortly thereafter, she learned she

¹ Respondent's daughters have not filed independent I-589s.

B. Testimony

is Lead Respondent's mother. first learned that was abusing Lead Respondent when one of the women who cared for Lead Respondent's children told her. Lead Respondent had not told her about the abuse because she was afraid of , but eventually witnessed verbally and physically abuse Lead Respondent. also assaulted directly on one of the occasions when Lead Respondent tried to leave him. accompanied Lead Respondent to pack some clothes. On that occasion, took Lead Respondent's daughter, , out of arms. They called the police, but one of the local officers who responded to the call was cousin, so he did not do anything. spoke to the cousin, and threatened to call the non-local police if did not return. This prompted the cousin to speak with and tell him to return the because he had kidnapped her. confirmed that no one arrested or reprimanded

also explained that her daughter made many police reports, and confirmed that the police would not turn those reports over to her unless Lead Respondent collected them in person. stated that she never saw the police respond to any of Lead Respondent's complaints. After Lead Respondent left Mexico, called and told her that he wanted his daughters, and if Lead Respondent returned to Mexico, he would kill her.

IV. Asylum

Asylum is a discretionary form of relief available to aliens physically present or arriving in the United States, who apply for relief in accordance with sections 208 or 235(b) of the Act. INA § 208(a)(1); *see INS v. Cardoza-Fonseca*, 480 U.S. 421, 444 (1987).

A. Timeliness – One Year Asylum Deadline

To be eligible for asylum, an applicant must demonstrate by clear and convincing evidence that she filed her asylum application within one year of her last entry into the United States. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)(i). Lead Respondent arrived in the United States on , and filed her asylum application on . Therefore, her application is timely.

B. Credibility and Corroboration

In all applications for asylum and withholding of removal, the Court must make a threshold determination of the applicant's credibility. INA §§ 208(b)(1)(B)(ii)-(iii), 241(b)(3)(C); *Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). The applicant's testimony, standing alone, may be sufficient to meet the burden of proof if it is credible, persuasive, and probative of facts sufficient to demonstrate that the applicant is a refugee. *Id.*; *see also* INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.13(a); *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989). Testimony is not credible if it is inconsistent, inherently improbable, or contradicts current country conditions. *Matter of S-M-J-*, 21 I&N Dec. 722, 729 (BIA 1997). The following factors

may be considered in assessing the applicant's credibility: demeanor, candor, responsiveness, inherent plausibility of the claim, the consistency between oral and written statements, the internal consistency of such statements, the consistency of such statements with evidence of record, and any inaccuracy or falsehood in such statements, regardless of whether it goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii); *Matter of J-Y-C-*, 24 I&N Dec. 260, 262 (BIA 2007); *Matter of S-B-*, 24 I&N Dec. 42, 43 n.1 (BIA 2006). In some cases, the applicant may be found credible even if she has trouble remembering specific facts or there is ambiguity regarding an aspect of her claim. *See, e.g., Matter of B-*, 21 I&N Dec. 66, 70-71 (BIA 1995); *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998).

The Court finds that both Lead Respondent and testified credibly. Their testimony remained consistent during direct and cross-examination and conformed to the information provided in Lead Respondent's application for relief. Additionally, Lead Respondent's testimony was consistent with . Though Lead Respondent described an incident in her affidavit that she did not describe during her testimony, an occasion when hit her so hard she passed out and woke up undressed in the bed, this omission does not undermine her credibility considering how often beat her. *Matter of A-S-*, 21 I&N Dec. 1106, 1109-10 (BIA 1998) (minor and isolated discrepancies in the applicant's testimony are not necessarily fatal to credibility). Similarly, although there were some minor inconsistencies in dates between her testimony and her statements to the AO who interviewed her, they are not significant enough to make Lead Respondent not credible. The Court also had an opportunity to observe Lead Respondent's and demeanor and other nonverbal indicators, and their testimony appeared authentic and genuinely based in fact. Thus, upon careful consideration of the facts of record and the witnesses' testimony, the Court finds Lead Respondent and credible.

C. Refugee Status

An asylum applicant bears the burden of proving that she is a "refugee" as defined in section 101(a)(42) of the Act. INA § 208(b)(1); 8 C.F.R. § 1208.13(a). This requires the applicant to prove that she is outside her country of nationality and is unable or unwilling to return to or avail herself of that country's protection because she has suffered past persecution or has a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42); *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 230 (BIA 2014).

1. *Past Persecution*

An applicant who can demonstrate that she suffered past persecution on account of a protected ground is entitled to the presumption that she has a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). An applicant alleging past persecution must establish that: (1) she suffered harm rising to the level of persecution; (2) the persecution was on account of a protected ground; and (3) the persecution was committed by the government or by a force the government is unable or unwilling to control. *Id.*

a. Severity of Harm

To qualify for asylum based on past persecution, an applicant must show that the harm she suffered rose to the level of persecution. 8 C.F.R. § 1208.13(b)(1). Persecution is a threat to life or freedom or the infliction of suffering or harm upon those who differ, in a way that is regarded as offensive. *Woldemeskel v. INS*, 257 F.3d 1185, 1188 (10th Cir. 2001); *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). In order for such acts to rise to the level of persecution, they must be “more than just restrictions or threats to life and liberty.” *Woldemeskel*, 257 F.3d at 1188; see also *Hayrapetyan v. Mukasey*, 534 F.3d 1330, 1337 (10th Cir. 2008). In determining whether an applicant experienced harm constituting persecution, the Court considers incidents in the aggregate. See *Hayrapetyan*, 534 F.3d at 1337-38; see also *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998).

The harm Lead Respondent experienced in Mexico consisted of threats, recurring physical and verbal assaults, and the kidnapping of her child. These incidents occurred throughout her relationship with [redacted], from [redacted] [redacted] regularly threatened to take Lead Respondent’s children away from her, and told her she could never leave him. He hit her face, pulled her by the hair, and pushed her onto the ground while she was pregnant, causing her to develop a blood clot on her uterus. On one occasion, he hit her in the face so badly that her wounds took a week to fade. On another occasion, he hit her so hard in her chest that she passed out and did not regain consciousness until the next morning, when she woke to find herself undressed in the bed. Finally, on at least two occasions, [redacted] took one of Lead Respondent’s daughters away from her and refused to return the child until persuaded to by others. On each of the three occasions that Lead Respondent attempted to escape [redacted], he tracked her down and forced her to return to their home in [redacted]. [redacted] also isolated Lead Respondent, preventing her from working or finishing her college degree, and physically and verbally abusing her when she left the house without his permission. He tried to separate her from her family members as well. He once beat up Lead Respondent’s brother, and threatened her family members after she arrived in the United States.

The Court finds that the harm Lead Respondent experienced rises to the level of persecution. [redacted] severely and repeatedly beat Lead Respondent, and refused to let her leave him. Further, he repeatedly threatened to take Lead Respondent’s children away from her, and one time, he actually did. During the incident that caused Lead Respondent to flee Mexico, [redacted] almost choked her to death. Had her daughter not intervened, [redacted] might have succeeded in killing Lead Respondent. He repeatedly told her she could never leave him, and fulfilled this promise by finding her every time she tried to leave. [redacted]’s beatings caused so much damage that Lead Respondent’s friends and family members noticed and encouraged her to leave him. However, he isolated her so successfully that she could not escape. His beatings were also accompanied by verbal abuse, as he regularly humiliated her and told her she was alone. In sum, while each incident alone might not have risen to persecution, when taken together, they easily meet this high threshold. *Hayrapetyan*, 534 F.3d 1330 (finding an asylum applicant’s cumulative harm, which included threats and beatings, constituted past persecution). The Court, therefore, finds that the threats, beatings, and injuries [redacted] inflicted on Lead Respondent rise to the level of persecution as contemplated under the Act.

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b. Protected Ground

To establish past persecution, an asylum applicant must demonstrate that such persecution was “on account of” race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.16(b); see *Elias-Zacarias*, 502 U.S. 478.

Lead Respondent argues that she was persecuted in Mexico on account of her membership in five particular social groups: “Mexican women”; “Mexican mothers”; “Mexican women in a domestic relationship who are unable to leave the relationship”; “Mexican mothers in a domestic relationship unable to leave the relationship”; and “Mexican women who favor women’s rights, equality, and autonomy.” To establish persecution on account of membership in a particular social group, an applicant must demonstrate the existence of a cognizable particular social group, her membership therein, and a nexus between her persecution and her membership in that group. *Matter of W-G-R-*, 26 I&N Dec. 208, 223 (BIA 2014). To be cognizable, a 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.” *M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014); see also *Rivera Barrientos v. Holder*, 658 F.3d 1222, 1229 (10th Cir. 2011).

i. Mexican women

First, Lead Respondent argues that [redacted] persecuted her on account of her membership in the particular social group defined as “Mexican women.” The Board and the Tenth Circuit Court of Appeals have left open the question of whether “women” in a particular country, without any other defining characteristics, can constitute a particular social group. See *Lopez v. Sessions*, Nos. 17-9517 & 17-9531, 2018 WL 3730137 (10th Cir. Aug. 6, 2018) (unpublished) (McKay, J., dissenting) (asserting that Tenth Circuit case law has “left open the possibility that gender alone could be sufficient to satisfy the immigration standard [of a protected ground]”).

In *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), *abrogated by Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018), the Attorney General breathed new life into the analysis of whether gender-based persecution among private individuals may serve as the foundation of a particular social group. *A-B-*, however, only considers gender-based persecution at the intersection of domestic violence, specifically where a man abuses a woman as part of a personal, often intimate, relationship. In doing so, it avoids addressing the most common form of gender-based asylum claims, where a woman faces persecution for no other reason besides her status as a woman, regardless of whether she is in an intimate relationship. Accordingly, while *A-B-* extrapolates on the viability of gender-based asylum claims between private parties in domestic relationships, it does not address whether societal, gender-based violence is alone sufficient for women in a particular country to constitute a cognizable social group under the Act. Moreover, *A-B-* does not and cannot change the ultimate inquiry in cases such as this: “[T]he focus with respect to such claims should not be on whether either gender constitutes a social group (which both certainly do) but on whether the members of that group are sufficiently likely to be persecuted that one could say that they are persecuted ‘on account of’ their membership.” *Niang v. Gonzalez*, 422 F.3d 1187, 1199-200 (10th Cir. 2005) (quoting INA § 101(a)(42)(A)).

The unfortunate reality is that many countries marginalize women as second-class citizens. Sometimes this occurs through laws that grant men and women different rights, and in other instances religion or long-established cultural traditions relegate women to inferior social statuses. Where a society institutionalizes laws that permit violence against women or holds women and men in unequal standing, there is no reason why gender or sex should not align with the definition of a “refugee” and be treated as tantamount to the broad, protected classes of race, religion, and political opinion. In the years since 1951, when the Refugee Convention was drafted, significant developments in women’s rights have reshaped the way women are treated in many parts of the world. In fact, most countries have taken steps to recognize and respond to the challenges women face in male-dominated societies. *See, e.g.,* United Nations Human Rights Commission, Convention on the Elimination of All Forms of Discrimination Against Women (1979) (committing to eliminate gender-based discrimination worldwide); Civil Rights Act of 1964, 42 U.S.C. § 2000e (1964) (prohibiting discrimination on the basis of sex in the United States). Indeed, if the Refugee Convention were drafted in more modern times, it likely would have recognized gender and sex as distinct classes as it did race, religion, nationality, and political opinion.

Nevertheless, even if “sex” or “gender” were codified as protected grounds, not all women would qualify as refugees, just as not all races, nationalities, or persons of a certain religious affiliation or political opinion are refugees. Most countries now recognize gender equality and condemn violence against women, by law if not in practice. Of course, there are some that do not, and the Court does not discount the possibility that “women” in certain countries, under certain situations, may constitute a cognizable social group without any additional defining characteristics. *See Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010) (acknowledging that “women in a particular country . . . could form a particular social group,” irrespective of other defining features, to conclude that “all women in Guatemala” is a cognizable social group). As such, the ultimate determination of whether “women” in a particular country constitute a cognizable social group requires a country-specific, fact-intensive analysis. There are some countries in which women are parceled out as a whole, irrespective of other defining characteristics, and subjected to misogynistic laws or customs that undermine their rights and condone gender-based violence. *See, e.g., Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005) (finding, based on country-specific circumstances in Somalia, that “Somalian females” constitutes a cognizable social group because persecution against women is “deeply imbedded in the culture throughout the nation and performed on approximately 98 percent of all females”); *Lopez*, 2018 WL 3730137, at *6 (McKay, J., dissenting) (“The record in this case strongly supports the conclusion that women in El Salvador face . . . persecution [‘on account of their membership in this particular, albeit large, social group.’]”).

Turning to the case at hand, the Court finds the social group defined as “Mexican women” cognizable. First, gender and nationality both constitute immutable characteristics that individuals cannot and should not be required to change. *See* INA § 101(a)(42) (listing nationality as a protected ground); *Acosta*, 19 I&N Dec. at 233 (listing sex as a paradigmatic example of a common, immutable characteristic).

Second, the group of Mexican women is sufficiently particular. A social group is particular if “the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.” *Matter of S-E-G-*, 24 I&N Dec. 579, 584 (BIA 2008). The terms used to describe the group must have commonly accepted definitions and defined boundaries within the society in which the group is a part, and may not be amorphous, overbroad, diffuse, or subjective. *M-E-V-G-*, 26 I&N Dec. at 239 (citing *Ochoa v. Gonzales*, 406 F.3d 1166, 1170-71 (9th Cir. 2005)). Though it is a large group, the term “women” has a commonly accepted definition in Mexico, as it does in most societies. In fact, Mexico has laws that apply specifically to women, suggesting that the term is discrete, and has legally definable boundaries. See Exhibit 6 at 26 (U.S. Dep’t of State, *Mexico 2017 Human Rights Report*(2018)) (DOS Report) (stating that “[a]ccording to the law, the crime of femicide is the murder of a woman committed because of the victim’s gender and is a federal offense punishable if convicted by 40 to 60 years in prison”). Moreover, women constitute a precise, albeit large, segment of society, and the term is neither vague nor amorphous.

Finally, the group composed of Mexican women is also socially distinct. To establish social distinction, there must be “evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.” *W-G-R-*, 26 I&N Dec. at 217. This inquiry must be individualized; whether a proposed group has the requisite social distinction “must be considered in the context of the country of concern and the persecution feared.” *Id.* at 586-87. Both the Board and the Tenth Circuit have stated that women tend to be viewed as a group by society. See *Niang*, 422 F.3d at 1199-200; *M-E-V-G-*, 26 I&N Dec. at 246 (“Social groups based on innate characteristics such as sex . . . are generally easily recognizable and understood by others to constitute social groups.” (quoting *Matter of C-A-*, 23 I&N Dec. 951, 959 (BIA 2006))). While such a large group may be diverse, this fact does not defeat Lead Respondent’s claim that in Mexico, a woman’s gender alone lands her in a category that determines her treatment. See *Niang*, 422 F.3d at 1199 (suggesting that a social group containing “half a nation’s residents” may be cognizable depending on the circumstances of their persecution).

Indeed, Lead Respondent has presented abundant evidence describing how women are treated as a group based on their gender. See Exhibit 6 at 26 (DOS Report stating that federal law criminalizes rape, domestic violence, and femicide, but the laws were often unenforced and resources for women victims were lacking); Exhibit 13 at 60 (Human Rights Watch, *Mexico* (2017)) (HRW Report) (“Mexican laws do not adequately protect women and girls against domestic violence.”); *id.* at 49 (Amnesty International, *Mexico 2017/2018*) (AI Report) (“Violence against women remained a major concern; new data showed that two third of women had experienced gender-based violence during their lives.”). Mexican society ascribes specific roles to women and men based exclusively on their gender, indicating that gender is a recognizable trait used to define and identify individuals. Exhibit 13 at 35 (Committee on the Elimination of Discrimination against Women, *Alternative Report on Violence against Women in Ciudad Juarez, Chihuahua, Mexico* (July 2018)) (CEDAW Report) (noting that patterns of violence against women in Mexico stem from “a culture of machismo and subordination of women” and “a culture of discrimination against women based in the erroneous conception of inferiority”). The existence of laws that protect women in Mexico does not undermine this particular social group; rather, it emphasizes that Mexican society views women as a group and

recognizes that it is a group in need of protection. *Cf. Hassan v. Gonzales*, 848 F.3d 513 (8th Cir. 2007) (concluding that “Somali females” is a cognizable social group, because of the overwhelming prevalence of institutionalized violence against Somalian women).

It is clear that Mexico is a country where women are broadly, as a group, subjected to persecution. Country conditions in Mexico demonstrate these circumstances. Gender-based violence is ubiquitous in Mexico. *See, e.g.*, Exhibit 6 at 26 (DOS Report stating that state laws in Mexico addressing domestic violence “largely failed to meet the required federal standards and often were unenforced” and stating that despite the existence of some shelters and justice centers, “the number of cases far surpassed institutional capacity”); Exhibit 13 at 52 (AI Report stating that “[g]ender-based violence against women and girls was widespread”); *id.* at 60 (HRW Report stating that “Mexican laws do not adequately protect women and girls against domestic and sexual violence” and noting that some laws “make the severity of punishments for some sexual offenses contingent upon the ‘chastity’ of the victim”). *See id.* Country condition reports illustrate universal inequality between Mexican men and women. *See, e.g.*, Exhibit 13 (multiple reports detailing endemic domestic violence and femicide, despite the laws on the books). Thus, as Lead Respondent has established that the group of “Mexican women” is immutable, particular, and socially distinct, the Court finds that it constitutes a cognizable particular social group.

ii. Mexican mothers

Lead Respondent claims that she is a member of a second social group: “Mexican others.” The Court, however, concludes that this group is not cognizable. While the record contains evidence that women as a whole are considered a particular social group, the evidence does not support the contention that Mexican mothers are considered socially distinct. Moreover, country conditions suggest that violence against women is widespread throughout the country regardless of whether women have had children. *See generally* Exhibit 13. Indeed, the Record reflects no laws pertaining to mothers in particular, as opposed to women in general. *Id.* Therefore, the Court concludes that Mexican mothers is not a cognizable social group.

iii. Mexican women or mothers unable to leave domestic relationships

Lead Respondent’s next proposed social groups are composed of both Mexican women and Mexican mothers who are in domestic relationships and unable to leave those domestic relationships. Domestic relationships can take many forms; thus, the group lacks the definable benchmarks necessary to satisfy the particularity requirement. Moreover, as with Mexican mothers, country conditions suggest that violence against women is widespread throughout the country regardless of whether women are in domestic relationships. *See generally* Exhibit 13. Thus, the evidence is insufficient to show that Mexican society views women unable to leave domestic relationships—or even women in domestic relationships—as a socially distinct group.

iv. Mexican women who believe in women’s rights

Lead Respondent’s fifth social group, “Mexican women who favor women’s rights, equality, and autonomy,” is also not cognizable. Like the previous social groups, this group is

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not particular, as it lacks clear or definable benchmarks to determine its membership. *M-E-V-G-*, 26 I&N Dec. at 239. The terms “women’s rights,” “equality,” and “autonomy” are all vague, subjective terms. Additionally, it is unclear what form “believ[ing] in” women’s rights would take; it could mean anything from actively and publicly promoting the advancement of women to, as here, desiring to obtain a college degree and work outside the home. Additionally, individuals who believe in women’s equality and autonomy may change the way they view those rights over time, and they may manifest their changing beliefs in different manners. Moreover, the group is not socially distinct, as the record contains insufficient evidence demonstrating whether Mexican society views women who believe in women’s rights as socially distinct. See generally Exhibit 13. As this social group is neither particular nor socially distinct, it is not cognizable for asylum purposes.

c. Nexus

The Court has concluded that “Mexican women” constitutes a particular social group for asylum purposes. However, Lead Respondent must also establish a nexus between her membership in that group and persecution. The Court will find a nexus between an applicant’s persecution and a protected ground if the protected ground is “at least one central reason” that motivated her persecutor to harm her. INA § 208(b)(1)(B)(i); see also *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-12 (BIA 2007). The protected ground cannot play a minor role in the persecution, nor can it be “incidental, tangential, superficial, or subordinate to another reason for harm.” *Karki v. Holder*, 715 F.3d 792, 800 (10th Cir. 2013) (citations omitted).

Here, Lead Respondent met her burden to show that [redacted] persecuted her on account of her membership in the particular social group of “Mexican women.” Lead Respondent’s testimony demonstrates that [redacted] behavior conforms to the predominant view of traditional gender roles in Mexico. As discussed above, a culture based on “machismo” and women’s inferiority persists throughout Mexico, despite Mexico’s apparent progress in enacting laws aimed at preventing and punishing domestic violence. See Exhibit 13 at 35 (CEDAW Report stating that the State of [redacted] admitted that crimes against women are “influenced by a culture of discrimination against women based in the erroneous conception of inferiority”); *id.* at 52 (AI Report stating that two thirds of Mexican women above age fifteen have experienced gender-based violence); *id.* at 60 (HRW Report stating that in some cases, the severity of punishments for sexual offenses depends on the victim’s “chastity”); *id.* at 141 (Nidia Bautista, *Justice for Lesvy: Indifference and Outrage in Response to Gender Violence in Mexico City*, North American Congress on Latin America (July 31, 2017)) (NACLA article) (describing the “pervasive government indifference toward violence against women in Mexico”); *id.* at 149 (Michelle Lara Olmos, *Ni una más: Femicides in Mexico*, Justice in Mexico (Apr. 4, 2018)) (citing a report concluding that “there has been little change to the overall cultural mindset, which marginalized women as ‘disposable’ and permeat[ed] gender-based violence, and ultimately, femicide”).

At every step, [redacted] actions were informed by Mexico’s traditional culture of machismo, and its deep-seated view of gender relations and a woman’s role in society. Cf. *A-B-*, 27 I&N Dec. at 339 (noting that an asylum applicant who’s claim is based on domestic violence must show that her partner “attacked her because he was aware of, and hostile to,” the particular

social group to which the applicant belonged). [redacted] comments and conduct show that he viewed himself as the man of the house, and believed that he could treat Lead Respondent as subordinate and inferior. He did not bother to hide his beatings from either the neighbors, his own family, or Lead Respondent's family. Moreover, he prevented Lead Respondent from working and from completing her education, repeatedly telling her that there was no need for her to work or continue her education, as "that's why he's the man of the house." Lead Respondent stated that [redacted] repeatedly humiliated her "to keep [her] in submission." In fact, he sabotaged her efforts to establish independence from him: he got her fired from her job by not letting her leave the car when he dropped her off, and he stopped paying the internet bill when she was trying to complete an online college degree. Moreover, [redacted] refused to let Lead Respondent transport herself; he insisted on driving her anywhere she needed to go, including to her father's funeral. He would not even accept favors from Lead Respondent's parents, because he "wanted to be the man." [redacted] also consistently told Lead Respondent that she could never leave him. However, he never imposed this treatment on any of Lead Respondent's children, supporting Lead Respondent's claim that [redacted] beatings resulted specifically from his views on women rather than from anger or a general desire to control all members of his family. [redacted] behavior demonstrates that he believed he and Lead Respondent both had specifically defined gender roles to fulfill, and he attempted to structure their life around those roles by beating her whenever she attempted to leave him, asserted her will, or violated her assigned gender role in any other way.

Lead Respondent's experience is exceptionally common throughout both Mexico and other Central American countries. See Exhibit 13 at 64-124 (United Nations High Commissioner for Refugees, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* (Oct. 2015)) (UNHCR Report) (describing accounts of women attempting to flee abusive, controlling men, and generally explaining that women bear the brunt of violence in the countries included in the report). The UNHCR Report states that "physical and sexual abuse was often accompanied by psychological abuse, including isolation, stalking, and threats to harm family members." *Id.* at 91. One Mexican woman stated that "a woman is worthless. It is as though your life is not worth anything," and another described being "beaten like a man" by her husband for several years and trying to flee repeatedly, but he always tracked her down. *Id.* at 83, 91. These experiences precisely mirror Lead Respondent's life with [redacted], and stem from common views on women and gender relations throughout Mexico and Central America as well.

Thus, in light of Lead Respondent's personal experiences and evidence in the Record pertaining to men's views of women and Mexico's patriarchal and machismo-based culture, the Court concludes that Lead Respondent has met her burden to show that her membership in the social group of Mexican women was one central reason for [redacted] continuous harm.

d. Government Involvement

To establish past persecution, an applicant must also demonstrate that she suffered persecution by the government, or by forces the government is unable or unwilling to control. *Wiransane*, 366 F.3d at 893. Here, Lead Respondent suffered harm at the hands of her domestic partner. Thus, she must establish that the Mexican government was unable or unwilling to protect her, as "[p]ersecution is something a government does,' either directly or indirectly by

being unwilling or unable to prevent private misconduct.” *A-B-*, 27 I&N Dec. at 319 (quoting *Hor v. Gonzales*, 400 F.3d 482, 485 (7th Cir. 2005)). “An applicant seeking to establish persecution based on violent conduct of a private actor ‘must show more than “difficulty . . . controlling” private behavior.’” *Id.* at 337 (quoting *Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005)). Additionally, “[t]he fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime . . . Applicants must show not just that the crime has gone unpunished, but that the government is unwilling or unable to prevent it.” *Id.* at 337-38.

The Court concludes that Lead Respondent has met this high burden. First, Lead Respondent’s testimony establishes that on not one, but multiple occasions, the police failed to intervene to help her. She testified that she called the police on several times, and her mother confirmed this. Sometimes, the police never responded to the call. Other times, the police showed up late, long after [redacted] had already left the house. On those occasions, they instructed Lead Respondent to call them when [redacted] returned; however, when she called them back, they never returned to her home or otherwise followed up with her. Moreover, on at least one occasion, Lead Respondent attempted to file a report with the police and they told her to return the next day “because [she] had come after office hours.” She indicated that the police wanted to take pictures and have her visit with the doctor and the psychologist to evaluate her mental state and her injuries, which suggests that the police understood the extent of her pain and suffering but sent her away anyway. And though she “managed to make a report . . . it was never processed because they lack the personnel.” The Court notes that Lead Respondent does not have any of the police reports she filed; however, Lead Respondent explained that the police refused to release the reports to her or anyone she authorized to retrieve the reports unless she appeared before them in person. This sort of bureaucratic obstructionism is consistent with a police system that is unwilling and unable to prevent violence against women. *See* Exhibit 13 at 89 (UNHCR Report noting, “Sometimes women were unable to report incidents and threats due to bureaucratic excuses”).

DHS repeatedly emphasized the one occasion when [redacted] kidnapped Lead Respondent’s child, who was a baby at the time, and the police helped her. Specifically, [redacted] kidnapped [redacted] and ran away with her to his brother’s house. Lead Respondent and her mother called the local police, and two officers responded to the call. However, one of the officers was [redacted] cousin, and he initially refused to help Lead Respondent. Eventually, Lead Respondent’s mother threatened to call the state police, which convinced [redacted] cousin to tell [redacted] to return the baby. This incident does not demonstrate that the government was willing and able to prevent [redacted] abuse. Importantly, though [redacted] was convinced to return the baby, he was not arrested, and the police took no report. Moreover, there is nothing to indicate that the police would have forced [redacted] to return the child if he did not agree to do so willingly. It is even possible that [redacted] gave in only because his cousin—a family member rather than an anonymous police officer—persuaded him to do so. Additionally, while the threat of calling the state police was effective in this one instance, nothing in the record speaks to what the state police would have done if they had been called. The Court is left with Lead Respondent’s account that, despite many calls to the police, they only helped her on one occasion, and then, only because her mother threatened to involve an external police force. Thus, the police consistently failed to protect Lead Respondent from [redacted] abuse. This systematic failure goes beyond a couple rogue

police officers' actions, and the Court will not speculate what a different police force might have done. *Cf. Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1078-80 (9th Cir. 2015) (concluding that torture committed by police officers in uniform were acting in an official capacity and it was not a defense that higher-up officials did not direct their torture and rape of a transgender woman); *Costa v. Holder*, 733 F.3d 13, 17-18 (1st Cir. 2013) (concluding that two rogue police officers do not constitute government action).

Even if the Court engaged in such speculation, however, evidence about country conditions in the Record confirms that Lead Respondent's experience is not unique. Instead, the evidence reveals a police force riddled with incompetence, lack of resources, and corruption, whose members reflect the broader cultural realities of machismo and women's inferiority. Such a police force thoroughly undermines the laws Mexico has enacted to protect women. For example, though the DOS Report confirms that federal law prohibits rape, including spousal rape, and that the crime of femicide carries strict penalties and is a crime in all states, "[f]ederal law does not criminalize spousal abuse." Exhibit 6 at 26. Human Rights Watch reported that "Mexican laws do not adequately protect women and girls against domestic and sexual violence," Exhibit 13 at 60, and Amnesty International reported that the system of "Alerts of gender-based violence against women" active in twelve states "were not shown to have reduced gender-based violence against women and girls," *id.* at 52. In fact, one report notes, "Women may be equal to men according to enacted legislation, but women do not enjoy the same protections because those laws are consistently not enforced in instances of transgressions of women." *Id.* at 48 (CEDAW Report); *see also id.* at 83 (UNHCR Report stating that despite Mexico's laws aimed at protecting women, reporting remains low due to "authorities' ineffective approach to victims, and a perception that cases will not be prosecuted").

Indeed, impunity for perpetrators of gender-based violence remains the norm. Exhibit 6 at 3 (DOS Report noting that the government itself "estimated that 94 percent of crimes were either unreported or not investigated and that underreporting of kidnapping may have been even higher"), 13 ("[I]mpunity, especially for human rights abuses, remained a serious problem. The frequency of prosecution for human rights abuse was extremely low."); Exhibit 13 at 52 (AI Report stating that most cases of gender-based violence "were inadequately investigated and perpetrators enjoyed impunity"); *id.* at 135 (Vice News article reporting, "Although Mexico has the toughest prison sentences against a person charged with femicide in Latin America . . . the prospect of a long sentence is apparently not a deterrent to end the femicide wave. After all, crimes are rarely if ever investigated and punished in the country. In 2013, 93.8 percent of crimes were not prosecuted in Mexico, according to the 2014 National Survey on Public Security perception."); *id.* at 141 (NACLA article describing the "pervasive government indifference toward violence against women in Mexico"); *id.* at 148 (Justice in Mexico article quoting a United Nations human rights representative saying that Mexico's lack of federal response to rising femicide rates reinforces a culture of gender-based violence and that "[i]mpunity is very high so you cannot see the deterrent effect of the [femicide] sanction").

Moreover, resources for women victims of domestic violence are inadequate, particularly in the state of Exhibit 6 at 5 ("According to . . . the Center for Women's Human Rights . . . was one of the states with the highest numbers of enforced disappearances"), 26 ("State and municipal laws addressing domestic violence largely failed to meet the

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required federal standards and were often unenforced.”); Exhibit 13 at 45 (CEDAW Report stating that despite an extremely large case load of open investigations into crimes against women, [redacted] had dramatically insufficient staff and resources). Additionally, [redacted] was one of the last states to enact laws prohibiting femicide, and still has not enacted the warning system meant to prevent such murders before they occur. Exhibit 13 at 43, 46 (CEDAW Report stating that “[t]he State of [redacted] was the last to codify the crime of femicide,” and that [redacted] still “does not have an Alert for Gender-based Violence, although one exists on the federal level”); *id.* at 89 (UNHCR Report, “All of the women who said they reported persecution to the authorities in . . . Mexico stated that they received no protection or inadequate protection.”); *id.* at 134 (Vice News article stating, “[T]he lack of comprehensive data on women killings in Mexico is chronic. For example, [redacted] does not count women killings with extreme violence differently than other murders, as the state still lacks rules on the subject.”)

The Court also notes that although the police did not directly harm Lead Respondent in this case, police still regularly abuse women in Mexico. *See* Exhibit 6 at 10 (DOS Report listing cases of sexual exploitation of female prisoners throughout Mexico), 13 (detailing a 2006 incident where police took forty seven women into custody and sexually tortured them), 14 (reporting “widespread use of arbitrary detention by security forces”); Exhibit 13 at 88 (UNHCR Report recounting that “10 percent of the women interviewed stated that the police or other authorities were the direct source of their harm”); *id.* at 144-45 (NACLA article, “With the militarization of Mexican cities and the impunity encouraged by the political system, women have been targets of abductions, murder, disappearances, torture, arbitrary detention and criminalization in alarming numbers in the last three decades.”).

As abundant evidence in the Record reveals, despite recent advancements in legal protections, the de facto reality in Mexico still reflects a culture of discrimination and violence against women where police regularly fail or refuse to protect women, and even harm them directly. The Court cannot rely with blind faith on the existence of laws that protect women in name only while the evidence shows that officials continue to stand idly aside as women are abused and murdered with impunity. Thus, the Court finds that the Mexican government has proven unable or unwilling to protect Lead Respondent from [redacted] abuse.

2. *Well-Founded Fear of Persecution*

An asylum applicant who has suffered past persecution is presumed to have a well-founded fear of future persecution on the same grounds. 8 C.F.R. § 1208.13(b)(1). DHS may rebut this presumption by demonstrating either that there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in her home country, or that the applicant could relocate to another part of the country to avoid future harm, and it would be reasonable to expect her to do so. 8 C.F.R. §§ 1208.13(b)(1)(i)(A)-(B); *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 31 (BIA 2012). DHS bears the burden of rebutting this

presumption by a preponderance of the evidence. 8 C.F.R. § 1208.13(b)(3)(ii); *Matter of D-I-M-*, 24 I&N Dec. 448, 450 (BIA 2008).

As Lead Respondent has demonstrated that she suffered past persecution on account of her membership in the particular social group of Mexican women, she is entitled to a presumption of future persecution. To rebut this presumption, DHS presented only the DOS Mexico Human Rights Report. Exhibit 6. Indeed, the DOS Report describes efforts Mexico has made in recent years to protect women. *Id.* at 4 (noting the special prosecutor for violence against women opened ten cases as of [redacted], 26 (describing various state and federal laws Mexico has enacted to protect women). However, as described at length above, these laws have failed to mitigate violence against women, which remains ubiquitous throughout the country. *See, e.g.*, Exhibit 13 at 148 (Justice in Mexico report stating that [redacted] had “the third highest number of femicides in Mexico’s recorded history”). Moreover, Lead Respondent has presented evidence that [redacted] was repeatedly attempted to contact her since she left Mexico. *See* Exhibit 13 at 10-23 (print-outs of [redacted] attempts to contact Respondent through Facebook). Though she last heard from [redacted] in [redacted], [redacted] also repeatedly tried to contact her through her family members. Lead Respondent also credibly testified that [redacted] attempted to enter the United States to find her. [redacted] brother-in-law warned Lead Respondent about [redacted] plans, and Immigration and Customs Enforcement informed Lead Respondent when it returned [redacted] to Mexico after he attempted to enter the United States. Thus, the Court concludes that DHS has failed to demonstrate a fundamental change in circumstances regarding either the general treatment of women throughout Mexico, or [redacted] specific plans to seek out and harm Lead Respondent.

DHS has presented no evidence regarding Lead Respondent’s ability to relocate internally, and the Court concludes that it would not be reasonable for her to do so. Lead Respondent left [redacted] and moved to a different city at least twice, and [redacted] found her and forced her to return with him on both occasions. [redacted] located Lead Respondent on these occasions because he knows where her family lives throughout Mexico. In fact, [redacted] managed to locate Lead Respondent in the United States, which indicates that he has the incentive to track her down even far from home. While Lead Respondent might be able to relocate to a part of Mexico where she has no family, the Court finds that it would not be reasonable to expect her to do so. First, Lead Respondent has only a high school education, and never held a successful job in Mexico. Second, she would have no one to help her with her four children, two of whom are United States citizens, if she was forced to live far from her family. Finally, Lead Respondent explained that [redacted] job as a truck driver means that he drives all over Mexico, and could search for her throughout the country. He used other people’s social media posts to locate her at least twice, and could likely do so again. Thus, the Court finds that Lead Respondent could not safely relocate within Mexico.

In sum, DHS has not rebutted the presumption that Lead Respondent has a well-founded fear of persecution upon return to Mexico.

D. Conclusion

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Lead Respondent timely filed for asylum under the Act. Further, the Court found that she established through credible evidence that she suffered harm rising to the level of persecution on account of her membership in the particular social group of Mexican women by an individual that the government was unable and unwilling to control. DHS failed to rebut the resulting presumption that Lead Respondent has a well-founded fear of persecution upon her return to Mexico, as it failed to show changed circumstances or that she could safely relocate within Mexico. Thus, the Court finds Lead Respondent eligible for asylum under section 208 of the Act. The Court further finds Lead Respondent merits a favorable exercise of discretion, and will therefore grant her application. As the Court grants Lead Respondent's request for asylum, her daughters' derivative claims are also granted.

VI. Other Requested Relief

As the Court finds that Respondent is eligible for relief in the form of asylum under section 208 of the Act, it declines to analyze her eligibility for withholding of removal under section 241(b)(3) of the Act, and protection under the CAT.

Accordingly, the Court will enter the following orders:


ORDERS

IT IS ORDERED that Respondents' applications for asylum pursuant to section 208 of the Act are GRANTED.

It is FURTHER ORDERED that Respondent's minor daughters, riders in this proceeding, shall be granted derivative relief pursuant to section 208 of the Act.

IT IS FURTHER ORDERED that appeal is RESERVED on behalf of both parties.

3/7/19
Date



Eileen R. Trujillo
Immigration Judge