UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
FORT SNELLING, MINNESOTA

File Numbers: [redacted]

In the Matters of:

[redacted]

Respondents.

In Removal Proceedings

-NON-DETAINED-

Charge: INA § 212(a)(6)(A)(i) – an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

Applications: Asylum under INA § 208; Withholding of Removal under INA § 241(b)(3); and Protection under the Convention Against Torture.

ON BEHALF OF RESPONDENT:
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DECISION OF THE IMMIGRATION JUDGE

I. BACKGROUND

On February 4, 2014, the U.S. Department of Homeland Security (DHS) commenced removal proceedings against Lead Respondent [redacted] by filing the Notice to Appear (NTA), charging her as removable under the above-captioned Section of the Immigration and Nationality Act ("INA" or "the Act"). Ex. 1A. On December 16, 2013, the DHS commenced removal proceedings against Rider Respondent [redacted], and Rider Respondent [redacted], charging them as removable under the same above-

[redacted]

captioned section of the INA. Ex. 1B; Ex. 1C. Respondents admitted all factual allegations and conceded the sole charge of removability, which the Court sustained. Respondents declined to designate a country of removal, and the Court designated Honduras, should such action become necessary. Respondents filed the above-captioned forms of relief from removal.

Rider Respondents are Respondent's children and derivatives on all of her applications. As Respondents are a family, the Court originally consolidated their cases. However, the Court now severs Respondents' cases because U.S. Citizenship and Immigration Services (USCIS) approved the Special Immigrant Juvenile Status (SIJS) petitions for Rider Respondent [redacted] on October 10, 2020 and for Rider Respondent [redacted] on November 6, 2020. See EOIR Policy Manual, Chapter IV.21(b) (Jan 12, 2021) ("The immigration court may sever cases in its discretion. . . "). On August 2, 2021, Rider Respondents filed a joint motion to administratively close their proceedings based on their approved SIJS petitions. The Court granted this motion on August 19, 2021, as Rider Respondents await visa availability in order to adjust their status.

Lead Respondent has applied for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). Ex. 4A. For the reasons below, the Court now grants Respondent's application for withholding of removal.

II. EVIDENCE PRESENTED

A. Testimony

1. Respondent

Respondent testified about her life in Honduras, the domestic violence that she suffered at the hands of her ex-partner, her work in Honduras, her life in the United States, her family, and her fears of returning to Honduras.

2. Dr. Aaron Schneider

Respondent offered Dr. Aaron Schneider as an expert witness. Dr. Schneider testified about his qualifications and experience. He testified generally about country conditions in Honduras. He discussed women's rights issues, gangs, governmental corruption, and patriarchal and machista culture in Honduras.

B. Expert Qualification

"The sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair." Nyama v. Ashcroft, 357 F.3d 812, 816 (8th Cir. 2004) (quoting Espinoza v. INS, 45 F.3d 308, 310 (9th Cir. 1995)); Matter of D-R-, 25 I&N Dec.

445, 458 (BIA 2011). The traditional rules of evidence are not binding in immigration proceedings, except to the extent that due process is implicated. Zeah v. Holder, 744 F.3d 577, 581 (8th Cir. 2014) (quoting Lybesha v. Holder, 569 F.3d 877, 882 (8th Cir. 2009)). While the Federal Rules of Evidence are not binding, the BIA views them as providing "helpful guidance . . . because the fact that specific evidence would be admissible under the Federal Rules lends strong support to the conclusion that the admission of the evidence comports with due process." Matter of D-R-, 25 I&N Dec. at 458 n.9 (internal quotation marks and citation omitted). Evidence must comport with due process rights. INA § 240(b)(4)(B). Additionally, an "Immigration Judge may receive in evidence any oral or written statement that is material and relevant to any issue in the case." 8 C.F.R. § 1240.7(a).

According to the BIA, "[a]n expert witness is broadly defined as someone who is 'qualified as an expert by knowledge, skill, experience, training, or education'" and who has "'scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue.'" Matter of D-R-, 25 I&N Dec. at 459 (quoting Fed. R. Evid. 702). The Seventh Circuit has indicated that, although the Federal Rules of Evidence do not apply to administrative agencies, "the spirit of Daubert . . . does apply to administrative proceedings." Niam v. Ashcroft, 354 F.3d 652, 660 (7th Cir. 2004) (citing Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) (interpreting Fed. R. Evid. 702 and setting forth the rules for qualifying an expert witness in federal court)). Even if an Immigration Judge qualifies someone as an expert witness, the Immigration Judge may still decide the weight and persuasiveness of that testimony in light of all other evidence. See Dukuly v. Filip, 553 F.3d 1147, 1149-50 (8th Cir. 2009) (finding the Immigration Judge properly considered expert testimony and did not ignore it but, instead, found it unpersuasive when weighed against other evidence).

Dr. Aaron Schneider testified as an expert witness in this case. See Ex. 15A, Tab B at 52-61. The DHS had the opportunity to cross-examine the witness as to his qualifications. The DHS did not object to the classification of Dr. Schneider as an expert witness. The Court qualifies Dr. Schneider as an expert witness in Honduran country conditions, including Honduran culture, conditions of life, and governmental operations, procedures and processes.

Dr. Schneider discussed his qualifications in testimony and detailed them in his curriculum vitae and expert declaration. See Ex. 13A; Ex. 15A, Tab B at 52-61. Dr. Schneider is a Leo Block Chaired Professor at the Korbel School of International Studies at the University of Denver and Director of the Latin America Center at the University of Denver. Ex. 13A at 1; Ex. 15A, Tab B at 52. He recently finished a term as an Associate Dean of Academic Affairs at the University of Denver. See id. Dr. Schneider joined the University of Denver in 2012 as an Associate Professor and was promoted to full professor in 2019. See id. Dr. Schneider earned his Bachelors of Arts Degree from Brown University in 1993. See id. He earned his Masters Degree in Political Science from the University of California, Berkley

in 1995. See id. Dr. Schneider earned his PhD in Political Science in 2001 from the University of California, Berkley. See id.

Dr. Schneider's areas of expertise include Central America, Latin American, Brazil, India, Public Finance, and Urban Politics and Development. See id. He has served as a policy advisor for the Inter-American Development Bank in Washington D.C. and was assigned to the Honduras Ministry of the Presidency. See id. Dr. Schneider has traveled to Honduras many times. See id. Dr. Schneider serves on the board of the Central American Institute for Fiscal Studies, a think tank located in Honduras. See id. Dr. Schneider has taught at the National University in Tegucigalpa, Honduras. See id. Dr. Schneider wrote a book titled *State-building and Tax Regimes in Central America* that includes several chapters dedicated to Honduras. See id. In Immigration Court, Dr. Schneider has been offered as an expert in country conditions 17 times and has been offered as an expert specifically related to Honduras 6 times. He has never been rejected as an expert from an Immigration Court.

Dr. Schneider has specialized knowledge that assists the Court in understanding the evidence in the record, particularly as it relates to Respondent. Based on the above, the Court finds Dr. Schneider is qualified as an expert witness. The Court will give his testimony and written opinion the appropriate weight and consider them along with the rest of the evidence in the record.

C. Documentary Evidence

Ex. 1A: Form I-862, Notice to Appear, filed Sept. 20, 2018.
Ex. 2A: I-213, Record of Deportable/Inadmissible Alien, filed Sept. 20, 2018.
Ex. 3A: Motion to Withdraw, filed Aug. 19, 2016.
Ex. 4A: IJ Order of Sept. 9, 2016 granting Motion to Withdraw.
Ex. 5A: Respondent's Form I-589, filed Sept. 20, 2018.
Ex. 6A: Motion to Withdraw as Counsel, filed Sept. 17, 2018.
Ex. 7A: IJ Order of Sept. 19, 2018 Granting Motion to Withdraw.
Ex. 8A: I-213, Record of Deportable/Inadmissible Alien, filed Sept. 20, 2018.
Ex. 9A: Frivolous Asylum Filing Warning, filed Sept. 20, 2018.
Ex. 10A: Motion for Substitution of Counsel, filed June 25, 2020.
Ex. 11A: IJ Order of July 31, 2021 granting Motion to Substitute Counsel.
Ex. 12A: Respondent's Pre-Hearing Brief, filed March 1, 2021.
Ex. 13A: Respondent's Witness List, filed March 21, 2021.
Ex. 14A: Motion for Telephonic Testimony, filed March 1, 2021.
Ex. 15A: Respondent's Supporting Documentation, Tabs A-C (94 pages), filed March 1, 2021.
Ex. 16A: Respondent's Pre-Hearing Brief, filed Aug. 23, 2021.
Ex. 18A: Updated Pages to Form I-589 and Application for Relief (Form I-589 filed 9/26/2017), Tabs A-B, filed Aug. 23, 2021.

[redacted]

Ex. 19A: Motion to Supplement Record (Birth Certificates of Respondent's Children), filed Sept. 13, 2021.
Ex. 20A: Affidavits of [redacted] and [redacted] (in Spanish), filed Sept. 21, 2021.
Ex. 21A: Summary of Exhibit List.
Ex. 22A: U.S. Department of State, Honduras 2020 Human Rights Report[1]

III. CREDIBILITY

A. *Respondent*

It is the applicant's burden to satisfy the Court that his or her testimony is credible. See Fesehaye v. Holder, 607 F.3d 523, 526 (8th Cir. 2010). As the respondent's application was filed after May 11, 2005, the credibility provisions of the REAL ID Act govern. INA § 208(b)(1)(B); INA § 241(b)(3)(C). Consistent with the REAL ID Act, the following factors may be considered in assessing an 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, whether or not such inaccuracy or falsehood goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii); see also Matter of J-Y-C-, 24 I&N Dec. 260, 262–63 (BIA 2007). The testimony of the applicant, if credible, is sufficient to sustain the burden of proof without corroboration. 8 C.F.R. § 1208.13(a). To be credible, an applicant's testimony must be believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis of his or her fear. 8 C.F.R. § 1208.13(a). In determining whether the applicant has met his or her burden, the Immigration Judge (IJ) may weigh credible testimony along with other evidence of record. Where the IJ determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence. INA § 208(b)(1)(B)(ii).

Respondent's testimony was largely consistent with her prior written statements and applications. Respondent gave an account that was internally consistent and inherently

[1] As requested by the DHS, the Court takes administrative notice of the recently released 2020 U.S. Department of State Human Rights Report. See also 8 C.F.R. § 1003.1(d)(3)(iv) (stating the Court may take administrative notice of "commonly known facts such as current events or the contents of official documents."); Constanza-Martinez v. Holder, 739 F.3d 1100, 1102–03 (8th Cir. 2014) (stating both the Board of Immigration Appeals ("BIA" or "the Board") and the Immigration Judge (IJ) may take administrative notice of country conditions, provided the alien is given notice and an opportunity to respond); see, e.g., Matter of J-G-T-, 28 I&N Dec. 97, 105 (BIA 2020) ("Although the State Department country reports should not be given dispositive weight to the exclusion of all other country conditions evidence, the reports provide important evidence that should be given reasoned consideration."); Matter of H-L-H- & Z-Y-Z-, 25 I&N Dec. 209, 213 (BIA 2010) ("State Department reports on country conditions . . . are highly probative evidence and are usually the best source of information on conditions in foreign nations."). The Court will send a courtesy copy of the Report to the parties.

plausible. She was responsive and candid. In addition, Respondent's testimony was generally consistent with the evidence in the record. Therefore, the Court finds Respondent to be credible.

B. *Dr. Aaron Schneider*

The Court finds Dr. Schneider to be a credible witness. His testimony was consistent with his affidavit. His testimony was detailed and candid.

IV. FINDINGS OF FACT

Respondents' story

All Respondents are natives and citizens of Honduras. Ex. 1. Lead Respondent was born [redacted] 1984 in Santa Rosa de Copan, Copan, Honduras. Ex. 11 at 1. Rider Respondent Jairon was born on August 9, 2003 in Santa Rosa de Copan. Rider Respondent [redacted] was born on May 3, 2011 in Santa Rosa de Copan. Respondent's daughter, [redacted], in the United States.

Respondent's father is deceased. Respondent has two brothers, [redacted], who now live in Minnesota. Ex. 5A at 4. Respondent's mother lives in San Pedro Sula, Honduras. She has worked as a live-in housekeeper for the same family for more than 20 years. Since Respondent's mother worked as a live-in housekeeper, Respondent was unable to live with her mother during some of her childhood. As a teenager, Respondent lived with her aunts in Dulce Nombre, Copan, Honduras. Dulce Nombre is about three and a half hours by car from San Pedro Sula and approximately 30 minutes by car northwest of Santa Rosa de Copan.

Respondent met [redacted] in 2002 when she was approximately sixteen years old. The couple started dating. In total, Respondent and [redacted] were together for approximately 11 years, from 2002 to 2013. When Respondent met [redacted] she was attending high school at the time in Dulce Nombre.[2]

[redacted], a wealthy, powerful and well-connected family in Dulce Nombre. The family owned a lucrative livestock slaughtering business. [redacted] worked for his family in the horseshoeing business and would sometimes travel outside of Dulce Nombre with his father to buy cattle. Respondent described the [redacted] family as "traditional, machista, and patriarchal." See Ex. 14A, Tab B. The [redacted] family had a reciprocal relationship with corrupt police in the area. The family provided the police with money, gasoline and meat from their slaughterhouse and bribed the police to look the other

[2] Respondent also attended high school in San Pedro Sula and Comayuaga. See Ex. 5A; 18A.

way regarding any of their illegitimate business dealings or criminal matters. If the [redacted] members had trouble with the law, the police would be lenient with them. For example, on one occasion, [redacted]'s brother severely beat his wife, but [redacted]'s brother only spent a few days in jail as a result. On another occasion, [redacted]'s brother beat a local boy, [redacted], to death. No one in the [redacted] family reported the beating to the police.

The [redacted] also had family members who belonged to gangs. A cousin of the [redacted] was a gang member and began to live with the family because he was fleeing from the police in another part of the country. He had many tattoos, such as gravestones and crosses, and told Respondent that the tattoos meant he was a gang member who had killed someone. Respondent believes that [redacted] committed robberies in the town while he lived with the [redacted] family. [redacted] eventually left town.

Respondent began living with [redacted] and his family on the [redacted] property in 2002, when she became pregnant with the couple's son, [redacted]. [redacted] was born on August 9, 2003. [redacted] and Respondent rented a small house and later moved to a one-bedroom house on the [redacted] property that [redacted] had built. [redacted]'s father, mother, two brothers, one sister, and his brothers' wives all lived on the [redacted] property. Respondent soon discovered that the women living on the [redacted] property, including [redacted] mother, were physically and emotionally abused by their husbands. See Ex. 14A, Tab B at 4. Although Respondent was never legally married to [redacted] she was no exception to this pattern of abuse.

[redacted] had severe substance abuse problems. See Ex. 14A, Tab B at 5. [redacted] would be intoxicated with either alcohol or illicit drugs Thursday through Sunday. [redacted] spent most of his income on purchasing these substances, leaving Respondent as the sole provider for the family.

Against [redacted]'s wishes, Respondent continued with her studies and graduated from high school in Dulce Nombre in 2007. Her mother sent her money to complete her studies. See id. Respondent secured an internship with a company [redacted] after graduation, and the company offered her a job in sales after the internship. Respondent accepted the job and began working for the company. See Ex. 15A, Tab B at 63-64. Respondent worked for [redacted] from 2008 to 2013, eventually becoming the Head of Personnel. See id. Sometimes Respondent traveled to Santa Rosa de Copan for work.

[redacted] and his family disapproved of Respondent obtaining her degree and working outside of the home. [redacted] family scorned [redacted] for "permitting" Respondent to work outside the home. Nevertheless, Respondent continued to work. She used her income to pay for childcare during the day and food costs because she could not rely on [redacted] for any financial support.

became emotionally, physically, and verbally abusive with Respondent because she obtained her degree and continued to work against his wishes. He told Respondent that she needed to stay home like a "proper homemaker." made Respondent feel as if she were his property. He discouraged her from advancing in life. referred to Respondent as his "wife," even though the couple never legally married. He told Respondent that he felt shame at her success. He acted jealous of the children. insulted Respondent. He told her she was ugly. He raped her. See Ex. 14A, Tab B at 6. On one occasion, grabbed Respondent's hair and threw her against a wall, leaving her with a visible scar on her head. See Ex. 14A, Tab B at 39-47. also had a piece of firewood, which he used to hit Respondent's knee. Respondent's son, attempted to intervene to protect Respondent, but beat as well. Afterward, sister, who was a nurse, gave Respondent stiches without anesthesia.

Respondent's coworkers advised Respondent to leave the relationship. Respondent reported abuse to the police, but this greatly bothered -he only became more abusive. On one occasion, Respondent went to the police after receiving a beating from but followed her. The police did not do anything.

In 2011, after the birth of , badly beat Respondent. Respondent took the children and went to live with her aunts, but they did not stay with long with her aunt because her aunt had her own financial and familial woes. Respondent had to return to and he warned her that if she ever tried to leave him, she would not live to tell the tale. Respondent fled Honduras in December 2013.

If she moved to a different part of Honduras, Respondent believes that could find her through his family connections. Since being in the United States, has called Respondent's mother asking for Respondent's location. When sees Respondent's mother, he insults her. He told Respondent's mother that if she did not tell him where Respondent and the children were located, there would be consequences.

Respondent has heard that gang violence has increased in Honduras. She has heard there is an economic recession. Climate change has changed the country. Respondent does not want to return to Honduras.

Honduran Country Conditions

Dr. Schneider described Honduras as a "failed state." There is rampant corruption that extends all the way to the current president. Gangs have permeated every level of government. He described the Honduran state as ineffective at enforcing laws. Honduras has the highest murder rate in the world. The Honduran state, using paramilitary and off-duty police, engages in assassinations. Two elections have been stolen by the Nationalist Party since Respondents left Honduras in 2013. During election years, violence increases and opposition candidates can be assassinated.

Dr. Schneider described Honduras as a traditional and patrimonial society. Elite families have political power and control regions of the country. One family can control can entire town. Dr. Schneider described Honduras as a "small large town," where one is quickly identified as an outsider. Due to the extensive network of the gangs, if the gangs want to find someone they can.

In 1990s, all of the countries composing Latin America created cabinet positions for women's rights issues. However, Honduras demoted that cabinet position to an agency. Dr. Schneider described gender relations in Honduras as patriarchal or "machismo"—a system of power and rights where males have more power and females have less. Female illiteracy is high. Women earn less money than men. Dr. Schneider testified that violence against women is rampant. Honduras is fifth in the world for femicide. One third of Honduran women report intimate partner violence. Gangs often use the patriarchy to control people. Domestic violence and rape is not often prosecuted. There are laws against domestic violence in Honduras, but the laws are not enforced. See Ex. 15A, Tab C at 1-26.

V. RELIEF

A. Asylum under INA § 208

1. *One-Year Filing Limitation*

i. Legal Standard

An applicant must demonstrate by clear and convincing evidence that his or her asylum application has been filed within one year of arrival in the United States. INA § 208(a)(2)(B). If the applicant filed more than one year after his or her arrival in the United States, he or she must show either the existence of "changed circumstances" which materially affect his or her eligibility for asylum or that "extraordinary circumstances" prevented him or her from filing in a timely manner. INA § 208(a)(2)(D). The applicant bears the burden of proving to the satisfaction of the IJ that he or she qualifies for an exception to the one-year deadline. 8 C.F.R. § 1208.4(a)(2)(i)(B).

Changed circumstances may include changes in country conditions or changes in the applicant's personal circumstances. 8 C.F.R. § 1208.4(a)(4)(i)(A)–(B); see also Degbe v. Sessions, 899 F.3d 651, 654 (8th Cir. 2018) ("[C]hanged circumstances, such as an alteration in country conditions that creates eligibility for asylum where it was previously absent, can extend that deadline."). An applicant has a "reasonable period" to file his or her application after such changed circumstances occur. 8 C.F.R. § 1208.4(a)(4)(ii). If the applicant can establish that he or she did not become aware of the changed circumstance until after it occurred, the Court must take that into account in evaluating whether the applicant filed within a reasonable period. Id. The BIA has held that filing an asylum

application six months beyond the changed circumstances would be presumptively unreasonable. Matter of T-M-H- & S-W-C-, 25 I&N Dec. 193, 193 (BIA 2010). The Eighth Circuit has indicated that waiting nine months to file an asylum application after learning of changed circumstances is not a "reasonable time." See Goromou v. Holder, 721 F.3d 569, 573–79 (8th Cir. 2013). In Goromou, the respondent was aware that he had violated his nonimmigrant status and aware of the changed country conditions during that nine-month period. See Goromou, 721 F.3d at 571–73.

Extraordinary circumstances are events or factors that caused the failure to meet the one-year deadline. 8 C.F.R. § 1208.4(a)(5). To show an extraordinary circumstance, the applicant must show "that the circumstances were not intentionally created by the alien through his or her own action or inaction, that those circumstances were directly related to the alien's failure to file the application within the 1-year period, and that the delay was reasonable under the circumstances." Id. Examples include serious illness, mental or physical disability, ineffective assistance of counsel, and maintaining lawful status or parole until a reasonable period before the filing of the asylum application. See 8 C.F.R. § 1208.4(a)(5)(i)–(vi). This list is illustrative but not exhaustive. 8 C.F.R. § 1208.4(a)(5).

ii. Analysis

Respondent has not met her burden to show, to the satisfaction of this Court, that she qualifies for an exception to the one-year filing deadline because of "extraordinary circumstances."

Respondent last arrived in the United States on or about December 16, 2013. Ex. 1A. She filed her asylum application on September 26, 2017. Ex. 5A. Because Respondent's asylum application was filed more than one year after her arrival to the United States, she must show one of the two aforementioned exceptions to the one-year bar apply.

Respondent argues she merits an exception to the filing deadline due to extraordinary circumstances consisting of ineffective assistance of counsel. See Ex. 16A. Specifically, Respondent argues that she was unaware that her previous pro bono counsel had withdrawn from representing her. Ex. 16A at 23. Yet, to date, the record does not reflect that Respondent filed a Lozada claim against her former counsel. See Matter of Lozada, 19 I&N Dec. 637 (BIA 1988). While ineffective assistance of counsel may constitute an exceptional circumstance, here, Respondent has not offered evidence showing she has fulfilled the procedural requirements set forth in Matter of Lozada that are necessary to prove ineffective assistance of counsel. Matter of Lozada, 19 I&N Dec. 637 (BIA 1988); see also Valencia v. Holder, 657 F.3d 745, 748 (8th Cir. 2011). Consequently, Respondent has not demonstrated extraordinary circumstances on this basis to justify her delay in applying for asylum.

[redacted]

In her I-589 application, Respondent argues she merits an exception to the filing deadline due to extraordinary circumstances consisting of the birth of her daughter, [redacted] on April 12, 2017. See Ex. 5A. Specifically, Respondent states that it was difficult for her to complete the four-hour drive to her attorney's office during her pregnancy and post-partum period. Ex. 5A at 8. While the Court recognizes the birth of a child may be a life event rising to the level of an exceptional circumstance, the Court notes that Respondent entered the United States on December 16, 2013, more than three years before Alexandra was born. In addition, Respondent attended a master calendar hearing at the Fort Snelling Immigration Court on August 4, 2014, but still did not file her asylum application until September 26, 2017. Ex. 5A. Respondent has not provided a compelling reason for why she did not file her asylum application during the more than three years before the birth of Alexandra. Therefore, the Court finds Respondent has not shown an extraordinary circumstance affecting her ability to timely file her application. INA § 208(a)(2)(D).

In sum, as Respondent's asylum application was filed more than one year after her arrival in the United States, the one-year filing limitation applies. Respondent has not demonstrated that an exception to the one-year bar applies. Thus, the Court denies Respondent's application for asylum. See INA § 208(a)(2)(B).

B. Withholding of Removal under INA § 241(b)(3)

1. *Legal Standard*

To establish eligibility for withholding of removal, an applicant must show that there is a "clear probability" that the applicant's life or freedom would be threatened on account of the applicant's race, religion, nationality, membership in a particular social group, or political opinion. See INA § 241(b)(3)(A), (C); Antonio-Fuentes v. Holder, 764 F.3d 902, 904 (8th Cir. 2014). Put another way, withholding of removal will be granted only if an applicant proves that it is more likely than not that the applicant would be persecuted upon return to his or her country of origin. Goswell-Renner v. Holder, 762 F.3d 696, 700 (8th Cir. 2014). The "clear probability" standard for withholding of removal is significantly more stringent than required for asylum. See INS v. Cardoza-Fonseca, 480 U.S. 421, 430–31 (1987); Ladyha v. Holder, 588 F.3d 574, 579 (8th Cir. 2009).

Although the protected ground does not need to be the sole reason for the persecution, it must be "at least one central reason." Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 212–14 (BIA 2007); see also Garcia-Moctezuma v. Sessions, 879 F.3d 863, 867 (8th Cir. 2018). There is insufficient evidence to show a proper nexus where the protected ground plays only "a minor role in . . . past mistreatment" or is "incidental, tangential, superficial, or subordinate to another reason for harm." Matter of J-B-N- & S-M-, 24 I&N Dec. at 212. "The applicant's protected status must be both a but-for cause of [the] persecution and it must play more than a minor role that is neither incidental nor tangential to another reason

for the harm or a means to a non-protected end." Matter of A-B-, 28 I&N Dec. 199, 211 (A.G. 2021).

The Eighth Circuit has defined persecution as "'the infliction or threat of death, torture, or injury to one's person or freedom on account of race, religion, nationality, membership in a particular social group, or political opinion.'" Litvinov v. Holder, 605 F.3d 548, 553 (8th Cir. 2010) (quoting Davila-Mejia v. Mukasey, 531 F.3d 624, 628 (8th Cir. 2008)). Persecution "does not encompass all treatment that society regards as unfair, unjust, or even unlawful or unconstitutional." Matter of V-T-S-, 21 I&N Dec. 792, 798 (BIA 1997). Low-level intimidation and harassment alone do not rise to the level of persecution. Alavez-Hernandez v. Holder, 714 F.3d 1063, 1067 (8th Cir. 2013), nor does harm arising from general conditions such as anarchy, civil war, or mob violence. Agha v. Holder, 743 F.3d 609, 617 (8th Cir. 2014). Even minor beatings or limited detentions do not usually rise to the level of past persecution. Bhosale v. Mukasey, 549 F.3d 732, 735 (8th Cir. 2008); Kondakova v. Ashcroft, 383 F.3d 792, 797 (8th Cir. 2004). Rather, "'persecution is an extreme concept.'" Litvinov, 605 F.3d at 553. Persecution is treated cumulatively. See Ngengwe v. Mukasey, 543 F.3d 1029, 1036 (8th Cir. 2008); Matter of O-Z- & I-Z-, 22 I&N Dec. 23, 25–26 (BIA 1998).

"Acts of violence against family members may demonstrate persecution if they show a pattern of persecution tied to the petitioner." Ahmadshah v. Ashcroft, 396 F.3d 917, 920 (8th Cir. 2005). "However, evidence of isolated violence is not sufficient. There must be evidence of a pattern of persecution on account of a protected ground, and the persecution must be tied to the petitioner." Jalloh v. Gonzales, 418 F.3d 920, 923 (8th Cir. 2005); see also Cano v. Barr, 956 F.3d 1034, 1039–40 (8th Cir. 2020).

The harm must also be inflicted by the government or actors the government is "unwilling or unable to control." Cubillos v. Holder, 565 F.3d 1054, 1057 (8th Cir. 2009) (citing Flores-Calderon v. Gonzalez, 472 F.3d 1040, 1043 (8th Cir. 2007)); see also Galloso v. Barr, 954 F.3d 1189, 1192 (8th Cir. 2020) ("To the extent that the condone-and-completely-helpless standard conflicts with the unable-and-unwilling standard, the latter standard controls."); Matter of A-B-, 28 I&N Dec. at 201 (stating that the "unwilling or unable" standard is interchangeable with requiring an applicant "condoned" the persecution or "at least demonstrated a complete helplessness to protect the victims").

An applicant is not required to provide evidence that he or she would be singled out individually for persecution if the applicant establishes that there is a pattern or practice of persecution of persons similarly situated to the applicant on account of one of the enumerated grounds and that the applicant is a member of, and identifies with, that group, such that it is more likely than not that his or her life or freedom would be threatened if he or she were returned to the proposed country of removal. 8 C.F.R. § 1208.16(b)(2).

[redacted]

If an applicant establishes past persecution in the proposed country of removal on account of a protected ground, the applicant is entitled to a presumption that the applicant's life or freedom would be threatened in the future on the basis of the original claim. 8 C.F.R. § 1208.16(b)(1)(i). The DHS may rebut this presumption by demonstrating, by a preponderance of the evidence, that there has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of a statutorily protected ground, or that the applicant could reasonably relocate to avoid future harm. See 8 C.F.R. § 1208.16(b)(1)(i)(A), (B).

If, however, an applicant does not establish past persecution, the applicant must demonstrate that it is more likely than not that he or she would be persecuted on account of a protected ground upon removal if returned to the proposed country of removal. 8 C.F.R. § 1208.16(b)(2); Thu v. Holder, 596 F.3d 994, 999 (8th Cir. 2010). Such an applicant also bears the burden of showing it would not be possible or reasonable to relocate to another part of the proposed country of removal where the applicant could avoid a future threat to life or freedom. 8 C.F.R. § 1208.16(b)(2), (3)(i).

2. *Past Persecution*

In the present case, Respondent suffered harm rising to the level of past persecution. Taken cumulatively, the domestic violence that Respondent suffered for 11 years constitutes persecution. On one occasion, [redacted] grabbed Respondent's hair, and threw her against the wall, leaving her with a visible scar on her head. See Ex. 14A, Tab B at 39-47. [redacted] hit Respondent with a piece of firewood on her knee. Afterward, [redacted]'s sister, who was a nurse, gave Respondent stiches without anesthesia for the gash on her head. The Court finds this treatment to constitute persecution. See Matter of A-R-C-G-, 26 I&N Dec. 388, 389 (BIA 2014) (accepting that the respondent suffered harm rising to the level of persecution where the respondent experienced the "repugnant abuse" of weekly beatings, including suffering a broken nose, being burned by paint thinner thrown on her breast, and rape). Additionally, this treatment went beyond low-level intimidation and harassment. Alavez-Hernandez v. Holder, 714 F.3d 1063, 1067 (8th Cir. 2013). The treatment, taken cumulatively, did not consist of "minor beatings." Bhosale v. Mukasey, 549 F.3d 732, 735 (8th Cir. 2008); Kondakova v. Ashcroft, 383 F.3d 792, 797 (8th Cir. 2004). Finally, [redacted] raped Respondent on numerous occasions. The Court finds this sexual abuse to constitute persecution. Matter of Kasinga, 21 I&N Dec. 357, 362 (BIA 1996) (suggesting that rape, sexual abuse and domestic violence may serve as evidence of past persecution); Matter of D-V-, 21 I&N Dec. 77, 78 (BIA 1993) (indicating rape and severe beatings may rise to the level of persecution).

3. *Analysis – Political Opinion*

Persecution on account of a political opinion requires an active, specific opinion or belief, which must be considered within the context of the country of removal. Cf. Marroquin-

Ochoma v. Holder, 574 F.3d 574 (8th Cir. 2009) (finding that opposition to membership in a gang is not, in itself, a political opinion). It is insufficient to show that the persecutor's conduct furthers a goal in a political controversy; rather, the applicant must show that it is his or her own, individual political opinion that a persecutor seeks to overcome by the infliction of harm or suffering. Matter of Acosta, 19 I&N Dec. 211, modified by Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). Persecution can be based on an imputed political opinion. See, e.g., De Brenner v. Ashcroft, 388 F.3d 629 (8th Cir. 2004) (finding an imputed political opinion where guerillas "labeled [the applicant] a political enemy" based on her ties to an opposing political party). Opposition to corruption may constitute a political opinion in certain circumstances. Matter of N-M-, 25 I&N Dec. 526 (BIA 2011).

Respondent claims persecution on account of her "feminist political opinion." Ex. 16A at 13. Respondent argues that through the "pursuit of her education and career and expressions of economic independence from her male partner, she demonstrated her beliefs about women's equality and gender roles in opposition to the machismo culture that permeates the laws, institutions, and social organizations of Honduras." Id. at 14. Turning to an analysis of [redacted], Respondent argues that [redacted] violently beat, raped, and threatened to kill her "because she expressed her opinion that women have a right to be educated and earn their own money to support themselves and their families." Id. at 15. Respondent posits that, "[redacted] protested against her education and career because her success shamed and humiliated him." Id.

"Opposition to male domination and violence against women, and support for gender equity, constitutes a political opinion." See Matter of R-A-, 22 I. & N. Dec. 906, 940 (BIA 2001); Fatin v. INS, 12 F.3d 1233, 1242 (3d Cir. 1993) (acknowledging that there is "little doubt that feminism qualifies as a political opinion within the meaning of the relevant statutes"). The Court finds that Respondent has expressed a valid political opinion.

The Court also finds that Respondent established a nexus from the harm she suffered from [redacted] to her political opinion. [redacted]'s abuse stemmed from the patriarchal and machismo worldview that he shared. [redacted] consistently discouraged Respondent from studying and working outside of the home. Respondent testified that [redacted] did not want her "to advance in life." It is evident from [redacted]'s disparaging comments that he disapproved of and resented Respondent's achievements because they "humiliated him." For example, [redacted] repeatedly demanded that Respondent stop studying and working. [redacted] told Respondent that she needed to stay home like a "proper homemaker." [redacted]'s family also joined in these demands. They scorned [redacted] for "permitting" Respondent to work outside the home. Therefore, the Court finds Respondent has established a sufficient nexus between her feminist political opinion and the harm she suffered.

4. *Analysis – Membership in a Particular Social Group*

To prevail on a particular social group (PSG) claim, "[a]n applicant's burden includes demonstrating the existence of a cognizable particular social group, his [or her] membership in that particular social group, and a risk of persecution *on account of* his [or her] membership in the specified particular social group." Matter of W-G-R-, 26 I&N Dec. 208, 223 (BIA 2014). A cognizable PSG is "(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question." Matter of M-E-V-G-, 26 I&N Dec. 227, 237 (BIA 2014). An immutable characteristic is one "that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985). Particularity requires that the group is distinct enough that it "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). This particularity inquiry may require looking into the culture and society of a respondent's home country to determine if the class is discrete and not amorphous. Matter of W-G-R-, 26 I&N Dec. at 214–15. Social distinction is not determined by the persecutor's perception but "exists where the relevant society perceives, considers, or recognizes the group as a distinct social group." Id. at 217–18; see also Matter of M-E-V-G-, 26 I&N Dec. at 242 ("The perception of the applicant's persecutors may be relevant, because it can be indicative of whether society views the group as distinct. However, the persecutors' perception is not itself enough to make a group socially distinct, and persecutory conduct alone cannot define the group."). Social distinction does not require "ocular" visibility. See Matter of W-G-R-, 26 I&N Dec. at 216.

A group cannot be circularly defined by the fact that it suffers persecution. Matter of C-A-, 23 I&N Dec. 951, 959 (BIA 2006); see also Matter of W-G-R-, 26 I&N Dec. at 215 ("Persecutory conduct aimed at a social group cannot *alone* define the group, which must exist independently of the persecution.") (emphasis added). However, evidence of widespread persecution can sometimes demonstrate social distinction. See Matter of A-M-E- & J-G-U-, 24 I&N Dec. 69, 74 (BIA 2007) ("Although a social group cannot be defined exclusively by the fact that its members have been subjected to harm . . . this may be a relevant factor in considering the group's visibility in society."). "[A] social group determination must be made on a case-by-case basis." Matter of M-E-V-G-, 26 I&N Dec. at 242.

Respondent claims persecution on account of three proposed PSGs:

(1) Honduran women in a domestic relationship they are unable to leave;

(2) Honduran women viewed as property by virtue of their status in a domestic relationship;

(3) Honduran women who oppose controlling gender norms.

[redacted]

Ex. 16A at 2. The Court analyses these proposed PSGs below.

The Court finds all proposed groups to be cognizable based on the evidence presented in this case. First, the BIA has held that "married women in Guatemala who unable to leave their relationship" can be a cognizable social group. Matter of A-R-C-G-, 26 I&N Dec. 388, 393 (A.G. 2014); Matter of A-B-, 28 I&N Dec. 307 (A.G. 2021) ("A-B- III") (vacating Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018) ("A-B-I") and Matter of A-B-, 28 I&N Dec. 199 (A.G. 2021) ("A-B-II"). Respondent's proposed group #1 ["Honduran women in a domestic relationship they are unable to leave"] mirrors this formulation from Matter of A-R-C-G-, and the evidence in the record of country conditions supports the existence of this particular social group in this case as it did in that case. See id. at 393-94.[3] The Court finds the group is made up of immutable characteristics of gender, nationality, and Respondent's status as someone who cannot leave her domestic relationship. See id. at 392 (stating these can be immutable characteristics).[4] As discussed below, the evidence in this case shows that women in Honduras are constrained by strict gender roles and societal expectations of subservience in personal relationships. See Ex. 15A, Tab B at 52-62. Respondent's own experience shows she was unable to leave her relationship with [redacted] because of his view—commonly accepted in Honduran society—that he controlled Respondent and had license to mistreat her. Second, group #1 possesses the element of particularity because these terms have commonly accepted definitions within Honduran society and because they can be combined to create a group with discrete, discernable boundaries. Matter of A-R-C-G-, 26 I&N Dec. 388, 393 (A.G. 2014). In Honduras, women are expected to conform to "patriarchal society" and "even to believe or advocate for freedom to operate outside patriarchal limits violates social norms and is punished." Ex. 15A, Tab B at 54. Lifelong subjection to domestic violence is common experience among Honduran women. Id. As in Matter of A-R-C-G-, Respondent sought protection from her persecutor's abuse, but police failed to arrest [redacted] Additionally, Honduran society perceives those who are unable to leave their domestic relationship as sharing the same characteristics of the group and are, thus, socially distinct. For example, Dr. Schneider explained that Honduras has enacted laws to protect women on the basis of gender, even though the laws are rarely enforced. Dr. Schneider explained that various institutions and organizations have been created for the protection of women in Honduras, such as the Honduran Institute of Women and Children that receives funding from the state and recommends legislation. Since Honduras has enacted laws and institutions for the

[3] Group (1) is not defined by the harm suffered. For a contrasting example, see Menjivar-Sibrian v. U.S. Att'y Gen., 720 Fed. Appx. 610 (11th Cir. 2018), holding that proposed group "women abused by her partner she cannot control" was defined by the harm suffered.

[4] The Court recognizes that the BIA addressed "married" Guatemalan women in Matter of A-R-C-G-; however, the Court here does not limit that holding to only married women. While Respondent was never legally married to [redacted] he referred to her as his "wife." The fact that the Respondent was never formally married to her domestic partner is not a distinguishing factor from the social group rationale set forth in Matter of A-R-C-G-.

protection of women, Honduran society must recognize that domestic violence is a serious problem for women. Therefore, the Court finds that Honduran society finds this proposed PSG to be particular and socially distinct. The Court also finds Respondent to be a member of this group—she is a Honduran woman who was in a domestic relationship she was unable to leave.

The Court finds Respondent's second proposed PSG, ["Honduran women viewed as property by virtue of their status in a domestic relationship"] to be cognizable. First, similar to Respondent's first proposed group, the Court finds that group #2 is made up of immutable characteristics of gender, nationality, and Respondent's status as someone in a domestic relationship. See id. at 392 (stating these can be immutable characteristics). Moreover, for reasons similar to those above, the Court also finds the group to be defined with particularity and social distinction. Being "viewed as property" is an unalterable proposition—Respondent cannot change the standpoint of society, or more specifically that of her domestic partner, regarding her position as "property." According to the declaration of Claudia Herrmanndorfer, Co-Legal Director of the Center for Gender & Refugee Studies based at the University of California Hastings College of Law, and an attorney who specializes in violence against women in Honduras, women are viewed as property by men in Honduras:

> The culture of machismo pervades Honduras. Machismo teaches that women are property of their intimate partners or fathers, that women are second-class citizens and that women are to be dealt with as seen fit by the masculine sectors of society.
>
> According to Honduran cultural norms, when a woman moves in with a man, the man takes over the 'ownership of a woman from her father. This is true in formal legal marriages, common law marriages, and other domestic relationships including those where individuals cohabitate or share children in common or otherwise have intimate bonds. Because the husband or male partner feels like he owns the woman, he also feels like he can treat her as person property. Honduran men believe that they can abuse and rape their wives or partners with impunity because these women 'belong' to them and, like pieces of property, the men can do what they wish with a woman. Domestic violence is accepted and common throughout Honduras because of these beliefs. The problem is compounded because domestic violence is so widely accepted that neighbors, family members, teachers, and doctors do not report violence to the authorities.

Ex. 15A, Tab C at 3. As explained above, Honduran society recognizes this problem and has passed laws against femicide, although the laws are poorly enforced. Id. at 9-10. Therefore, the Court finds that Honduran society finds this proposed PSG to be particular and socially distinct. The Court also finds Respondent to be a member of this group—she is a Honduran woman who was viewed as property by virtue of her status in a domestic relationship with [redacted]

As for Respondent's final proposed group, ["Honduran women who oppose controlling gender norms"], the Court also finds this group cognizable. Again, the Court finds that group #3 is made up of immutable characteristics of gender and nationality. As for the concept of those individuals who oppose controlling gender norms, the Court finds this to be particular and socially distinct given the culture and attitudes toward women in Honduras. The Court finds support for this position in the record. According to Dr. Schneider, "only about half of the women in [Honduras] participate in the labor market, and the World Economic Forum measure of the gender gap suggests that women are 29 percent less likely to have equal economic participation and opportunities to men." Ex. 15A, Tab B at 54. Female illiteracy rates are at 88.6% in Honduras. Id. More often then not, women do not work the same jobs as men, as women are funneled into lower-paying jobs requiring little education or training. Id. According to Dr. Schneider, "attempts to break out of such limited roles are punished by stigma, reinforcing narrow forms of participation in the labor market." Id. A 2011 article published by a newspaper based in Tegucigalpa stated, that men "should be the superiors at work and domestic duties are the responsibility of good women." Ex. 15A, Tab C at 88. In his report, Dr. Schneider concluded that, "women who pursue further education or alternative employment are subject to persecution. Even to believe or advocate for freedom to operate outside patriarchal limits violates social norms and is punished." Ex. 15A, Tab B at 54. Based on these observations and conclusions, the Court finds that Honduran society recognizes women who oppose gender norms. The Court also finds Respondent to be a member of this group—she is a Honduran woman who opposed gender norms by completing her education and working outside of the home against [redacted] wishes.

i. Nexus

The past persecution suffered by Respondent must be "on account of" her membership in a particular social group. INA § 101(a)(42)(A). Respondent received beatings, rapes, and emotional and verbal abuse because of her membership in all three groups. Respondent received abuse on account of her first PSG, "Honduran women in a domestic relationship they are unable to leave." Respondent was unable to leave her relationship with [redacted] for many years. As an initial matter, Respondent lived on [redacted]'s family's property. [redacted]'s family has power and is influential in [redacted] Nombre where Respondent lived with [redacted]. [redacted]'s family shared the same machismo attitude that [redacted] has. When Respondent took the children and went to live with her aunts because of the abuse, Respondent came looking for her. He also went to Respondent's place of work. On one occasion, [redacted] followed

Respondent to the police station when she went to report his abuse. Ex. 15A, Tab B at 8. After Respondent unsuccessfully attempted to report the abuse, the severity of [redacted]'s beatings increased. See id. After Respondent left Honduras, [redacted] called her mother, asking for Respondent. This behavior and these statements show [redacted] persecuted Respondent because she is a woman and because he refused to allow her to leave the relationship. The country conditions evidence in the record also demonstrates the ways Honduran society permits this kind of behavior. See Ex. 15A, Tabs B-C. Societal conditions, such as the police's inaction and judicial negligence, have led to the continued persecution of Respondent.

Respondent also received abuse on account of her second PSG, "Honduran women viewed as property by virtue of their status in a domestic relationship." Respondent states in her affidavit that Respondent viewed her as his property. See Ex. 15, Tab B. Indeed, [redacted] treated Respondent as his property. He beat her, raped her, and verbally and emotionally abused her. He demanded sex and money from Respondent. By raping and physically beating Respondent, [redacted] treated Respondent's body as his property. By demanding money from Respondent, [redacted] treated Respondent's income as his property. Furthermore, [redacted] and Respondent lived on [redacted]'s family's property. Even when they lived in their own house, the house was located on the [redacted] family land, thus Respondent was viewed as part of that property. Based on [redacted]'s treatment of Respondent, the Court finds that Respondent received abuse on account of her second PSG, "Honduran women viewed as property by virtue of their status in a domestic relationship."

Finally, Respondent received abuse on account of her third PSG, "Honduran women who oppose controlling gender norms." Early on in Respondent's relationship with [redacted], he discouraged her from finishing her education. He demanded that she stop working. He told her that her working outside of the home shamed him. Respondent testified that [redacted] never wanted her to "advance in life. [redacted]'s family reinforced the idea that Respondent's career and independence were wrong and an embarrassment to [redacted] and his family. In her affidavit, Respondent states that if she ever wanted to buy anything for the children, "[she] had to give him money so he would be seen making the purchase as the man of the family, even though it was actually money [Respondent] had earned at her job." Ex. 15A, Tab B at 7. The family disliked when Respondent wanted to move to a different house because it "represented independence which was considered wrong for women within the machista culture that reigned in that area and in that family." Ex. 15A, Tab B at 5. These statements and attitudes demonstrate that Respondent received abuse on account of her opposition to gender norms in Honduras.

5. *Government Unable or Unwilling to Control the Persecutor*

In order to qualify for asylum purposes, the persecution must be inflicted by the government of a country or by persons or an organization that the government is unwilling or unable to control. Quinteros v. Holder, 707 F.3d 1006, 1009 (8th Cir. 2013). To establish

persecution by private actors, the applicant must show more than just that the government has difficulty controlling private behavior, rather she must demonstrate that the government condoned the private behavior or at least demonstrated a complete helplessness to protect the victims. Salman v. Holder, 687 F.3d 991, 995 (8th Cir. 2012).

The Honduran government was unable or unwilling to control the persecutor in this case. Respondent was harmed by a private actor, [redacted].[5] [redacted] persecuted Respondent over many years; Respondent sought government help by reporting [redacted] to the police. Nevertheless, the police never took action against [redacted]. Inaction and indifference characterize the police's interactions with Respondent. Personal relationships between [redacted], [redacted]'s family, and local police and judicial officers also impeded the fair administration of justice.

The country condition reports affirm the Honduran government's response to Respondent's pleas for help. As an initial matter, the Court notes that Honduras has one of the highest murder rates in the world, according to the United Nations Office on Drugs and Crime. Ex. 15A, Tab C at 11. Honduran police often state that domestic violence should be resolved in the home by the couple. Ex. 15A, Tab C at 13. Because police are largely seen as nonresponsive to women in cases involving domestic violence, women often do not report the crimes at all because they believe reporting will result in no governmental intervention and will only serve to anger their abuser. See id. Disturbingly, ninety-six percent of femicides in Honduras go unpunished. Ex. 15A, Tab C at 14. The leading cause of femicides in Honduras is the widespread prevalence of domestic or interfamilial violence. Ex. 15A, Tab C at 13. Prosecutors consistently failed to prosecute those who commit violence against women. Id. at 22. In 2014, the U.N. Special Rapporteur on Violence Against Women called for urgent action to address the culture of impunity for crimes against women and girls in Honduras. The Special Rapporteur noted that legal reforms "had not led to an effective legislative response to domestic violence, and it remains the leading cause of reported crimes against persons at the national level." Id. at 17-18. The U.N. Special Rapporteur further concluded that the attempts at legislative reform had not been translated into practical improvements in the lives of the majority of women who remain marginalized, discriminated against and at a high risk of being subjected to numerous human rights violations." Id. at 20. This observation is compounded by the fact that there are only four currently operating domestic violence shelters in Honduras. Id. at 19.

The Court recognizes that the Honduran government has taken some steps to combat femicide and violence against women, including the creation of specialized offices and courts. See id. The Law against Domestic Violence was passed in 1997 to promote women's rights and equality throughout Honduran society. Ex. 15A, Tab C at 16-17. Afterward, the National Institute of the Women (INAM) was created; however, INAM has

[5] The Court declines to address the government's inability to stem gang violence, as such actions against Respondent were not "on account of" one of the four particular social groups advanced by Respondent.

never received funding sufficient to discharge its functions and relies entirely on funding from international sources. See id. In 2006, Honduras amended its Law Against Domestic Violence in an effort to improve its terrible enforcement record. See id. Yet, many of the 2006 reforms have never been implemented. See id. One of the implementations was the creation of domestic violence courts, yet only two have been set up—the two existing courts do not have sufficient staffing to discharge their functions. See id. Changes to the Honduran Criminal Code in 2014 criminalized femicide, defining it as the "discrimination with hatred or contempt on the basis of sex, gender, religion, national origin, belonging to indigenous and Afro-descendent groups, sexual orientation or gender identity." Ex. 15A, Tab C at 21. During the first year after the formal recognition of femicide as a crime, 300 murders of women were identified that would fall under the definition of femicide. Yet, there were only seven formal investigations or prosecutions of femicide. See id. In light of this evidence, Claudia Herrmannsdorfer states in her report that, "Despite efforts to address the problem of violence against women and the increasingly prevalent phenomenon of femicides—including that the Honduran Criminal Code now includes femicide as a specific crime—neither Honduras's legal system nor its culture protect women from violence." Ex. 15A, Tab C at 3. Thus, the country evidence demonstrates a pattern of culturally accepted violence against women. While the Honduran government in some instances has shown a willingness to assist battered women, a repeated pattern of inability to protect Respondent remains. Therefore, Respondent has met her burden to establish that the government is unwilling or unable to control her persecutor.

6. *Future Threat to Life or Freedom*

If an applicant establishes past persecution in the proposed country of removal on account of a protected ground, the applicant is entitled to a presumption that the applicant's life or freedom would be threatened in the future on the basis of the original claim. 8 C.F.R. § 1208.16(b)(1)(i). The DHS may rebut this presumption by demonstrating, by a preponderance of the evidence, that there has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of a statutorily protected ground, or that the applicant could reasonably relocate to avoid future harm. See 8 C.F.R. § 1208.16(b)(1)(i)(A), (B).

Here, Respondent has established past persecution in Honduras on account of protected grounds, thus she is entitled to a presumption that the her life or freedom would be threatened in the future on the basis of the original claim. 8 C.F.R. § 1208.16(b)(1)(i). The DHS has not adequately rebutted this presumption by demonstrating, by a preponderance of the evidence, that there has been a fundamental change in circumstances such that Respondent's life or freedom would not be threatened on account of a statutorily protected ground, or that Respondent could reasonably relocate to avoid future harm. See 8 C.F.R. § 1208.16(b)(1)(i)(A), (B).

The DHS has not presented any evidence of a fundamental change in circumstances such

that Respondent's life or freedom would not be threatened on account of a statutorily protected ground. Similarly, the DHS has also not demonstrated that Respondent could reasonably relocate to avoid future harm.

In her declaration [redacted] concluded that, "[W]omen in Honduras cannot escape violence by seeking protection from the authorities or by physical relocation." Ex. 15A, Tab C at 3. She further concluded, "It is not possible for a women to secure protection by trying to relocate within the country. It is very hard for women to leave their home community, as family support networks so vital to women are anchored in their hometowns and rarely extend to different places in the country." Ex. 15A, Tab C at 15. "Even if a woman did move, Honduras is a very small country and usually the abuser knows the woman's family or can easily find her through other means." Id. In addition, there is a strong cultural stigma against women who live alone in Honduras. Ex. 15A, Tab C at 16. The Court also considers the testimony of the expert, Dr. Schneider, who stated that it is impossible to move in Honduras because the country is like a "small town" where everyone knows each other. If one travels to a new town, the town immediately recognizes that person as an outsider.

Additionally, the Court considers that [redacted]'s family is influential, powerful, and wealthy. Therefore, they have the means and connections to track down Respondent. The [redacted] family is also well connected to the police—if [redacted] or his family were to find Respondent and harm her, it is unlikely, based on the country conditions, that Respondent could count on the protection of the police. Finally, the Court notes that Respondent could not return to live with her mother because her mother lives and works on-site as a housekeeper for a family.

Considering this evidence and the fact that the DHS has not adequately rebutted the presumption that Respondent's life or freedom would be threatened in the future on the basis of her original claim by showing a fundamental change in circumstances or that Respondent could reasonably relocate to avoid future harm, the Court finds Respondent has established a clear probability that her life would be threatened in Honduras on account of a protected ground. See 8 C.F.R. § 1208.16(b)(1)(i)(A), (B).

For the above reasons, the Court finds the DHS did not rebut the presumption Respondent's fear of future persecution is well-founded. Therefore, the Court grants Respondent's application for withholding of removal under INA § 241(b)(3).

C. Convention Against Torture

Because the Court is granting Respondent's withholding of removal application under INA § 241(b)(3), the Court does not reach the issue of relief under Article 3 of the Convention Against Torture. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, as a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach).

[redacted]

Accordingly, the Court enters the following orders:

ORDERS

IT IS HEREBY ORDERED that Respondent's application for asylum under INA § 208 be **DENIED.**

IT IS FURTHER ORDERED that Respondent be ordered removed from the United States to any country other than **HONDURAS** that will accept her.

IT IS FURTHER ORDERED that Respondent's application for withholding of removal under INA § 241(b)(3) be **GRANTED.**

IT IS FURTHER ORDERED that Respondent's application for protection under the Convention Against Torture be **NOT REACHED.**

IT IS FURTHER ORDERED that Rider Respondent [redacted] and Rider Respondent [redacted] cases be **SEVERED** from Respondent's case.

M. Audrey Carr
United States Immigration Judge

If either party elects to appeal this decision, Notice of Appeal must be received by the Board of Immigration Appeals within thirty (30) days of this decision. 8 C.F.R. § 1003.38(a)–(b).

M Audrey Carr

Immigration Judge: Carr, Audrey 10/21/2021

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Date: 10/21/2021