

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

File Numbers: A [REDACTED] ) Date: [REDACTED]  
A [REDACTED] )  
In the Matters of: )  
[REDACTED] and ) IN REMOVAL PROCEEDINGS  
[REDACTED]  
Respondents. )

**Charge:** INA § 212(a)(7)(A)(i)(I) – any immigrant at the time of application for admission who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a) of the Act.

**Applications:** Asylum under INA § 208, Withholding of Removal under INA § 241(b)(3); and Relief under the Convention Against Torture; Voluntary Departure under INA § 240B(b)(1).

**ON BEHALF OF RESPONDENT:**

Mary E. McGinnis, Esq.

Pro Bono Counsel  
955 Linwood Avenue  
Saint Paul, MN 55105

**ON BEHALF OF THE DHS:**

Luke R. Nelson, Esq.

Asst. Chief Counsel/ICE  
1 Federal Drive, Suite 1800  
Fort Snelling, MN 55111

**WRITTEN DECISION OF THE IMMIGRATION JUDGE**

**I. Background**

The respondents are a mother and son from Mexico. The Court will refer to Respondent [REDACTED] as "Respondent," and the Court will refer to Respondent [REDACTED] as "Respondent [REDACTED]." On [REDACTED], the U.S. Department of Homeland Security (DHS) initiated removal proceedings against the respondents by filing a Notice to Appear (NTA) with the Court for each respondent. See

UNITED STATES DEPARTMENT OF JUSTICE  
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1 FEDERAL DRIVE, SUITE 1850  
FORT SNELLING, MN 55111

Mary E. McGinnis  
McGinnis, Mary Ellen  
955 Linwood Avenue  
Saint Paul, MN 55105

In the matter of \_\_\_\_\_

File A \_\_\_\_\_

DATE: \_\_\_\_\_

Unable to forward - No address provided.

X Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to:

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

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

IMMIGRATION COURT  
1 FEDERAL DRIVE, SUITE 1850  
FORT SNELLING, MN 55111

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

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

Other: \_\_\_\_\_

COURT CLERK

IMMIGRATION COURT

FF

cc: OFFICE OF THE PRINCIPAL LEGAL ADVISOR  
1 FEDERAL DR., SUITE 1800  
FORT SNELLING, MN, 55111

Ex. 1; Ex. 1A. DHS charged the respondents with removability under the above-captioned section of the Immigration and Nationality Act ("INA" or "Act"). (Ex. 1; Ex. 1A). At a Master Hearing on [REDACTED], both respondents admitted the factual allegations and conceded the removability charge. The respondents declined to designate a country of removal. The Court sustained the charge of removability and designated Mexico as the country of removal, should such action become necessary. Respondent has submitted an I-589, application for asylum, withholding of removal, and relief under the Convention Against Torture. See Ex. 4. Respondent [REDACTED] is a derivative on that application for asylum. Respondent [REDACTED] also submitted an independent application Form I-589. (Ex. 4A). The respondents also seek voluntary departure. See Ex. 6 at 23-24. For the reasons stated below, the Court will deny all applications for relief.

## II. Evidence Presented

### A. Documentation

The Court has carefully considered all admitted evidence identified below in its entirety, regardless of whether specifically mentioned in the text of this decision.

#### *1. Respondent*

- Ex. 1: Form I-862, Notice to Appear, filed Sept. 16, 2016.
- Ex. 2: Form I-213, Record of Deportable/Inadmissible Alien, received Oct. 6, 2016.
- Ex. 3: Respondent's Documents in Support of Application for Asylum and Withholding of Removal, received Dec. 18, 2018.
- Ex. 4: Respondent's Form I-589, Application for Asylum, Withholding of Removal, and relief under the Convention Against Torture, filed Aug. 11, 2017.
- Ex. 5: Respondent's Witness List, received Feb. 6, 2019.
- Ex. 6: Respondent's Brief, received Feb. 6, 2019.
- Ex. 7: Respondent's Motion for Pre-Trial Telephone Conference, received Feb. 6, 2019.
- Ex. 8: Respondent's Exhibit List, received Feb. 6, 2019.
- Ex. 9: Respondent's Red Line Form I-589, Application for Asylum and for Withholding of Removal, received Feb. 6, 2019.
- Ex. 10: Respondent's Motion to Accept Untimely Filing, including Declaration of Miguel Angel Orozco-Bucio, received Feb. 14, 2019.
- Ex. 11: DHS Opposition to Respondent's Motion for Pre-Trial Telephone Conference, received Feb. 19, 2019.
- Ex. 12: Respondent's Motion to Accept Untimely Filing, including Statement of Dr. Patrick J. McNamara, PhD, filed Feb. 19, 2019.
- Ex. 13: Exhibit List Summary.
- Ex. 14: Respondent's Closing Statement, filed March 22, 2019.
- Ex. 15: DHS Closing Argument, filed March 22, 2019.

## *2. Respondent Adan Daniel*

- Ex. 1A: Form I-862, Notice to Appear, filed Sept. 16, 2016.  
Ex. 2A: Form I-213, Record of Deportable/Inadmissible Alien, received Oct. 6, 2016.  
Ex. 3A: Copy of Respondent's Form I-589, Application for Asylum, Withholding of Removal, and relief under the Convention Against Torture, filed Aug. 11, 2017.  
Ex. 4A: Respondent [REDACTED] Form I-589, Application for Asylum, Withholding of Removal, and relief under the Convention Against Torture, filed Feb. 6, 2019.  
Ex. 5A: Copy of Respondent's Red Line Form I-589, Application for Asylum and for Withholding of Removal, received Feb. 6, 2019.  
Ex. 6A: Exhibit List Summary.

### B. Testimony

#### *1. Respondent*

Respondent testified about her life in Mexico, witnessing her brother's abduction by cartel members, her attempts to report the crime to the police, the sexual harassment and threats she suffered at the hands of the police as a result, and her fears of returning to Mexico.

#### *2. Dr. Patrick J. McNamara*

Respondent offered Dr. McNamara as an expert witness on historical and current issues related to organized crime, violence, and the government response to and involvement related to that violence in Mexico. Dr. McNamara is an Associate Professor of Latin American History at the University of Minnesota. He has worked there since 1999. Dr. McNamara has taught courses related to Mexican history, but recently, his professional focus has centered on the current violence in Mexico and Central American countries. His last visit to Mexico was in 2017, and his last visit to Michoacan was in 2014. Based on Dr. McNamara's qualifications, as detailed in his curriculum vitae (Ex. 8 at 220-33) and as explained in his testimony, the Court finds him to be an expert in his proposed area of expertise. Dr. McNamara testified about his professional qualifications, his knowledge of Mexican cartels and law enforcement and of the risks Respondent would encounter should she return to Mexico.

### **III. Findings of Fact**

Respondent is a twenty-nine-year-old Mexican citizen with a high school education. She has four siblings: two brothers and two sisters. She was born in Ciudad Hidalgo, in the state of Michoacan, where she lived until she came to the United States (U.S.). Respondent worked in a mill making tortillas, and she has also worked in a pharmacy.

Respondent first came to the U.S. in March 2009 and remained for nine months before returning to Mexico. She returned to Mexico because she had no family in this country and felt she could not get ahead.

Respondent is married and has three children. Two are U.S. citizens: [REDACTED] (nine years old) and [REDACTED] (one year old). The third is Respondent [REDACTED] (five years old), a Mexican citizen. Prior to coming to the United States, [REDACTED] and Respondent [REDACTED] lived in Ciudad Hidalgo with Respondent.

Respondent explained she came to the United States on [REDACTED] after witnessing the kidnapping of her brother, [REDACTED]. Respondent was at home with her children around four to five in the afternoon when she saw [REDACTED], outside in his vehicle. Suddenly, two cars blocked his way. Respondent went outside and witnessed four armed men, with faces covered, beat her brother. Respondent tried to intervene by yelling and reaching for her brother, but one of the men pointed a gun at her and told her to get back in the house before the same thing happened to her. After the beating, two of the men put her brother in the trunk of their car. Respondent has not seen or heard from her brother since. She also believes that her brother is likely dead. Respondent believes the men who took her brother are members of the cartel because [REDACTED] had refused to pay extortion money to a cartel. Respondent's young children [REDACTED] and Respondent [REDACTED] witnessed the incident.

On the same day of the abduction, Respondent went with her mother and sister to the only police station in Hidalgo to file a complaint. There, they spoke to a police "Commander." Respondent knows the Commander by the name [REDACTED] but she does not know if that is his real name. He was approximately 35 to 40 years old. The Commander wrote down all their contact information and took a witness statement from Respondent. She was the only one to provide a statement because she was the sole witness. Respondent does not know if the police recorded the complaint, and she did not sign any documents.

Three to four days later, having heard nothing from the police, Respondent returned to the station with her son, Respondent [REDACTED]. Respondent entered the Commander's office and saw a gun on his desk. At first, the Commander acted as if he did not remember Respondent, but then he stated that he recognized her and asked her what she was prepared to do for her brother. When Respondent told him that she would be willing to do whatever it took, the Commander walked over to where Respondent was sitting with her son. He told Respondent that she should be with him and that she would enjoy being with him. Respondent understood that the Commander was demanding sex from her. When Respondent refused, the Commander grabbed her arm or hand and pulled her, leaving a red mark. They were yelling and fighting. The Commander said, "All women are whores."<sup>1</sup> He also told Respondent that she "shouldn't be a bitch" and that she would have a good

<sup>1</sup> Per Respondent's testimony, the Commander said, "All women are whores." Respondent's declaration states the Commander said, "All women in Mexico are whores." (Ex. 8 at 202).

time with him. He told her if she did what he wanted; he would do everything he could to find her brother. Respondent refused and threatened to report the Commander to the Mexican army. The Commander got angry and told Respondent that if she reported him, what happened to her brother would happen to her, or worse. As she left, the Commander warned that he knew where to find Respondent and told her to keep her mouth shut. Respondent's son was frightened and crying. Respondent never reported the Commander to the army because she did not know how to do so. She made the threat because she had heard the army has authority over the police. Respondent also never reported the Commander to the federal police or the police in Mexico City because she heard the police work with cartels.

The Commander began harassing and threatening Respondent by text messages and phone calls, warning her to stay quiet. Respondent has no record of these messages because she removed the chip from her cellphone and disconnected her landline to stop the calls. Beginning in [REDACTED], police officers began circling Respondent's home and her son's school in a police van. This stood out to Respondent because police rarely came to her neighborhood. Usually, four to six officers would be in the van. Sometimes the Commander was with them. When Respondent would see him, he would make gestures towards his eyes to signal that he was watching her, and put his finger over his mouth to tell her to be quiet. The patrols continued through [REDACTED] after Respondent had left.

Respondent felt the police presence close to her home was intimidating. On one occasion, Respondent heard gunshots close outside her home. She looked out her window and saw a parked patrol car. She does not know who fired the shots or why. After this incident, Respondent's family suggested she go to the United States to be safe. Because Respondent's oldest son, [REDACTED] is a U.S. citizen, she sent him to the U.S. first. Then Respondent, Respondent [REDACTED] and Respondent's brother-in-law traveled to the United States. On [REDACTED], they arrived at the border. She eventually came to Northfield, Minnesota, to stay with her husband's family, who are lawful permanent residents and have lived in the United States for years.

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Since her arrival, Respondent learned that her home in Hidalgo was vandalized and the homes' windows broken. She does not know who damaged her home, but she testified that no other damaged abandoned houses in her neighborhood. Respondent does not believe that she will be safe if she returns to Mexico, and she does not believe the police will protect her given her experience with the Commander.

Respondent testified that a Mexican drug cartel called the La Familia Michoacana, abducted her brother. She knows this because this same cartel had previously threatened to hurt her brother if he did not pay them. Both of Respondent's brothers were bus drivers. The cartel forced both of them to pay extortion fees. Respondent's brother, [REDACTED] is twenty-seven years old and is still a bus driver in Ciudad Hidalgo. He continues to pay the cartel extortion fees.

Respondent's parents and her two younger sisters, [REDACTED] and [REDACTED], still live in Ciudad Hidalgo. She also has a grandmother, cousins, aunts, and uncles who live there, as well as several of her husband's family members. Respondent sometimes sends money to her family in Mexico. None of Respondent's family has been harmed or threatened by the cartel or the police since [REDACTED]. No family members take care of Respondent's home in Hidalgo because they do not want to go there.

Respondent stated Hidalgo has a high level of crime, but she has only witnessed the crime against her brother. She also heard that police are corrupt—they extort people for money, work with cartels, and sexually harass women. Despite this knowledge, Respondent went to the police in [REDACTED] to seek help.

Respondent testified that she cannot live anywhere else in Mexico because she has no family outside of Michoacan. She believes the police will be able to locate her wherever she goes in Mexico because she will need to provide personal identification information (i.e., birth certificate, voter registration card, driver's license, or passport) to enroll her children in school. The police have access to her voter registration card, which contains all her personal identifying information. She fears the police could use this to find her. Respondent also testified there is a national communication system in Mexico where police in her town can communicate with police in larger towns.

Respondent's husband came to the U.S. because they had many debts related to their son's illness, and he wanted to save money to start a business in Hidalgo. Respondent stated all business owners are required to pay extortion fees to the cartel in Hidalgo. If Respondent and her husband start a business, they are prepared to pay extortion fees. Her husband had plans to return to Mexico in [REDACTED], but Respondent's experience with the police following her brother's disappearance caused her to leave Mexico. The trauma of this experience has made her nervous, afraid, and unable to sleep. She feels safer in the U.S.

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Dr. McNamara is familiar with the La Familia Michoacana cartel because much of his research focuses on this organization. The members of La Familia Michoacana follow an ideology referred to as "muscular Christianity," which has roots in patriarchal writings. Dr. McNamara testified the Mexican government chose to use violence to combat the cartels and drug trafficking. Dr. McNamara discussed how cartels bribe police and government officials to operate without fear of arrest. He also testified about the Mexican government's struggle to control criminal drug trafficking organizations, even in coordination with the U.S. government. He explained how violence has increased among various cartels.

Additionally, Dr. McNamara discussed a report alleging involvement of local police and military in the disappearance of 43 college students in Iguala, Mexico, in 2014. This report indicated the local police and former mayor cooperated in the students' disappearance. Dr. McNamara believes it most likely that the Guerreros Unidos drug cartel killed the students

when the students came across a supply of cocaine headed for the United States. Efforts to conceal the incident implicated Mexico's Attorney General. Dr. McNamara also stated that in 2015, a counterinsurgent group killed about 30 members of a cartel for shooting down a military helicopter in Michoacan. Law enforcement made no arrests. Dr. McNamara stated these two events show the collaboration between the police and organized crime.

Dr. McNamara testified the police at every level in Mexico—including the municipal, local, state, federal, and highway police—are susceptible to corruption because they receive low wages. He is aware of one federal police force with thousands of officers and thirty-six state police forces. He does not know how many municipal police forces are in Mexico because some towns share the same police force. Dr. McNamara does not know how many officers are in Hidalgo or if all officers have access to technology, but he believes a commander could access a national police database containing identification information for Mexican citizens.

Dr. McNamara testified that Michoacan has been designated by the U.S. Department of State as the highest risk level for travel (level four), which is the same level as Syria, Iraq, and other war zones. He further explained bus drivers in Michoacan are particularly vulnerable to extortion demands because they work independently, they deal with cash, and they need to travel through cartel-controlled territory. He clarified other businesses are also required to pay extortion money to the cartels. Although Ciudad Hidalgo is outside of the main control of La Familia Michoacana, Dr. McNamara believes they still operate there. He testified that many cartels have started to split into smaller groups taking on different names when faced with government pressure. These smaller groups begin to fight with one another or they rejoin the larger organization to survive.

Respondent's brother wrote in his affidavit he believes the Jalisco New Generation cartel abducted their brother, but Dr. McNamara does believe it is more likely that La Familia Michoacana was involved with the abduction. He testified that the kidnapping of Respondent's brother was consistent with the practices of La Familia Michoacana because they have reputation for disappearing people. Further, Dr. McNamara testified the cartel leaves the (unrecovered) dead bodies of disappeared persons in the reservoir in Respondent's home region.

Dr. McNamara testified the Commander's actions are inconsistent with the way corrupt police and commanders usually collaborate with cartels. The Commander's behavior was a more open, public display of intimidation. Dr. McNamara opined that if Respondent returns to Mexico, she would be in danger because the Commander will have access to her voter registration card. He stated that if the Commander were cooperating with the cartel, the cartel members, who abducted Respondent's brother, would know that she reported the crime to the police and she could be in danger of retaliation by the cartel members.



Dr. McNamara explained DHS has a database that provides countries such as Mexico, El Salvador, Honduras, and Guatemala with information about deportees from the United States, including the reasons for deportation and their criminal history. In Mexico, a person must present a universal ID with a current address to access the national healthcare system or to enroll children in schools. If Respondent returns to a new town in Mexico, she will be viewed, according to Dr. McNamara, as someone affiliated with the cartel because she would be alone without relatives in the area and the word about her presence could spread to other cartel members or to the police who may want to harm her. Dr. McNamara testified that police cannot provide any protection, especially in rural areas, because the police are often collaborating with the cartels. He estimates that around 75 percent of crimes in Mexico are never reported for fear that police are involved in the crimes.

Dr. McNamara did not know the threat level assigned for the entire country of Mexico by the U.S. Department of State, but he stated it is probably less than three. He stated he would not be surprised if Mexico was a level two, equal to the United Kingdom. He testified that cartels in Mexico are criminal organizations whose goal is to exert power over populations so they can have protected trafficking routes to the United States. Dr. McNamara explained that cartels exert power by threatening people and committing crimes, such as murder, abduction, rape, extortion, and manufacturing drugs. He stated La Familia Michoacana has been a major producer of methamphetamine for the United States.

Dr. McNamara testified that while Mexico is a large country with a population of 127.9 million people, he does not think Respondent could relocate safely unless she were able to reside in a gated community. Dr. McNamara acknowledged there are more secure parts of the country, but only people with substantial financial resources can live there. He stated that if Respondent's husband were to relocate with her to Mexico, they would still be questioned and investigated about why they were in a new area. Dr. McNamara added that it was common for the police to offer assistance only in exchange for sexual favors, but it was unusual that the Commander would publicly hint at retaliation.

#### IV. Credibility

It is the applicant's burden to satisfy the Court that his or her testimony is credible. See [REDACTED]. As Respondent's application was filed after [REDACTED] the credibility provisions of the REAL ID Act govern. [REDACTED] Consistent with the REAL ID Act, the following factors may be considered in assessing an applicant's credibility: demeanor, candor, responsiveness, inherent plausibility, [REDACTED] 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. [REDACTED] see also [REDACTED]. The testimony of the applicant, if credible, is sufficient to sustain the burden of proof

without corroboration. [REDACTED] 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. [REDACTED] In determining whether the applicant has met his or her burden, the 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. [REDACTED]

In this case, Respondent's testimony was largely consistent with her prior written statements and applications. Respondent gave an account that was internally consistent and inherently plausible. Respondent was responsive and candid. In addition, Respondent's testimony was generally consistent with the evidence in the record. Therefore, the Court finds Respondent generally credible. The Court also finds Dr. McNamara testified credibly.

## V. Relief

### A. Asylum

#### 1. *Legal Standard*

The applicant carries the initial burdens of proof and persuasion for establishing his or her eligibility for asylum. [REDACTED] To establish eligibility, an applicant must meet the definition of a "refugee," defined as an individual who is unwilling or unable to return to his or her country of nationality because of past persecution or because he or she has a well-founded fear of future persecution on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. [REDACTED]

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If the applicant can establish that he or she suffered past persecution, then the applicant is entitled to a rebuttable presumption that his or her fear of future persecution is "well-founded." [REDACTED] The government can rebut this presumption if a preponderance of the evidence shows either: (1) that there has been a "fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution" in his or her native country; or (2) that he or she "could avoid persecution by relocating to another part" of the country and that "it would be reasonable to expect the applicant to do so." [REDACTED] see also [REDACTED]

Asylum, unlike withholding of removal, may be denied in the exercise of discretion to an alien who establishes statutory eligibility for relief. See [REDACTED]

## 2. *Past Persecution*

### a. Level of Harm

Persecution is defined 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)). It is “an extreme concept” that “does not include low-level intimidation and harassment.” Litvinov, 605 F.3d at 553 (quoting Zakirov v. Ashcroft, 384 F.3d 541, 546 (8th Cir. 2004)). Persecution is more than mere discrimination or harassment. Matter of V-F-D-, 23 I&N Dec. 859, 863–64 (BIA 2006). Beyond physical harm, persecution may include “the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment, or other essentials of life.” Ngengwe v. Mukasey, 543 F.3d 1029, 1036 (8th Cir. 2008) (quoting Matter of T-Z-, 24 I&N Dec. 163, 171 (BIA 2007)). “The mere presence of some physical harm does not require a finding of past persecution.” Al Tawm v. Ashcroft, 363 F.3d 740, 743 (8th Cir. 2004). Brief beatings and detentions, isolated threats, and occasional police harassment generally do not amount to persecution. See Bhosale v. Mukasey, 549 F.3d 732, 735 (8th Cir. 2008); Eusebio v. Ashcroft, 361 F.3d 1088, 1091 (8th Cir. 2004). Furthermore, threats that are “exaggerated, non-specific, or lacking in immediacy,” including death threats, may not rise to the level of persecution. See Malonga v. Holder, 621 F.3d 757, 766 (8th Cir. 2010) (quoting Corado v. Ashcroft, 384 F.3d 945, 947–48 (8th Cir. 2004) (noting, however, that a single “specific, credible, and immediate” death threat could constitute persecution)). The definition of persecution does not require that a person wait for persecutors to carry out their death threats. See Sholla v. Gonzales, 492 F.3d 946, 952 (8th Cir. 2007) (finding past persecution where “persecutors made numerous and credible threats to kill [the respondent] and his family because of their political activities, punctuated by savage beatings, imprisonment, bombings, and high-caliber gunfire directed at his home”). Moreover, “[t]he harm suffered must be particularized to the individual rather than suffered by the entire population.” Agha v. Holder, 743 F.3d 609, 617 (8th Cir. 2014). “In general, harm resulting from conditions such as anarchy, civil war, or mob violence does not support a claim of persecution.” Bhosale, 549 F.3d at 735–36. Events of past harm should not be viewed in isolation, but instead considered cumulatively. Ngengwe, 543 F.3d at 1036–37. Non-life-threatening mistreatment can constitute persecution if the harm suffered, in the aggregate, rises to the level of persecution contemplated by the Act. See Malonga, 621 F.3d at 765. Finally, the determination of whether mistreatment rises to the level of persecution must be made on a case-by-case basis. Matter of C-Y-Z-, 21 I&N Dec. 915, 924 (BIA 1997).

Respondent witnessed four armed men beat and abduct her brother. See Ex. 8 at 200. She never saw or heard from him again. Harm to family members generally does not constitute persecution unless the record contains evidence that the intended purpose was to cause emotional harm to the applicant. See Matter of A-K-, 24 I&N Dec. 275, 278–79 (BIA

2007). While the four men were beating her brother, one of them pointed a gun at Respondent and threatened that the same thing would happen to her if she did not return to her house. This threat was specific, credible, and immediate, but it was ultimately isolated and unfulfilled. See Corado, 384 F.3d at 947–48 (stating a single “specific, credible, and immediate” death threat could constitute persecution); Setiadi v. Gonzales, 437 F.3d 710, 713 (8th Cir. 2006) (“Past persecution does not normally include unfulfilled threats of physical injury.”). Respondent suffered no physical harm during this incident. Thus, the Court finds witnessing her brother’s abduction, receiving one isolated threat that went unfulfilled, and suffering no physical harm does not rise to the level of persecution.

Separately, Respondent was sexually harassed, threatened, and monitored by the police Commander. The Commander insinuated that if she wanted him to investigate her brother’s disappearance, she must have sexual relations with the Commander. (Ex. 8 at 200). At one point, the Commander grabbed Respondent’s arm or hand and tried to push her up against the wall. Id. at 202. Respondent rebuffed his advances and said she would go over his head and report him. Id. The Commander threatened that if she reported him, the same thing that happened to her brother, or worse, would happen to her. Id. at 202–03. He also threatened that “[she] would never hear from [her] family.” Id. As she left, he threatened, “Get out of here. Go. I can follow you. I can find you anywhere.” Id. at 203. The Commander continued threatening Respondent and making sexual remarks to her by sending text message and calling her phones. He told her to remain quiet and do what he wanted. Respondent deactivated her phones to avoid him. Police began patrolling in her neighborhood and near her son’s school. Respondent sometimes saw the Commander among the patrolling officers. Respondent also testified about hearing gunshots outside her home then seeing the police nearby, but she was unsure who fired the shots or why. The Court does not find these facts, even in the aggregate, rise to the level of persecution. Respondent suffered only minimal physical harm: grabbing and a red mark on her arm. While the officer’s actions are appalling and they unfairly limited Respondent’s access to justice for her brother, the Commander did not physically harm Respondent or follow through on his threats. The Court acknowledges the context of the recent abduction of Respondent’s brother, but the Court does not find significant evidence that the police were involved in the abduction. The Commander seemingly tried to take advantage of Respondent’s situation. Low-level intimidation and harassment is not enough to constitute persecution. See Zakirov, 384 F.3d at 546. The Eighth Circuit has also signaled that, in general, sexual harassment might not be severe enough to constitute persecution. See Al Yatim v. Mukasey, 531 F.3d 584, 590 (8th Cir. 2008); see also Uli v. Mukasey, 533 F.3d 950, 956 (8th Cir. 2008). The Court acknowledges Respondent received multiple threats for about a month and a half (the time between reporting the abduction and leaving Mexico) and that Respondent’s abandoned home was vandalized while no other abandoned houses in her area were vandalized. Respondent does not know who vandalized her home. However, “[t]hreats alone constitute persecution in only a small category of cases, and only when the threats are so menacing as to cause significant actual suffering or harm.” Lemus-Arita v. Sessions, 854 F.3d 476, 481 (8th Cir. 2017) (discussing unfulfilled threats) (quoting La v. Holder, 701 F.3d 566,

571 (8th Cir. 2012)). In this case, the Court finds the sexual harassment, the threats, the police surveillance, and the vandalizing of Respondent's home, even in the aggregate; do not rise to the extreme level of persecution.

b. On Account of a Protected Ground

In order to qualify for asylum, the persecution in question must be on account of at least one of five specially protected grounds: race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). 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); Garcia-Moctezuma v. Sessions, 879 F.3d 863, 867 (8th Cir. 2018).

i. *Membership in a Particular Social Group*

One qualifying type of persecution is persecution on account of the applicant's membership in a particular social group ("PSG"). An applicant who seeks asylum based on membership in a PSG must establish that the group is cognizable, meaning that it 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). A social group determination must be made on a case-by-case basis and is dependent on the facts of the individual case at issue. Id. at 242. 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). In addition to demonstrating that her group is cognizable, an applicant must establish her membership in that group. Matter of W-Y-C- & H-O-B-, 27 I&N Dec. 189, 191 (BIA 2018).

A characteristic is immutable when either it cannot be changed or forcing change on a respondent would alter her fundamental identity or conscience. Matter of W-G-R-, 26 I&N Dec. 208, 212 (BIA 2014) (quoting Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985) overruled in part on other grounds). A cognizable PSG is particularized by characteristics that clearly benchmark membership therein. See Matter of M-E-V-G-, 26 I&N Dec. at 239. This "particularity" requirement addresses "the question of delineation." Matter of W-G-R-, 26 I&N Dec. at 214. Meaning that this prong of the test clarifies the point that "not every 'immutable characteristic' is sufficiently precise to define a particular social group." Matter of M-E-V-G-, 26 I&N Dec. at 239. A group that has "discrete and . . . definable boundaries" will satisfy the particularity requirement. Id. Next, a cognizable PSG is also one that is recognized as distinct within its own society. Matter of M-E-V-G-, 26 I&N Dec. at 241-43. A group that is seen as "other" in an asserted society satisfies the social distinction requirement. Id. at 243-44. To satisfy the social distinction requirement, "there must be evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristics to be a group" and it "must be commonly

recognized that the shared characteristic is one that defines the group.” Matter of W-G-R-, 26 I&N Dec. at 217.

Respondent claims she was persecuted because of her membership in seven social groups: (1) Mexican women who have challenged police authority; (2) Mexican women viewed as property by the Mexican police; (3) Mexican women viewed as property by the Mexican police by virtue of their dependence on the police for their assistance; (4) Mexican women who testified to the police regarding cartel activity of La Familia Michoacana; (5) Mexican women who reported a crime to the police in defiance of cartel authority; (6) Mexican women who are family members of a disappeared person; and (7) Mexican women.

To begin, Respondent has not demonstrated that groups (1) [Mexican women who have challenged police authority], (4) [Mexican women who testified to the police regarding cartel activity of La Familia Michoacana], and (5) [Mexican women who reported a crime to the police in defiance of cartel authority] are cognizable social groups because these groups are not socially distinct. No evidence of record indicates that Mexican society perceives members of these proposed groups as belonging to distinct social groups. The available evidence does not support a conclusion that Mexican women who have challenged police authority, who testified to the police about La Familia Michoacana, or who reported a crime to the police in defiance of cartel authority are “perceived as a cohesive group” or otherwise seen as “other” by Mexican society. See Gaitan v. Holder, 671 F.3d 678, 681 (8th Cir. 2012); Matter of M-E-V-G-, 26 I&N Dec. at 243–44; see also Rivas v. Sessions, 899 F.3d 537, 541 (8th Cir. 2018) (rejecting the proposed PSG of “witnesses to a crime who report it to the police” because the record lacked evidence of particularity and social distinction); Ngugi v. Lynch, 826 F.3d 1132, 1138 (8th Cir. 2016) (“Ngugi presented no evidence to support the conclusion that merely having seen or experienced crime would satisfy the particularity or social-distinction prongs.”). Hence, Respondent’s claims on these bases will fail, and the Court finds that groups (1), (4), and (5) are not cognizable.

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Next, the Court finds groups (2) [Mexican women viewed as property by the Mexican police] and (3) [Mexican women viewed as property by the Mexican police by virtue of their dependence on the police for their assistance] to be not cognizable. First, Respondent has not shown the group is particular. It is unclear what “viewed as property” means in Mexican society. The Court finds insufficient evidence to demonstrate that Mexican society understands females “viewed as property” to be a discrete class of persons. Respondent fails to show how these terms can combine to create clear boundaries for who is included in this group. Second, Respondent has not shown this PSG is socially distinct. There is significant room to doubt that Mexican society views these individuals as members of a distinct group. The Court therefore finds proposed groups (2) and (3) are not cognizable.

by law enforcement. See Ex. 3 at 52, 67–69, 88–143. The Mexican government has recognized that gender-motivated violence is pervasive. In 2015 and 2016, the Mexican federal government began using a “gender alert” mechanism to combat violence against women. Id. at 68.<sup>2</sup> However, laws prohibiting domestic violence were largely unenforced and “[c]ivil society groups complained that so far the alerts had not led to noticeable changes.” Id. Additionally, Commander Garcia’s statement to Respondent that “all Mexican women are whores” further indicates that the society in question views Mexican women as a distinct group. Based on the evidence in this case, the Court finds that Mexican society recognizes that Mexican women are members of a distinct group. Having determined that group (7) satisfies the immutability, particularity, and social distinction requirements, the Court finds that “Mexican women” is a cognizable particular social group.

Respondent has also shown that she is a member of her proposed group, “Mexican women.” See Ex. 3 at 1–4 (Respondent’s Mexican birth certificate, which lists her gender as female). The Court therefore finds that Respondent is a member of that group.<sup>3</sup>

## *ii. Political Opinion*

Respondent claims she suffered past persecution by the police based on her imputed political opinion “that that police should do their job” (and investigate her brother’s disappearance). See Ex. 14 at 2, 5–6. The Court finds Respondent has not presented a valid political opinion claim.

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 (BIA 1985), 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).

<sup>2</sup> “The declaration of a gender alert directs relevant local, state, and federal authorities to take immediate action to combat violence against women by granting victims legal, health, and psychological services, and speeding investigations of unresolved cases. Since July 2015, the federal government has activated gender alerts in three states: Mexico, Morelos, and Michoacan. The state government of Jalisco activated its own gender alert.” Id.

<sup>3</sup> Because the Court does not find groups (1), (2), (3), (4), (5), or (6) cognizable, the Court need not reach Respondent’s membership in any of those groups.



Respondent also has not shown that group (6) [Mexican women who are family members of a disappeared person] is a cognizable social group. Family-based groups may qualify for asylum; however, as with other proposed social groups, adjudicators must apply a case-specific approach to determine whether a proposed family-based group is cognizable. Matter of L-E-A-, 27 I&N Dec. 581, 594–95 (A.G. 2019). Respondent's group lacks particularity. "[S]ome family-based group definitions may be too vague or amorphous to meet the particularity requirement—i.e., where an applicant cannot show discernible boundaries to the group." Matter of L-E-A-, 27 I&N Dec. at 593 (citing Matter of S-E-G-, 24 I&N Dec. 579, 585 (BIA 2008) (noting the "proposed group of 'family members,' which could include fathers, mothers, siblings, uncles, aunts, nieces, nephews, grandparents, cousins, and others, is . . . too amorphous a category" to satisfy the particularity requirement)). Moreover, Respondent has not shown that members of the group are "set apart, or distinct, from other persons within [Mexican] society in some significant way." Matter of M-E-V-G-, 26 I&N Dec. at 238. The Court therefore finds that group (6) is not cognizable.

Finally, the Court finds group (7) [Mexican women] cognizable. The formation of "gender-based" or "gender-related" particular social groups is "entirely appropriate," depending on the country conditions. Matter of Kasinga, 21 I&N Dec. 357, 377 (BIA 1996). The Eighth Circuit has held that gender is an immutable characteristic. See Hassan v. Gonzales, 484 F.3d 513, 518 (8th Cir. 2007) (holding "Somali females" was a valid particular social group, based on gender and the prevalence of female genital mutilation); see also Matter of Acosta, 19 I&N Dec. at 233 (finding that sex is an immutable characteristic). The group "Mexican women" therefore satisfies the immutability requirement.

Regarding particularity, the question is whether the term "women" has a commonly accepted definition within Mexican society. See Matter of Kasinga, 21 I&N Dec. at 377; W-G-R-, 26 I&N Dec. at 214 (providing that in conducting the particularity analysis, courts consider the social and cultural context of the country at issue). The size of a particular social group is not determinative. See Malonga v. Mukasey, 546 F.3d 546, 554 (8th Cir. 2008); Matter of S-E-G-, 24 I&N Dec. at 584. The record contains ample country condition evidence that Mexican society recognizes sex, gender, and gender identity. See Ex. 3 at 67–69; Ex. 8 at 337–38. Thus, as it has discrete and definable boundaries, the group "Mexican women" is defined with particularity.

In contrast to particularity, for which a higher incidence of victimization by private criminals may be a hindrance, one way to demonstrate social distinction is to show that the group in question is subject to a "higher incidence of crime" than the general population. See Matter of A-B-, 27 I&N Dec. at 335; Matter of M-E-V-G-, 26 I&N Dec. at 251 (citing Matter of S-E-G-, 24 I&N Dec. at 582); see also Matul-Hernandez v. Holder, 685 F.3d 707, 712 (8th Cir. 2012) (citing Matter of A-M-E- & J-G-U-, 24 I&N Dec. 69 (BIA 2007)). Here, country conditions reports demonstrate that Mexican women are special targets for physical and sexual violence, both within and outside of domestic relationships, including



Respondent argues the police Commander sought to harm her based on an imputed political opinion. See Ex. 14 at 5–6. She asserts that she held a strong conviction “that the police should do their job of investigating her brother’s disappearance.” Id. at 5. She further argues that by challenging the Commander to do his job and threatening to report him to a higher authority, her dispute became political because she was challenging authority. See id. at 6. The record does not contain adequate evidence to show this is a valid political opinion. Rather, it shows Respondent disagreed with the Commander’s refusal to investigate her brother’s disappearance in this particular situation. Beyond this incident, the record shows no other evidence that Respondent held this belief or that it was political in nature.

*iii. One Central Reason*

The Court further finds the harm that Respondent experienced in the past did not occur on account of a protected characteristic. Respondent must demonstrate that a protected ground was at least “one central reason” for the persecution she experienced, as opposed to playing “a minor role in . . . past mistreatment,” and “it cannot be incidental, tangential, superficial, or subordinate to another reason for harm.” Matter of J-B-N- & S-M-, 24 I&N Dec. at 212.

When Respondent witnessed her brother’s beating and abduction, one of the attackers threatened her with a gun. Respondent has not demonstrated this harm bears any connection to a protected ground. The facts show only that the reason for this threat was to prevent Respondent from intervening in the abduction. Respondent approached the men assaulting her brother, and one of the assailants threatened her, telling her to go back in her house. Respondent has not adequately explained how her proposed protected grounds motivated the perpetrators in this incident.

Regarding Respondent’s experience with the police Commander, the Court also finds missing the necessary nexus to a protected ground. The Court acknowledges the Commander stated, “all women are whores” and said that “shouldn’t be a bitch.” Respondent also testified she was aware of other, similar incidents where law enforcement officers used a *quid pro quo* proposition for sex against women seeking help. In addition, some country conditions evidence indicates that Mexican police and armed forces target women and perpetrate sexual violence against them because of their gender. See generally Ex. 3 at 88–143. However, the Court does not find gender was a central reason for the Commander’s threats of violence. Respondent’s testimony and other evidence show the Commander sexually harassed her in an attempt to leverage his power. When Respondent refused the Commander’s advances and threatened to report him to a higher authority, he threatened her to prevent her from reporting his inappropriate actions. He told her to keep her mouth shut as she left his office, and his subsequent threats by text and phone likewise instructed her to stay quiet. When Respondent saw the Commander on patrol in her neighborhood, he made gestures signaling he was watching her and to keep quiet. This

evidence shows the only clear, central reason for his threats was that he was attempting to cover up his sexual proposition to Respondent. Therefore, the Court finds Respondent's status as a Mexican woman was not one central reason for the harm she suffered.

Likewise, the Court does not find Respondent's proposed (imputed) political opinion "that police should do their job" was one central reason for the harm she suffered at the hands of the police Commander. Harm motivated by personal retribution is not a valid nexus. See Eusebio, 361 F. 3d at 1091-92 (upholding a finding that no proper nexus existed where the alleged harm "was based on personal animosity rather than political beliefs"); see also Setiadi, 437 F.3d at 713 ("[A] personal dispute without connection to government (in) action is not usually grounds for a finding of past persecution."). In determining nexus where an applicant claims a political opinion based on an anticorruption stance, the Court should consider: (1) whether and to what extent the alien engaged in activities that could be perceived as expressions of anticorruption beliefs; (2) any direct or circumstantial evidence that the persecutor was motivated by the alien's actual or perceived anticorruption beliefs; and (3) any evidence regarding the pervasiveness of corruption within the governing regime. Matter of N-M-, 25 I&N Dec. at 532. "It is also possible that exposing or threatening to expose government corruption to higher government authorities, the media, or nongovernmental watchdog organizations could constitute the expression of a political opinion." Id. at 528. "An alien may, of course, be motivated to engage in whistleblowing activities for nonpolitical reasons, that is, reasons other than a genuine concern for the practices of good government. Id. at 528 n.1. "[S]imply demonstrating resistance to pressure to engage in certain acts and consequent retaliation for this resistance is insufficient to establish a nexus. Rather, an alien must provide some evidence, direct or circumstantial, that the persecutor's motive to persecute arises from the alien's political belief." Id. at 529.

Respondent threatened to report the Commander for his refusal to investigate her brother's case, but she never did report him. She testified she did not actually know the process for reporting the Commander, and that she was afraid of retaliation. She never denounced the Commander in public or at work, and she never published any articles criticizing the government or organized any other people against this corruption. Respondent did not provide evidence of her actions beyond her interaction with the Commander that would demonstrate she held this opinion or that it has a political dimension that extends beyond her personal dispute with the Commander. His statements to her do not suggest he viewed her as a political threat. The record shows the Commander was taking advantage of her situation then threatening retaliation to cover up his misdeeds, but it does not contain enough evidence to persuade the Court that he was acting based on Respondent's proposed political opinion. Finally, the Court notes that the record contains evidence of general government corruption and ties between government officials and criminal entities. See Ex. 8 at 247, 269-70. Dr. McNamara also testified the police at every level in Mexico are susceptible to corruption. Still, the Court finds, in Respondent's case, that her threats to expose the Commander and his retaliatory threats do not show a political motive. See

inclination to persecute. Matter of Y-B-, 21 I&N Dec. 1136, 1149 (BIA 1998). A well-founded fear of persecution must be both subjectively genuine and objectively reasonable. Yu An Li v. Holder, 745 F.3d 336, 340 (8th Cir. 2014). To demonstrate a subjective fear of persecution, an applicant must demonstrate a genuine apprehension or awareness of the risk of persecution. Matter of Acosta, 19 I&N Dec. at 221. To satisfy the objective element, the applicant's subjective fear must be supported by "credible, direct, and specific evidence that a reasonable person in the alien's position would fear persecution if returned to the alien's country." Damkan v. Holder, 592 F.3d 846, 850 (8th Cir. 2010) (quoting Mamana v. Gonzales, 436 F.3d 966, 968 (8th Cir. 2006)). A ten percent chance of future persecution can be sufficient to meet the asylum requirements. Cardoza-Fonseca, 480 U.S. at 431; Bellido v. Ashcroft, 367 F.3d 840, 845 n.7 (8th Cir. 2004).

In evaluating whether the applicant has sustained the burden of proving a well-founded fear of persecution, the 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 identified with that group. 8 C.F.R. § 1208.13(b)(2)(iii); see also Matter of S-M-J-, 21 I&N Dec. 722, 731 (BIA 1997). However, to constitute a "pattern or practice," the persecution of the group must be "systemic, pervasive, or organized." Ngure v. Ashcroft, 367 F.3d 975, 991 (8th Cir. 2004).

Here, Respondent fears that if she returns to Mexico, the cartel (La Familia Michoacana) or the police will kidnap, beat, sexually assault, and kill her. (Ex. 9 at 5). She claims she is at risk of persecution because of her political opinion and her membership in a particular social group. Id. As discussed in Section V.A.2.b.ii of this Decision, the Court has found Respondent has not presented a valid political opinion claim. As discussed in Section V.A.2.b.i of this Decision, the Court has found proposed PSGs (1), (2), (3), (4), (5), and (6) to be not cognizable. The Court has found group (7) [Mexican women] to be cognizable. Therefore, the Court will focus only on group (7).

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Respondent also expressed a fear of harm by the cartel that took her brother, La Familia Michoacana. See Ex. 9 at 5. Respondent claims the cartel threatened her, stating they would harm her if she interfered with her brother's kidnapping. See id. She fears the cartel would sexually assault her, kidnap her, and kill her. See id. at 6. However, this was an isolated threat. Respondent received no further threats from the cartel, even after she reported them to the police. The evidence does not show she faces a reasonable possibility of harm from these actors. Thus, Respondent has not shown the requisite likelihood of harm by the cartel.<sup>4</sup>

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<sup>4</sup> The Court notes the record contains evidence of widespread violence and killings by criminal organizations, sometimes in coordination with state actors. See, e.g., Ex. 8 at 249, 330, 343. However, a fear of general criminal activity is not a valid ground for persecution. See Agha, 743 F.3d at 617; Bartolo-Diego v. Gonzales, 490 F.3d 1024, 1028 (8th Cir. 2007).

Matter of N-M-, 25 I&N Dec. at 533 (“Where the alien threatens to expose the corrupt acts of rogue officials acting without the support of the governing regime, it seems less likely that the act would be perceived as politically motivated or politically threatening.”). Simply because Respondent threatened to expose the Commander for his inappropriate conduct does not necessarily mean he was motivated by Respondent’s proposed political opinion or viewed her as a political opponent when he issued the retaliatory threats. Based on the record as a whole, the Court finds Respondent has not demonstrated the Commander was motivated to harm her because of her proposed imputed political opinion.

c. Government Unwilling or Unable to Control

To qualify for asylum, 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). The alleged persecutor in this case was the police Commander, a government official. Thus, the Court finds Respondent suffered harm inflicted by an actor within the Mexican government.

Nonetheless, Respondent has not shown that she suffered harm rising to the level of past persecution or that the harm she suffered was on account of a protected ground. Thus, the Court holds that Respondent has failed to meet her burden to establish past persecution.

3. *Well-Founded Fear of Future Persecution*

Because Respondent has not shown past persecution, she is not entitled to a presumption of a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1). If the applicant’s fear of persecution is unrelated to past persecution, the applicant bears the burden of establishing that the fear is well founded. See id. An applicant has a well-founded fear of future persecution if: (1) the applicant has a fear of persecution in his or her country of nationality or, if stateless, in the country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) there is a reasonable possibility of suffering such persecution if the applicant were to return to that country; and (3) the applicant is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear. 8 C.F.R. § 1208.13(b)(2)(i). A well-founded fear of persecution does not exist where the applicant could avoid persecution by relocating to another part of the country and such relocation would be reasonable. 8 C.F.R. § 1208.13(b)(2)(ii). In other words, the applicant’s fear of persecution must be countrywide. Mohamed v. Ashcroft, 396 F.3d 999, 1003 (8th Cir. 2005); Matter of Acosta, 19 I&N Dec. at 235.

To establish a well-founded fear of persecution, an applicant must present credible evidence that demonstrates that the feared harm is of a level that amounts to persecution, that the harm is on account of a protected characteristic, that the persecutor could become aware or already is aware of the characteristic, and that the persecutor has the means and

and he never harmed her despite numerous threats. She never reported him to a higher authority or tried to live somewhere else. Thus, the Court finds she has not shown the requisite likelihood of harm.

Additionally, Respondent has not shown the harm she fears would occur on account of a protected ground. Credible threats may contribute to a well-founded fear of future persecution. See Ngengwe, 543 F.3d at 1036–38; Sholla, 492 F.3d at 951. Threats based on personal retribution are not a valid basis for asylum. See Martinez-Galarza v. Holder, 782 F.3d 990, 993–94 (8th Cir. 2015). There may be a basis for asylum where threats are motivated by personal retaliation *and* a protected motive. *Id.* “Aliens fearing retribution over purely personal matters will not be granted asylum on that basis.” Matter of Y-G-, 20 I&N Dec. 794, 799 (BIA 1994) (citing Matter of Pierre, 15 I&N Dec. 461 (BIA 1975)). In the instant case, the cartel threatened Respondent only to stop her from interfering with their criminal abduction of Respondent’s brother. “While acts of violence against a family member may demonstrate a well-founded fear of persecution, those acts must be tied to the petitioner through a pattern of persecution such that the petitioner would also reasonably fear persecution.” Quomsieh v. Gonzales, 479 F.3d 602, 606 (8th Cir. 2007) (citing Nyonzele v. INS, 83 F.3d 975, 983 (8th Cir. 1996) (holding that there was no evidence to tie the father’s murder for his political beliefs to the petitioner)). The Commander threatened Respondent with violence to cover up his sexual harassment of her. The Court finds the facts in this case show Respondent fears persecution based not on a protected ground as one central reason, but rather she fears persecution stemming from personal, retaliatory situations.

Dr. McNamara does not think Respondent could relocate safely in Mexico unless she were able to reside in a gated community, which requires substantial financial resources. He stated that if Respondent moves to a new town, it is likely she would be questioned and investigated. He testified that Michoacan is at a higher travel risk level (level four) than other parts of Mexico (level two or three). See Ex. 8 at 285 (showing Mexico is at level 2). The U.S. Department of State advises citizens not to travel to Michoacan due to crime, among several other Mexican states. *Id.* The Court notes some areas have lesser travel restrictions though. See *id.* at 286–87, 291, 294–95, 298–99; see also *id.* at 301 (“Many tourist destinations have no restrictions.”). Respondent has not sufficiently demonstrated that relocation to another part of Mexico outside of Michoacan would be unreasonable and impossible.

Finally, the Court finds Respondent has not demonstrated the government would fail to protect her from the harm she fears. Respondent did not report the Commander to any other law enforcement authority, and she has not presented sufficient evidence to show that the Mexican authorities fail to take action to protect her. She has also not demonstrated that reporting the Commander would be futile. The Court recognizes that the country reports show serious problems with government corruption and ineffectiveness. Dr. McNamara’s expert declaration states, “The Mexican government has proven unable and unwilling to

Next, the Court finds Respondent has not shown the necessary likelihood of persecution by the government actors she fears (the Commander). Even though Respondent's PSG of "Mexican women" is cognizable, the Court finds Respondent has failed to meet her burden to show a reasonable possibility that she will face persecution for this reason if she returns to Mexico. Respondent experienced multiple threats from the Commander after she refused his advances. He contacted her on her phone, and he physically intimidated her by sending officers to patrol near her house in a police van. The Commander gestured to her to keep quiet. The Commander also told her he could find her anywhere. She also heard unexplained gunshots near her home and saw officers outside. Still, the Commander never harmed Respondent. He threatened to harm her if she reported him, which she did not. The Commander's threats continued after Respondent left Mexico, but stopped a few months later. See Ex. 8 at 210. Respondent's brother, [REDACTED], submitted a declaration attesting that the police were looking for her at home every few days for about four or five months. See id. He last saw police at Respondent's house in January 2019. See id. Respondent claims the police will be able to access her personal information, and Dr. McNamara testified the police Commander would likely have access to such a national database. The Commander also told Respondent he could find her anywhere. Nevertheless, the record does not establish that the Commander would likely seek Respondent out anywhere in Mexico or that he still seeks to harm her. Thus, Respondent has not demonstrated a reasonable possibility that the Commander will persecute her if she returns to Mexico.

The Court recognizes that some country conditions reports show Mexican women are targeted for physical and sexual violence, including by law enforcement. See Ex. 3 at 88-143; Ex. 8 at 337, 341; see also Ex. 8 at 272-73 (noting women domestic violence laws were often unenforced, and sexual harassment was a significant problem). This evidence is general in nature and focuses on violence that occurs in domestic relationships and in police custody. See, e.g., Ex. 3 at 88, 91 (stating the Amnesty International report (Ex. 3 at 88-143) relates to violence against women "during arrest and interrogation by police and armed forces."); Ex. 8 at 259 (showing reports that had police sexually tortured women in their custody). Respondent has not expressed fear that she will be detained or interrogated for being suspected of a crime.

In addition, Mexico's National Human Rights Commission reports "some police officers, particularly at the state and local level, were involved in kidnapping, extortion, and providing protection for, or acting directly on behalf of, organized crime and drug traffickers." (Ex. 8 at 270). "The police and armed forces have been provided with abundant training on gender and violence against women, but this has not translated into improvements in their poor performance in oversight and punishment of offenders within the security forces." (Ex. 3 at 126). One report states that family members who seek justice for the disappeared sometimes face retaliation from the perpetrators or the authorities. See id. at 145. Despite this evidence, the record does not support a finding that Respondent would face a reasonable possibility of persecution. She fears one corrupt officer in one city,

#### 4. Respondent Adan Daniel's Asylum Claims

The record also contains an independent Form I-589, Application for Asylum, Withholding of Removal, and relief under the Convention Against Torture, for Respondent Adan Daniel. (Ex. 4A). However, Respondent [REDACTED] does not set forth a valid claim for relief. His application shows he fears harm based on political opinion and membership in a PSG. *Id.* at 5. It states he fears his mother will be "kidnapped, beaten, sexually assaulted, and killed by the police and the cartel, La Familia Michoacana," and he "will suffer as well." *Id.* Respondent [REDACTED] did not articulate a specific political opinion or PSG for the Court to evaluate. See *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. at 191 ("[A]n applicant for asylum or withholding of removal must 'clearly indicate' on the record before the Immigration Judge 'what enumerated ground(s) she is relying upon in making her claim.'") (quoting *Matter of A-T-*, 25 I&N Dec. 4, 10 (BIA 2009)); see also *Matter of A-T-*, 24 I&N Dec. 617, 623 n.7 (A.G. 2008) (stating an applicant must identify the PSG in which membership is claimed). Thus, Respondent's claims for asylum fail.

Further, Respondent [REDACTED] has not demonstrated he suffered past persecution. At two years old, Respondent [REDACTED] witnessed the police beat and abduct his uncle (Respondent's brother). He cried at the time. Respondent [REDACTED] also witnessed at a young age the harassment incident involving Respondent and the Commander. He began to associate guns with police and cartels, and when he would see a police car, he would say, "Let's go because the police kill." Neither cartel members nor the police threatened or harmed Respondent [REDACTED]. While the Court recognizes Respondent's young age at the time, the Court does not find witnessing these two events constitutes past persecution. Further, Respondent has not provided evidence that the cartel members or the Commander were motivated by a protected characteristic that Respondent possesses.

Because Respondent [REDACTED] has not shown past persecution, he is not entitled to a presumption of a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1). He has not demonstrated a reasonable possibility that he would face persecution on account of a protected ground. He has not presented evidence that he would be at any particular risk of harm in Mexico. His claims are based on the same events and similar circumstances as those of his mother, Respondent. The Court thus incorporates the relevant analysis regarding Respondent. His claims of fear relate to his mother's experiences with the cartel and the Commander. Respondent has never received any threats in Mexico. For these reasons, the Court will deny Respondent [REDACTED] independent application for asylum under INA § 208.

#### B. Withholding of Removal

As Respondent has failed to establish a well-founded fear of persecution on account of a protected ground for asylum, she also fails under the more stringent standard of proof



protect civilians from violence. In fact, Mexican politicians, courts, police, and military forces have been infiltrated by criminal organizations to the point that many Mexicans refuse to report crimes.” Id. at 237; see also id. at 304–05 (stating cartel members have infiltrated the police in Michoacán). The evidence also shows reports of government officials participating in crimes such as extrajudicial killings and forced disappearances. See id. at 237–39, 332–33, 363. Corruption and impunity for human rights abuses remain significant problems in Mexico. See id. at 247, 259, 349. “The criminal justice system routinely fails to provide justice to victims of violent crimes and human rights violations.” Id. at 336.

However, the country condition reports also show the government has made efforts to fight organized crime. See, e.g., Ex. 8 at 250–53 (describing government efforts to investigate and punish those responsible for disappearances). While not wholly successful, the government provides some level of protection. See Saldana v. Lynch, 820 F.3d 970, 976 (8th Cir. 2016) (“Neither difficulty controlling private behavior nor failure to solve every crime or to act on every report is sufficient to meet the standard). “[A] government that is “unable” to control criminal activity cannot mean anything and everything short of a crime-free society; the standard is more akin to a government that has demonstrated “complete helplessness” to protect victims of private violence.” Id. at 977.

Moreover, the Court weighs heavily the fact that Respondent did not report the Commander to any higher authority, as she threatened to do. An applicant need not report a crime to the police if it would be futile. See Gathungu v. Holder, 715 F.3d 900, 906–09 (8th Cir. 2013). See Shaghil v. Holder, 638 F.3d 828, 834 (8th Cir. 2011) (stating a failure to report to the police can be significant in this regard). Although Respondent feared reporting the Commander because he had threatened her and the police surveilled her, she was aware of the possibility that she could report the Commander to a higher authority, as evidenced by her threats to the Commander (and his reaction). Some ineffective local law enforcement practices do not make all law enforcement in Mexico unwilling or unable to protect Respondent. See Saldana v. Lynch, 820 F.3d 970, 976, 977 (8th Cir. 2016) (“Neither difficulty controlling private behavior nor failure to solve every crime or to act on every report is sufficient to meet the standard.”). The evidence in this case does not demonstrate the government would be unwilling or unable to protect her.

In light of the above, the Court finds Respondent has not met her burden to show a reasonable possibility that she will be persecuted for the reasons she states if she returns to Mexico. Thus, Respondent has failed to meet her burden to demonstrate a well-founded fear of persecution. As such, the Court will deny Respondent’s application for asylum under INA § 208.



required for withholding of removal. See Prokopenko v. Ashcroft, 372 F.3d 941, 944 (8th Cir. 2004). Therefore, Respondent's application for withholding of removal under INA § 241(b)(3) is denied.

Likewise, as Respondent [REDACTED] has failed to establish a well-founded fear of persecution on account of a protected ground, his claim also fails under the more stringent standard for withholding of removal. Thus, the Court will deny Respondent [REDACTED] application for withholding of removal under INA § 241(b)(3).

### C. Convention Against Torture

An independent analysis of a claim under the Convention Against Torture (CAT) is required only where there is evidence that the applicant would face torture for reasons unrelated to his or her claims for asylum and withholding of removal. See Guled v. Mukasey, 515 F.3d 872, 882 (8th Cir. 2008). The Court finds Respondent has not presented evidence of a claim for relief for reasons unrelated to her underlying claims for asylum and withholding of removal. Her application for relief under the CAT is based upon the same set of facts as her application for asylum and withholding of removal. Therefore, the Court need not conduct an independent analysis of Respondent's CAT claim.

In addition, based on Respondent's testimony, the nature of her claims, and the evidence presented, the Court alternatively concludes Respondent has not met her burden to show it is "more likely than not" she would be tortured if removed to Mexico. See 8 C.F.R. § 1208.16(c)(2). Respondent has not experienced harm that would amount to past torture, and she has not met her burden to show she would be targeted for harm amounting to torture if she returns to Mexico. She has also failed to show the government of Mexico would inflict or acquiesce in the harm she fears. As a result, Respondent's application for relief from removal under the CAT is denied.

Similarly, because Respondent [REDACTED] has failed to show a reasonable possibility that he would face harm amounting to persecution if returned to Mexico, his claim for relief under the CAT fails. The evidence does not show he would more likely than not be tortured by the government or by private actors with the acquiescence of the government. Respondent also has not suffered harm amounting to past torture. Thus, Respondent [REDACTED] application for relief from removal under the CAT is denied.

### D. Voluntary Departure

The Attorney General may grant a non-citizen the privilege of voluntary departure at the conclusion of proceedings if Respondent can establish that he or she: (1) has been physically present in the United States for a period of at least one year immediately preceding the date the Notice to Appear (NTA) was served; (2) has been a person of good moral character during the five-year period immediately preceding the application for

voluntary departure; (3) is not removable under INA § 237(a)(2)(A)(iii) (aggravated felon) or INA § 237(a)(4) (security and related grounds); (4) has the means to depart the United States voluntarily and intends to do so, as shown by clear and convincing evidence; and (5) merits the relief as a matter of discretion. INA § 240B(b)(1); see also Matter of Arguelles, 22 I&N Dec. 811, 816-17 (BIA 1999). [REDACTED]

[REDACTED] Here, the respondents last entered the United States on August 29, 2016. The DHS served the NTAs on the respondents on August 30, 2016, and filed the NTAs with the Court on September 16, 2016. (Ex. 1; Ex. 1A). Thus, the Court finds the respondents cannot establish that they were physically present in the United States for at least one year immediately preceding service of the NTA. See INA § 204B(b)(1)(A). The Court will deny the respondents' request for voluntary departure.

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 [REDACTED] derivative request for asylum under INA § 208 be **DENIED**.

**IT IS FURTHER ORDERED** that Respondent [REDACTED] independent application for asylum under INA § 208 be **DENIED**.

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

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**IT IS FURTHER ORDERED** that Respondent [REDACTED] independent application for withholding of removal under INA § 241(b)(3) be **DENIED**.

**IT IS FURTHER ORDERED** that Respondent's application for relief under the Convention Against Torture be **DENIED**. [REDACTED]

**IT IS FURTHER ORDERED** that Respondent [REDACTED] independent application for relief under the Convention Against Torture be **DENIED**.

**IT IS FURTHER ORDERED** that Respondent be **REMOVED** from the United States to **MEXICO**.

**IT IS FURTHER ORDERED** that Respondent [REDACTED] independent application for relief under the Convention Against Torture be **DENIED**.


**IT IS FURTHER ORDERED** that Respondent's request for voluntary departure under INA § 240B(b)(1) be **DENIED**.

**IT IS FURTHER ORDERED** that Respondent [REDACTED] request for voluntary departure under INA § 240B(b)(1) be **DENIED**.

**IT IS FURTHER ORDERED** that Respondent be **REMOVED** from the United States to **MEXICO**.

**IT IS FURTHER ORDERED** that Respondent [REDACTED] be **REMOVED** from the United States to **MEXICO**.

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  
United States Immigration Judge

[REDACTED]

[REDACTED]

[REDACTED]