

**DETAINED
RESPONDENT'S
COPY**

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1 FEDERAL DRIVE, SUITE 1850
FORT SNELLING, MN 55111

Contreras & Metelska
Shaw, Mary Kathleen
200 University Ave West
Suite 200
Saint Paul, MN 55103

In the matter of

DATE: Jul 16, 2020

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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: _____


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IMMIGRATION COURT

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II. Evidence Presented

A. Testimony

Respondent was the only witness to testify. Respondent testified about his life in Mexico, the threats and harm he and his family members have suffered there, and his fears of returning to Mexico.

B. Documentary Evidence

- Ex. 1: Notice of Intent/Decision to Resinstate Prior Order, dated March 18, 2020, and filed May 7, 2020.
- Ex. 2: Interview notes from March 26, 2020, titled "Additional Information/Continuation," (7 pages).
- Ex. 3: Record of Determination/Reasonable Fear Worksheet (3 pages), dated March 26, 2020.
- Ex. 4: Notice of Referral to Immigration Judge, filed May 7, 2020.
- Ex. 5: Copy of Respondent's Exhibit in Support of Bond, A–G (57 pages), filed May 7, 2020.
- Ex. 6: Form I-589, Application for Withholding of Removal and protection under the Convention Against Torture, filed May 7, 2020.
- Ex. 7: Documents in Support of Respondent's Application for Withholding and Relief under the Convention Against Torture, A–F (317 pages), filed June 19, 2020.
- Ex. 8: Respondent's Witness List, filed June 19, 2020.

III. Credibility

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 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 his prior written statements and application. Respondent gave an account that was internally consistent and inherently plausible. He 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.

IV. Findings of Fact

Respondent was born [REDACTED] in the community of Rancho [REDACTED] in Papantla, in the State of Veracruz, Mexico. He is not legally married. He has three children, who are four, five, and seven years old, respectively. All three children were born in Minnesota. Respondent has one sister, [REDACTED], and one brother, [REDACTED], who both live in Mexico. Respondent's father, [REDACTED], and his mother, [REDACTED] live in Mexico as well.

Respondent speaks only Spanish, and he attended three years of high school. When he grew up, his hometown was peaceful. [REDACTED] is a small town of about 150 houses. The nearest city is Papantla, which is about four or five hours away on foot and about one hour by car. Respondent first entered the United States in 2006 to escape poverty and seek a better life. He worked in the United States and sent money to his family in Mexico.

In October 2009, Respondent was ordered removed in absentia and then deported to Mexico. When Respondent arrived to his hometown, he saw new people had come there because oil fields were discovered nearby. Respondent also heard rumors that a cartel called Los Zetas was present in his town.

In 2009, a few weeks after Respondent arrived in Mexico, Respondent and his father were returning home in their truck near [REDACTED] when two men with their faces covered and who were carrying weapons tried to stop their truck.¹ See Ex. 7 at 3. His father

¹ The Court notes that Respondent's Form I-589 application states that in November 2009, two men came to the front door to kidnap him and his father, but they escaped out the back door. See Ex. 6 at 5. This appears inconsistent with Respondent's testimony that they were attacked on the road while in a vehicle. The Court notes this discrepancy about this particular event, but this one discrepancy does not lead the Court to question Respondent's credibility, given the extensive corroborating documentation submitted and the overall consistency throughout the record.

accelerated the truck, so the men started shooting at them, but they managed to flee. The two men yelled that they were not going to escape because they were going to “pick them up.” Respondent testified this meant the men were going to kidnap them. Respondent testified the two men might have wanted to kidnap Respondent for ransom because they thought he had money after recently returning from the United States. Respondent had heard the cartel had attempted to kidnap others in their community in the same way. As soon as they arrived at the house, Respondent’s parents called the police and were told officers would come investigate, but no one came. After this incident, Respondent and his father hid inside Respondent’s parents’ house for several days. About one month later, out of fear for his life, Respondent fled Mexico and returned to the United States in [REDACTED] 2009. See id. He has remained in the United States since he last entered. Threatening notes from the cartel arrived at his parents’ house even after Respondent left the country. See id. at 35.

After Respondent returned to the United States, his family began receiving threats related to a situation concerning his cousin, [REDACTED]

Respondent’s father and Respondent’s cousin had started organizing a group of people to help the [REDACTED] community oppose the Zetas cartel’s extortion efforts of charging “rent” from crop growers. See id. at 2, 14, 25, 34, 55. If people did not pay, the Zetas threatened to kill them or damage their harvests. Respondent’s father stopped organizing at one point because he thought it was too dangerous. See id. at 34. Respondent warned [REDACTED] that he was putting the family in danger by opposing the Zetas. The Zetas left a threatening note stained with blood on the door of [REDACTED] house threatening to kill his family if he did not leave the townsfolk alone. See id. at 15. [REDACTED] father was also attacked by two men who broke his rib and stated, “You’ve been warned!” Id. Around the same time, a friend of [REDACTED], a federal police officer, warned him that dangerous people had started paying attention to him and his activities; this officer was later murdered for reasons unclear in this record. See id. at 14–15.

Starting around December 2010, [REDACTED] also had problems with a teacher in town named [REDACTED] was a powerful, wealthy man in the community. See id. at 3–4, 16. People in the community feared [REDACTED] because they believed he was a cartel member as he appeared to have much more money than teachers normally had to live the lifestyle he had—driving fancy cars and drinking expensive beers. See, e.g. id. at 26, 41–42. [REDACTED] was also known for drinking alcohol frequently, and [REDACTED] commented to others in the community, including parents of children in school, that a teacher should not give such a bad impression to students. For this reason, [REDACTED] disliked [REDACTED]. In the following months, [REDACTED] family’s corn was stolen, their tractor tires were slashed, and they suffered other damages to their property. See id. at 16.

Around December 2010, [REDACTED] was drinking beer one day in a store when Nicasio showed up in a nice car, started drinking, and insulted [REDACTED] saying he had more

money than [REDACTED] even though [REDACTED] had been in the United States.² [REDACTED] had left his car on outside playing music while he was in the store drinking. At some point, [REDACTED] car was stolen, and he blamed [REDACTED]. The next day, two police patrol cars from Papantla (the nearest police station) came to [REDACTED] looking for [REDACTED]. When they found him, they pulled him from his vehicle, put him in a patrol car, and took him away to beat him, torture him, and attempt to force him to confess to stealing the vehicle. See id. at 18–20. About eight officers were involved in the kidnapping and beating, and it lasted about eight hours total. See id. They laughed and mocked him, and they threatened to kill him and dump his body. See id. at 19. They told [REDACTED] “they could do anything to [him] and get away with it.” See id. The officers had broken his finger by slamming it in a car door, beaten him so much his face was swollen and bloody, and stabbed him in the leg because he refused to confess. [REDACTED] still bears marks on his body. During the extended beating, [REDACTED] and some of his men arrived in black trucks, and some of these men also beat [REDACTED] while the police watched. See id. at 20. [REDACTED] witnessed [REDACTED] hand an envelope to the officers, which [REDACTED] believes was a bribe. See id. at 19. The officers eventually put him in jail in Papantla, where officers beat him, slammed him against the wall, and accused him of other thefts for about 45 minutes. See id. at 20. Respondent testified [REDACTED] family did not know where he was for several days. [REDACTED] sustained serious injuries.

[REDACTED] parents tried to hire attorneys to get [REDACTED] out of jail, but although the attorneys charged them money, they did not help [REDACTED]. [REDACTED] parents asked Respondent to help because they did not have any more money. Respondent, who was in the United States, asked his friend who was an attorney in Mexico to take the case, but she was too scared something might happen to her. She referred Respondent to a friend who lived far away, and that attorney agreed to take [REDACTED] case. The attorney’s name was [REDACTED]. See id. at 41, 72. This attorney found out that [REDACTED] had paid [REDACTED] prior lawyers not to complete any work on [REDACTED] case. The attorney eventually got [REDACTED] released on bond and declared innocent. See id. at 22. [REDACTED] bond was returned, and he countersued [REDACTED], who was fired from his job because of this. [REDACTED] told Respondent that only some of the police officers involved were fired.³

[REDACTED] swore revenge. He had thought that because [REDACTED] was poor, he would remain in jail, but when [REDACTED] was released, [REDACTED] asked around town to find out who had helped [REDACTED]. Since discovering it was Respondent, [REDACTED] vowed he would get his revenge against Respondent the minute he returns to Mexico.

After his release, [REDACTED] hid at Respondent’s parent’s house. Blood-stained notes started to appear at Respondent’s parents’ house threatening [REDACTED]. See id. (describing a letter, signed by the Zetas, stating “We hope you are hiding well, you son-of-a-bitch.”);

² [REDACTED] had been deported from the United States in approximately September 2009. See Ex. 7 at 12.

³ Respondent testified two or three officers were fired. [REDACTED] affidavit states four were fired. See Ex. 7 at 22.

see also id. at 27 (stating threatening notes started to appear). Patrol cars and police in uniform would come to the house harassing Respondent's parents and demanding information about Respondent and [REDACTED]. See id. at 27. On one occasion, the police told Respondent's parents that they will arrest Respondent and [REDACTED] the minute they return to Mexico because they have a "pending debt" to [REDACTED]. See id. Armed officers conducted unauthorized searches of Respondent's parents' home, looking for Respondent and [REDACTED]. See id. at 27–28, 36, 40, 42. Respondent's parents received threatening calls and letters from [REDACTED] and cartel members blaming Respondent for [REDACTED] release. See id. at 42. See id. at 35. Cars without license plates drove by the house. See id. Strange cars also started following Respondent's siblings. See id. at 28.

After he won his case, [REDACTED] remained in hiding for fear of retaliation. See id. Men started coming to [REDACTED] parents' home in police uniforms asking about [REDACTED]; he is afraid the cartel paid them off. See id. at 22.

In 2012, [REDACTED] finally fled to Minnesota. The threats and harassment of [REDACTED] family and Respondent's family continued for about a year, until 2012 or 2013. See id. at 22, 28, 42. In April 2017, [REDACTED] was deported to Mexico again. See id. at 6, 23, 42. When he first arrived, he went to his parents' house. He then decided to visit Respondent's parents in [REDACTED]. Within a couple of hours of arriving there, [REDACTED] found him. First, someone called on [REDACTED] behalf, then men showed up at the house. See id. at 42–43. [REDACTED] asked who was at the house, [REDACTED] or Respondent. Respondent testified [REDACTED] wanted to ensure one of them was there, regardless of whom. He just wanted his revenge. Respondent's mother told the men neither was there while [REDACTED] hid. [REDACTED] had been tipped off by a friend that [REDACTED] along with patrol cars and other trucks, were looking for him and had gathered at the entrance to the town. See id. at 23. By night, [REDACTED] escaped on foot and walked all night to Papantla, then he called Respondent to let him know they both could not return to [REDACTED] because [REDACTED] was waiting there to kill them. See id. [REDACTED] fears the cartel will kidnap, torture, and kill him for winning his case against [REDACTED]. See id. at 23.

Respondent and [REDACTED] tried to call the attorney who had helped [REDACTED], but she had disappeared. Respondent's brother drove to her office 10 hours away, and the secretary there told him the attorney went on vacation in 2015 and never came back, which was unusual for her. See id. at 7, 30, 72. People believe she was killed out of revenge by [REDACTED] the cartel, or the police. See, e.g., id. at 30.

Respondent's brother asked Respondent's other attorney friend in Mexico, who had referred them to the attorney who helped [REDACTED], to write a letter explaining what happened, but she refused out of fear.

Respondent believes that [REDACTED] is involved in the Zetas cartel and is still waiting for him to return to Mexico. Respondent cited the kidnapping of [REDACTED] in 2009, and other

attempts to kill or kidnap his brother and father, during which the attackers often asked for Respondent's whereabouts.

In 2013, some people tried to put Respondent's father in a vehicle, but he was able to flee. Respondent's family believes the Zetas cartel was responsible based on the cartel's activities. Around this time the Zetas continued to charge "rent" for crops and also began to put up signs identifying themselves as the Zetas. Respondent added that cartels kidnap people for money, but [REDACTED] might have also ordered the 2013 kidnapping attempt on Respondent's father to instill fear in Respondent. The attackers did not say anything to Respondent's father about Respondent during this incident though. Following the attack, the family called the police, but the police never responded. Respondent testified the police answer the call and say they will send a unit, but they never do.

In 2019, an armed, masked man showed up at Respondent's family home in Mexico. Respondent's mother and sister overheard the man through the door talking on a radio saying the target he was to kill was not there. The man then stated he would wait for Respondent's father at the entrance to the town because Respondent's father would pass by there. Respondent's mother asked her sister to call the police, but the police never showed up. Respondent's mother also asked her sister to notify Respondent's father about the masked man searching for him. Respondent's father took an alternate route home. He hid at Respondent's aunt's house for two days.

In 2014, Respondent's brother, [REDACTED] was in college in Veracruz several hours from [REDACTED] when three masked men wearing black beat him and tried to shove him into a car. See id. at 29. He managed to defend himself, and he yelled out to his friends, who came out quickly to help him. During the beating, the assailants yelled and asked for Respondent's whereabouts. After the incident, [REDACTED] began to receive threatening notes on his door. See id. Several times, [REDACTED] has also received threatening messages via social media platforms (e.g., Facebook, WhatsApp) telling him to watch out, that they are looking for him, and asking about Respondent's location. See id. They threatened Respondent's brother that there would be consequences if he does not reveal Respondent's location. Even though Respondent's brother has changed his telephone number and stopped using social media, he continues to receive threats and demands about where Respondent is.

In Respondent's hometown, his father's niece was also kidnapped by Zetas cartel members in 2013. See id. at 28, 102–03, 109. Some people grabbed her and put her in a car. They called her parents and asked for a ransom of one million pesos. They told the parents not to contact the police or there would be consequences. The parents called the police because they did not have enough money. With the help of police, they set up an exchange plan, but the cartel found out. On the day of the exchange, the cartel took the money the parents had gathered and took the girl with them as well. The parents have given her up for dead.

Respondent thinks the main reason [REDACTED] and his cartel would harm him is out of revenge

for helping [REDACTED] get out of jail. [REDACTED] lost everything because Respondent paid for [REDACTED] attorney, so [REDACTED] wants revenge. He has been looking for Respondent since 2010 or 2011. Respondent also believes the cartel will harm him for telling his parents to not pay “rent” to the cartel. Respondent also testified that his family is being targeted in Mexico because they are considered wealthy. Respondent’s father owns properties and crops. Respondent explained that they were able to have some assets because he has been sending money from the United States to support them. He added that cartels often kidnap people to extract ransom money, and cartels might target him for this reason.

Respondent has heard from many people that the police work with the cartels because when something bad happens and people call the police, the police never show up. Respondent’s brother told him police sometimes do other jobs for money when they are off-duty.

Respondent also fears the police in Mexico because they are looking for him. Respondent’s brother found out the police are being paid to pick Respondent up and turn him over when he arrives in Mexico. One of their superiors has ordered the officers to look for Respondent. See id. at 68–69. To obtain this information, Respondent’s brother paid two police officers. Respondent’s family has called the police after each incident of harm or attempted harm against them, but the police have never come to their aid. Respondent does not believe the police will protect him if he returns to Mexico due to their corruption.

Respondent fears returning to Mexico due to the threats he received. He believes he will be taken, tortured, and killed. Respondent also believes his family members are in danger.

Respondent testified he could not stay safe in Mexico as soon as he runs out of money to hide and move around. He testified the cartel has contacts all over Mexico, and he will not be able to hide from the police and the cartel members who are looking for him.

People in Respondent’s hometown have sent text messages indicating they are looking for Respondent because they believe he has already been deported and is in hiding there. See id. at 63–67. Respondent testified that at the beginning of June 2020, a threatening sign using vulgar words was left at the family’s house saying they were waiting for Respondent. The record contains a copy of this note and a translation. See id. at 60–61 (“Don’t be dumbasses. We know that [REDACTED] and [Respondent] were deported and they’re on their way, here we haven’t forgotten anything and we have been waiting to beat their asses. They are going to hell. We are watching you carefully. Sincerely: Group Zeta.”). Several affidavits attest to the same. See id. at 7, 29, 36, 43.

To stay safe, Respondent’s family members have moved around and not stayed in one place. Since the beating in 2014, Respondent’s brother, [REDACTED] has moved many times, and he has continued to move from one state to another. See id. at 29. He received messages in Monterrey—about 14 hours from [REDACTED] by car—and had to move again. In total, the cartel has found him in three different Mexican states. See id. His parents do not have

a stable residence; they move around from place to place. To the best of Respondent's knowledge, they are in [REDACTED] now because they have property and crops there.

V. Relief

A. 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 Eighth Circuit has defined past 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).

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)).

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).

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 one incident of a threat and attempted harm in Mexico. In 2009, he was in a truck with his father when two men with their faces covered tried to stop them and shot at them, but they were able to get away. The men yelled a threat to kidnap them, but Respondent suffered no physical harm. This is the only incident of past harm or attempted harm directly against Respondent. The Court does not find this rises to the extreme level of persecution.

In addition, Respondent has not demonstrated this attack occurred on account of a protected ground. The evidence shows the only reason for this attempted kidnapping was financial gain for the kidnappers. Respondent testified the attackers likely wanted to kidnap Respondent for ransom because they thought he had money after recently returning from the United States. Similarly, Respondent’s father believes the Zetas saw Respondent had returned from United States and saw an opportunity to extract ransom money. See Ex. 7 at

35. Respondent's brother likewise believes the Zetas knew Respondent had just arrived from the United States and might be a good target for kidnapping, and Respondent's brother states Respondent's problems only started when the cartel found out he had lived in the United States. See id. at 26, 29. Respondent has not presented any other evidence of the reason for which the two attackers targeted him and his father in 2009. Thus, Respondent has not demonstrated the harm he experienced was on account of a protected ground.

For these reasons, the court concludes Respondent has not met his burden to show he suffered harm amounting to past persecution or that he suffered past persecution on account of a protected ground.

3. *Future Threat to Life or Freedom*

Because Respondent has not established past persecution, he must demonstrate that it is more likely than not that he would be persecuted on account of a protected ground upon removal if returned to Mexico. See 8 C.F.R. § 1208.16(b)(2). Respondent claims he will more likely than not face a threat to his life or freedom on account of his political opinion and his membership in a particular social group. The Court addresses each claim below.

i. 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 (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).

Respondent claims he will suffer persecution on account of a political opinion, but he has not clearly articulated what that political opinion is. Respondent did testify about his father's and [REDACTED] opposition to the criminal activities of Los Zetas in his hometown, and in closing argument, his counsel argues that he held a political opinion "for helping

oppose the cartels” because the Zetas cartel is tied to the police.⁴ To the extent Respondent is claiming a political opinion based on opposition to or refusal to cooperate with the Zetas cartel, the Court finds this is not a valid political opinion. Generally, the Eighth Circuit has held that opposition to gangs or criminal enterprises is not sufficient to constitute a political opinion. See Gomez-Rivera v. Sessions, 897 F.3d 995, 999 (8th Cir. 2018) (rejecting an imputed anti-gang political opinion claim); Marroquin-Ochoma, 574 F.3d at 578–79 (holding that opposition to a gang “does not compel a finding that the gang’s threats were on account of an imputed anti-gang political opinion”). In the instant case, Respondent has not shown that his opposition to the Zetas cartel extends beyond his general opposition to the activities of the cartel in his hometown. The above case law shows that general opposition to criminal activity and groups does not normally qualify as a political opinion. Here, Respondent has not submitted sufficient evidence to persuade the Court otherwise. Therefore, the Court finds Respondent has not presented a valid political opinion claim and has not shown he would face persecution on account of a political opinion.

ii. Membership in a Particular Social Group

For this protected ground, “[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); see also Matter of S-E-G-, 24 I&N Dec. 579, 584 (BIA 2008); Matter of Acosta, 19 I&N Dec. at 233. “[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.

In general, family-based groups may qualify for asylum, but 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). “[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.” Id. at 593 (citing Matter of S-E-G-, 24 I&N Dec. at 585 (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.”)). In the Eighth Circuit, family-based PSGs may be cognizable. See Bernal-Rendon v. Gonzales, 419 F.3d 877, 881 (8th Cir. 2005) (“[A] nuclear family can constitute a social group. . . .”); Silvestre-Giron v. Barr, 949 F.3d 1114, 1118 (8th Cir.

⁴ Respondent also believes the cartel will harm him for telling his parents to not pay “rent” to the Zetas cartel, but the record does not expand on this assertion.

2020) (assuming petitioner's proposed family-based PSG was cognizable); Aguinada-Lopez v. Lynch, 825 F.3d 407, 409 (8th Cir. 2016) (same).

Respondent claims he will face persecution because he is a member of the proposed PSG of [REDACTED].” Assuming Respondent's proposed PSG is cognizable, the Court finds Respondent has not demonstrated a proper nexus between the harm he fears and his membership in the proposed PSG.

Respondent testified the main reason he fears that [REDACTED] and the Zetas cartel would harm him is out of revenge for hiring an attorney to help [REDACTED] get out of jail. Because [REDACTED] filed a countersuit, [REDACTED] lost his job as a teacher, and [REDACTED] blames Respondent. See Ex. 7 at 6 (stating [REDACTED] blames Respondent as much as [REDACTED] for the loss of his job and car). In his affidavit, Respondent's father states the cartel is motivated by “money and revenge.” Ex. 7 at 36. He adds that Respondent made the cartel mad by standing up to them and paying for [REDACTED]'s attorney. See *id.*; see also *id.* at 43 (mother's affidavit stating similar reasons).

Criminal extortion efforts, without more, generally do not constitute persecution on account of a protected ground. See Matter of T-M-B-, 21 I&N Dec. 775 (BIA 1997); see also Silvestre-Giron, 949 F.3d at 1118–19; Martin-Martin v. Barr, 916 F.3d 1141, 1144 (8th Cir. 2019). But see Silvestre-Giron, 949 F.3d at 1119 n.3 (“We do not hold that a threat to harm the members of a family as a means to affect extortion can never support a meritorious application for withholding of removal.”). Furthermore, 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) (holding alleged threats were based on purely personal retribution, and thus, could not support an asylum claim); Matter of Y-G-, 20 I&N Dec. 794, 799 (BIA 1994) (holding applicants fearing retribution over purely personal matters will not be granted asylum on that basis). The Court finds Respondent's fear that [REDACTED] the Zetas cartel, or their affiliates will harm him out of retaliation for helping [REDACTED] obtain an attorney constitutes retaliation of a personal nature.

Respondent has not shown that being a “member of the [REDACTED] family” is at least one central reason for the harm for the harm he fears. To the extent that Respondent claims his familial relationship to his cousin is the reason he fears persecution, the Court notes that he and his cousin have received the same threats, and Respondent's cousin is not in the [REDACTED] family as his last name is [REDACTED].” The Court also notes that the attorney who won [REDACTED] case disappeared and was presumably harmed by the Zetas cartel because of her involvement in [REDACTED]'s case. She is not a member of Respondent's family or his proposed PSG. This further undermines Respondent's claim that he will be targeted because of his membership in his family rather than his involvement in helping [REDACTED] win his case.

The Court acknowledges that several members of Respondent's family have received threats or have been targeted themselves by the cartel, including a kidnapping attempt on his brother, a kidnapping attempt on his father, and an assassination attempt on his father. However, "the fact that a persecutor has threatened an applicant and members of his family does not necessarily mean that the threats were motivated by family ties." Matter of L-E-A-, 27 I&N Dec. 40, 45 (BIA 2017); see also Matter of E-R-A-L-, 27 I&N Dec. 767, 775 n.10 (BIA 2020) (stating the Attorney General in his 2019 decision of Matter of L-E-A-, 27 I&N Dec. at 597 expressly left undisturbed the nexus portion of the Board's 2017 decision of Matter of L-E-A-, 27 I&N Dec. 40). The Court also notes that the threats to and attacks on Respondent's family members were often accompanied by questions about Respondent's whereabouts and indications that Respondent and [REDACTED] were the primary targets. See Ex. 7 at 27 (stating the police would demand information about Respondent and [REDACTED] when they came to Respondent's parent's home), 28 ("I know I am being watched and I am afraid the police will arrest me by mistake or arrest me to try and get info about my brother . . . and my cousin."), 29 ("Now we are a target only because we have confirmed family in the United States and because of the actions taken against corrupt police and the teacher [REDACTED]"), 42, 61. Respondent's family members were primarily targeted as a means to achieve a cartel objective: to find and punish Respondent and [REDACTED].

Respondent also testified that his family is being targeted in Mexico because they are considered wealthy. Respondent's family owns properties and crops, and they are perceived as wealthy in the community. Perceived wealth does not constitute a valid protected ground. See Tejado v. Holder, 776 F.3d 965, 970–71 (8th Cir. 2015) (holding a claimed PSG of those perceived as wealthy for having lived in the United States for a long time was not valid); Matul-Hernandez v. Holder, 685 F.3d 707, 712–13 (8th Cir. 2012) (concluding a claimed PSG of "Guatemalans returning from the United States who are perceived as wealthy" was not a valid).

Respondent's testimony and the supporting evidence in the record show he fears harm because of a personal vendetta and perceived wealth. He was not targeted because of his family name. The record does not show that [REDACTED] and the Zetas cartel seek to eliminate his family or that his family membership is sufficiently intertwined with their desire to seek revenge for helping [REDACTED]. Cf. Cedillos-Cedillos v. Barr, No. 18-2233, ---F.3d---, 2020 WL 3476981 (4th Cir. Jun. 26, 2020) (upholding a finding of no nexus where the respondent claimed membership in a PSG of his nuclear family but the "overwhelming" evidence showed the reason he feared harm was that he was the sole witness to the gang murder of his brother); Silvestre-Giron, 949 F.3d at 1118 ("There is no evidence the extortionists targeted or murdered Silvestre-Giron's stepfather because of his family membership or any other family connection. According to Silvestre-Giron's testimony, their only motivation was money."); De la Rosa v. Barr, 943 F.3d 1171, 1174 (8th Cir. 2019) ("[D]e la Rosa's testimony, as a whole, undermines his claim that these family members were singled out because of their membership in the de la Rosa family and,

instead, suggests that criminals target wealthy individuals regardless of family membership.”).

An applicant “must provide *some* evidence of [motive], direct or circumstantial.” INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992). In the instant case, the Court does not find enough evidence that Respondent would be harmed specifically on account of his family membership—though he will likely face harm for other reasons. Rather, the Court finds Respondent’s membership in the [REDACTED] family is tangential to his claimed fears of return. Thus, the Court finds Respondent has not shown that his membership in his proposed PSG would be at least one central reason for the harm he fears.

In total, Respondent has failed to meet his burden to show any future harm he would face would occur on account of a protected ground. Accordingly, the Court will deny Respondent’s application for withholding of removal under INA § 241(b)(3).

B. Protection under the Convention Against Torture (CAT)

1. *Legal Standard*

Respondent is still eligible to seek withholding of removal or deferral of removal under the CAT. See 8 C.F.R. § 1208.13(c)(1). Eligibility for this form of protection is set forth at 8 C.F.R. § 1208.16(c) and 8 C.F.R. § 1208.18. The burden of proof is on the applicant to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2). The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. 8 C.F.R. § 1208.16(c)(2).

“Torture” is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information or a confession, punishment, intimidation or coercion, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity.” 8 C.F.R. § 1208.18(a). “Acquiescence” requires that the public official have prior awareness of the activity and thereafter breach his or her legal responsibility to intervene to prevent such activity. 8 C.F.R. § 1208.18(a)(7). It is not sufficient to show that the government is aware of the torture and is simply powerless to stop it. See Ramirez-Peyro v. Gonzalez, 477 F.3d 637, 639 (8th Cir. 2007). However, a government’s willful blindness toward the torture of citizens by third parties amounts to unlawful acquiescence. Gallimore v. Holder, 715 F.3d 687, 689 (8th Cir. 2013). A public official or person acting “under color of law” while inflicting or acquiescing to torture satisfies the requirement that torture be committed by someone acting “in an official capacity.” See Ramirez-Peyro v. Holder, 574 F.3d 893, 899–901 (8th Cir. 2009). Country conditions evidence of torturous conduct that is routine and sufficiently connected to the criminal justice system may

support a finding that high-level government officials are acquiescing to such conduct. See Matter of O-F-A-S-, 27 I&N Dec. 709, 718 (BIA 2019).

In assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered. Such evidence includes, but not is limited to: evidence of past torture inflicted upon the applicant; evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured; evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable. 8 C.F.R. § 1208.16(c)(3). Other relevant information regarding conditions in the country of removal may also be considered. Id.

A pattern of human-rights violations alone is not sufficient to show that a particular person would be in danger of being subjected to torture upon his return to that country; rather, “[s]pecific grounds must exist that indicate the individual would be *personally* at risk.” Matter of S-V-, 22 I&N Dec. 1306, 1313 (BIA 2000) (emphasis added) (citation omitted). Eligibility for relief cannot be established by stringing together a series of suppositions to show that torture is more likely than not to occur unless the evidence shows that each step in the hypothetical chain of events is more likely than not to happen. Matter of J-F-F-, 23 I&N Dec. 912, 917–918 (A.G. 2006). “The Board has recognized that claims under the CAT must be considered in terms of the aggregate risk of torture from all sources.” Abdi Omar v. Barr, No. 18-3351, ---F.3d---, 2020 WL 3477003 (8th Cir. Jun. 26, 2020) (citing Matter of J-R-G-P-, 27 I&N Dec. 482, 484 (BIA 2018)).

2. *Analysis*

The Court finds Respondent would more likely than not be tortured if removed to Mexico. Specifically, the Court finds Respondent will more likely than not be killed or tortured by [REDACTED] and the Zetas cartel, with the acquiescence of the government or by government officials themselves acting in an official capacity on behalf of the cartel. The Court also finds Respondent cannot relocate to a part of Mexico where he could avoid torture or death.

Respondent fears he will be kidnapped, tortured, and killed if he returns to Mexico. He fears that [REDACTED], the Zetas cartel, and government officials working for the cartel will inflict this harm on him.

i. Past Torture

To begin, the Court finds Respondent suffered no past harm that would amount to torture. On one occasion, he was in a truck with his father when two men with their faces covered tried to stop them and shot at them, but they were able to get away in the truck. The men yelled a threat to kidnap them, but he suffered no physical harm. This is the only incident of past harm or attempted harm directly against Respondent, and it does not rise to the level

of torture. However, the Court notes that Respondent's family members, including his father, brother, and cousin, were subjected to severe harm, including beatings, detention, threats, and kidnapping and assassination attempts.

ii. Likelihood of Torture

Next, the Court finds [REDACTED], other members of the Zetas cartel, or other cartel or government affiliates will more likely than not target Respondent for torture or death in Mexico.

Respondent's cousin, [REDACTED], crossed a powerful, wealthy, and well-known teacher in the town, [REDACTED]. [REDACTED] falsely accused [REDACTED] of stealing his car. [REDACTED] is connected with the Zetas cartel that operates in the area of [REDACTED], Veracruz. *See, e.g.*, Ex. 7 at 36. When [REDACTED] was arrested by the police, eight officers beat him all over his body, broke his finger by slamming it in a car door, stabbed him in the leg, threatened to kill him, and then detained him on the false charge that he had stolen [REDACTED] car. *See id.* at 18–20. This left [REDACTED] severely injured. The police tried to force him to confess, and [REDACTED] and other men were present during the beating and interrogation. *See id.* [REDACTED] spent months in jail until Respondent, who was in the United States, sought to assist his cousin by hiring an attorney from out of town. This attorney, unlike the local attorneys, had not been paid off by [REDACTED]. The attorney successfully defended [REDACTED], helped him bond out of jail, and got the theft charges dismissed against him. *See id.* at 75–97 (criminal records). The attorney countersued, which cost [REDACTED] his job, and he did not recover any money for his stolen car. [REDACTED] blamed [REDACTED] and Respondent for this loss, and he swore revenge. In 2015, that attorney disappeared, and no one has been able to locate her or her family.

Because Respondent assisted in securing his cousin's release, the police are now looking for him. Respondent has submitted compelling evidence from two employees of the police department (representatives from the police headquarters in Veracruz) who submitted a letter stating that, in 2009, a superior officer ordered officers to kidnap Respondent and [REDACTED] if they returned to Mexico. *See id.* at 68–69. The officers were instructed to visit their family homes and search for them not only in the state of Veracruz but throughout Mexico. *See id.* The officers received payment to surveil Respondent's family and report back to their superiors if Respondent and his cousin return to Mexico. The letter states that [REDACTED] [REDACTED] requested this work and has paid them since 2009. *See id.* What these employees report is consistent with extensive country conditions evidence in the record, discussed below, that Mexican police work in tandem with drug cartels to kidnap, torture, and kill civilians.

The cartel has come to Respondent's parent's home in search of him, they have threatened and attacked Respondent's father and brother, and they have left threatening notes about what they would do to Respondent should he return to Mexico. On one occasion, the police

told Respondent's parents that they will arrest Respondent and [REDACTED] the minute they return to Mexico because they have a "pending debt" to [REDACTED]. See id. at 27. Armed police officers have also entered Respondent's parents' home, without a warrant or permission, to search for him and [REDACTED]. See id. at 27–28, 36, 40, 42.

In 2017, [REDACTED] and the cartel found out about [REDACTED]'s arrival in [REDACTED] within hours and attempted to kidnap him again with the help of officers. See id. at 23, 42–43.

Respondent's brother, [REDACTED], submitted an affidavit explaining that while at college in 2014 in [REDACTED] Veracruz, he was beaten by cartel members who demanded that he reveal Respondent's whereabouts. Respondent's brother also received threats via social media and physical notes left on his dorm room door. Despite getting rid of social media accounts, changing his telephone number, and moving several times, the Zetas continued to harass and threaten [REDACTED]. In 2017, upon completing his degree, [REDACTED] moved from Veracruz to the state of Puebla, there again he was located and threatened. Each time [REDACTED] has moved, he has continued to receive messages saying the cartel has found him and threatening him to obtain information about Respondent.

Most recently, in June 2020, the Zetas left a signed, handwritten threat note at Respondent's parents' home demanding Respondent's location and threatening to kill him. See Ex. 7 at 60–61 (stating the Zetas are waiting for Respondent and [REDACTED] "to beat their asses" and send them to hell). Because of the numerous threats and attacks, Respondent's parents and siblings have been hiding and moving around to different parts of Mexico to remain safe.

Due to Respondent assisting his cousin to get out of custody and prove his innocence, Respondent has now become a target of [REDACTED] and the Zetas, who are actively looking for him with the paid assistance of police. [REDACTED] is believed to be associated with Los Zetas. Respondent testified that people in the community thought [REDACTED] was a cartel member because he had much more money than teachers normally have. Supporting affidavits in the record also show [REDACTED] is believed to be a member of the Zetas cartel. See id. at 36; see also id. at 26, 41.

The U.S. Drug Enforcement Administration (DEA) has identified Los Zetas as one of the major drug trafficking organizations (DTOs)⁵ in Mexico. See id. at 176, 192. Los Zetas was one of the large, "traditional" DTOs, but these dominant cartels have fragmented in recent years. See id. Due to shifting allegiances, newly formed groups, and regional changes in power balance, some sources state the criminal landscape in Mexico is hard to portray. See id. at 206. The Zetas have fragmented into at least two major factions. See id.

⁵ For purposes of this Decision, the Court uses both terms "DTO" and "cartel" when referring to the Los Zetas criminal organization, as they reflect the descriptions of the group in the country reports and the testimonial evidence.

at 200. In addition, smaller, regional criminal groups sometimes use the “Zeta” name “to tap into the benefits of the Zeta reputation.” See id. at 199. On the whole, most observers “concur that the organization is no longer as powerful as it was during the peak of its dominance in 2011 and 2012.” Id.

Despite the fragmentation of the original Zetas, they remain a powerful force in Mexico. Originally, the Zetas were formed by corrupted Mexican special military forces, some with U.S. training, who defected to become the military arm of the Gulf Cartel and later broke away to form their own cartel. See id. at 118, 192, 198–99. Since their beginning, their main asset has been the ability to carry out organized violence. See id. at 199. Traditionally, the Zetas have been more aggressive than other DTOs, using intimidation and terror to control territory, commonly through extreme violence and killings of civilians. See id. at 199, 255; see also id. at 120 (showing a former Zetas boss who was arrested in 2011 revealed mass grave sites). Though fragmented, the Zetas have continued their model of violence and intimidation; they are still known for torture, beheadings, and massacres of civilians. See id. at 118. The Zetas have military-style organization and the training and finances needed to carry out sophisticated attacks on civilians. See id. at 271. Though the scope of the Zetas’ territory is now disputed, see id. at 200, One report suggests the Zetas control large swaths of territory.⁶ See id. at 271; cf. Xochihua-Jaimes v. Barr, No. 18-71460, ---F.3d---, 2020 WL 3479669, at *9 (9th Cir. June 26, 2020) (“[E]xtensive record evidence shows that Los Zetas operate in many parts of Mexico, including states far away from ‘Veracruz and surrounding areas.’”). The Zetas have adapted and are known for “diversification and expansion into other criminal activities, such as fuel theft, extortion, kidnapping, human smuggling, and arms trafficking.” Ex. 7 at 200.

More generally, cartel violence has resulted in numerous murders in Mexico in recent years. Some estimate there have been 150,000 murders related to organized crime since 2006. See id. at 181. This type of violence is intrinsic to the drug trade. See id. The total scope of criminal violence hard to measure, though, because of restricted reporting by the government, self-censorship by the media, and attempts by criminal groups to mislead the public. See id. at 186–87.

“Forced disappearances in Mexico also have become a growing concern, and efforts to accurately count the missing or forcibly disappeared have been limited, a problem that is exacerbated by underreporting.” Id. at 187. Since 2016, at least 60,000 people have disappeared, though estimates range widely. See id. at 118, 187; see also id. at 213. “Disappearances have been carried out by state forces, crime groups, or both together.” Id. at 118. “There continues to be virtually no criminal accountability for the many thousands of disappearances perpetrated in Mexico since 2006.” Id. at 269; see also id. at 156 (“Unfortunately the authorities do nothing to stop all this and many cases of disappearance

⁶ One article states the rival cartel factions in Veracruz are the Jalisco New Generation Cartel (CJNG) and a splinter of the Zetas cartel. See id. at 152. This article also notes that the CJNG has “declared war against the government of Veracruz,” according to a news report. See Ex. 7 at 152.

of minors, youth and adolescents more and more are increasing in this municipality of Papantla.”).

Based on the record in this case, the Court finds Respondent will more likely than not be tortured and killed by [REDACTED], the Zetas cartel, or the police officers working for them. The facts of Respondent’s case show numerous threats against his life from [REDACTED] and the Zetas cartel. The most recent threat was left at Respondent’s family home in June 2020. These threats are numerous, specific, and immediate. As the Second Circuit has suggested, even one credible threat of harm could be sufficient to warrant CAT protection:

To hold categorically that an applicant for CAT relief must be threatened more than once and that such a person must suffer physical harm before fleeing is an error of law. *See* 8 C.F.R. § 208.16(c). Martinez and her children left within days of when gang members threatened them. The IJ credited Martinez’s testimony that the threats received were believable and in no way remote. Under the circumstances, it was error to require that the petitioners wait until they suffered physical harm or until the threats recurred before they fled.

Martinez De Artiga v. Barr, 961 F.3d 586, 591 (2d Cir. 2020). In this case, Respondent and his family members have received numerous threats over the past decade that clearly spell out Respondent’s fate should he return. Furthermore, [REDACTED] and the Zetas cartel have said they will torture and kill Respondent for hiring an attorney to help [REDACTED] fight and win his criminal case against [REDACTED]. [REDACTED] and the Zetas cartel have sent threats to Respondent’s family members in several states in Mexico, have attempted to kidnap his father in 2013, have attempted to kidnap his brother in 2014, have attempted to kidnap [REDACTED] again in 2017, and have attempted to kill his father in 2019. The record also contains a letter from two anonymous police officials directly stating that [REDACTED] bribed the police to kidnap Respondent and [REDACTED] and inform him when they return. This case shows extensive efforts by [REDACTED] and the Zetas cartel to find Respondent and punish him for his past actions, along with [REDACTED]. All these facts show Respondent would more likely than not personally face a risk of torture in Mexico.

iii. Government Infliction or Acquiescence

In addition, the Court finds government actors would inflict or acquiesce to the torture Respondent fears. The record in this case shows that [REDACTED] and the Zetas cartel will more likely than not kidnap, torture, and kill Respondent with the acquiesce of government officials, or the police themselves, acting under color of law, would directly harm Respondent.

In this case, Respondent has direct evidence that government officials will torture him or acquiesce in his torture. Respondent’s brother secured a letter from two police department

officials who anonymously declare that, in 2009, a superior officer ordered subordinate officers to kidnap Respondent and [REDACTED] if they returned to Mexico, pursuant to [REDACTED] who has been paying them to find him. See Ex. 7 at 68–69.⁷ The officers were instructed to visit their family homes and search for them not only in the state of Veracruz but throughout Mexico. See id.

Beyond this letter, Respondent's family members have been harassed and threatened by the police numerous times, and their house has been searched without permission. The officers have repeatedly asked about Respondent and [REDACTED]. For example, Respondent testified that, in 2017, [REDACTED] arrived at the door of Respondent's parents' home with police officers trying to find [REDACTED]. Patrol cars and men in police uniforms were often visiting to make these inquiries and threats. One officer told Respondent's parents directly they plan to arrest Respondent and [REDACTED] the minute they return to Mexico because they have a "pending debt" to [REDACTED]. See id. at 27. This matches the order in the letter from the police officials. See id. at 69.

Moreover, Respondent and his family members have repeatedly reached out to the police for help in the past, to no avail. For example, Respondent and his father reported the kidnapping attempt in 2009, but police never came. In 2013 and in 2019, Respondent's father reported the kidnapping and assassination attempts made on him, but the police never came to investigate. The record shows a pattern of police failing to respond to the consistent requests by Respondent's family for protection against threats and violence by the Zetas cartel.

Respondent has demonstrated state involvement and acquiescence regarding his personal circumstances, and he has presented extensive country conditions evidence documenting in general the widespread problem of public official acquiescence in crimes by the Zetas and other DTOs. The Eighth Circuit has held evidence showing "wide-scale police participation in harmful actions on behalf of" a Mexican drug cartel and showing the government has general knowledge of that activity can support a grant of CAT protection. See Ramirez-Peyro, 574 F.3d at 905; see also Rodriguez de Henriquez v. Barr, 942 F.3d 444, 448 (8th Cir. 2019) ("We have construed 'acquiescence' as including acts of officials, 'including low-level ones, even when those officials act in contravention of the nation's will.'") (quoting Ramirez-Peyro, 574 F.3d at 901). Moreover, the Board has held:

⁷ The letter states, in relevant part:

[W]e also receive orders to care for and keep informed people who request some work beyond the usual on removal and kidnapping of people assigned by our superiors, in 2009 we received orders from superior Juan Carlos "N" who was the direct head of the corporate and in charge of the platoon to which we belonged the uprising and kidnapping of the individuals [REDACTED] and [REDACTED] from the community of [REDACTED]

Ex. 7 at 69.

An applicant may establish acquiescence by citing to evidence, particularly country conditions evidence, showing that the torturous conduct is “routine” and sufficiently connected to the criminal justice system for an adjudicator to reasonably infer that higher-level officials either know of the torture or remain willfully blind to it and therefore breach their legal responsibility to prevent it.

Matter of O-F-A-S-, 27 I&N Dec. at 718 (citing Khouzam v. Ashcroft, 361 F.3d 161, 171 (2d Cir. 2004)).⁸

In the present case, the record is replete with evidence that Mexican authorities regularly collude with DTOs to carry out torture and killings, as the Zetas did to Respondent’s cousin, [REDACTED]. In [REDACTED] case, eight police officers arrested [REDACTED] on instruction by [REDACTED] who has apparent connections to the Zetas cartel. [REDACTED] was also present and participated in the torture of [REDACTED]. Although some of the officers were later fired because of [REDACTED] countersuit, some of the officers are still active.

Likewise, the country conditions evidence shows many government actors are directly involved in kidnapping, extortion, killings, and other acts of cartel violence. The U.S. Department of State 2019 Mexico Human Rights Report documents the prevalence of Mexican police acting in collusion with criminal organizations and drug traffickers. See Ex. 7 at 210 (noting “reports of the involvement by police, military, and other government officials and illegal armed groups in unlawful or arbitrary killings, forced disappearance, and torture”), 211 (“There were several reports government entities or their agents committed arbitrary or unlawful killings, often with impunity. Organized criminal groups were implicated in numerous killings, acting with impunity and at times in league with corrupt federal, state, local, and security officials.”), 212 (“There were reports of forced disappearances by organized crime groups, sometimes with allegations of state collusion. . . . Investigations, prosecutions, and convictions for the crime of forced disappearance were rare.”), 212–13 (“There were credible reports of police involvement in kidnappings for ransom, and federal officials or members of the national defense forces were sometimes accused of perpetrating this crime.”); see also id. at 184 (noting reports of severe human rights violations involving Mexican military and police forces colluding with criminal groups); id. at 251 (stating impunity has festered because “crimes committed by drug

⁸ The facts of each individual case still matter though. For example, in a recent Ninth Circuit case, the panel stated:

[T]he country conditions evidence shows that corruption of government officials, especially of the police with regard to drug cartels, and specifically with regard to Los Zetas, remains a major problem in Mexico. The country conditions evidence certainly does not indicate that low-level government corruption has been so rectified as to render insufficient Petitioner’s testimony regarding acquiescence by specific police officers in Petitioner’s specific circumstances.

Xochihua-Jaimes v. Barr, No. 18-71460, 2020 WL 3479669, at *8 (9th Cir. June 26, 2020).

cartels have been perpetrated in collusion with corrupt government officials”), 257 (stating collusion by government officials in cartel crimes is increasing), 277–86 (detailing extensive collusion between the Zetas cartel and government officials in the state of Coahuila). Some state officials in Veracruz were arrested in 2018 for alleged involvement in forced disappearances but were released in August 2019 for lack of evidence; these officials included a former police chief, former state attorney, and more than 50 other former high-ranking Veracruz state security and police officers. See id. at 214. Other evidence suggests collusion by police officers and cartels in violent criminal acts in Papantla and in Veracruz. See id. at 290–91.

DTOs use bribery and violence as complimentary tactics to achieve their objectives. See id. at 187–88. According to a 2019 report, “The ability of the organized crime groups to thrive hinges critically on the acquiescence, protection, and even active involvement of corrupt government officials, as well as corrupt private sector elites.” Id. at 189. “Police corruption has been so extensive that law enforcement officials sometimes carry out the violent assignments from drug trafficking organizations and other criminal groups. Purges of Mexico’s municipal state, and federal police have not rid the police of this enduring problem.” Id. Enforcement against this type of behavior is rare. See id. (“In Mexico, arrests of police and other public officials accused of cooperating with drug trafficking organizations have rarely been followed by convictions.”).

The record also contains some country conditions reports showing the Zetas specifically collude with government officials. One report states that, in 2016, human rights organizations found “a reasonable basis to believe that Mexican federal forces and members of the Zetas cartel have perpetrated crimes against humanity.” See id. at 251. This report also states that the Zetas originally gained control through violence with the assistance of corrupt public officials. See id. at 287. The report further explains in great detail how the Zetas bribed and colluded with the government in the state of Coahuila to get away with many murders and other criminal activities. See id. at 252–53, 271–88; see also id. at 120 (stating the federal government knew for years about Zetas “kitchens” in Veracruz that were used by the cartel to burn bodies but took no action).

The Court recognizes that the Mexican government has made some efforts to fight drug traffickers and police corruption, but these efforts have not stopped the tide of violence and government collusion. Police and military do actively combat organized criminal groups. See id. at 152 (“The Mexican government has been fighting a drug war with cartels and drug traffickers since 2006 and at the same time, drug cartels have been fighting each other in a brutal campaign for control of territory.”). There have been some criminal arrests and prosecutions of corrupt government officials. However, there is a pattern of scapegoating lower officers when prosecutions occur. See id. at 269. In one prominent case, a former governor of Veracruz, Javier Duarte (2010–2016), was arrested for cooperating with organized crime, and was sentenced to nine years in September 2018. See id. at 162–64, 182–83. While this might show the government seeks to eliminate corruption, it also

shows recent collaboration with criminal enterprises at a high level of government. There have also been some criminal convictions for homicides committed by public officials. See id. at 211. Though some government officers have been convicted, but these are an exception to the rule of endemic impunity. See id. at 269.

Nationally, the federal government has made efforts to address the problems associated with DTOs. For forced disappearances, the government passed the 2017 General Law on Forced Disappearances, but the federal government and several states failed to meet deadlines to implement some provisions of the law. See id. at 213. The federal government has enacted some new laws against torture and enforced disappearances, which improves the legal framework for investigating, prosecuting, and punishing these crimes. See id. at 292–93. However, increased militarization, and a weak criminal justice system that make Mexico poorly suited to eliminate corruption and collusion between state actors and organized crime. See id. at 293. There have also been attempts at anti-corruption legislation attempts, but these reforms have not yet been fully implemented. See id. at 295.

In general, recent administrations have sought to diminish the power of DTOs with aggressive tactics. See id. at 183–84, 208. The current president, Andres Manuel Lopez-Obrador, elected in July 2018, has adopted a new approach of building infrastructure, promoting social programs, and trying to deter vulnerable youth from crime. See id. at 176, 185. He created a federal truth commission to investigate the unresolved case of 43 missing youth in Guerrero from 2014. See id. at 185, 214. He also created a new 80,000-member National Guard, comprised of military police, federal police, and new recruits. See id. at 185. Overall, President Lopez-Obrador has avoided violent confrontations with gangs and has used a calculated, “go-slow” policy of reducing youth unemployment to eventually solve the root problem. See id. at 140.

Meanwhile, Mexico also continues to suffer from rampant corruption and impunity that fuel cartel violence. In 2019, “[i]mpunity for human rights abuses remained a problem.” Id. at 210; see also id. at 256 (stating Mexico has “the highest rate of impunity of any country in the Americas.”). Corruption, including DTO-related corruption, is also widespread in Mexico; it persists in public officials, politicians, law enforcement, and the judicial system. See id. at 176, 208, 229, 251, 256. Widespread corruption allows DTOs to continue operating. See id. at 251 (stating there are increasing signs of corruption, which enables violent crime, widespread across a number of states in Mexico). Corruption has also spread to high levels in the Mexican government. In December 2019, a former top security minister was arrested in the United States for bribes from Sinaloa cartel. See id. at 176. In 2018, there were 20 former state governors were under investigation or in jail in 2018. See id. at 182.

The result of all this collusion and corruption is ineffective law enforcement. An estimated 94 percent of all crimes go unreported or are not investigated. Id. at 210; see also id. at 139 (stating over 90 percent of crime goes unpunished in Mexico). One report also found

“political obstruction at multiple levels was the primary impediment” to accountability for violent crimes committed by the Zetas. See id. at 255. Respondent’s case illustrates precisely the type of case where government corruption and collusion with criminal elements has removed any possibility of protection and replaced it with an increased probability of torture.

In light of the above evidence, the Court concludes Respondent has met his burden to show the government is more likely than not to inflict or acquiesce to the torture he fears. The Court finds that Mexican government officials, acting under color of law, will more likely than not acquiesce to the torture of Respondent committed by [REDACTED], the Jalisco Cartel, or other cartel associates. The evidence also shows police officers themselves will more likely than not be directly involved in the kidnapping, torture, and death of Respondent. The record shows police officers in Mexico frequently collude with drug cartels to commit kidnappings and unlawful killings, and Respondent’s cousin was already kidnapped and tortured by the police at the behest of [REDACTED]. Police officers have been searching for Respondent and his cousin, pursuant to orders stemming from [REDACTED] payments to police leaders, and the record contains direct evidence that the police will kidnap Respondent and [REDACTED] and turn them over to the Zetas cartel upon finding them anywhere in Mexico. Thus, Respondent has met his burden to show the torture he fears would more likely than not be inflicted by government actors or with the acquiescence of government actors.

iv. Gross, flagrant, and mass violations of human rights

Moreover, the Court considers the evidence of gross, flagrant, and mass violations of human rights in Mexico. The U.S. Department of State 2019 Report on Human Rights Practices in Mexico states, “Significant human rights issues included reports of the involvement by police, military, and other government officials and illegal armed groups in unlawful or arbitrary killings, forced disappearance, and torture; harsh and life-threatening prison conditions in some prisons; impunity for violence against human rights defenders and journalists.” Id. at 210. From January 2017 to August 2018, there were 618 complaints of arbitrary detention by government officials. Id. at 218. Cartel violence has contributed to the internal displacement of thousands of people. See id. at 226. In addition, organized criminal groups have influenced and intimidated media outlets and reporters by “threatening individuals who published critical views of crime groups” and using violence to retaliate for information posted online. See id. at 224. Kidnapping is also a serious problem. “As of April 30, 2018, a total of 37,435 individuals were recorded as missing or disappeared, according to the National Registry of Missing Persons, up 40 percent compared with the total number at the end of 2014.” Id. at 213. Mexico has seen record-breaking homicide rates in the past few years, numbering in the tens of thousands, and homicides have become more spread out across the country. See id. at 151, 176, 262; see also id. at 138 (stating that drug war killings from 2006 to 2012 were more concentrated in certain northern cities, but they are now more dispersed, according to a security analyst in Mexico).

Torture is against the law in Mexico, but “there were reports of security forces torturing suspects.” Id. at 215. “[T]orture remains a routine and ‘generalized’ practice by Mexican public officials at both the state and federal level,” and “criminal accountability remains virtually absent.” Id. at 251; see also id. at 264 (“Torture continues to be widely practiced in Mexico. Torture is committed by organized crime groups a tactic of terror and intimidation, and by investigative authorities to force confessions, extract information, or exact extrajudicial punishment.”).

Several articles in the record also show frequent murders and violent acts by drug cartels in the city of Papantla and the state of Veracruz. See id. at 131, 138, 144, 148, 150–51, 156, 172. Journalists have also been murdered in Veracruz. See id. at 164. One journalist who made a documentary about violence, murders, drug dealing, and the involvement of the Mexican government was murdered in Papantla in March 2020. See id. at 135.

In addition, the record shows other accounts of violence by the Zetas in [REDACTED]. A declaration by [REDACTED] shows an attack in 2013 in which Zeta members assaulted and robbed her. See id. at 51. Respondent also testified about his father’s niece who was also kidnapped near [REDACTED] by the Zetas in 2013, and she has not been seen since, despite her parents paying a ransom for her return. See also id. at 28, 102–03, 109. She is presumed dead.

Based on the above, the Court finds significant evidence of gross, flagrant, and mass violations of human rights in Mexico that further supports a grant of CAT protection.

v. Internal Relocation

Finally, the Court finds Respondent cannot safely or reasonably relocate in Mexico in an area where he would not face a clear probability of torture. Respondent testified he will not be safe anywhere in Mexico. Respondent’s brother, father, and mother also believe there is nowhere safe for Respondent to live in Mexico. See id. at 30, 36, 43.

Respondent’s parents and two siblings still live in Mexico, but they are in hiding and constantly moving locations to avoid harm from [REDACTED] and the Zetas cartel. Respondent’s brother has been found by the cartel in three different Mexican states. See id. at 29. He received threatening messages even in Monterrey—about 14 hours from [REDACTED] by car—and had to move again. Respondent’s parents do not have a stable residence; they move around from place to place to stay safe. To the best of Respondent’s knowledge, they live in [REDACTED] now because they still have property and crops there. See id. at 8 (“They have so far been able to avoid danger by constantly moving, splitting their time between their house, another property, visiting my sister in Monterrey, and traveling all over.”). Respondent also sends money to his parents so they do not have to work, and, at one point, the family was paying other people in the community to accompany and protect

Respondent's father. See id. Respondent's family members now live in different states and move around to avoid threats and harm. See id. at 30.

Similarly, due to repeated threats, [REDACTED] parents moved away from [REDACTED] and are now in hiding. See id. at 22–23 [REDACTED] states in his affidavit, "The cartel, they are like shadows, they will find you and kill you." Id. at 23.

The record in this case shows numerous threats, including a very recent threat in June 2020, demonstrating [REDACTED] will to find and harm Respondent (and [REDACTED]). The record also shows [REDACTED] paid the police to kidnap him on sight and inform him, if they return to Mexico. See id. at 69.

The country conditions evidence also shows the power of the Zetas cartel. See, e.g., id. at 118, 176, 192, 271. Other evidence shows more generally that the worst violence of Mexico's drug war "is now spread out throughout the country." Id. 137.

The Court finds the above evidence shows Respondent cannot relocate to a part of Mexico where he could avoid torture or death.

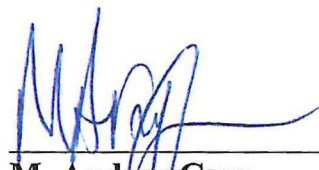
In conclusion, Respondent has demonstrated he will more likely than not be tortured at the hands of private actors with the acquiescence of the government or directly by government officials acting at the behest of the Zetas cartel, if he is returned to Mexico. Thus, the Court will grant Respondent's application for withholding of removal under the CAT.

Accordingly, the Court enters the following orders:

ORDERS

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

IT IS FURTHER ORDERED that Respondent's application for withholding of removal under Article 3 of the Convention Against Torture be **GRANTED**.



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).