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

De Leon & Nestor
Torres-Garza, Jesus
3547 Cedar Ave. S.
Minneapolis , MN 55407

In the matter of [redacted] File A [redacted] 2 DATE: Mar 23, 2020

__ 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.

__X__ Other: **Appeal Date 4/20/2020.**

MG
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IMMIGRATION COURT FF

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

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

File Number:

Date: March 20, 2020

In the Matter of:	)	
	)	**In Removal**
,	)	**Proceedings**
	)	
Respondent.	)	**Non-Detained**
	)	
	)	

Charge: INA § 212(a)(7)(A)(i)(i) - an immigrant who at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as 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); relief under the Convention Against Torture

ON BEHALF OF THE RESPONDENT:
Jesus Torres-Garza, Esq.
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3547 Cedar Ave., S.
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ON BEHALF OF THE DHS:
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WRITTEN DECISION OF THE IMMIGRATION JUDGE

I. Background

(Respondent) is a 32-year-old man and a native and citizen of Ecuador. (Ex. 1). Respondent entered the United States at or near Nogales, Arizona on or about August 26, 2016. Id. Respondent did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card or other valid entry document, and was not then admitted or paroled by an Immigration Officer. Id. Respondent was not then admitted or paroled after inspection by an Immigration Officer. Id.

On September 13, 2016, the Department of Homeland Security (DHS) commenced removal proceedings against Respondent with the filing of the Notice to Appear (NTA) charging Respondent with being removable pursuant to the above-captioned charge of the Immigration and

Nationality Act (INA or the Act). (Ex. 1). Respondent acknowledged receipt of the NTA, admitted the allegations, and conceded the charge. Respondent declined to designate a country of removal and the Court designated Ecuador as a country of removal should such action become necessary. Respondent subsequently filed the above-listed forms of relief. (Exs. 11; 16; 17).

II. Evidence

a. Testimony[1]

i. Respondent

Respondent testified about his life in Ecuador, the harm he suffered there, and his fears of returning. Respondent also testified about his life in the United States.

Should he return to Ecuador, Respondent does not think he would be safe. Respondent fears he will be harmed for his membership in particular social groups and his political opinion.[2]

b. Documentation

Ex. 1: I-862 dated September 7, 2016, with a certificate of service for personal service September 7, 2016, filed September 13, 2016, marked September 3, 2019
Ex. 2: I-870, 5 pages, filed September 13, 2016
Ex. 3: Credible Fear Questions and Answers 9/6/2016, 7 pages, filed September 13, 2016
Ex. 4: Credible Fear Questions and Answers 9/1/2016, 2 pages, filed September 13, 2016
Ex. 5: Credible Fear Determination Checklist, 2 pages, filed September 13, 2016
Ex. 6: I-867A, 3 pages, filed September 13, 2016
Ex. 7: I-867B, 1 page, filed September 13, 2016
Ex. 8: I-830, filed September 14, 2016
Ex. 9: September 20, 2016 IJ Order Changing Venue from Eloy to Bloomington
Ex. 10: Respondent's Exhibits in Support, Tabbed A-B, 47 pages, filed August 23, 2019
Ex. 11: Respondent's I-589, filed August 23, 2019
Ex. 12: Respondent's Notice of *Mendez Rojas* Class Membership, filed August 23, 2019
Ex. 13: Notice of Privilege of Counsel and Consequences of Knowingly Filing a Frivolous Application for Asylum, provided September 3, 2019
Ex. 14: Respondent's Exhibits in Support, Tabbed C-E, pp 48-141, filed January 29, 2020
Ex. 15: Respondent's Prehearing Brief Re: Particular Social Groups, filed January 29, 2020
Ex. 16: Respondent's Redlined I-589, filed January 29, 2020
Ex. 17: Respondent's Redlined I-589, filed February 28, 2020
Ex. 18: Respondent's Filing: Respondent's Child's birth certificate, 3 pages, filed March 13, 2020[3]

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1 This section is a summary of the testimony and does not constitute a finding of fact.

2 Counsel did not explicitly indicate whether Respondent's claim was both an expressed political opinion and imputed political opinion. The Court reaches no analysis regarding imputed political opinion, though the Court recognizes that imputed political opinion can also be grounds for a Political Opinion asylum claim.

3 Based on information at the Individual hearing, the Court anticipated the filing of this document. The DHS did not object to its filing.

c. Administrative Notice

The Court takes Administrative Notice of the United States Department of State Report for Ecuador for 2015. The 2015 report is marked as Exhibit 19 for the convenience of the Court and the parties.[4] The Court takes Administrative Notice of the United States Department of State Report for Ecuador for 2016. The 2016 report is marked as Exhibit 20 for the convenience of the Court and the parties. The Court takes Administrative Notice of the United States Department of State Report for Ecuador for 2019. The 2019 report is marked as Exhibit 21 for the convenience of the Court and the parties.

III. Credibility

It is the applicant's burden to satisfy the Immigration Judge that his or her testimony is credible. See Fesehaye v. Holder, 607 F.3d 523, 526 (8th Cir. 2010). As 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). An applicant's own testimony is sufficient to meet his burden of proving his claim if it is 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).

Respondent was responsive and presented an inherently plausible and internally consistent story. Respondent testimony was generally consistent with his applications and past statements. See Exs. 11; 16;17. Respondent was also responsive and candid, particularly regarding the difference in

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[4] The Court may take administrative notice of "commonly known facts such as current events or the contents of official documents." See 8 C.F.R. § 1003.1(d)(3)(iv); Constanza-Martinez v. Holder, 739 F.3d 1100, 1102-03 (8th Cir. 2014); see also Matter of H-L-H- & Z-Y-Z-, 25 I&N Dec. 209 (BIA 2010) (holding that the Board may take administrative notice of official documents prepared by the Department of State); The Federal Rules of Evidence explain the kinds of facts that may be judicially noticed:

> The court may judicially notice a fact that is not subject to reasonable dispute because it:
>
> (1) is generally known within the trial court's territorial jurisdiction; or
> (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Fed. R. Evid. 201. While the Federal Rules of Evidence are not binding in immigration proceedings, the BIA views them as providing "helpful guidance . . . because the fact that specific evidence would be admissible under the Federal Rules lends strong support to the conclusion that the admission of the evidence comports with due process." Matter of D-R-, 25 I&N Dec. 445, 458 n.9 (BIA 2011) (internal quotation marks and citation omitted).

the year of 2015 and 2016.[5] He was sufficiently detailed. In addition, Respondent's testimony is generally consistent with the evidence in the record. See Exs. 2; 3; 4; 5; 6; 7; 10; 14; 18; 19; 20; 21. The Court notes that the DHS did articulate that it had issues with Respondent's credibility.[6] The Court finds Respondent credible.

IV. Relief

A. Asylum

1. *Legal Standard*

The applicant carries the initial burdens of proof and persuasion for establishing her eligibility for asylum. INA § 208(b)(1)(B); 8 C.F.R. § 1208.13(a). To establish eligibility for a grant of asylum, an applicant must meet the definition of a "refugee," defined as an individual who is unwilling or unable to return to her country of nationality because of past persecution or because she has a well-founded fear of future persecution on account of her race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(a).

If the applicant can establish that she or he suffered past persecution, then the applicant is entitled to a rebuttable presumption that her or his fear of future persecution is "well-founded." 8 C.F.R. § 1208.13(b)(1). 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 her native country; or (2) that 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." 8 C.F.R. § 1208.13(b)(1)(i)-(ii). See also Bushira v.

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5 Respondent testified that the reason for the difference was four-fold: that he sometimes had a lot in his head; that he said what he thought was accurate when he spoke to the asylum officer; that he realized later when he saw the written documentation that the information was incorrect; and that he was nervous. Each of these four reasons are logical explanations to the Court, in the Court's experience. Respondent's four explanations were provided on cross-examination, rather than on direct examination, and were provided with demeanor that suggested to the Court that they were genuine, e.g. that he had known of the inconsistency before the date of the individual hearing and his testimony at the individual hearing was truthful. The Court assessed his demeanor regarding this 2015-2016 issue carefully, and finds Respondent's testimony in this regard genuine and credible. The Court is mindful that Respondent's Credible Fear interview reflects this date as June 2015. The Court accepts Respondent's testimony identifying June 2016 as more consistent with the record as a whole, including the date of the 2016 Ecuadorian earthquake, and the timing of Respondent's departure from Ecuador and his arrival to the United States.

6 The DHS indicated that it found Respondent not credible regarding the dates of the threats and when and if even he relocated to Guayaquil – or whether he was "back and forth." The Court concludes that Respondent lived for a period of time to Guayaquil and that he returned to San Juan after the earthquake. The Court also concludes that Respondent was back and forth to San Juan while he lived in Guayaquil. The Court finds Respondent's disclosure on direct examination that he moved to Guayaquil and visited San Juan while living in Guayaquil to supplement his otherwise credible testimony, not to detract from it. The Court recognizes that inconsistencies need not be material to cause the Court to find a witness to be incredible. Even minor inconsistencies can impact credibility under the REAL ID Act's "totality of the circumstances" approach. See Ali v. Holder, 776 F.3d 522 (8th Cir. 2015) (holding inconsistencies about facts which "may seem like minutiae" are appropriate factors to consider and rejecting the argument that the cited inconsistencies related only to insignificant matters). see also Matter of J-Y-C-, 24 I&N Dec. 260, 262-63 (BIA 2007). The Court finds Respondent credible.

Gonzales, 442 F.3d 626, 631 (8th Cir. 2006); Matter of D-I-M-, 24 I&N Dec. 448, 450-51 (BIA 2008).

Asylum, unlike withholding of removal, may be denied in the exercise of discretion to an alien who establishes statutory eligibility for relief. See I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 441 (1987).

2. *One-Year Filing Limitation*

An applicant must demonstrate by clear and convincing evidence that his or her asylum application has been filed within one year of arrival in the United States. INA § 208(a)(2)(B). Respondent entered the United States on August 26, 2016, and filed his application on August 23, 2019. Respondent timely filed his application pursuant to Mendez Rojas v Johnson, 305 F. Supp. 3d 1176 (W.D. Wash. Mar. 29, 2018).[7]

3. *Past Persecution*

1. Level of persecution

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 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 within the meaning of the INA "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. Matul-Hernandez v. Holder, 685 F.3d 707, 711 (8th Cir. 2012). Even minor beatings or limited detentions do not usually rise to the level of past persecution. Nanic v. Lynch, 793 F.3d 945, 948 (8th Cir. 2015); Barillas-Mendez v. Lynch, 790 F.3d 787, 789 (8th Cir. 2015); Bhosale v. Mukasey, 549 F.3d 732, 735 (8th Cir. 2008); Kondakova v. Ashcroft, 383 F.3d 792, 797 (8th Cir. 2004). Persecution does not normally include unfulfilled threats of physical injury, Setiadi v. Gonzales, 437 F.3d 710, 713 (8th Cir. 2006); see also La v. Holder, 701 F.3d 566, 571 (8th Cir. 2012) (stating threats that "are exaggerated, nonspecific, or lacking in immediacy" may be insufficient to establish persecution). Additionally, "'persecution is an extreme concept.'" Eusebio v. Ashcroft, 361 F.3d 1088, 1090 (8th Cir. 2004), and may be found based on cumulative events. Ngengwe v. Mukasey, 543 F.3d 1029, 1036 (8th Cir. 2008).

The Court concludes the harm Respondent suffered rises to the level of persecution.

Prior to coming to the United States, Respondent lived in Ecuador with his parents. While in Ecuador, Respondent and Respondent's parents' neighbor, Luis Alberto Quinones, threatened Respondent's father over land which belonged to Respondent's father. Ex. 3 at 3. Mr. Quinones went to obtain a court decision regarding the ownership of the land. Id. Respondent's father was declared the owner by the Ecuadorian court. Id. After Respondent's father was declared the owner

7 Respondent filed notice of this in advance of the individual hearing. Ex. 12. Additionally, the DHS agreed at the Individual hearing that the one-year statutory bar did not apply.

of the land, Mr. Quinones verbally threatened Respondent's father over the land, and threatened Respondent's father with a machete. Id. Respondent detailed the dispute which he observed twice: Mr. Quinones threatened to hit and kill Respondent's father with a weapon, because Mr. Quinones believed that the land was his. In response, Respondent's father sold Respondent the parcel which Mr. Quinones believed (despite the Ecuadorian court decision) was his. Id. This parcel, which was flat land, is approximately 50 meters by 10 meters.[8] This land is good quality land, on which corn and tomatoes could be planted. It was not walled off. One day, at approximately 2:00 pm in that afternoon, Respondent was on his land. Mr. Quinones told Respondent that Respondent's land was not Respondent's; it belonged to him/Mr. Quinones, and that Mr. Quinones wanted it. Id. Mr. Quinones told Respondent, "Get Out!" Respondent told Mr. Quinones, "This is mine. It's not fair. This is mine." Mr. Quinones threatened to kill Respondent. Id. Mr. Quinones pulled out his machete. Id. This machete was about 50 centimeters long.[9] He became very angry and approached Respondent with the machete. Id. Respondent was unarmed. Respondent fled, as Mr. Quinones chased him for approximately five minutes.[10] During the chase, Mr. Quinones yelled, "If I catch up with you, I'll kill you." Respondent was afraid of dying. When Respondent reached home, he told his parents.

Respondent did not report the matter to the police, despite his efforts to report the matter. Id. Respondent went to the police station in downtown San Juan, Azuay Province but they were not present. Respondent does not know why they were not at the station. Respondent tried to make a report on another day, and found a police officer in the office, but Respondent was informed by the police that they could not do anything for Respondent. Respondent answered the police officer's many questions, but Respondent was only told to stay away from the man, because he is older and an adult.[11]

Respondent did however move to another place within Ecuador. Id. Respondent moved to Guayaquil, which was about four or five hours away from his home in San Juan, Azuay Province. In Guayaquil, Respondent worked in construction. Respondent returned to his land from Guayaquil, after the 2016 earthquake.[12]

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8 Approximately 54 yards by 10 yards.

9 Approximately 19.68 inches.

10 Respondent is currently 32 years old; Respondent has a vision impairment from a fireworks injury which occurred in Ecuador. Mr. Quinones was between 50 and 60 years old. When Mr. Quinones couldn't continue running, after five minutes, Respondent made his way home.

11 Respondent told the Asylum Officer that he did not report it to the police. Ex. 3 at 3. His interview was conducted with an interpreter. Id. at 1-2. The Court concludes that the interpreter spoke Spanish. Ex. 2 at 1. The Court finds Respondent's testimony consistent with the outcome: no police report was produced; none was filed, because the police would not accept it. Respondent's answer on cross-examination on this point is logical to the Court.

12 A 7.8 earthquake struck Ecuador on April 16, 2016. https://www.usgs.gov/news/magnitude-78-earthquake-ecuador . USGS was created by an act of the United States Congress. https://www.usgs.gov/about/about-us/who-we-are

In April 2016, Respondent returned to his land. Id. When Respondent arrived at his land, he saw Mr. Quinones. Id. Mr. Quinones was angry and told Respondent that he should not come back for the land. Id. Mr. Quinones again threatened to kill Respondent. Id. Respondent did not go back to the police again, but decided to leave Ecuador. Respondent knew that Mr. Quinones had had "land fights with other neighbors and threatened them. When they told the police, the police never went to him." Id. at 4.

Respondent left Ecuador because of the earthquake and his fear that the house would collapse,[13] and because Mr. Quinones had made threats to other neighbors. When those neighbors told the police about Mr. Quinones's threats, the police never went to Mr. Quinones. Id. at 2, 3-4. Respondent's main reason for coming to the United States involved Mr. Quinones's threats made by. Id. at 3-4.

The Court concludes that the harm Respondent suffered in the aggregate rises to the level of persecution. The harm suffered is a pattern of harm, which occurred over an extended period of time, was tied to the ownership of the land, [14] and encompassed Respondent and members of his family. It is not akin to a minor beating or brief detention.[15] Taken together, the Court considers the following incidents indicative of past persecution: (1) Mr. Quinones's initial death threats against Respondent, combined with Respondent's rebuke of Mr. Quinones's claim to ownership by telling him, "This is mine. It's not fair. This is mine;" (2) Mr. Quinones giving chase with a 50 centimeter machete capable of causing death while Respondent was unarmed; (3) Mr. Quinones's continual threats despite Respondent's relocation within Ecuador due to the earthquake; (4) Mr. Quinones's continual threats despite Respondent's efforts to report Mr. Quinones to the police; (5) Mr. Quinones's continual threats despite Respondent's exit from Ecuador; (6) the continual death threats to members of Respondent's family since Respondent left

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13 Respondent was forthright about this during cross-examination as well as in his credible fear interview. Respondent clarified at his Individual hearing that his home was affected and his land was affected some, but not much.

14 The Court is particularly mindful that Mr. Quinones's death threats also occurred and continued despite the justice system in Ecuador ruling against Mr. Quinones on the issue of the ownership of the land. The Court is mindful that this case arises after May 11, 2005, and that the REAL ID Act provisions apply. Respondent has not submitted land title records, or records related to the Ecuadorian court's determination of ownership. While one may generally assume land title documents and Court orders related to land title exist, evidence in the record does indicate such records do not exist in many instances in Ecuador. Respondent provided the Court with a report by USAID, which reflects that land titles are lacking and many parcels' records are outdated, and that land disputes are common. See generally Ex. 14 at 61-82. The Court finds that this report, issued by the United States government, provides corroborative evidence which reasonably explains the record's lack of land title documents in the record (showing Respondent's purchase, Respondent's father's ownership, and the Court's decision regarding the ownership of the land). Therefore is would not be reasonable for Respondent to obtain records. Therefore, the Court will not draw a negative inference from their lack of inclusion.

15 Minor beatings or limited detentions do not usually rise to the level of past persecution. Bhosale v. Mukasey, 549 F.3d at 735; Kondakova v. Ashcroft, 383 F.3d at 797; Nanic v. Lynch, 8793 F.3d 945; Barillas-Mendez v. Lynch, 790 F.3d 787.

his country in 2016;[16] and Mr. Quinones continual threats that he will "kill Luis Roberto without mercy when he sees him again."[17] The Court notes that the Respondent was not killed before leaving Ecuador; that his parents were alive as of the date of Respondent's last phone call with them; that others in the community of San Juan also suffered threats by Mr. Quinones and although the police were alerted by Respondent and by others, the police did nothing; and the Court also considers that Mr. Quinones did not cease his behavior even after Respondent left Ecuador, as he sought out Respondent's parents repeatedly and threatened death to Respondent and harm to them.[18]

1. On account of a statutorily protected ground – Political Opinion

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). "It is also important to consider whether an act of violence is an isolated occurrence, or part of a continuing effort to persecute on the basis of a factor enumerated in the statute." Ngure v. Ashcroft, 367 F.3d 975, 990 (8th Cir. 2004).

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). "It is also important to consider whether an act of violence is an isolated occurrence, or part of a continuing effort to persecute on the basis of a factor enumerated in the statute." Ngure v. Ashcroft, 367 F.3d 975, 990 (8th Cir. 2004).

One qualifying type of persecution is persecution on account of the applicant's political opinion The Respondent articulated the political opinion his refusal to acquiesce his land rights, and referenced a recent ruling by the Fourth Circuit Court of Appeals.[19]

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16 Respondent identified the last threats as occurring in January 2020 and December 2019. Respondent's mother characterized Mr. Quinones's tone as "aggressive and threatening." As to the threats against him, Respondent remarked, "I don't think they'll ever end."

17 Ex. 14 at 48. Respondent's parents' affidavit was completed January 17, 2020.

18 The Court notes that the DHS argued that the mere death threats were insufficient for Respondent's claim to be successful as he was not physically harmed. This is contrary to the case law; see Corado v. Ashcroft, 384 F.3d 945, 947 (8th Cir. 2004). As in Corado, Respondent has been threatened with death, including being chased for approximately five minutes with a machete by a man approximately twice his age and hearing Mr. Quinones's words: "If I catch up with you, I'll kill you." The law does not require that a person wait for persecutors to carry out their death threats for that harm to qualify as persecution. See Sholla v. Gonzales, 492 F.3d 946, 952 (8th Cir. 2007).

19 Respondent Counsel cited Alvarez Lagos v. Barr for the proposition that Respondent's refusal to comply with Mr. Quinones's demands was an expression of his political opinion, and that such provided the legal analysis for Respondent's claim. Alvarez Lagos v. Barr, 927 F.3d 236 (4th Cir. 2019) (finding an imputed anti-gang political opinion to be a central reason for likely persecution if Respondent were returned to Honduras.) The Court notes that DHS did not cite any Court of Appeals cases; the DHS limited its case citations in closing argument to Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014), Matter of L-E-A-, 27 I&N Dec. 581 (A.G. 2019), and Matter of E-R-A-L-, 27 I&N Dec. 767 (BIA 2020). The Court notes that

The Court is mindful that, "Where there has been persecution on account of political opinion, it does not matter if the applicant actually holds the political opinion that the persecutor attributes to her. Rather, we consider the political views the persecutor rightly or in error attributes to a victim." De Brenner v. Ashcroft, 388 F.3d 629, 635 (8th Cir.2004) (internal quotation and alteration omitted). It is the political opinion attributed to the victim, not the political opinion of the persecutor, that is ultimately relevant. Turay v. Ashcroft, 405 F.3d 663, 668 (8th Cir.2005) (citing INS v. Elias-Zacarias, 502 U.S. 478, 482, 112 S.Ct. 812, 117 L.Ed.2d 38 (1992)). The political opinion must be " 'at least one central reason' for [the] persecution." Carmenatte-Lopez v. Mukasey, 518 F.3d 540, 541 (8th Cir.2008) (quoting 8 U.S.C. § 1158(b)(1)(B)(I)). But the persecution need not be solely, or even predominantly, on account of the imputed political opinion. Parussimova v. Mukasey, 555 F.3d 734, 739-41 (9th Cir.2009); cf. De Brenner, 388 F.3d at 636.

Here, Respondent's persecution began when Respondent purchased the land from his father. Respondent did so, despite knowing that his father had received repeated death threats over the course of time regarding the land. The death threats continued after Respondent's purchase when he appeared on his land until current. The threats continued despite the passage of time from before when Respondent left Ecuador in August 2016 to the present. Importantly, the death threats occurred despite the justice system in Ecuador ruling against Mr. Quinones's claim to ownership. Respondent's father was awarded legal property rights in this case. Respondent then purchased the land from his father after the justice system had issued its order. Significantly, the Ecuadorian police failed in their duty to execute the law and protect Respondent and his family. Therefore, Respondent's refusal to acquiesce his land rights to Mr. Quinones, coupled with the judicial order against Mr. Quinones, took on a uniquely political nature. Moreover, country conditions in the area reflect the political nature of land rights disputes in Azuay province. See Ex. 14, Tab D. In Ecuador more generally, legislation from 2008 reflects the government's efforts to increase effective representation of all Ecuadorians, including "advocating for improved land rights and support for the rule of law." See id. at 61. Due to the record, the Court finds Respondent possessed a political opinion of refusing to acquiesce, and that Mr. Quinones's actions are on account of Respondent's expressed political opinion.[20]

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each of the cases cited by DHS involve claims for asylum based in Particular Social Group. Particular Social Group is not the only identified basis of Respondent's claim, and Respondent's Counsel addressed both Respondent's Political Opinion claim and his Particular Social Group claim in his closing argument; he did not abandon either basis for Respondent's claim. The DHS provided a limited closing argument regarding Political Opinion, and primarily focused its argument against the granting of asylum as to Particular Social Group. Alvarez Lagos, though not a land ownership claim, does articulate that Political Opinion claims are of two natures: explicit and imputed, and careful attention must be made to not "conflate" Particular Social Group claims with Political Opinion claims. Alvarez Lagos, 927 F.3d at 253.

As the DHS noted, this case arises in the 8th Circuit Court of Appeals, not the 4th Circuit Court of Appeals; therefore, Alvarez Lagos is not binding on this Court. Given that the 8th Circuit has not spoken on the issue, the Court considers Alvarez Lagos to be persuasive, and not binding.

20 The DHS summarily addressed Respondent's political opinion claim in closing argument by calling it "specious" and without evidence of expression either in the United States or in Ecuador. This argument is not based in the facts of this case. Respondent clearly expressed to his persecutor while in Ecuador, "This is mine. It's not fair. This is mine."

2. On account of a statutorily protected ground – Particular Social Group

Because the Court finds the harm Respondent suffered to be persecution and grants the application in political opinion the Court does not reach a separate, and independent analysis under the statutorily protected ground of particular social group. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976). The Court notes that Respondent offered six particular social groups in his brief on particular social groups. (Ex. 15.)

3. Government unwilling or unable to protect Respondent

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

Respondent claimed harm by Mr. Quinones, a neighbor who was a farmer. Respondent attempted to contact the police, and when he did not find them, he tried again on another day. The Court finds Respondent's second attempt to have been significant as it indicates that Respondent took Mr. Quinones's actions seriously (not casually) and genuinely sought the assistance of his government: Respondent sought the help of those who have a duty to protect him.[21] On the second attempt, Respondent was successful in finding the police at their station, however despite Respondent's explanation of the events, and answering of the police officer's questions, the police did not take a report. When other neighbors had gone to the police to file reports against Mr. Quinones, the police did nothing. While an applicant need not report abuse to the police if doing so is futile, see Gathungu v. Holder, 725 F.3d 900, 906-09 (8th Cir. 2013), failure to report abuse to the police can be significant. See Shaghil v. Holder, 638 F.3d 828, 834 (8th Cir. 2011).

The 2016 United States Department of State Human Rights report reflects that "[c]orruption, insufficient training, poor supervision, and a lack of resources continued to impair the effectiveness of the National Police." Ex. 20 at 6.[22] While those enrolled in the police academy received human

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In Matter of N-M-, the BIA turned to Black's Law Dictionary to provide a definition of "political." See Matter of N-M-, 25 I&N Dec. 526, 528 (BIA 2011). The most recent Black's Law Dictionary defines "political" exactly as it was defined in the 2004 edition. See *Political*, Black's Law Dictionary (11th ed. 2019) (defining "political" as "[o]f, relating to, or involving politics; pertaining to the conduct of government."). Respondent's claim is a political claim because of its relationship to the conduct of government – Mr. Quinones sought a judicial ruling regarding the ownership of the land, and Mr. Quinones received one – albeit not in his favor. Respondent's refusal to acquiesce is Respondent's articulation pertaining to the conduct of government: that the Court ruled against Mr. Quinones.

21 That Respondent did not just try later the same day is notable in the Court's analysis. The police office was in the downtown of San Juan, about a ten minute travel time from Respondent's home. In going another day, Respondent also had time to consider the events and the seriousness of the events.

22 The exact language was present in the report in 2015. Ex. 19 at 6.

rights training, "there were reports that some officers complained to local non-profit groups that the instructors were not prepared and not knowledgeable." Id. The Court notes that the law in Ecuador "provides criminal penalties for corruption by officials. The government did not implement the law effectively, and officials often engaged in corrupt practices with impunity." Id. at 24.[23] Notably to the Court, the 2015 and the 2016 reports reflect that the Ecuadorian government recognized corruption "*in the legislative and judicial branches.*" (emphasis supplied) Exs. 19 at 26; 20 at 24.[24] The reports for both 2015 and 2016 are clear, however, that steps to reform the corruption were made only to the judiciary. Id.

Further, both the 2015 and 2016 reports reflect that allegations of police corruption were made by the media. Id. That *the media* (emphasis added) reported corruption by the police is noteworthy, as Freedom House continued to rate the country's press status as "not free" in 2016. Ex. 20 at 13; this was the fourth consecutive year of the "not free" rating by Freedom House. Ex. 19 at 13. In 2015, the freedom watchdog group, Fundamedios, reported that 2015 was the "worst year" for freedom of expression. Id. In both the 2015 and 2016 reports, "[j]ournalists working at private media companies reported instances of indirect censorship and stated that President Correa's attacks caused them to practice self-censorship." Exs. 19 at 15; 20 at 13.[25] The 2015 and 2016 U.S. Department of State reports reflect that while there were criminal penalties for official corruption, "[t]he government did not implement the law effectively... and officials frequently engaged in corrupt practices with impunity." Exs. 19 at 26; 20 at 24. The record also reflects that United Nations Special Rapporteur on extrajudicial executions, Philip Alston pronounced, "[t]he level of impunity for all types of killings in Ecuador is shocking. For every 100 killings, only one perpetrator is actually convicted. In addition to the shortcomings of the police investigative process, it seems that the police often don't bother to pursue an investigation seriously one they have decided that the killing was part of a 'settling of accounts'...." Ex. 14 at 86.[26] Consequently, the Court finds it would have been futile for the Respondent to try to report Mr. Quinones's death threats against him to the police a third time.

The evidence, therefore, does establish that the Ecuadorian government was completely helpless to protect Respondent. See Salman, 687 F.3d at 995. As such, Respondent has met his burden in demonstrating that the Ecuadorian government was completely helpless to protect him. Therefore,

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23 The exact language was present in the report in 2015. Ex. 19 at 26.

24 Here the language is different from the report issued in 2015. In 2016, the United States Department of State report reflect s that "The government took some steps to address official corruption." Ex. 20 at 24. The Court recognizes the distinction made, as that year's report speaks only to the judicial branch of government. Additionally, the Court recognizes the similarity, the government did not recognize corruption in the branch of government which is responsible for the police.

25 The Court also notes that media watchdog organizations argued that advertising contracts were used by the government to reward or to punish media companies, and that the government used libel laws against media companies, journalists, and private individuals. Exs. 19 at 16; 20 at 14.

26 The Court notes the report was made in July 2010. That is approximately six years before Respondent left Ecuador. The United States Department of State concluded that public corruption remained and officials acted with impunity in 2015 and 2016. There is no reason on this record to not credit, taking into consideration the publication date, the UN Special Rapporteur.

the Court finds the harm Respondent suffered was inflicted by the government or actors the government is unwilling or unable to control.

Because the harm Respondent suffered rises to the level of persecution and that Respondent met his burden to show nexus, the Court concludes that Respondent has met his burden to establish past persecution. Respondent therefore, is entitled to a presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1).

4. *Well-Founded Fear of Future Persecution*

As Respondent has shown that he suffered past persecution, he is entitled to a rebuttable presumption that his fear of future persecution is "well-founded." 8 C.F.R. § 1208.13(b)(1). 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 her native country; or (2) that he "could avoid persecution by relocating to another part" of the country and that "it would be reasonable to expect the applicant to do so." 8 C.F.R. § 1208.13(b)(1)(i)-(ii). See also Bushira, 442 F.3d at 631; D-I-M-, 24 I&N Dec. at 450-51.

In evaluating whether an applicant has a well-founded fear, the Court must also consider the ability of the Respondent to internally relocate if returned to Ecuador. 8 C.F.R. § 1208.16(b)(3); Mohamed, 396 F.3d at 1003.When reviewing if internal relocation is reasonable, the Court looks at whether another area of the country is "practically, safely, and legally accessible." Matter of M-Z-M-R-, 26 I&N Dec. 28, 33-34 (BIA 2012). The location must also "present circumstances that are substantially better than those giving rise to a well-founded fear of persecution on the basis of the original claim. Id. Further, the law provides that: "In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate." See 8 C.F.R. § 1028.16(b)(3)(ii).

The DHS did not argue that the conditions within Ecuador have changed. The Court finds the preponderance of evidence in the record reflects that corruption remains a high risk in Ecuador. Ex. 14 at 88-93.[27] As Respondent Counsel pointed out, Ecuador is a small country, approximately the size of the State of Nevada. Ex. 14 at 108. Mr. Quinones continues to threaten Respondent with death, by making those threats to him, through his parents. Ex. 14 at 48. More than three years have passed since Respondent left Ecuador. Mr. Quinones has not abandoned his insistence in persecuting Respondent. Thus, the Court finds the conditions have not changed.

[27] The 2019 United States Department of State Human Rights report for Ecuador reflects that while the government "launched or continued multiple investigations, judicial proceedings, and legislative audits of officials accused of corruption" those actions "related to state contracts and commercial endeavors that reached the highest levels of government." Ex. 21 at 19. This report indicates that "[o]fficials, particularly at the local level, sometimes engaged in corrupt practices with impunity." Id.

The DHS did provide argument regarding relocation in Ecuador. The DHS articulated that Respondent had not met his burden to establish that he could not relocate. This however, misstates the burden of proof. See 8 C.F.R. § 1208.13(b)(3)(ii).

Although misstating the burden of proof, the DHS' argument alone that the Respondent has not established that it would be unreasonable for him to relocate to Guayaquil when he has done so in the past, does not rebut the presumption provided in the law to Respondent. This is particularly so in this case, when one of the reasons that Respondent left Guayaquil was because of the April 2016 earthquake, that currently some of Mr. Quinones's children live in Guayaquil, and that fewer than six months ago Respondent's persecutor articulated to Respondent's parents, "kill Luis Roberto without mercy when he sees him again."[28] The DHS has not established, by a preponderance of the evidence, "that under all the circumstances it would be reasonable for the applicant to relocate." See 8 C.F.R. § 1028.16(b)(3)(ii). As Matter of M-Z-M-R- provides, such a location must also "present circumstances that are substantially better than those giving rise to a well-founded fear of persecution on the basis of the original claim." 26 I&N Dec. 28, 33-34 (BIA 2012).

The government has failed to rebut the presumption that Respondent's fear of future persecution is well-founded. First, the DHS has failed to show that there was a fundamental change in circumstances such that Respondent would no longer have a well-founded fear of persecution. Respondent fears that upon return, Mr. Quinones will fulfill his threats and kill him. Respondent's belief is well-founded, because despite having left Ecuador, Mr. Quinones continues to threaten Respondent by delivering those threats to his mother. Respondent's mother and Respondent continue to talk and she relays those threats to him; an affidavit of both Respondent's parents was filed with the Court. Furthermore, the country conditions have not changed such that Respondent would have a reasonable expectation of protection or support from the government

Second, the government has failed to show by a preponderance of evidence that Respondent could avoid persecution by relocating to another part of the country, "that under all the circumstances it would be reasonable for the applicant to relocate." See 8 C.F.R. § 1028.16(b)(3)(ii).

Respondent offer an indication why as an adult he could not relocate and live safely: Mr. Quinones will look for him and kill him. Respondent did attempt to relocate within Ecuador, until he had to leave Guayaquil due to the earthquake. As indicated, the Ecuadorian government does not have the capacity to protect Respondent. As Respondent affirmed on cross-examination, there is much corruption within Ecuador. That Mr. Quinones did not find him does not mean that he could not in the future, particularly given the widespread nature and structural problem which has defined the corruption, and that only three years ago Mr. Quinones had the stamina and agility to chase Respondent for five minutes, despite being more than 50 years of age, and Respondent (at the time) being 29 years old. This fear is well-placed, both subjectively in his experience personally and those of his neighbors, and objectively on the independent exhibits in the record.

In plain language, the DHS has not demonstrated that under all the circumstances it would be reasonable for the applicant to relocate.

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[28] Ex. 14 at 48.

As a result, Respondent has established that he risks persecution at the hands of Mr. Quinones, based in his political opinion, and that complaints to the government in Ecuador will go unheeded.

For the reasons stated above, the DHS has failed to meet its burden and failed to rebut the presumption that Respondent has a well-founded fear of future persecution.

For the reasons above, the Court finds Respondent has demonstrated the harm he fears rises to the level of persecution, would be inflicted on account of a statutorily protected ground, and the government of Ecuador is unwilling or unable to control Respondent's persecutor. Therefore the Court concludes Respondent has met his burden to show a well-founded fear of persecution on account of a protected ground. Further, the Court finds Respondent merits asylum as a matter of discretion. He has no negative factors. See Matter of Pula, 19 I&N Dec. 467, 474 (BIA 1987). ("The danger of persecution should generally outweigh all but the most egregious adverse factors."). This Court, therefore, grants his asylum application

a. Withholding of Removal

The Court need not address Respondent's claim for withholding of removal under INA § 241(b)(3) because it is granting Respondent's application for asylum. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976).

b. Convention Against Torture

The Court need not address Respondent's claim under the Convention Against Torture because it is granting Respondent's application for asylum. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976).

Accordingly, the Court enters the following orders:

ORDERS

IT IS HEREBY ORDERED that Respondent's application for asylum under INA § 208 of the Act be **GRANTED**.

If either party elects to appeal this decision, the 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).

Katherine L. Hansen
United States Immigration Judge