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**UNITED STATES DEPARTMENT OF JUSTICE**

**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

**IMMIGRATION COURT**

**FORT SNELLING, MINNESOTA**

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**In the Matter of:** **)**

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**FIRST LAST** **)** **File No. A 000-000-000**

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**In Removal Proceedings** **)**

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**Judge Katherine Hansen                                     Next Hearing: June 30, 2022 at 10:30a.m.**

**RESPONDENT’S BRIEF IN SUPPORT OF HER APPLICATIONS FOR ASYLUM, WITHHOLDING AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE**

1. **FACTS AND PROCEDURAL HISTORY**
   1. **Personal History**
      1. **Persecution by XX**
      2. **Persecution by Y**
   2. **Country Conditions**
      1. **Political Situation**
      2. **Conditions for [Protected Group]**
      3. **Conditions for [Other Serious Harm]**
2. **ASYLUM ELIGIBILITY**
   1. **RESPONDENT IS A REFUGEE**
      1. **Respondent suffered past persecution in the form of XXX by XXX**

A person suffers from past persecution when the harm occurred in their country of national origin “on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to return to, or avail himself or herself of the protection of, that country owing to such persecution.” 8 C.F.R. §1208.13(b)(1). The harm that was suffered must reach the threshold of being past persecution. INA §101(a)(42)(A); 8 C.F.R. §1208.13(a). The Eighth Circuit has held that “minor beatings and brief detentions, even detentions lasting two or three days do not amount to political persecution, even if government officials are motivated by political animus.” *Eusebio v. Ashcroft*, 361 F.3d 1088. 1090 (8th Cir 2004). However, threats alone can constitute persecution if they are specific and likely to be carried out. (See *Matter of T-Z-*, 24 I&N Dec. 163 (BIA 2007)).

* + - 1. **Economic harm constitutes past persecution**

Non-physical harm of economic discrimination can be persecution if the effects are extreme. *Mater of T-Z-*, 24 I&N Dec. 163, 171-173 (BIA 2007). In *Mirisawo v. Holder,* the court found that economic persecution can be established by a deliberate and severe depravation of basic necessities or a deliberate imposition of severe financial disadvantage. 599 F.3d 391 (4th Cir. 2010).

* + - 1. **[Harm] also constitutes past persecution**
    1. **Respondent has a well-founded fear of future persecution**
    2. **The persecution and fears are on account of a protected ground under INA § 101(a)(42)(A)**

Respondent’s well-founded fear of persecution is based on four separate grounds enumerated in INA § 101(a)(42)(A): (a) XXX; (b) XXX;  (c)XXX

  To qualify for asylum, an applicant’s past persecution must have been “on account” of at least one protected ground. 8 U.S.C. § 1101(a)(42)(A). This does not mean, however, that the persecution must have been *exclusively* motivated by a protected ground. To the contrary, “persecution due to a statutorily protected ground may provide a basis for a finding of refugee status even though other, nonprotected criteria might have provided additional motivation for the persecutor's actions.” *De Brenner v. Ashcroft*, 388 F.3d 629, 636 (8th Cir. 2004); *see also Lopez-Cortaza v. Sessions*, 739 F. App'x 855, 860 (8th Cir. 2018) (“[P]ersecutions can stem from mixed motives, and the finding of a particular motive ‘do[es] not . . . preclude a finding of additional motives that may concern a protected ground.’” (quoting *Marroquin-Ochoma v. Holder*, 574 F.3d 574, 577 (8th Cir. 2009)).

* + - 1. **Respondent’s imputed political opinion gives rise to a well-founded fear of persecution**

An asylum seeker can receive protection when their persecution, or fear of future persecution, is based on their actual political opinion or on a political opinion imputed to them by their persecutor. *See* *DeBrenner v. Ashcroft*, 388 F.3d 629 (8th Cir. 2004) (finding persecution due to political opinions imputed to petitioner by the guerillas and the government where Peruvian Shining Path guerillas mistakenly singled her out as a supporter of the APR). Under international law, the concept of “political opinion” as a ground for recognition as a refugee “should be interpreted in a broad sense, as encompassing any opinion concerning matters on which the machinery of the state, government or society is engaged. It goes beyond identification with a specific political party or recognized ideology.”5 According to the BIA “[i]n situations involving general civil unrest, the motive for harm should be determined by considering the statements or actions of the perpetrators; abuse or punishment out of proportion to nonpolitical ends; treatment of others similarly situated; conformity to procedures for criminal prosecution or military law;…and the subjection of political opponents to arbitrary arrest, detention, and abuse.” *Matter of S-P-,* 21 I&N Dec. 486, 494 (BIA 1996). In *Matter of S-P-,* the Board found that nexus to the applicant’s imputed political opinion was present where the applicant was interrogated by government officials because of his suspected separatist political opinion, as well as to obtain information. *Id.* at 497.

In this case, XXX

* + - * 1. **Respondent’s [protected ground] was one central reason for the persecution.**
      1. **Respondent is a member of [Particular Social Group A], a cognizable social group;**

Respondent’s particular social groups (PSGs) are cognizable because they (1) involve an immutable characteristic, (2) are defined with sufficient particularity, and (3) are socially distinct. Respondent is the member of the following PSGs: (1) …

A particular social group (PSG) must be (1) “composed of members who share a common immutable characteristic;” (2) “defined with particularity;” and (3) “socially distinct within the society in question.” *Matter of A-B-*, 27 I&N Dec. at 320 (BIA 2018).

The Eighth Circuit defines immutability as a group characteristic “that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities and consciences.” *Ngengwe v. Mukasey*, 543 F.3d 1029, 1033 (8th Cir. 2008). The particularity requirement analyzes whether a proposed PSG “can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.” *Gaitan v. Holder*, 671 F.3d 678, 680 (8th Cir. 2012). A proposed PSG must possess “definable boundaries,” *Matter of M-E-V-G-*, 26 I&N Dec. 227, 239 (BIA 2014), and must not be “too vague or amorphous.” *Matter of L-E-A-*, 27 I&N Dec. 581, 593 (BIA 2019). The group must be particular enough to “create a [clear] benchmark for determining group membership.” *Davila-Mejia v. Mukasey*, 531 F.3d 624, 628–29 (8th Cir. 2008). The cohesiveness of the group is key; size, alone, is not determinative. *See Malonga v. Mukasey*, 546 F.3d 546, 554 (8th Cir. 2008) (“[F]emales comprise a large percentage of the Somali population, yet this fact did not foreclose the conclusion that they were a particular social group.”).

A particular social group is socially distinct if it is “perceived as a group by society.” *Matter of M-E-V-G-*, 26 I&N 227, 240 (2014). Moreover, “a group’s recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor.” *Id.* at 242. The social distinction inquiry requires a “fact-based inquiry made on a case-by-case basis.” *Miranda v. Sessions*, 892 F.3d 940, 943 (quoting *Matter of L-E-A*, 27 I&N 40, 42 (BIA 2017)). A court can infer that society views a group as socially distinct if that particular group faces “a higher incidence of crime” than the general population. *Gathungu v. Holder*, 725 F.3d 900, 908 (8th Cir. 2013). Evidence that society “recognizes the need to offer protection” to the group or documentation that the group commonly suffers persecution with relative impunity can also support a finding of social distinction. *Gonzalez Cano v. Lynch*, 809 F.3d 1056, 1059 (8th Cir. 2016). The social and cultural norms in the relevant country must be assessed to determine if the group is perceived as distinct by that society. *See Matter of S-E-G-*, 24 I&N Dec. 579, 584.

* + - * 1. **Respondent’s PSG was one central reason for the persecution.**
      1. **Respondent is a member of [Particular Social Group B], a cognizable social group;**
         1. **Respondent’s PSG was one central reason for the persection.**
      2. **There is a pattern and practice of persecution of [PSG] in [Country]**
  1. **THE GOVERNMENT OF [COUNTRY] IS UNABLE OR UNWILLING TO PROTECT RESPONDENT FROM THE PERSECUTORS**

An asylum applicant who was persecuted by private actors must show “the assaults were either condoned by the government or were committed by private actors that the government was unwilling or unable to control.” *Mejia-Ramos v. Barr*, 934 F.3d 789, 793 (8th Cir. 2019) (quoting *Beck v. Mukasey*, 527 F.3d 737, 740 (8th Cir. 2008)). The court may rely on evidence showing that the government does not protect people similarly situated as the petitioner to demonstrate the government’s “complete helplessness to protect the victims.” *Ngengwe v. Mukasey*, 543 F.3d 1029, 1035 (8th Cir. 2008).2 Finally, the BIA has deemed evidence demonstrating the futility of reporting persecution to the government as “significant” to their analysis. *In re S-A-*, 22 I&N 1328, 1332-33 (BIA 2000).

* 1. **RESPONDENT’S WELL FOUNDED FEAR CANNOT BE REBUTTED BY CHANGED CIRCUMSTANCES OR INTERNAL RELOCATION**
     1. **Circumstances in [Country] have not changed to make it safe for Respondent to safely return**
     2. **Respondent Cannot Safely Relocate Elsewhere In [The Country]**
        1. **Internal relocation is unreasonable given X, Y, Z**
  2. **RESPONDENT IS ELIGIBLE FOR HUMANITARIAN ASYLUM**
  3. **RESPONDENT IS NOT BARRED FROM RECEIVING ASYLUM**
     1. **Respondent filed the asylum application within the one-year filing deadline;**
     2. **[other relevant grounds]**

1. **WITHHOLDING ELIGIBLITY**

Under 8 U.S.C. § 1231(b)(3)(A), “the Attorney General may not remove an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.” This standard requires the applicant to show a “clear probability” that they will face persecution in their home country. *Valioukevitch v. INS*, 251 F.3d 747, 749 (8th Cir. 2001).

1. **CAT ELIGIBILITY**

To establish eligibility for relief under the Convention Against Torture (“CAT”), Ms. Salazar must demonstrate that it is more likely than not she will be tortured with the Salvadoran government’s consent or acquiescence. 8 C.F.R. §§ 208.16(c)(2); 208.17(a).

CAT prohibits returning an individual to a country “where there are substantial grounds for believing that she would be in danger of being subjected to torture” or where it “is more likely than not to be tortured in the country of removal.” 8 C.F.R. § 1208.16(c). Circuit courts have determined that the phrase “more likely than not” does not require an applicant to demonstrate an exact 51% likelihood of torture. *See Arrazabal v. Lynch*, 822 F.3d 961, 966 (7th Cir. 2016) (noting that the standard “must be understood pragmatically in the immigration context, because there is no reliable data to show just how great an applicant’s risk of torture is.”). Furthermore, the risk is heightened and must be aggregated where there are multiple persecutors. *See e.g. Rodriguez-Arias v. Whitaker*, 915 F.3d 968, 973 (4th Cir. 2019) (noting that no circuit has disagreed with the “aggregation analysis” applied by the Third and Ninth Circuits).

In assessing whether it is more likely than not that she would be tortured, the court shall consider all evidence relevant to the possibility of future torture, including, but not limited to, evidence of past torture inflicted on the applicant; evidence that the applicant could relocate to a part of the country where she is not likely to be tortured; evidence of gross, flagrant, or mass violations of human rights within the country of removal; and other relevant information regarding conditions in the country of removal. 8 C.F.R. § 208.16(c)(3). An applicant’s uncorroborated testimony is often sufficient to invoke CAT protection. 8 C.F.R. § 208.16(c)(2).

1. **CONCLUSION**