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

| | | |
|---|---|---|
| **File Numbers:** | [redacted] | **Date: 7-28-20** |
| **In the Matters of:** | [redacted] | **IN REMOVAL PROCEEDINGS**<br>**NON-DETAINED** |
| | **Respondents.** | |

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

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

**ON BEHALF OF RESPONDENTS:**
Stephen Meili, Esq.
University of Minnesota Law School
229 19th Ave. South
Minneapolis, MN 55155

**ON BEHALF OF THE DHS:**
Luke Nelson, Esq.
Asst. Chief Counsel/ICE
1 Federal Dr., Suite 1800
Fort Snelling, MN 55111

[redacted]

## WRITTEN DECISION OF THE IMMIGRATION JUDGE

### I. Background

Respondents are long-term partners and their children, who are natives and citizens of Mexico. Exhibits (Exs.) 1, 1A, 1B, and 1C. The Court will refer to Respondent [redacted] as [redacted] The Court will refer to Respondent [redacted] as [redacted] The Court will refer to Respondent [redacted] The Court will refer to Respondent [redacted] The Court will refer to all four respondents collectively as "Respondents."

Respondents applied for admission to enter the United States at the port of entry in Laredo, Texas on or about May 23, 2017 as immigrants. Id. Respondents were not in possession of valid unexpired immigrant visas, reentry permits, border crossing cards, or other valid entry documents required by the Immigration and Nationality Act (Act or NTA). On July 21, 2017, the Department of Homeland Security (DHS) commenced removal proceedings against Respondents with the filing of Notices to Appear, charging Respondents as removable pursuant to the above-captioned charge of the INA. Id.[1] On March 20, 2019, Respondents admitted the allegations against them and conceded the charges of removability. Respondents seek relief in the form of asylum under INA § 208, withholding of removal under INA § 241(b)(3), and protection under the Convention Against Torture. [redacted] are also derivatives on Respondent [redacted] application. Respondent [redacted] is also a derivative on Respondent [redacted] application.[2] All applications are based on the same facts and are therefore addressed in this single decision. For the reasons below, the Court now grants Respondents' applications for asylum under INA § 208 and, in the alternative, grants for withholding of removal under INA § 241(b)(3), and Respondents' applications for withholding of removal under Article 3 of the Convention Against Torture.

[1] The Notices to Appear for Respondent [redacted] were filed on July 28, 2017.

[2] Because Respondent [redacted] and Respondent [redacted] are not legally married, they are not derivatives for each other's application. Likewise, because Respondent [redacted] is not the biological father of Respondent [redacted] she is not a derivative on his application. The Court considered addressing the claims in separate orders. However, because the claims all stem from the same factual background, the Court determined a single, consolidated order was more efficient and effective.

[redacted]

## II. Evidence Presented

The Court has considered all admitted evidence in this decision, regardless of whether specifically mentioned.

a. Documentation

i. *Respondent* [redacted]

Ex. 1: Notice to Appear, Form I-862, filed July 21, 2017.
Ex. 2: DHS Motion to Consolidate Removal Proceedings, filed July 28, 2017.
Ex. 3: Order of the Immigration Judge Granting Motion to Consolidate, dated August 15, 2017.
Ex. 4: Materials supporting asylum petition, filed April 27, 2018.
Ex. 5: Application for Asylum and for Withholding of Removal, Form I-589, filed April 27, 2018.
Ex. 6: Brief in Support of Respondents' Applications for Asylum, with Tabs A-I, filed October 25, 2019.
Ex. 7: DHS Closing Argument, filed December 5, 2019.
Ex. 8: Respondents' Reply to DHS Closing Argument, filed January 21, 2020.

ii. *Respondent* [redacted]

Ex. 1A: Notice to Appear, Form I-862, filed July 28, 2017.
Ex. 2A: Material supporting asylum petition, filed April 27, 2018.
Ex. 3A: Record of Deportable/Inadmissible Alien, Form I-213, filed March 20, 2019.

iii. [redacted]

Ex. 1B: Notice to Appear, Form I-862, filed July 28, 2017.
Ex. 2B: Material supporting asylum petition, filed April 27, 2018.
Ex. 3B: Record of Deportable/Inadmissible Alien, Form I-213, filed March 20, 2019.

iv. [redacted]

Ex. 1C: Notice to Appear, Form I-862, filed July 28, 2017.
Ex. 2C: Material supporting asylum petition, filed April 27, 2018.
Ex. 3C: Record of Deportable/Inadmissible Alien, Form I-213, filed March 20, 2019.

[redacted]

b. Testimony[3]

Respondent [redacted] testified about her neighbor's recent interactions with cartel members in Mexico.

## III. Credibility

It is the applicant's burden to satisfy the Immigration Judge (IJ) that his or her testimony is credible. See Fesehaye v. Holder, 607 F.3d 523, 526 (8th Cir. 2010). As Respondents' applications were 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). Inconsistencies about facts that "may seem like minutiae" are appropriate factors to consider. Ali v. Holder, 776 F.3d 522, 527 (8th Cir. 2015). When an applicant makes implausible allegations and fails to present corroborating evidence, an adverse credibility determination may be warranted. See Rucu-Roberti v. INS, 177 F.3d 669, 670 (8th Cir. 1999) (affirming vague testimony without any corroborating evidence created an implausible claim). 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 her fear. 8 C.F.R. § 1208.13(a). The testimony of the applicant, if credible, is sufficient to sustain the burden of proof without corroboration. 8 C.F.R. § 1208.13(a) (asylum); 8 C.F.R. § 1208.16(c)(2) (protection under the Convention Against Torture). 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 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). The need for corroborative evidence is greater when the applicant's testimony is less detailed. Matter of Y-B, 21 I&N Dec. 1136, 1139 (BIA 1998). Respondent [redacted] testimony was candid and responsive. Her testimony was plausible and internally consistent. Therefore, the Court finds Respondent credible.

[3] The Court heard limited testimony in this matter because the parties stipulated to the facts Respondent [redacted] and Respondent [redacted] provided in their affidavits. Ex. 6 at Tab A.

[redacted]

## IV. Findings of Fact[4]

Respondent [redacted] have been in a long-term relationship for approximately twelve or thirteen years. They are not legally married. They share one child together, Respondent A[redacted]. Respondent [redacted] has a daughter, Respondent [redacted] from a previous relationship. Respondent [redacted] considers Respondent [redacted] to be her step-father. Until May 2017, Respondents lived in Santiago Pinotepa Nacional (Pinotepa), Oaxaca, Mexico. Respondent [redacted] worked in construction.

In early March 2017, Respondent [redacted] was approximately six months pregnant with her and Respondent [redacted] second child. Respondent [redacted] and Respondent [redacted] decided to run a small store from their home in order to make more money. They sold cleaning products, soda, and coffee. They advertised their store by posting signs outside their home. Respondent [redacted] ran the store during the day, and Respondent [redacted] when he came home from his construction job.

On March 31, 2017, approximately one month after opening the store, two men came to the house in a black car. One of the men was named [redacted], and he had grown up with Respondent [redacted] These men were affiliated with a cartel, but Respondent [redacted] and Respondent [redacted] did not know which cartel. At various points they speculated the men were from either the Zetas or the Jalisco New Generation [redacted], or the men had switched cartels. The men spoke with Respondent [redacted] outside. They told Respondent [redacted] that he had to pay the cartel *la cuota* (the cut) in order to run the small store. *La cuota* was approximately $241 (USD). Respondent [redacted] told them he could not afford to pay and would not pay. [redacted] said this refusal to pay was disrespectful and Respondent [redacted] would regret refusing to pay.

The next day, in the early afternoon, Respondents went to the bank to pick up money. As the family got into their car to leave, two men with guns ran to the car. One of the men was [redacted] The two men shot Respondents multiple times. Respondent [redacted] was shot approximately seven times and lost consciousness during the attack. Respondent [redacted] was shot approximately ten times, but she remained conscious. Respondent [redacted] was shot once in the back and lost consciousness. Respondent [redacted] covered Respondent [redacted] with her body, and he did not suffer any gunshot wounds.

[4] This section is based on Exhibit 6, including Respondent [redacted]'s affidavit, Respondent [redacted] affidavit, medical reports, police reports, and news articles. The parties stipulated to the facts of the case.

[redacted]

An ambulance transported Respondents to a hospital for medical care. During the transport, motorcycles drove alongside the ambulance, and Respondent [redacted] heard two gunshots. The paramedics urged the ambulance driver to go faster. The paramedics told Respondent [redacted] that a police car followed the motorcycles. Later, Respondent [redacted] learned from her family that the police followed the motorcycles to a neighborhood on the outskirts of the town, where bad people would gather, but the police did not follow them farther because they were concerned for their safety.

At the hospital, the staff treated Respondent [redacted] and Respondent [redacted] Respondent [redacted] condition was grave. Respondent [redacted] clavicle was broken in two places. He suffered injuries to his soft tissue, trachea, esophagus, neck, and left lung. Respondent [redacted] condition was grave. She suffered injuries to her right lung, liver, abdominal organs, soft tissues, and bone tissues. As a result of the gunshot wounds, she lost her unborn child. Respondent [redacted] condition was delicate. She suffered injuries to her soft tissues and left lung, as well as a probable lesion to her cervical spinal cord.

Respondent [redacted] and Respondent [redacted] were unable to speak with police initially because of the severity of their injuries. The police provided them with 24-hour security. Twice, members of the cartel attempted to enter the hospital and gain information about Respondent [redacted] The hospital did not give out information and called security. The cartel members left when the police approached, but the police did not pursue the cartel members.

Later, Respondent [redacted] was able to answer police questioning. The police chief provided photographs to Respondent [redacted]. She identified [redacted] as one of the assailants. Respondent [redacted] noticed a change in the police chief's attitude after she identified [redacted] After she identified [redacted] the police protection left the hospital. Respondent [redacted] suspects the police did not want to cross [redacted] Respondent [redacted] also noticed a change in hospital staff—the staff rarely checked her and her family, when the staff did check them the visits were brief, and the staff neglected Respondent [redacted] and Respondent [redacted]. After twelve days, Respondent [redacted] and Respondent [redacted] left the Pinotepa hospital at the suggestion of a staff member.

Respondent [redacted] contacted forty-five or fifty hospitals in Oaxaca to seek treatment, but they all denied her and Respondent [redacted] treatment after contacting the Pinotepa hospital. A doctor in a private clinic ultimately agreed to care for them, but would not keep records. The Pinotepa hospital and the police would not transport Respondent [redacted] and Respondent [redacted] so they hired a small private

[redacted]

plane (Respondent [redacted] and Respondent [redacted] traveled with Respondent [redacted] mother by car). They spent three weeks at the private clinic in Oaxaca. Cartel members followed Respondents to the private clinic in Oaxaca, 200 miles from Pinotepa. Respondents decided they were not safe in Mexico and the cartel would follow them anywhere in Mexico. Respondents decided to seek asylum in the United States.

Respondents left for the United States on May 21, 2017 and entered the United States on May 23, 2017. Respondents completed a credible fear interview and sought asylum. Respondents have continued to receive medical care in the United States for the injuries sustained in Mexico (both physical and mental).

Since arriving in the United States, Respondent [redacted] has had contact with members of her family and her community in Pinotepa. Her neighbor, [redacted] reported that men on motorcycles shot her house and men in black trucks surveille the house. [redacted] has disappeared since providing a letter of support to her. Respondent [redacted] reports that a black car picked him up, that the same black car has repeatedly driven past her old house in Pinotepa, and that the same black car is affiliated with the cartel. Men in a black van also mistook Respondent [redacted] brother for Respondent [redacted] The men yelled at him and attempted to assault him. Respondent [redacted] brother managed to escape.

The preceding summary of factual findings will be further developed in the analysis below, including applicable Mexico country conditions.

## V. Relief

### a. Asylum

#### i. *Legal Standard*

An 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, an applicant must meet the definition of a "refugee," defined as an individual who is unwilling or unable to return to his or her country of nationality because of past persecution or because he or she has a well-founded fear of future persecution on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. See INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(a). Although the protected ground does not need to be the sole reason for the persecution, it must be at least one central reason. See Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 212-14 (BIA 2007).

[redacted]

If an applicant's fear of persecution is unrelated to past persecution, he or she bears the burden of establishing that the fear is well-founded. See 8 C.F.R. § 1208.13(b)(1). An applicant has a well-founded fear of future persecution if: (1) he or she has a fear of persecution in his or her country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) there is a reasonable possibility of suffering such persecution if he or she were to return to that country; and (3) he or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear. See 8 C.F.R. § 1208.13(b)(2)(i).

A future threat to life or freedom can be established by demonstrating either an individualized risk or a pattern of persecution of similarly situated persons based on one of the five protected grounds. 8 C.F.R. § 1208.16(b)(2); Thu v. Holder, 596 F.3d 994, 999 (8th Cir. 2010). A well-founded fear of persecution does not exist where the applicant could avoid persecution by relocating to another part of the country and such relocation would be reasonable. See 8 C.F.R. § 1208.13(b)(2)(ii). In other words, the applicant's fear of persecution must be country-wide. Mohamed v. Ashcroft, 396 F.3d 999, 1003, 1006 (8th Cir. 2005); Matter of Acosta, 19 I&N Dec. 211, 235 (BIA 1985).

A well-founded fear of persecution must be both subjectively genuine and objectively reasonable. Yu An Li v. Holder, 745 F.3d 336, 340 (8th Cir. 2014). To demonstrate a subjective fear of persecution, an applicant must demonstrate a genuine apprehension or awareness of the risk of persecution. Matter of Acosta, 19 I&N Dec. at 221. To satisfy the objective element, the applicant's subjective fear must be supported by "[']credible, direct, and specific evidence that a reasonable person in the alien's position would fear persecution if returned to the alien's country.'" Damkan v. Holder, 592 F.3d 846, 850 (8th Cir. 2010) (quoting Mamana v. Gonzales, 436 F.3d 966, 968 (8th Cir. 2006)). A ten percent chance of future persecution can be sufficient to meet the asylum requirements. INS v. Cardoza-Fonseca, 480 U.S. 421, 431 (1987); Bellido v. Ashcroft, 367 F.3d 840, 845 n.7 (8th Cir. 2004).

Asylum, unlike withholding of removal, may be denied in the exercise of discretion to an alien who establishes statutory eligibility for relief. See Cardoza-Fonseca, 480 U.S. at 441; Matter of Mogharrabi, 19 I&N Dec. 439, 447 (BIA 1987).

[redacted]

ii. *Past Persecution – Level of Harm*

Past persecution is "'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 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, 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). "[M]inor beatings and brief detentions, even detentions lasting two to 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). Rather, "'persecution is an extreme concept.'" Litvinov, 605 F.3d at 553 (quoting Zakirov v. Ashcroft, 384 F.3d 541, 546 (8th Cir. 2004)). 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).

In Respondents' case, they suffered extensive, life-threatening injuries. Ex. 6 at 131-35. The DHS concedes this harm rises to the level of persecution. The Court finds Respondents suffered harm rising to the level of persecution.

iii. *Past Persecution – Protected Ground*

Respondents claims persecution due to their membership in a particular social group.[5] "An 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).

When requesting asylum on account of membership in a particular social group, applicants must "clearly indicate, on the record and before the immigration judge, the exact

[5] Respondents' applications for asylum also include a check for "political opinion." Respondents did not present a political opinion in their briefs or oral arguments. Therefore, the Court does not analyze a general "political opinion." In any event, the Court sees no evidence in the record to a claim under political opinion and finds Respondents have not established a political opinion that would entitle them to asylum.

[redacted]

delineation of any proposed particular social group." Matter of A-B-, 27 I&N Dec. 316, 344 (A.G. 2018). Respondents' claim various particular social groups. Respondent [redacted] and Respondent [redacted] (and their derivatives) claim the group "former business owners who refused to pay the cartel extortion when they were business owners." See Ex. 6. Respondent [redacted] (and her derivatives) also claim the groups: "nuclear family of Respondent [redacted] who defied the cartel" and "witnesses who reported cartel violence." See id.

1. Particular Social Group

A cognizable particular social group must (1) include members who share a common immutable characteristic; (2) be defined with particularity; and (3) be socially distinct within the society in question. Ngugi v. Lynch, 826 F.3d 1132, 1137-38 (8th Cir. 2016); Matter of W-G-R-, 26 I&N Dec. at 211-12. First, an immutable characteristic is one "that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." Matter of Acosta, 19 I&N Dec. at 233. Second, a group must be particular. "[I]t must not be amorphous, overbroad, diffuse, or subjective." Matter of M-E-V-G-, 26 I&N Dec. 227, 239 (BIA 2014). Particularity requires the group is distinct enough that it "would be recognized, in the society in question, as a discrete class of persons." Matter of W-G-R-, 26 I&N Dec. at 214 (quoting Matter of S-E-G-, 24 I&N Dec. 579, 584 (BIA 2008)). This particularity inquiry may require looking into the culture and society of a respondent's home country to determine if the class is discrete and not amorphous. Id. at 214-15. Third, social distinction "exists where the relevant society perceives, considers, or recognizes the group as a distinct social group." Id. at 217-18; see also Matter of M-E-V-G-, 26 I&N Dec. at 242. Social distinction does not require "ocular" visibility. Matter of W-G-R-, 26 I&N Dec. at 216.

Notably, a group cannot be circularly defined by the fact that it suffers persecution. Matter of C-A-, 23 I&N Dec. 951, 959 (BIA 2006). A proposed particular social group must "exist independently of the harm asserted." Matter of A-B-, 27 I&N Dec. at 334-335. Thus, a proposed particular social group is not cognizable unless its members "share a narrowing characteristic other than their risk of being persecuted." Id. (internal citations omitted). "Social group determinations are made on a case-by-case basis." Matter of M-E-V-G-, 26 I&N Dec. at 251 (citing Matter of Acosta, 19 I&N Dec. at 233-34).

a. *Former business owners who refused to pay the cartel extortion when they were business owners*

As an initial matter, business owners typically fail to constitute particular social groups. See Davila-Mejia v. Mukasey, 531 F.3d at 628–29 (finding claimed particular social group

[redacted]

of "competing family business owners" lacked "sufficient social visibility to be perceived as a group by society," and further finding the term "family business owner" to be "too amorphous to adequately describe a social group"); see also Quinteros v. Holder, 707 F.3d 1006, 1010 (8th Cir. 2013) (finding claimed social group of "family members of local business owners" not to be a particular social group because it was too amorphous and facts did not show nexus); see generally Cambara-Cambara v. Lynch, 837 F. 3d 822 (8th Cir. 2016). Despite this case law, each particular social group requires independent analysis. See Matter of M-E-V-G-, 26 I&N Dec. at 251.

First, "a shared past experience" is immutable. See Matter of Acosta, 19 I&N Dec. at 233. Thus, "former business owners who refused to pay the cartel when they were business owners" is a group whose members share an immutable characteristic. However, this group is not particular. By one count, 620,000 small stores like Respondents' operate in Mexico, to say nothing of all businesses. Ex. 6 at 936. Although the group is further narrowed by the refusal to pay extortion, "[e]xtortion demands go unreported in 97.4% of cases." Id. at 922. Given the vast number of such businesses and the indeterminate number of those who refuse to pay extortion demands, the group "former business owners who refused to pay the cartel extortion when they were business owners" lacks particularity. Moreover, the group is not socially distinct. As Respondents aptly note, a higher incident of crime may indicate social visibility. See Gathungu v. Holder, 725 F.3d 900, 908 (8th Cir. 2013). However, it is unclear from the record whether "former business owners who refused to pay the cartel extortion when they were business owners" suffer crime at a higher rate. Although Respondents note a nightclub owner was killed for his refusal to pay, that nightclub owner was a business owner—not a *former* business owner. Ex. 6 at 927-28. Moreover, countless articles in the record report high rates of homicide in Mexico—without pointing out business owners as distinct groups. See id. at 845-48; see also id. at 854 (detailing special groups of homicide victims based on "Gender, Politics, and the Press"). One expert reported victims of extortion often change residences because of the threats of danger. Id. at 52. However, that decision reflects the victims of extortion are distinct to cartels—not to society as a whole. See Matter of L-E-A-, 27 I&N Dec. 581, 582 (A.G. 2019) (finding the particular social group must be "socially distinct in the eyes of its society—not just those of its alleged persecutors"). Therefore, the Court finds "former business owners who refused to pay the cartel extortion when they were business owners" is not a cognizable particular social group.

b. *Nuclear family of Respondent* [redacted] *who defied the cartel*

First, family is an immutable characteristic. See Matter of Acosta, 19 I&N Dec. at 233 ("The shared characteristic might be an innate one such as . . . kinship ties."). Thus,

[redacted]

"nuclear family of Respondent [redacted] who defied the cartel" is a group whose members share an immutable characteristic. See Bernal-Rendon v. Gonzales, 419 F.3d 877, 881 (8th Cir. 2005) (finding a nuclear family is a particular social group because it is based on "a common, identifiable and immutable characteristic"). Second, this group is particular. It is discrete and has definable boundaries based on the common understanding of nuclear families. However, this group is not socially distinct based on the record before the Court. "[M]ost nuclear families are not inherently socially distinct within the society in question." Matter of L-E-A-, 27 I&N Dec. at 581. Respondents argue their publicity of their small store in their family home made them socially distinct. Ex. 6 at 19. Small stores in family homes are common in Mexico. Ex. 6 at 936 (noting 620,000 small stores in homes in Mexico). Although Respondents may have attempted to distinguish themselves through the publicity of their store, the publicity does not indicate the rest of society actually noted the distinction. Therefore, the Court finds "nuclear family of Respondent [redacted] who defied the cartel" is not a cognizable particular social group.

c. *Witnesses who reported cartel violence*

Witnesses, "merely having seen or experienced crime," generally do not satisfy the particularity or social distinction requirements necessary to establish a particular social group. Ngugi v. Lynch, 826 F.3d 1132, 1138 (8th Cir. 2016). Likewise, confidential informants generally cannot satisfy the requirement of social distinction. Matter of C-A-, 23 I&N Dec. at 960 ("Recognizability or visibility is limited to those informants who are discovered because they appear as witnesses or otherwise come to the attention of cartel members."). However, "for those who have publicly testified against gang members, their 'social visibility' is apparent." Henriquez-Rivas v. Holder, 707 F.3d 1081, 1093 (9th Cir. 2013) (remanding to the Board of Immigration Appeals). Although these cases are instructive, each particular social group requires independent analysis. See Matter of M-E-V-G-, 26 I&N Dec. at 251.

First, "a shared past experience" is immutable. See Matter of Acosta, 19 I&N Dec. at 233. "Witnesses who reported cartel violence" have shared the experience of reporting—that experience is immutable. Second, this group is particular. Members of the group objectively must have both witnessed and reported the cartel violence, thus giving the group definable boundaries.

The primary issue is whether the proposed particular social group is socially distinct. Unlike the respondent in Ngugi, who neither reported nor testified about the crimes, Respondent [redacted] spoke with the police and gave information about the assailants (as did her daughter, Respondent [redacted]). Ex. 6 at 168. However, Respondent [redacted] is also unlike the respondent in Henriquez-Rivas because she did not ultimately

[redacted]

testify against the cartel. Although she did not testify, the cartel attempted to enter the hospital where they knew she was with police, thus making her readily identifiable to them.[6] Because the cartel members knew she was in the hospital with police protection and assistance (for a time), Respondent [redacted] despite not publicly testifying, "otherwise c[a]me to the attention of cartel members." See Matter of C-A-, 23 I&N Dec. at 960.

Moreover, society, not just the cartels, distinguish witnesses who report cartel violence. See Matter of L-E-A-, 27 I&N Dec. at 582 (finding the particular social group must be "socially distinct in the eyes of its society—not just those of its alleged persecutors"). The Mexican government views witnesses as socially distinct because they are entitled to certain protections for their roles. Ex. 6 at 1061-87 (Mexican law protecting witnesses). Under this law, a "protected person" is:

> Any individual that may be at risk or in danger due to their intervention in a criminal proceeding. Likewise, within said concept, persons linked by kinship or emotional ties to the witness, victim, injured party or public servants, that are at risk or in danger because of the activities of those in the proceeding will be considered.

Id. at 1062. Likewise, a "corroborating witness" is "the person that voluntarily consents to lending effective help to the investigating authority, by producing their testimony *or providing other means of proof for the purpose of investigating*, processing or sentencing other parties." Id. (emphasis added). The definition of "corroborating witness" is not clearly limited to those who testify. This Mexican law is "significant evidence that [Mexican] society recognizes the unique vulnerability to people who" report crimes and assist in investigations. See Henriquez-Rivas v. Holder, 707 F.3d at 1092 (analyzing a similar Salvadoran law). Therefore, the proposed particular social group "witnesses who report cartel violence" is socially distinct.

The Court finds "witnesses who report cartel violence" is a particular social group.

2. Membership

In addition to the existence of a cognizable group, a respondent must also demonstrate he

[6] Even assuming the cartel members did not specifically see Respondent [redacted] give information to police, the presence of police officers with Respondent [redacted] imputed that characteristic. "Persecution for 'imputed' grounds (e.g., where one is erroneously thought to hold a particular political opinion or mistakenly believed to be a member of a religious sect) can satisfy the 'refugee' definition." Matter of S-P-, 21 I&N Dec. 486, 489 (BIA 1996) (citing Matter of A-G-, 19 I&N Dec. 502, 507 (BIA 1987)); see also Matter of M-E-V-G-, 26 I&N Dec. at 243.

[redacted]

or she is a member of such a group. INA §§ 101(a)(42)(A), 208(b)(1)(B); 8 C.F.R. § 1208.13(a); Matter of W-G-R-, 26 I&N Dec. at 223. Although only one particular social groups is cognizable, the Court recognizes they would be members of all of those respective groups.

3. Nexus

An asylum applicant must demonstrate the persecution he or she fears was or would be "on account of" his or her race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.13(a); see INS v. Elias-Zacarias, 502 U.S. 473, 483 (1992) (explaining that an asylum claim fails unless the applicant establishes the requisite nexus between the alleged harm and a statutorily protected ground). For an applicant to show he or she has been targeted on account of a protected ground, the applicant must demonstrate his or her claimed ground was at least "one central reason" for the claimed harm. INA § 208(b)(1)(B)(i); Matter of A-B-, 27 I&N Dec. at 317; Matter of N-M-, 25 I&N Dec. 526, 531-33 (BIA 2011). The protected ground "cannot be incidental, tangential, superficial, or subordinate to another reason." Matter of J-B-N- & S-M-, 24 I&N Dec. at 212-14. An applicant may show a persecutor's motives through direct or circumstantial evidence. Elias-Zacarias, 502 U.S. at 483. Such evidence may include statements by persecutors, or treatment of other similarly situated people. See Matter of S-P-, 21 I&N Dec. 486, 494 (BIA 1996).

a. *Former business owners who refused to pay the cartel extortion when they were business owners*

At the time of the initial harm (gunshot wounds) Respondents experienced, Respondent [redacted] and Respondent [redacted] were not former business owners—they were business owners. Thus, even if the group "former business owners who refused to pay the cartel extortion when they were business owners" were cognizable, this claim of past persecution would fail on nexus.

b. *Nuclear family of Respondent* [redacted] *who defied the cartel*

The initial harm Respondents experienced (the gunshot wounds) were the result of failure to pay an extortion fee—not Respondents' membership in their nuclear family. Respondent [redacted] and Respondent [redacted] in their affidavits, note [redacted] threatened them after they did not pay an extortion fee. The gun attack followed the next day. The family was with Respondent [redacted], who appears to have been particularly targeted based on the number and extent of his injuries. There is no significant

[redacted]

direct or circumstantial evidence indicating [redacted] and the cartel members were influenced by Respondents' membership in their nuclear family. See Silvestre-Giron v. Barr, 949 F.3d 1114, 1118 (8th Cir. 2020) (finding extortionists were motivated by money, rather than family connection, even though family members were targeted). Thus, even if the group "nuclear family of Respondent [redacted] who defied the cartel" were cognizable, this claim of past persecution would fail on nexus.

c. *Witnesses who reported cartel violence*

"Witnesses who reported cartel violence" is a cognizable particular social group. However, as with "former business owners who refused to pay the cartel extortion when they were business owners," Respondent [redacted] was not a witness who had reported cartel violence when she was shot by the cartel members. Thus, even though the group "witnesses who reported cartel violence" is cognizable, this claim of past persecution fails on nexus.

For the above reasons, the Court finds Respondents did not suffer past persecution on account of their membership in a particular social group.[7]

iv. *Well-Founded Fear of Future Persecution*

Because Respondents have not established past persecution, they are not entitled to a presumption of a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1). If the applicant's fear of persecution is unrelated to past persecution, the applicant bears the burden of establishing that the fear is well-founded. Id. An applicant has a well-founded fear of future persecution if: (1) the applicant has a fear of persecution in his or her country of nationality or, if stateless, in the country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) there is a reasonable possibility of suffering such persecution if the applicant were to return to that country; and (3) the applicant is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear. 8 C.F.R. § 1208.13(b)(2)(i). The applicant bears the burden to establish a protected ground "will be at least one central reason" for persecution. INA § 208(b)(1)(B)(i). A well-founded fear of persecution does not exist where the applicant could avoid persecution by relocating to another part of the country and such relocation would be reasonable. 8 C.F.R. § 1208.13(b)(2)(ii). In other words, the applicant's fear of persecution must be countrywide. Mohamed v. Ashcroft, 396 F.3d 999, 1003 (8th Cir. 2005); Matter of Acosta, 19 I&N Dec. 211, 235 (BIA 1985).

[7] Because Respondents did not establish past persecution on account of a protected ground, the Court also finds Respondents are ineligible for humanitarian asylum. See Matter of L-S-, 25 I&N Dec. 705, 710 (BIA 2012).

[redacted]

To establish a well-founded fear of persecution, an applicant must present credible evidence that demonstrates the feared harm is of a level that amounts to persecution, that the harm is on account of a protected characteristic, that the persecutor could become aware or already is aware of the characteristic, and that the persecutor has the means and inclination to persecute. Matter of Mogharrabi, 19 I&N Dec. at 446.

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

In evaluating whether the applicant has sustained the burden of proving a well-founded fear of persecution, the applicant is not required to provide evidence that he or she would be singled out individually for persecution if the applicant establishes that there is a pattern or practice of persecution of persons similarly situated to the applicant on account of one of the enumerated grounds and that the applicant is a member of and identified with that group. 8 C.F.R. § 1208.13(b)(2)(iii); see also Matter of S-M-J-, 21 I&N Dec. 722, 731 (BIA 1997). However, to constitute a "pattern or practice," the persecution of the group must be "systemic, pervasive, or organized." Ngure v. Ashcroft, 367 F.3d 975, 991 (8th Cir. 2004).

To begin, two of Respondents' particular social groups ("former business owners who refused to pay the cartel extortion when they were business owners" and "nuclear family of Respondent [redacted] who defied the cartel") are not cognizable. Therefore, Respondents cannot establish a well-founded fear of persecution based on those groups.

"Witnesses who reported the cartel" is a cognizable particular social group.[8] See Section V.a.iii.1.c. As with the analysis for past persecution, Respondents must establish the

[8] The Court finds Respondent [redacted] is an imputed member of this particular social group. "Persecution for 'imputed' grounds (e.g., where one is erroneously thought to hold a particular political opinion or mistakenly believed to be a member of a religious sect) can satisfy the 'refugee' definition." Matter of S-P-, 21 I&N Dec. 486, 489 (BIA 1996) (citing Matter of A-G-, 19 I&N Dec. 502, 507 (BIA 1987)); see also Matter of M-E-V-G-, 26 I&N Dec. at 243. Respondent [redacted] was at the hospital while Respondent [redacted] and Respondent [redacted] provided testimony to the police. He was unconscious and therefore did not provide his own testimony. However, it is reasonable that the cartel will believe he also cooperated.

[redacted]

Text

particular social group "will be at least one central reason" for their well-founded fear of persecution. See INA § 208(b)(1)(B)(i).

First, Respondents are "afraid of returning to Mexico because the cartel that threatened [them] and attacked [them] will try to kill" them. Id. at 7, 14. Respondents previously faced extensive violence based on their unwillingness to pay an extortion fee. Although this initial violence was unrelated to Respondents' status as "witnesses who reported cartel violence," the events indicate the level of harm the cartel are capable of inflicting on Respondents. Moreover, the cartel has continued to pursue Respondents in two locations and later threatened their family and neighbors. Respondent [redacted] brother was attacked. Respondents' neighbor has disappeared. Based on the past violence, continued threats, subsequent attacks, and subsequent disappearances, the Courts finds Respondents have established a subjectively genuine fear of future persecution based on their status as "witnesses who reported cartel violence."

Moreover, the evidence establishes an objectively reasonable fear. First, the U.S. Congressional Research Service Report states that the cartels' "main asset is not drug smuggling but organized violence," which may include targeting witnesses. Id. at 966. Similarly, Expert Ravest notes the cartels "practice extremely violent methods to frighten the population and control businesses, institutions and entire populations (including their authorities)." Id. at 50. Expert Ravest also notes these methods "desuade [sic] people from going to the authorities." Id. This focus on dissuasion further indicates the cartels specifically target people who cooperate with authorities. The witness protection program is deteriorating and failing to protect witnesses from assassination. Id. at 1116. Even individuals who merely report cartel activity (without serving as testifying witnesses) face retribution for those acts. Id. at 928 (detailing the murder of a nightclub owner who filed a police report on cartel activity). The cartels have a pattern and practice of targeting witnesses who report cartel violence. In Respondents' specific case, Expert Jones notes that [redacted] "is highly motivated to find [Respondents] and kill them given they could testify against him in court." Id. at 84; see id. at 86.

Widespread gang violence is typically not a ground for asylum because there will often not be a nexus to a cognizable particular social group. See Matter of M-E-V-G-, 26 I&N Dec. at 227. However, Respondents presented a cognizable particular social group and presented extensive evidence of the nexus between the particular social group and the harm feared.

The Court acknowledges the cartel members initially attacked Respondents because they failed to pay *la cuota*. However, Respondents must show the protected ground was *at least one* central reason—not *the only* central reason. See Matter of J-B-N- & S-M-, 24 I&N Dec. at 212. Mixed motives are not uncommon in cases of persecution. "An asylum

[redacted]

applicant is not obliged to show conclusively why the persecution has occurred or may occur." Matter of S-P-, 21 I&N Dec. at 489. Rather, an applicant may use direct and circumstantial evidence to meet his or her burden to establish eligibility. Matter of J-B-N- & S-M-, 24 I&N Dec. at 214. The evidence presented demonstrates that the cartel has multiple central reasons for targeting Respondents for future persecution—including their membership in the particular social group "witnesses who reported cartel violence." The evidence demonstrates that Respondents' membership in the particular social group is not superficial or subordinate to their fear of persecution. Respondents have established they face a well-founded fear of persecution on account of their membership in the particular social group "witnesses who reported cartel violence."

The Court also finds the government is unwilling or unable to protect Respondents. Respondent [redacted] identified [redacted] as one of the assailants to the police. Ex. 6 at 168-69. Respondent [redacted] also identified [redacted] as one of the assailants to the police. Id. at 172-73. The April 3, 2017 report from the Oaxaca State Attorney's Office lists [redacted] as the suspect for the attempted homicide and aggravated assault. Id. at 158 (spelling [redacted] as [redacted]). However, the April 6, 2017 report from the Oaxaca State Attorney General's Office did not include [redacted] name. Id. at 188. The "official police report" also does not contain [redacted] name. Id. at 188-200. The DHS argues the fact that authorities investigated the crime and recorded [redacted] name (on one occasion) indicates the authorities were willing to protect Respondents. Ex. 7 at 10. The Court disagrees. The initial inclusion and subsequent omission indicates an unwillingness to protect Respondents. The police ceased to include [redacted] name on future reports. Moreover, the police chief "changed his attitude immediately" after Respondent [redacted] identified [redacted] Ex. 6 at 5. She spoke with the police chief at 10:00am, and by 6:00pm all the protection the police had provided was removed from the hospital. Id. The police and state attorney knew of [redacted] acts, and then removed protection and effectively halted the investigation by not identifying [redacted] in the continued reports. These decisions by the police and state attorney indicate an unwillingness to protect Respondents from persecution.

Moreover, these police actions are consistent with country conditions evidence. "Organized criminal groups were implicated in numerous killings, acting with impunity and at times in league with corrupt federal, state, local, and security officials." Ex. 6 at 790. Cartels have "paid bribes and integrated police officers into their hierarchy to ensure the cartel would be able to continue illicit operations." Id. at 1025 (citing a report from the Human Rights Clinic at the University of Texas School of Law and Fray Juan de Larios Diocesan Human Rights Centre in Coahuila, Mexico). Even a Mexican attorney general (for the State of Jalisco) reported that "[p]eople believed the police in the state were working for a criminal gang." Id. at 1016. Mexico's deputy interior minister for human

[redacted]

rights acknowledged, "[w]e know that organi[z]ed crime works with government official at all levels." Id. at 1011; see also id. at 830 (noting that the now-defunct Federal Judicial Police engaged in corruption); id. at 897 (noting that the former President of Mexico, Enrique Peña Nieto, requested a bribe from a prominent drug lord). Police corruption appears to be increasing, rather than decreasing. Id. at 830 ("79% of Mexican citizens see corrupt police as a top concern in 2017—an increase of nine points since 2015."). Although the Mexican government has funneled resources into combating cartel violence, the statements of government officials demonstrate the government remains infiltrated and influenced by the cartels. See id. at 899. In addition to participating in criminal acts, police fail to address criminal activity. Ninety-four percent of crimes are either unreported or not investigated. Id. at 790. In Mexico, "a suspect is detained and charged in fewer than [two] percent of reported homicides in Mexico." Id. at 829.

Finally, the Court finds Respondents would not be safe in another part of Mexico. The DHS argues Respondents can relocate in Mexico. But evidence shows Respondents cannot relocate. Respondents moved to a different area in Oaxaca to seek medical treatment (after the police stopped providing protection). That area is a seven-hour drive from their home in [redacted]. Ex. 6 at 785. In the second hospital, Respondent [redacted] saw a black truck with cartel members on at least two occasions. Id. at 6. This failed relocation inspired the family to leave Mexico. Id. at 6-7. Respondents' failed relocation is consistent with evidence in the record finding that cartels have national reach. Id. at 55, 74-75, 84-85. In addition, the Court considers social and family ties in determining the reasonableness of relocation. 8 C.F.R. § 1208.13(b)(3). Given Respondents' ties to Oaxaca, internal relocation, even if technically feasible, would not be reasonable.

Further, the Court finds Respondents merit asylum as a matter of discretion. They have no criminal history or other negative factors. See Matter of Pula, 19 I&N Dec. 467, 474 (BIA 1987). ("[T]he danger of persecution should generally outweigh all but the most egregious adverse factors.")

For the reasons above, the Court concludes Respondents have met their burden to show a well-founded fear of persecution on account of a protected ground. Therefore, the Court grants Respondent [redacted] application for asylum, Respondent [redacted] derivative application for asylum, Respondent [redacted] derivative application for asylum, and Respondent [redacted] application for asylum.

b. Withholding of Removal

To establish eligibility for withholding of removal under INA § 241(b)(3), a respondent must show there is a "clear probability" his or her life or freedom would be threatened on

[redacted]

account of the applicant's race, religion, nationality, membership in a particular social group, or political opinion. See INA § 241(b)(3)(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 it is more likely than not that he or she would be persecuted upon return to her country. Goswell-Renner v. Holder, 762 F.3d 696, 700 (8th Cir. 2014). Although the protected ground does not need to be the sole reason for the persecution, it must be at least one central reason. Matter J-B-N- & S-M-, 24 I&N Dec. at 212-14. In other words, the protected ground cannot be "incidental, tangential, superficial, or subordinate to another reason." Id. at 214.

While asylum and withholding claims rely on the same factual basis, there is a heavier burden of proof for withholding of removal relief. Matter of Dass, 20 I&N Dec. 120, 121 (BIA 1989). The Court finds, for the reasons stated above, Respondents have met their burden for their claim under asylum. The Court also notes, in the alternative, Respondents have satisfied the higher threshold for withholding of removal.

c. Convention Against Torture

The Court finds, above, Respondents have met their burden for their claim under asylum and, in the alternative, withholding of removal. However, in the interest of thoroughness and because certain facts are relevant for the analysis of applications for relief, the Court also analyzes Respondents' claim under the Convention Against Torture. Although some facts are used in all of the analyses, the analyses are independent.

i. *Legal Standard*

For asylum applications filed on or after April 1, 1997, an applicant for asylum shall also be considered for eligibility for withholding of removal or deferral of removal under the Convention Against Torture (CAT). See 8 C.F.R. § 1208.13(c)(1). 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 "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. Gonzales, 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). "[C]laims 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)).

ii. *Analysis*

To begin, the Court finds Respondents suffered past torture. Respondents suffered severe, life-threatening physical pain in the form of multiple gunshot wounds. See Ex. 6, Tabs D and E. The timing and nature of the gun attack shows the purpose was to punish Respondents or to intimidate Respondents. See Ex. 6 at Tab A; see also Garcia-Moctezuma

v. Sessions, 879 F.3d 863, 869 (8th Cir. 2018) ("Unlike withholding of removal, protection under the CAT does not depend on a showing that the anticipated torture would be motivated by a protected ground."). In addition to Respondents' experience, according to the U.S. Department of State, "[h]uman rights issues [in Mexico in 2018] included reports of the involvement by police, military, and other state officials, sometimes with criminal organizations, in unlawful or arbitrary killings, forced disappearances, [and] torture." Ex. 6 at 790.

The key question in Respondents' case is whether the Mexican government acquiesced to the torture. Private actors (cartel members) shot Respondents—not the Mexican government. However, a claim still exists under the CAT where the government exhibits willful blindness to the torture, such that it acquiesces to the torture. See Gallimore v. Holder, 715 F.3d 687, 689 (8th Cir. 2013).

Respondent [redacted] identified [redacted] one of the assailants to the police. Ex. 6 at 168-69. Respondent [redacted] also identified [redacted] as one of the assailants to the police. Id. at 172-73. The April 3, 2017 report from the Oaxaca State Attorney's Office lists [redacted] as the suspect for the attempted homicide and aggravated assault. Id. at 158 (spelling [redacted] as "[redacted]"). However, the April 6, 2017 report from the Oaxaca State Attorney General's Office did not include [redacted]'s name. Id. at 188. The "official police report" also does not contain [redacted]'s name. Id. at 188-200. The DHS argues the fact that authorities investigated the crime and recorded [redacted]'s name (on one occasion) indicates the authorities did not acquiesce to the acts of torture. Ex. 7 at 10. The Court disagrees. The initial inclusion and subsequent omission indicates a breach of legal responsibility. The police ceased to include [redacted]'s name on future reports. Moreover, the police chief "changed his attitude immediately" after Respondent [redacted] identified [redacted]. Ex. 6 at 5. She spoke with the police chief at 10:00am, and by 6:00pm all the protection the police had provided was removed from the hospital. Id. "'Acquiescence' at least requires prior awareness of the torture and a breach of the legal responsibility to intervene." Menjivar v. Gonzales, 416 F.3d 918, 923 (8th Cir. 2005). The police and state attorney knew of [redacted] acts, and then breached their legal responsibility by deciding to remove protection and effectively halting the investigation by not identifying [redacted] in the continued reports. The police interviewed Respondents, protected (and ceased protecting) Respondents, and filed police reports all in their official capacity.

Similarly, country conditions evidence indicates organized crime, impunity, and police complicity exist throughout Mexico. See 8 C.F.R. § 1208.16(c)(3)(iii). "Organized criminal groups were implicated in numerous killings, acting with impunity and at times in league with corrupt federal, state, local, and security officials." Ex. 6 at 790. Cartels have

"paid bribes and integrated police officers into their hierarchy to ensure the cartel would be able to continue illicit operations." Id. at 1025 (citing a report from the Human Rights Clinic at the University of Texas School of Law and Fray Juan de Larios Diocesan Human Rights Centre in Coahuila, Mexico). Even a Mexican attorney general (for the State of Jalisco) reported that "[p]eople believed the police in the state were working for a criminal gang." Id. at 1016. Mexico's deputy interior minister for human rights acknowledged, "[w]e know that organi[z]ed crime works with government official at all levels." Id. at 1011; see also id. at 830 (noting that the now-defunct Federal Judicial Police engaged in corruption); id. at 897 (noting that the former President of Mexico, Enrique Peña Nieto, requested a bribe from a prominent drug lord). Police corruption appears to be increasing, rather than decreasing. Id. at 830 ("79% of Mexican citizens see corrupt police as a top concern in 2017—an increase of nine points since 2015."). Although the Mexican government has funneled resources into combating cartel violence, the statements of government officials demonstrate the government remains infiltrated and influenced by the cartels. See id. at 899. In addition to participating in criminal acts, police fail to address criminal activity. Ninety-four percent of crimes are either unreported or not investigated. Id. at 790. In Mexico, "a suspect is detained and charged in fewer than [two] percent of reported homicides in Mexico." Id. at 829. "[W]ide-scale police participation in harmful actions on behalf of" a Mexican drug cartel and a showing that 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).

The DHS argues Respondents can relocate in Mexico. "Evidence that [Respondents] could relocate to [another] part of [Mexico]" is relevant to the determination of whether they are entitled to protection under the CAT. 8 C.F.R. § 1208.16(c)(3)(ii). But evidence shows Respondents cannot relocate. Respondents moved to a different area in Oaxaca to seek medical treatment (after the police stopped providing protection). That area is a seven-hour drive from their home in Pinotepa. Ex. 6 at 785. In the second hospital, Respondent [redacted] saw a black truck with cartel members on at least two occasions. Id. at 6. This failed relocation inspired the family to leave Mexico. Id. at 6-7. Moreover, Respondents' failed relocation is consistent with evidence in the record finding that cartels have national reach. Id. at 55, 74-75, 84-85.

Because the Respondents suffered torture and the Mexican government breached its legal responsibility, the Court finds Respondents have established it is more likely than not that they would be tortured if removed to Mexico.

Accordingly, the Court enters the following orders:

## ORDERS

**IT IS HEREBY ORDERED** that [redacted] application for asylum under INA § 208 is **GRANTED**.

**IT IS FURTHER ORDERED** that [redacted] application for asylum under INA § 208 is **GRANTED**.

**IT IS FURTHER ORDERED** that Respondent [redacted] derivative application (based on Respondent [redacted] application) for asylum under INA § 208 is **GRANTED**.

**IT IS FURTHER ORDERED** that Respondent [redacted] derivative application (based on Respondent [redacted] application) for asylum under INA § 208 is **GRANTED**.

**IT IS HEREBY ORDERED** that Respondent [redacted] application for withholding of removal under INA § 241(b)(3) is **GRANTED**, in the alternative.

**IT IS FURTHER ORDERED** that Respondent [redacted] application for withholding of removal under INA § 241(b)(3) is **GRANTED**, in the alternative.

**IT IS FURTHER ORDERED** that Respondent [redacted] withholding of removal under INA § 241(b)(3) is **GRANTED**, in the alternative.

**IT IS FURTHER ORDERED** that Respondent [redacted] withholding of removal under the Convention Against Torture is **GRANTED**, in the alternative.

**IT IS HEREBY ORDERED** that Respondent [redacted] application for withholding of removal under the Convention Against Torture is **GRANTED**, in the alternative.

Decision – [redacted]
Decision –
Decision –
Decision –

**IT IS FURTHER ORDERED** that Respondent [redacted] application for withholding of removal under the Convention Against Torture is **GRANTED**, in the alternative.

**IT IS FURTHER ORDERED** that Respondent [redacted] withholding of removal under the Convention Against Torture is **GRANTED**, in the alternative.

**IT IS FURTHER ORDERED** that Respondent [redacted] withholding of removal under the Convention Against Torture is **GRANTED**, in the alternative.

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).

**Brian Sardelli**
United States Immigration Judge