

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
3260 NORTH PINAL PARKWAY  
FLORENCE, ARIZONA 85132

IN THE MATTER OF:

BERNABE GARCIA, Jose Ulises

RESPONDENT

IN REMOVAL PROCEEDINGS

File No. A202-063-596

DATE: JAN 07 2020

**CHARGE:** INA § 212(a)(7)(A)(i)(I)

**APPLICATIONS:** Asylum pursuant to INA § 208  
Withholding of Removal pursuant to INA § 241(b)(3)  
Protection under the Convention Against Torture

**FOR RESPONDENT:**

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**MEMORANDUM ORDER AND DECISION OF THE IMMIGRATION COURT**

**I. PROCEDURAL HISTORY**

Respondent is a thirty-five year-old native and citizen of Mexico. (Exh. 1, Form I-862; *see also* Ex. 4, Form I-589.) Respondent entered the United States on or about April 20, 2015. (*Id.*) The Department of Homeland Security (“DHS” or “Department”) issued a notice to Appear (“NTA”) against Respondent on April 20, 2015, alleging:

- (1) You are not a citizen or national of the United States;
- (2) You are a native of Mexico and a citizen of Mexico;
- (3) On or about April 20, 2015, you applied for admission into the United States from Mexico at the DeConcini Port of Entry in Nogales, Arizona;
- (4) You are, by your own admission, an intended immigrant not in possession of a valid Immigrant Visa as required by the Immigration and Nationality Act and you are not exempt from this documentary Requirement.

(*Id.*) However, after the initial filing of the NTA, DHS filed a Form I-261, amending allegation 4 of the NTA. (*See* Exh. 2, Form I-261.) Allegation 4 was amended as follows:

- (4) You did not then possess a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act.

(*Id.*) Based on these modified allegations, the Department charged Respondent with removability, pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (“INA” or “Act”) as “an immigrant, who, at the time of application for admission, [was] not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act...” *Id.* On April 24, 2015, the Department filed the NTA with the Immigration Court, which initiated removal proceedings against Respondent, and vested this Court with jurisdiction. *See id.*; *see also* 8 C.F.R. § 1003.14(a) (2018).

On July 6, 2015, Respondent, through written pleadings, admitted all modified factual allegations, conceded removability, and declined to designate a country of removal. (Ex. 3, Resp’t Written Pleading.) Based on Respondent’s admissions and concession, the Court sustained the charge of removability pursuant to INA § 212(a)(7)(A)(i)(I), and directed Mexico as the country of removal. *See* INA § 240(c)(1)(A); *see also* 8 C.F.R. § 1240.10(c). On July 6, 2015, Respondent submitted a Form I-589, Application for Asylum and for Withholding of Removal. (Exh. 4, Form I-589.) Respondent also checked the box requesting protection under the Convention Against Torture. (*Id.* at 5.) Accordingly, the Court will consider Respondent’s application to be an application for asylum under INA § 208, withholding of removal under INA § 241(b)(3), and for protection under the Convention Against Torture (CAT). (Exh. 4, Form I-589.)

At numerous hearings on the matter, Respondent testified in support of his Form I-589. An expert witness also testified in support of Respondent’s application for relief. At the conclusion of the December 18, 2019, hearing, the Court reserved ruling on a decision. This is the decision of the Court.

## II. REMOVABILITY

Through written pleadings, Respondent admitted all the modified factual allegations, as set forth in the NTA and the Form I-261. (Ex. 1, Form I-862; Ex. 2, Form I-261.) Specifically, Respondent admitted that he is a native and citizen of Mexico, and that he is not a citizen of the United States. Respondent also admitted that he applied for admission into the United States at the DeConcini Port of Entry on or about April 20, 2015, and that he did not then possess a valid entry document as required by the INA. Based on the evidence of record, including Respondent’s admissions, the Court finds that that clear, convincing, and unequivocal evidence supports a finding that Respondent is subject to removal pursuant to INA § 212(a)(7)(A)(i)(I). Thus, the Court sustains the sole charge of removability.



### III. EVIDENTIARY RECORD

#### A. Documentary Evidence

In reviewing Respondent's applications for relief, all admitted evidence and testimony was considered in its entirety<sup>1</sup>, regardless of whether specifically referenced in the text of this decision, and is incorporated as part of the factual basis and substantial evidence upon which this Court bases this instant decision.

During the course of the proceedings, the Court admitted the following exhibits into the record:

- Exhibit 1: Notice to Appear, Form I-862 (dated July 6, 2015)
- Exhibit 2: Additional Charges of Inadmissibility, Deportability, Form I-261 (dated July 6, 2015)
- Exhibit 3: Respondent's Written Plea
- Exhibit 4: Application for Asylum, Withholding of Removal, and CAT, Form I-589
- Exhibit 5: Respondent's Motion to Continue and Expand Time Period for Filing Documents and Witness List
- Exhibit 6: DHS's Opposition to the Respondent's Motion to Continue Merit Hearing and Expand Time Period for Filing Documents and the Witness List
- Exhibit 7: DHS Exhibit List for Evidentiary Hearing
- Exhibit 8: DHS Exhibit List for Evidentiary Hearing
- Exhibit 9: Respondent's Filing of *Informe Ayotzinapa* Report in English and Spanish (received November 15, 2016)
- Exhibit 10: Respondent's Transcription of Recorded Interview Conducted with Journalists Anabel Hernández and Steven Fisher (received October 13, 2015) (Tabs A-B)
- Exhibit 10A: Respondent's Filing of Two News Magazine Articles Previously Filed in Spanish (received January 4, 2016) (Tabs A-B)
- Exhibit 11A: Respondent's Disclosure of Witnesses with Attached Curriculum Vitae (received October 13, 2015)
- Exhibit 11A: Respondent's Motion to Permit Respondent to File Documents and Required Translations (received Dec. 31, 2015)
- Exhibit 12: Respondent's Documentary Evidence in Support of Respondent's I-589 Application— for Identification Only (received October 13, 2015)
- Exhibit 12A: Respondent's Documents in Support of Respondent's I-589 Application (received December 31, 2015) (Tab A – I)
- Exhibit 13: Respondent's Filing of Documentary Evidence Offered in Support of Respondent's I-589 Application (received October 13, 2015)
- Exhibit 14: Respondent's Motion to Continue Merits Hearing (received Oct. 13, 2015)
- Exhibit 15: Respondent's Filing Proposed Order of the Court Inadvertently Not Attached to Motion to Continue Merit Hearing (received October 13, 2015)
- Exhibit 16: DHS's Opposition to Respondent's Motion to Continue Merit Hearing (received October 20, 2015)

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<sup>1</sup> Exhibits 12, 27, 31A, 32, and 61 were admitted for identification purposes only, and as such, the Court did not consider these exhibits in issuing a decision. The portions of Exhibit 57, *Ayotzinapa Report II*, which were not translated from Spanish to English were also not considered by the Court in issuing its decision.

- Exhibit 17: Respondent's Filing of English Translation of Five News Magazine Articles Previously Filed in Spanish (received February 8, 2016) (Tab A –E)
- Exhibit 18: Respondent's Filing of Articles and Documents (received February 8, 2016) (Tabs A–D)
- Exhibit 19: Respondent's Filing of Articles and Documents (received February 18, 2016) (Tabs A–B)
- Exhibit 20: Respondent's Filing of Mexico Country Report (received March 4, 2016)
- Exhibit 21: Respondent's Filing of Articles (received March 2, 2016) (Tabs A–E)
- Exhibit 22: Respondent's Filing of Articles (received March 4, 2016) (Tabs A–C)
- Exhibit 26: DHS Exhibit List for Evidentiary Hearing (marked into evidence on May 22, 2019) (Tabs A–D)
- Exhibit 27: Respondent's Filing Documentary Evidence in Support of Respondent's I-589 Application for Identification Only until English Language Translation is Complete; *Informe Ayotzinapa II* report (received May 6, 2016)
- Exhibit 28: Respondent's Filing Documents in Support of Respondent's I-589 Application (received June 24, 2016)
- Exhibit 29: Respondent's Filing Documents in Support of Respondent's I-589 Application, Translated *Proceso* Articles (received July 1, 2016)
- Exhibit 30: Respondent's Filing of *Narcoland: The Mexican Drug Lords and their Godfathers*, a book by Anabel Hernández (received November 15, 2016) (Not admitted, as it is not relevant)
- Exhibit 31A: Respondent's Exhibit List for Removal Proceedings: English translation of Mexican Attorney General Report—for Identification Only (received September 12, 2017) (marked into evidence on September 18, 2018)
- Exhibit 31B: Respondent's Exhibit List for Removal Proceedings: English translation of Mexican Attorney General Report (received September 18, 2018)
- Exhibit 32: Respondent's Exhibit List for Removal Proceedings— for Identification Only (received on September 12, 2017) (marked into evidence on September 18, 2018) (Tabs A–D)
- Exhibit 32A: Respondent's Exhibit List for Removal Proceedings: Unofficial English translation of *True Night of Iguala* (received September 18, 2018)
- Exhibit 33: Respondent's Filing of English Translated Attorney General of Mexico's Investigation Report of the Disappearance of the 43 Students in Iguala, Mexico (received August 17, 2018) (pp. 1–170)
- Exhibit 33A: Respondent's Filing of English Translated Attorney General of Mexico's Investigation Report of the Disappearance of the 43 Students in Iguala, Mexico (marked into evidence on September 18, 2018) (pp. 171–340)
- Exhibit 33B: Respondent's Filing of English Translated Attorney General of Mexico's Investigation Report of the Disappearance of the 43 Students in Iguala, Mexico (marked into evidence on September 18, 2018) (pp. 341–510)
- Exhibit 33C: Respondent's Filing of English Translated Attorney General of Mexico's Investigation Report of the Disappearance of the 43 Students in Iguala, Mexico (marked into evidence on September 18, 2018) (pp. 511–680)
- Exhibit 33D: Respondent's Filing of English Translated Attorney General of Mexico's Investigation Report of the Disappearance of the 43 Students in Iguala, Mexico (marked into evidence on September 18, 2018) (pp. 681–820)



- Exhibit 50: Respondent's Filing Proposed Exhibit No. 44 (submitted August 12, 2019) (Tabs A–D)
- Exhibit 51: Respondent's Filing of Documents that were originally filed on January 17, 2017 but do not appear on the Court's list of exhibits (received July 10, 2019) (Tabs A–G)
- Exhibit 52: Respondent's Filing of Supplement Brief in Support of Asylum Application [To be considered a continuation of Exhibit 45: Brief in Support of Respondent's Asylum Application] Proposed Exhibit 59 (received October 15, 2019)
- Exhibit 53: Respondent's Filing: *Experts Say Authoritarian Regimes Abuse Interpol Notices*, Jack Rogers, September 12, 2019 (received October 15, 2019)
- Exhibit 54: Respondent's Filing of Proposed Exhibit 58 (received October 15, 2019) (Tabs A–F)
- Exhibit 55: Respondent's Filing Advice to the Court Regarding the Status of Translation of Respondent's Admitted Exhibit 27 (ROP 32, 33, 34) and Respondent's Admitted Exh. 42 (ROP 36) (received October 15, 2019)
- Exhibit 56: Respondent's Filing Proposed Exhibit: Institutional Reports (received October 15, 2019) (Tabs A–D)
- Exhibit 57: Respondent's Filing: Ayotzinapa Report II: Forward Steps and New Conclusions on the Investigation, Search, and Care for Victims. Summary. Interdisciplinary Group of Independent Experts (IGIE) Organization of American States (received October 15, 2019) (Spanish Portions Without Translation Withdrawn)
- Exhibit 58: Respondent's Filing of Documents (received October 15, 2019) (Tabs A–B)
- Exhibit 59: Respondent's Filing Transcribed Record of the Testimony of Respondent Jose Ulises Bernabe Garcia October 26, 2015; May 9, 2016; July 12, 2016 (received October 15, 2019)
- Exhibit 60: DHS Exhibit List Updated Country Conditions (received October 15, 2019)
- Exhibit 61: Respondent's Proposed Supplemental Brief— for Identification Only (received December 18, 2019)

In addition to the documentary evidence contained in the record, the Court also considered Respondent's testimony before the Court, and Respondent's expert witness's testimony before the Court.

### **B. Summary of Respondent's Claim**

Respondent testified that he is afraid to return to Mexico because he fears persecution on account of his political opinion, and his membership in a particular social group. Respondent is an attorney, and served as a magistrate to the Police Department of Iguala, in the state of Guerrero, Mexico. Respondent's duties at the Police Department included checking in those who were arrested and charged with a crime and brought to the police station. Respondent created a record by documenting a detainee's information in the official register, and noting their crimes. He also created an inventory of a detainee's personal belongings. Additionally, Respondent sentenced those who had committed misdemeanors to pay fines, and collected the fines when a detainee's family members arrived to the station to take the detainee home.

On September 26, 2014, forty-three Mexican student teachers from a rural college were on the way to a protest when they were kidnapped. (*See* Ex. 4, Form I-589, at Supplement B; *see also* Ex. 9, Ayotzinapa Report I.) All forty-three students are presumed dead. The case has brought



controversy against the Mexican government as many reliable reports have demonstrated that the Mexican government engaged in a cover-up of the real incidents of that night. According to the official Mexican government report of the incident, hereinafter known as the “Historic Truth,” the forty-three student teachers were arrested by the Iguala Police after the students hijacked buses. The Mexican government contends that the Iguala Police, after imprisoning the student teachers, turned the students over to a local drug cartel, the Guerreros Unidos, at the insistence of the local mayor. (Ex. 9, Ayotzinapa Report I, at pg. 121–124.) The local drug cartel then allegedly murdered all forty-three students, and burned their bodies at a local landfill. (*Id.*) After burning the bodies, the local cartel members then reportedly collected the remains and ashes, and put them in the river. Only the bone fragments of two students have been identified by DNA testing. (Ex. 19, Tab A, *2nd outside report says Mexico students not burned at dump*, THE WASHINGTON POST (Feb. 9, 2016).) The Mexican government contends that all of these events occurred without the knowledge or participation of the Mexican government, the Guerrero State, and Mexican military officials.

Respondent, however, testified that he was on duty at the Iguala Police Station the night of September 26, 2014, and that the forty-three students were never brought into the Iguala Station. (*Id.*, at pg. 65; *see also* Ex. 10, Recorded Interview.) Respondent stated that there were only six people detained at the Iguala Police Station the night of September 26, 2014. According to Respondent, all those who were detained were arrested for public drunkenness, and the detainees were all released by 2:20 am. (Ex. 9, Ayotzinapa Report I, at pg. 65.) Respondent explained that none of the detainees were students, and that at no point that night were any students brought to the Iguala Police Station.

Furthermore, Respondent stated that during the night of September 26, the police station was visited by members of the Mexican military, the Mexican state police, and Mexican state officials. Respondent testified that he was only told there was a “red alert” involving some students, buses, and shootings in the area. (Ex. 10, Recorded Interview, at pg. 20.) Respondent was advised to be on the lookout for attacks on the police station, but he was not told anything else. The Mexican military, state police, and state officials searched the police station, and inspected the weapons of the officers at the station. (Ex. 9, Ayotzinapa Report I, at pg. 65.)

The next morning, Respondent and all the police on duty the night of September 26, were taken to the state police station. While there, Respondent was questioned about the disappearance of the students, and asked why detainees had been released from the station. Respondent insisted that he knew nothing about the students, and stated that the detainees released were not students. Respondent also said that he did not think it was proper that the students’ disappearances were being investigated in this way, when Mexican law requires a period of 72 hours before a person is considered missing. Respondent also testified that a representative from the Mexican Attorney General threatened him, and subjected him and the other police officers to a series of tests, such as looking for gun powder residue, and taking the officers’ fingerprints. Respondent was not charged, and he was not given an opportunity to provide testimony to the Mexican authorities. Respondent and a few officers were then released, but 22 police officers remained in custody, including Respondent’s brother-in-law.

According to Respondent, the 22 officers were taken into state police custody, where they were severely beaten and tortured, including receiving electric shocks to the genitals. These beatings and torture were used as an attempt to force the officers to claim responsibility for the kidnapping



and murder of the 43 students. Respondent stated that he heard what the detained officers endured from the news and his family members.

The next day after being called to the police station, Respondent went back to work, and nothing extraordinary happened. Two days later, however, Respondent and other police personnel were informed that they were on administrative leave. Respondent's home was also later searched and ransacked by Mexican military police. (Ex. 10, Recorded Interview, at pg. 38.) Respondent alleged that this search was illegal. The military police stole from Respondent's home, and threatened Respondent's family at gunpoint. (*Id.*) Respondent stated that his mother called him, and told him not to return home because they had been threatened. Respondent then decided to live with his brother, a few kilometers away. During that time, the police and military continued to watch Respondent's mother's home.

After reading numerous statements and reports in the Mexican media that blamed the Iguala police for the disappearance and murder of the 43 students, Respondent decided to speak with the press. Respondent stated that the students were never arrested by the Iguala police or held at the Iguala Police Station, and that, instead, it was the Mexican military who had custody of the students. Respondent first spoke with Anabel Hernández ("Ms. Hernández"), an investigative journalist with the news magazine *Proceso*, in October 2014. Respondent also gave a formal interview to Ms. Hernández in February 2015. Ms. Hernández testified as an expert witness during Respondent's removal hearings. Additionally, some of the surviving student teachers of the September 26, 2014, incidents have also spoken out, and they stated that the Mexican military were involved in the events of that night.

Respondent has refused to retract his statements to the press about the Mexican government's involvement in the September 26 incidents. As a consequence, Respondent testified that his family has been under military surveillance and threatened. Respondent believes the Mexican military is still searching for him, and if he were returned to Mexico, he would be detained and tortured, as were the other Iguala police officers, in order to get Respondent to publicly recant his statements.

### **C. Summary of Anabel Hernández's Testimony**

Hernández has been an investigative reporter for 23 years, and has spent 16 of those years investigating abuses of power. Hernández has also published books on corruption in Mexico. She has also written for the Mexican news media for the last several years, including *Proceso* news magazine.

In October 2014, Hernández began her investigation into the story of the missing 43 students. (*See* Exh. 32, Resp't Exh. List; Exh. 32a, *True Night of Iguala*.) Hernández used her numerous sources within the Mexican government, which she accumulated over the course of her career, to investigate the disappearances. Hernández first arrived in Iguala, and began interviews, at the end of October 2014.

Throughout her investigation, Hernández has spoken to survivors of the September 26, 2014, incidents, who have provided photographs and videos taken by cellphone that night. She has also talked with attorneys, families, and neighbors of the surviving students, and other witnesses who witnessed the incidents of that night. She gained access to testimony featured in police reports from the bus drivers and soccer players who were also attacked that night, as well as other



witnesses. Witnesses to the attacks, such as Fernando Marin, the only survivor from the third bus, verified to Hernández that officers from the Mexican state and municipal police, who had been monitoring the buses, attacked the buses and the students within by shooting at them. The survivors also stated that many of those who were wounded went to a nearby hospital, but were informed by a nurse that they could not be treated. The survivors noted that about 14 Mexican military personnel were present at the hospital.

Through ministerial reports and student testimony, Hernández verified that military personnel searched students for weapons, took pictures of them, and demanded their true names, threatening that they would not be found if they did not provide their true names. According to Hernández, the testimony of the military varies greatly; some military members said they searched students, some stated that they took pictures, and some said that they did not do any of those actions.

Hernández testified that, at the end of the night of September 26th, three students, a driver, a soccer player, and a taxi passenger had all been killed. There were also several wounded, including approximately 20 students, passersby, and journalists. Furthermore, initially 53 students could not be located; however, the number missing was later settled at 43. On the morning of September 27, 2014, the surviving students went to the Guerrero state to file a report of the assault. This is where journalists at the news conference spread the news about the events of the prior night. Hernández also verified that the official Mexican government version of the events, also known as the “historic truth,” is that the local Iguala police forces kidnapped the students, and a local gang killed the students.

Hernández first encountered Respondent when she was at the office of an attorney representing the victims’ families, as well as a detained Iguala police officer. Respondent was also at the attorney’s office, and joined into a conversation between Hernández and the attorney, discussing the incidents. Respondent confirmed that the 43 missing students were never taken to the Iguala police station, in contradiction to the historic truth. Hernández eventually interviewed Respondent three times over the course of her investigation, and she testified that she found Respondent to be credible and consistent in his story over the course of those interviews.

Hernández has done extensive research on the issue, and discovered that the Mexican federal police and the Mexican army were involved in the disappearance of the 43 students. Hernández testified that she knew it was a sensitive accusation, so she sought out confirmation from multiple sources. On December 16, 2004, Hernández published her first article in *Proceso* implicating the Mexican military in the attacks. (*See Ex. 36, ANABEL HERNÁNDEZ, A MASSACRE IN MEXICO 225–26 (Verso, 2018).*) After Hernández published this article, the Mexican government tried to discredit her, and issued a localization order for her to appear before the Procuraduría General de la República (“PGR”) in January 2015.

Hernández was also able to obtain a copy of a non-public legal audit conducted by the PGR, which confirmed Respondent’s account of torture of the detained police officers. Hernández testified that the report and the exams within it documented fractured bones, scratches, and pointed marks, consistent with electric shocks close to the genitals of several detained officers. Hernández also verified the torture of the officers during interviews with the detained officers themselves.

Hernández testified that, without speaking to Respondent, she would never have requested the documentation involving interviews with military personnel about the events of September 26th.



Respondent's statements led Hernández to discover an extensive amount of information proving that the Mexican military was involved in the student massacre. Hernández also testified that her search is not over, because it is still unknown who made the students disappear, and where they, or most likely their remains, are located.

#### IV. BURDEN OF PROOF AND CREDIBILITY

The respondent bears the burden to establish that he is eligible for any requested benefit or privilege, and that it should be granted in the exercise of discretion. *See* INA § 240(c)(4)(A). If the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the respondent shall have the burden of proving by a preponderance of the evidence that such grounds do not apply. *See* 8 C.F.R. § 1240.8(d); *see also* *Matter of M-B-C-*, 27 I&N Dec. 31 (BIA 2017).

To determine if the respondent has met his burden, the Court will assess whether his testimony is credible, persuasive, and fact-specific. *See* INA § 240(c)(4)(B). In applying a "totality of the circumstances" approach, the Court assesses:

the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements . . . the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor.

INA § 240(c)(4)(C). There is no presumption of credibility. *Id.* A respondent's testimony is typically sufficient in and of itself to sustain respondent's burden of proof for asylum, withholding of removal, and other relief applications. *See* 8 U.S.C. § 1158(b)(1)(B)(ii) (as amended); *see also* *Bhattarai v. Lynch*, 835 F.3d 1037, 1042 (9th Cir. 2016) (Under the REAL ID Act, an applicant may establish eligibility on his credible testimony alone, without any corroboration. 8 U.S.C. § 1158(b)(1)(B)(ii).) When the Court deems it necessary, corroborating evidence must be provided unless the respondent does not have the evidence and cannot reasonably obtain it. *See* *Matter of S-M-J*, 21 I&N Dec. 722, 724–26 (BIA 1997); *see also* *Matter of L-A-C-*, 26 I&N Dec. 516, 518 (BIA 2015). Furthermore, under the REAL ID Act, inconsistencies no longer need to go to the heart of the claim; however, when an inconsistency does go to the heart of the claim, it is of great weight. *See* *Shrestha v. Holder*, 590 F.3d 1034, 1046–47 (9th Cir. 2010) (applying REAL ID Act).

Upon review of the totality of the circumstances, the Court finds Respondent credible. Notably, the Court finds that Respondent's testimony was detailed, consistent, and specific. In particular, Respondent's accounts of the actual events that occurred on September 26, 2014, and the events that occurred after that night, including Respondent's interrogation, the abuse of detained police officers, and the ransacking of Respondent's home, were consistent with the evidence of record. Additionally, Respondent's personal account of what he witnessed on the night of September 26th was corroborated and consistent with the discoveries made by Ms. Hernández through her investigative reporting. Furthermore, Respondent explained any discrepancies between his written declaration and his in-court testimony to the satisfaction of this Court. As Respondent's testimony



was credible, persuasive, and fact-specific, he has met his burden of proof and persuasion in connection with his claim and need not corroborate it further. *See* INA § 208(b)(1)(B)(I); *see also* 8 C.F.R. § 1208.13; *see also Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987).

## V. ASYLUM

To qualify for asylum, the alien must establish that: (1) his application was filed timely within one year of his last arrival in the United States; (2) he is not statutorily barred from relief; (3) he is a refugee within the meaning of INA § 101(a)(42)(A); and (4) he merits asylum as a matter of discretion. INA § 208(b)(1)–(2); *Matter of Acosta*, 19 I&N Dec. 211, 218–19 (BIA 1985), *modified on other grounds by Mogharrabi*, 19 I&N Dec. at 446; 8 C.F.R. § 1208.13(a). Here, Respondent timely filed his application. He last arrived in the United States on or about April 20, 2015, and filed his Form I-589 on July 6, 2015. (*See* Ex. 1, Form I-862; *see also* Ex. 4, Form I-589.) While Respondent timely filed his application, DHS alleges that he is barred from relief as it alleges there are serious reasons for the Court to believe that Respondent committed a serious, non-political crime in Mexico. *See* 8 U.S.C. § 1158(b)(2)(A)(iii).

A respondent is ineligible for asylum and withholding of removal if there are serious reasons for believing that he committed a serious, non-political crime outside the United States prior to arrival. *See id.*; *see also McMullen v. INS*, 788 F.2d 591, 599 (9th Cir. 1986), *overruled in part on other grounds by Barapind v. Enomoto*, 400 F.3d 744, 751 n.7 (9th Cir. 2005) (en banc). The court interprets “serious reasons to believe as being tantamount to probable cause.” *Go v. Holder*, 640 F.3d 1047, 1052 (9th Cir. 2011) (internal quotation marks and citation omitted). The Immigration Judge is not required to balance the seriousness of the offense against the degree of persecution feared. *See INS v. Aguirre-Aguirre*, 526 U.S. 415, 432 (1999).

Here, the Department asserts that Respondent was involved in the students’ disappearances, in that he booked the students into the Iguala Police Station. In support of this argument, the Department cites witness statements which state that the students were taken to the Iguala Police Station and booked on the night of September 26, 2014. This is contradictory to Respondent’s testimony that the students were never arrested or brought to the Iguala Police Station on the night of September 26, 2014. The Department points to the summary of the Ayotzinapa Report II, which states that “[a]ccording to the statements of several defendants given to the PGR [Office of the Attorney General of the Republic], a group of normal school students had been taken to these headquarters.” (Ex. 60, DHS Exh. List, at Tab G, pg. 11.) In that summary, the Report also cites statements from the two surviving students of the attack, who stated that “they observed the normal school students... being arrested and taken away in patrol cars to the Iguala Municipal Police Headquarters.” (*Id.*) According to the Report, other witnesses testified that, at the police headquarters, a police officer standing guard outside the door “told them that there was a group of normal school students being held in custody there.” (*Id.*)

The Department also points to other witness statements throughout the record indicating that the students were at the Iguala Police Station on the night of September 26, 2014. (*See* Ex. 9, Ayotzinapa Report I, pg. 66–67 (a statement made by Oscar Rodríguez Salgado to the PGR noted that there would be a group of student teachers taken from the Iguala police station in at least two or three patrol cars; also a statement from the deputy secretary of the Iguala Police noting that there were between 12 and 16 detainees at the Police Station, but their faces were covered; other statements by various sources that a group of 16–17 student teachers were taken to holding cells



that night); *see also* Ex. 10, Interview with Ms. Hernández, pg. 27 (Ms. Hernández asked Respondent if he had seen the declaration in which a man, Hugo Hernandez Arias, claimed that Respondent was talking with some young people at the Iguala Police Station the night of September 26, 2014. Respondent stated that he never spoke with any young people at the station, and that it was a lie. Respondent also stated that interrogating suspects is not in his line of duty).)

The Department further notes that Respondent has an active Red Notice issued by the Office of Interpol Mexico calling for Respondent's arrest for the crimes of conspiracy to commit a crime and kidnapping. (Ex. 40, Resp't Interpol Red Notice; *see also* Ex. 8, DHS Exh. List, Tab A, Apprehension Order.) The Department contends that Interpol does not issue red notices that violate Interpol's "Constitution, which forbids the Organization from undertaking activities of a political, military, religious or racial character." (Ex. 41, International Notices System.) Consequently, the Department argues that Interpol would not create a Red Notice calling for the execution of an arrest warrant if the subject of the Red Notice, in this case, Respondent, would be tortured or persecuted. The Department produced no evidence to substantiate this assumption.

The Court, however, does not find serious reasons to believe Respondent committed a serious, non-political crime in Mexico prior to his arrival in the United States. *See* 8 U.S.C. § 1158(b)(2)(A)(iii). Numerous plausible sources, including sources submitted by DHS, note that the historic truth created by the Mexican government has unraveled over numerous investigations into the incident. (*See* Ex. 38, DHS Exh. List, Tab E, at pg. 45, Azam Ahmed, *Disappearance of 43 Mexican Students Must Be Investigated Anew*, THE NEW YORK TIMES (Jun. 5, 2018); Ex. 38, DHS Exh. List, Tab F, *Mexico cannot move forward 'without addressing the shadows of the past', says UN rights chief*, UN NEWS (Apr. 10, 2019); Ex. 39, DHS Exh. List, Tab A, *Mexico: The Government creates a search party to find the 43 students from Ayotzinapa*, EL PERIÓDICO (Apr. 18, 2019) (Parents of the missing students "asked that the investigation consider the possibility of participation on the party of the Army and the Federal Police."); Ex. 10A, Resp't *Proceso* Articles, Marcela Turati, *The Night of Iguala: The Collapse of the "Historical Truth" — Myth, omissions, and lies of the official investigation*, PROCESO (Sep. 13, 2015); Ex. 51, Resp't Docs, Tab A, *Reports implicate Mexico AG Office in missing students case*, EFE: MEXICO CITY (Dec. 17, 2016); Ex. 51, Resp't Docs, Tab B, *Experts ask for new investigation into disappearance of 43 Mexican students*, REUTERS (Jun. 22, 2016).) The investigation revealed that many of the initial accounts of the incident, which blamed the local Iguala police department, were obtained through torture. (Ex. 36, ANABEL HERNÁNDEZ, A MASSACRE IN MEXICO 237–256 (Verso, 2018); *see also* Ex. 9 Ayotzinapa Report I.)

Consequently, the Court agrees with the conclusion of the expert witness, Ms. Hernández, that the official historic truth created by the Mexican government has been disproven, that numerous witnesses were tortured by the Mexican government, and that pieces of evidence were either fabricated or planted at the crime scene by the Mexican government in order to support the false "historic truth." (Hr'g (Dec. 4, 2018); *see also* Ex. 36, ANABEL HERNÁNDEZ, A MASSACRE IN MEXICO 305–309 (Verso, 2018); *see also* Ex. 9 Ayotzinapa Report I.) The Court also concurs with Respondent's credible testimony, and Ms. Hernández, that the Mexican Army and the Mexican Federal Police participated in, and had been present during the attacks, and the disappearance of the students. (*Id.*) It defies credulity that a municipal police department would have the political clout and resources to mastermind an intricate cover-up, and the actual disappearance of 43 Mexican students. It is much more plausible that the Mexican federal government and federal police were responsible for this horrific incident.



Furthermore, Ms. Hernández stated that, through her thorough investigation, everything Respondent told her has been confirmed, in particular that the Mexican government lied about the missing students being taken to the municipal police station on the night of September 26, 2014. (*Id.*) For example, Ms. Hernández noted that a member of Guerrero’s State Commission of Human Rights searched the municipal police station for any indication that the students were there, such as any hair, saliva, or discarded clothing; however, the State Commission member did not find any evidence that the students were present at the police station. (*Id.*; *see also* Ex. 36, ANABEL HERNÁNDEZ, *A MASSACRE IN MEXICO* 309 (Verso, 2018).) Ms. Hernández also stated that a police officer from Iguala, Honorio Atunez Osorio, was detained, and allegedly provided a list of those who participated in organized crime, including Respondent. (Hr’g (May 20, 2019).) Ms. Hernández testified that Mr. Atunez Osorio later changed his story, and declared that he had not given any names, and that he had been tortured and forced to sign papers containing unknown information to him. (*Id.*)

After a review of Ms. Hernández’s testimony, as well as several pieces of reliable documentary evidence submitted by both Respondent and DHS, the Court does not find serious reasons to believe Respondent committed a serious, non-political crime in Mexico prior to his arrival in the United States. *See* 8 U.S.C. § 1158(b)(2)(A)(iii). Contrary to the Department’s argument, the historical truth as created by the Mexican government has been disproven, and this cover-up by the Mexican government has been well-documented in several news articles and reports, as well as Ms. Hernández’s published book. (*See* Ex. 10A, Resp’t *Proceso* Articles, Marcela Turati, *The Night of Iguala: The Collapse of the “Historical Truth” — Myth, omissions, and lies of the official investigation*, PROCESO (Sep. 13, 2015); Ex. 36, ANABEL HERNÁNDEZ, *A MASSACRE IN MEXICO* 305–309 (Verso, 2018).) Ms. Hernández, an investigative journalist who is considered a leading source on the disappearance of the 43 Mexican students, herself stated that she has no reason to doubt Respondent’s testimony, and that everything Respondent told her has been proven consistent and truthful throughout her investigation. (Hr’g (Dec. 4, 2018).) Although the Court is not bound to find Respondent credible based on Ms. Hernández’s belief in his testimony, the Court finds that a thorough review of Respondent’s testimony and evidence of record, supports Respondent’s version of events. As a result, the Court finds that Respondent is not statutorily barred from asylum relief.

**A. “Refugee” as Defined under INA § 101(a)(42)(A)**

A respondent may qualify as a refugee because he has suffered past persecution or because he has a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). If the respondent establishes past persecution, he shall be presumed to have a well-founded fear of future persecution. *See id.* That presumption may be rebutted if DHS proves by a preponderance of evidence that either: (1) there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution; or (2) the respondent could avoid future persecution by relocating to another part of his country of nationality or country of last habitual residence, and under all the circumstances, it would be reasonable to do so. *See* 8 C.F.R. § 1208.13(b)(1)(i)(A)–(B). The respondent must also establish that the alleged persecution or well-founded fear of persecution was or will be “on account of [his] race, religion, nationality, membership in a particular social group, or political opinion.” *See* INA §§ 101(a)(42)(A), 208(b)(1)(B)(i).



## 1. Past Persecution

Here, Respondent has not demonstrated that he has suffered past persecution, which requires a respondent to show: (1) harm that rises to the level of persecution; (2) which was inflicted “on account of” one of the statutorily-protected grounds; and (3) was committed “by the government or forces the government is either ‘unable or unwilling’ to control.” *See Navas v. INS*, 217 F.3d 646, 655–56 (9th Cir. 2000); *see also Rahimzadeh v. Holder*, 613 F.3d 916, 920 (9th Cir. 2010). While there is no universally accepted definition of “persecution,” the BIA has defined “persecution” as “either a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive.” *Acosta*, 19 I&N Dec. at 222. In addition, “persecution” under the Act “contemplates that harm or suffering must be inflicted upon an individual in order to punish him for possessing a belief or characteristic a persecutor seeks to overcome.” *Id.* at 223. Various forms of physical violence, including assault and beatings, amount to persecution.

In this case, Respondent never suffered any physical violence, such as an assault or a beating, at the hands of Mexican officials. Consequently, considering the persecutory acts in their totality, and viewing the cumulative effect of all the alleged acts, the Court finds that Respondent has not established that he suffered past persecution in Mexico. *See* INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b)(1).

## 2. Well-Founded Fear of Future Persecution

Even if past persecution is not found, a respondent may still be eligible for asylum due to a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b). A well-founded fear must be subjectively genuine and objectively reasonable. *See Parada v. Sessions*, 902 F.3d 901, 909 (9th Cir. 2018). A “well-founded fear” ... can only be given concrete meaning through a process of case-by-case adjudication.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 448 (1987). A respondent can demonstrate a well-founded fear of persecution if: (1) he has a fear of persecution in his country; (2) there is a reasonable possibility of suffering such persecution; and (3) he is unable or unwilling to return to that country because of such fear. *See* 8 C.F.R. § 1208.13(b)(2)(i). Here, although the Court finds that Respondent has not established past persecution in Mexico, the Court finds that Respondent has established a well-founded fear of future persecution in Mexico.

First, the subjective prong of the well-founded fear test is satisfied by a respondent’s credible testimony that he genuinely fears harm. *See Parada*, 902 F.3d at 909; *see also Lolong v. Gonzales*, 484 F.3d 1173, 1179–79 (9th Cir. 2007) (en banc) (finding subjective fear where petitioner described fears and gave specific examples of violent incidents involving friends and family). Turning to Respondent’s testimony, he clearly testified that he genuinely fears harm in Mexico. (Hr’g (Nov. 20, 2019); Hr’g (May 9, 2016); *see also* Ex. 2, Form I-589.) Respondent stated that he is afraid to return to Mexico, as the Mexican military and police are still searching for him, and there is a warrant and an Interpol Red Notice requesting his arrest. (Ex. 8, Tab A, Certified Translation of Apprehension Order; *see also* Ex. 40, Resp’t Interpol Red Notice.) Respondent testified that he fears he will be detained and tortured like the other Iguala police officers in order to force Respondent to publicly recant his statement about the truthful events of September 26th. (Hr’g (May 9, 2016); *see also* Ex. 4, Form I-589.)



Second, the objective prong of the test can be met in two different ways. One way is to “prove persecution in the past, giving rise to a rebuttable presumption that a well-founded fear exists.” *Ladha v. INS*, 215 F.3d 889, 897 (9th Cir. 2000) (internal citations and quotation marks omitted), *overruled on other grounds by Abebe v. Mukasey*, 554 F.3d 1203, 1208 (9th Cir. 2009) (en banc). The second way “is to show a good reason to fear future persecution by adducing credible, direct, and specific evidence in the record of facts that would support a reasonable fear of persecution.” *Id.* This requirement can be met by either the production of specific documentary evidence, or by a respondent’s credible and persuasive testimony.” *Id.* In addition, “[e]ven a ten percent chance of persecution may establish a well-founded fear.” *Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001). A respondent may demonstrate a well-founded fear by showing that he has been targeted for persecution. *See, e.g., Marcos v. Gonzales*, 410 F.3d 1112, 1119 (9th Cir. 2005) (Philippine applicant demonstrated well-founded fear based on credible death threats by members of the New People’s Army.)

Here, Respondent can show at least “a ten percent chance of persecution.” *Al-Harbi*, 242 F.3d at 888. Respondent testified that he was threatened with detention by the Mexican Attorney General. (Hr’g (May 9, 2016).) Respondent and the other Iguala police officers were also subjected to a series of inspections after the disappearance of the students. (*Id.*) Respondent was released, but several officers remained in custody. (*Id.*) Notably, several of the 22 Iguala police officers who remained in custody, including Respondent’s brother-in-law, were severely beaten and tortured in an attempt by the Mexican government to force the police officers to say the Iguala Police Officers were responsible for the kidnapping and murder of the students. (*Id.*; *see also* Ex. 36, ANABEL HERNÁNDEZ, *A MASSACRE IN MEXICO* 237–241 (Verso, 2018).) The torture included electric shock applied to the officers’ genitals. (*Id.*) Additionally, Respondent was placed on administrative leave from his position. (Hr’g (Oct. 27, 2015).) During this time, Respondent’s mother’s home was ransacked, and searched by armed Mexican military police searching for Respondent. (Ex. 9, Ayotzinapa Report I, pg. 65.) The military police also threatened Respondent’s family at gunpoint. (*Id.*) Even after Respondent left to live with his brother, Mexican state police and military continued to observe and patrol his mother’s home. (*Id.*) They parked in front of her home, took pictures of the house, and questioned neighbors about Respondent and his whereabouts. (*Id.*) In Ayotzinapa Report I, in which Respondent was interviewed, when Respondent reported to the office of the Federal Public Secretary, the presence of members of the military became more frequent at his residence. (*Id.*)

Finally, Respondent is unwilling or unable to return to Mexico. Respondent has expressed his fear of death or bodily injury if returned to Mexico. (*Id.*) Respondent stated that he fears detention and torture, as many of his fellow Iguala Police Officers have suffered this fate at the hand of Mexican military police. (*Id.*)

*a. Changed Circumstances*

The government may rebut the presumption of a well-founded fear by showing “by a preponderance of the evidence” that there has been a “fundamental change in circumstances such that the applicant no longer has a well-founded fear.” 8 C.F.R. §§ 1208.13(b)(1)(i) – (ii); *see also Singh v. Whitaker*, 914 F.3d 654 (9th Cir. 2019); *see also Kamalyan v. Holder*, 620 F.3d 1054, 1057 (9th Cir. 2010) (to rebut presumption of a well-founded fear, government must show by a preponderance of the evidence that a fundamental change in country conditions has dispelled any well-founded fear). To meet its burden pursuant to 8 C.F.R. § 208.13(b)(1), the government is



“obligated to introduce evidence that, on an individualized basis, rebuts a particular applicant’s specific grounds for his well-founded fear of future persecution.” *Popova v. INS*, 273 F.3d 1251, 1259 (9th Cir. 2001). Thus, the government “must provide an individualized analysis of how changed conditions will affect the specific petitioner’s situation.” *Lopez v. Ashcroft*, 366 F.3d 799, 805 (9th Cir. 2004) (citation and internal quotation marks omitted); *see also Parada v. Sessions*, 902 F.3d 901, 912 (9th Cir. 2018) (“[T]he IJ must make an ‘individualized determination’ of how the changed circumstances affect the alien’s specific situation.”).

In the case at hand, the Department argues that the Mexican government is now reopening the investigation for the 43 missing students, and releasing incarcerated suspects indicted in the initial investigation. (Hr’g (Dec. 18, 2019); *see also* Ex. 60, DHS Exh. List.) In support of this position, DHS presented articles which state that Mexican Attorney General will be “[o]pening a fresh investigation” into the students’ disappearances as the new Mexican President, Andrés Manuel López has taken power. (Ex. 60, DHS Exh. List; *Mexico missing students: New investigation ordered*, BBC, Sep. 19, 2019.) The Attorney General plans on also investigating the officials who handled the original probe “so that those ‘who had failed in their duties’ could be held accountable.” (*Id.*; *see also* Ex. 60, DHS Exh. List Tab D, *Mexico targets former attorney general in probe of missing students case*, REUTERS, Sep. 15, 2019.) The Department also points out that, earlier in September 2019, a key suspect in the case, a leader of the Guerreros Unidos gang, was freed because he had been tortured in detention. (Ex. 60, DHS Exh. List; *Mexico missing students: New investigation ordered*, BBC, Sep. 19, 2019.) Of the “142 people detained in connection with the case, only 65” remain in custody as of September 16, 2019. (Ex. 60, DHS Exh. List, Tab F, *Mexico missing students: Anger at suspects’ release*, BBC.)

However, the Department did not introduce evidence that “on an individualized basis” rebuts Respondent’s specific grounds for his well-founded fear of future persecution. *See Lopez*, 366 F.3d at 805. Although the Department presents evidence regarding the release of suspects involved in the original investigation, the record does not contain any evidence that indicates or leads to a presumption that Respondent would not be arrested or tortured upon a return to Mexico. The Court notes that, despite the Department’s assertion that the Mexican government is releasing individuals who were seen as involved in the students’ disappearances in the original investigation, there is still an active warrant seeking Respondent’s arrest, as well as an Interpol Red Notice requesting his arrest. (*See* Ex. 8, Tab A, Certified Translation of Apprehension Order; *see also* Ex. 40, Resp’t Interpol Red Notice.)

Additionally, the Department presents no evidence that the Mexican government would not incarcerate or torture Respondent, the main whistleblower who initially brought to light the Mexican government’s involvement in the students’ disappearance. (*See* Ex. 60, DHS Exh. List, Tab F, *Mexico missing students: Anger at suspects’ release*, BBC.) Instead, the Department asks the Court to rely on broad information regarding several unnamed local police officers in order to reach an unsubstantiated conclusion that Respondent, a main actor in the original investigation, would not be incarcerated, tortured, or harmed upon his return to Mexico. All the police officers who were released by Mexican Judge Samuel Ventura are unnamed individuals lumped into a singular group— local police officers. (*Id.*) Only one individual was specifically identified and named in the news articles provided by DHS, Gildardo Lopez Astudillo, a man suspected of being the gang leader who ordered the killing of the students. (*Id.*) In contrast, Respondent’s name has been both published and mentioned numerous times in reference to the students’ disappearance, including several mentions in Ms. Hernández’s published book. (*See* Ex. 36, ANABEL



HERNÁNDEZ, *A MASSACRE IN MEXICO* 77, 166, 185, 304–09, 338 (Verso, 2018).) In fact, Ms. Hernández stated that Respondent “would become a key element for overturning the state’s official version of events.” (*Id.*, at pg. 166.) Respondent has also been named in several important publications and news articles reporting the incident, such as a June 14, 2015, *Proceso* news article which focused entirely on an exclusive interview with Respondent about the events of September 26, 2014. (Ex. 17, Resp’t Submission of *Proceso* News Magazine Articles, at Tab A, *The Ayotzinapa Case: New testimonies refute the official history*, PROCESO Jun. 14, 2015.) Respondent was also interviewed for the Ayotzinapa Report, which was completed by an Interdisciplinary Group of Independent Experts. (Ex. 9, Ayotzinapa Report I, pg. 65–66.) Again, Respondent was mentioned by name, and his testimony was detailed within the report itself. (*Id.*) Although the Mexican government has released local Mexican police officers, DHS has not provided any indication that Respondent, a main actor and initial whistleblower of the Mexican government’s involvement, would not be targeted by the Mexican government upon his return. In fact, both Respondent’s Mexican arrest warrant and the Interpol Red Notice indicate that Respondent would be incarcerated upon his return to Mexico if he were removed.

In light of the Mexican government’s previous acts of torture against suspects indicted in the students’ disappearance, as well as Respondent’s particular status as a main whistleblower, the Court finds that Respondent has established a well-founded fear of future persecution in Mexico. Respondent has shown both a subjective and objective fear of persecution in Mexico, and demonstrated his unwillingness or inability to return to Mexico. Additionally, the Department has not shown “by a preponderance of evidence” that there has been a “fundamental change in circumstances” in Mexico, such that Respondent no longer has a well-founded fear. *See Singh*, 914 F.3d at 654. Thus, even if the Respondent has not demonstrated past persecution, the Court finds he is still eligible for asylum. 8 C.F.R. § 1208.13(b).

### 3. On Account of a Protected Ground

In addition to demonstrating harm rising to the level of persecution, the respondent bears the burden of establishing that establish that “race, religion, nationality, membership in a particular social group, or political opinion was or will be *at least one central reason* for persecuting the” respondent. 8 U.S.C. § 1158(b)(1)(B)(i) (emphasis added).

[A] motive is a “central reason” if the persecutor would not have harmed the applicant if such motive did not exist. Likewise, a motive is a “central reason” if that motive, standing alone, would have led the persecutor to harm the applicant. ... [P]ersecution may be caused by more than one central reason, and an asylum applicant need not prove which reason was dominant. Nevertheless, to demonstrate that a protected ground was “at least one central reason” for persecution, an applicant must prove that such ground was a cause of the persecutors’ acts.

*Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2009); *see also Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1062 (9th Cir. 2017) (en banc); *Regalado-Escobar v. Holder*, 717 F.3d 724, 732 (9th Cir. 2013) (“Under the REAL ID Act, the applicant bears the burden to show nexus by showing that a protected ground was “one central reason” for his persecution.”); *Zetino v. Holder*, 622 F.3d 1007, 1015 (9th Cir. 2010) (“The REAL ID Act of 2005 places an additional burden on Zetino to demonstrate that one of the five protected grounds will be at least one central reason for his persecution.”).



A whistleblower's exposure of government corruption "may constitute political activity sufficient to form the basis of persecution on account of political opinion." *Grava v. INS*, 205 F.3d 1177, 1181 (9th Cir. 2000) (Filipino policeman and customs officer); *see also Khudaverdyan v. Holder*, 778 F.3d 1101, 1106 (9th Cir. 2015) (applying REAL ID Act); *Baghdasaryan v. Holder*, 592 F.3d 1018, 1024 (9th Cir. 2010) (pre-REAL ID Act application) ("Whistle-blowing against government corruption is an expression of political opinion."). In determining if a respondent's whistleblowing "constitutes protected political opinion, the 'salient question' is whether the individual's actions are 'directed toward a governing institution, or only against individuals whose corruption was aberrational." *See Khudaverdyan*, 778 F.3d at 1106; *see also Grava*, 205 F.3d at 1181. However, "[w]hen the alleged corruption is inextricably intertwined with governmental operation, the exposure and prosecution of such an abuse of public trust is necessarily political." *Grava*, 205 F.3d at 1181.

"To qualify as a whistleblower, [respondent] was not required to expose governmental corruption to the public at large. It was sufficient that [he] demonstrated that he suffered retaliation for acting against governmental corruption." *Fedunyak v. Gonzales*, 477 F.3d 1126, 1129 (9th Cir. 2007) (pre-REAL ID Act application); *see also Perez-Ramirez v. Holder*, 648 F.3d 953, 956 (9th Cir. 2011) ("Whistleblowing by a government employee against government officials engaged in corruption 'may constitute political activity sufficient to form the basis of persecution on account of political opinion' for the purposes of an asylum claim." (quoting *Grava*, 205 F.3d at 1177)), *overruled on other grounds by Maldonado v. Holder*, 786 F.3d 1155, 1163–64 (9th Cir. 2015) (en banc).

A respondent's uncontroverted credible testimony as to the persecutor's motivations may be sufficient to establish nexus. *See, e.g. Antonyan v. Holder*, 642 F.3d 1250, 1254 (9th Cir. 2011); *see also Shoafera v. INS*, 228 F.3d 1070, 1074-75 (9th Cir. 2000) (Ethiopian applicant established through her credible testimony and witness testimony that the perpetrator was motivated to rape her based, in part, on her Amhara ethnicity). Furthermore, direct proof of motivation may consist of evidence concerning statements made by the persecutor to the respondent, or by respondent to persecutor. *See, e.g., Kebede v. Ashcroft*, 366 F.3d 808, 812 (9th Cir. 2004) (soldiers stated that rape was because of Kebede's family's position in prior Ethiopian regime); *see also Duarte de Guinac*, 179 F.3d at 1162 (noting that motivation was on account of ethnicity where persecution was "coupled with explicit expressions of ethnic hatred").

Here, Respondent asserts that his political opinion as a whistleblower of the Mexican government's involvement in the disappearance of the 43 students was at least one central reason for his persecution. *See, e.g., INA § 208(b)(1)(B)(i)*. (*See also Ex. 4, Form I-589*.) In support of his claim, Respondent credibly testified that he informed investigative journalist Ms. Hernández of the actual events of the night of September 26, 2014. (Hr'g (Oct. 26, 2015).) Substantial evidence supports the Court's conclusion that Respondent was a whistleblower. Ms. Hernández first interviewed Respondent in October 2014, and then on multiple occasions after that. (Hr'g (Dec. 6, 2018); *see also Ex. 10, Resp't Interview*.) Ms. Hernández testified that Respondent's testimony was the first time an eyewitness spoke out about the truthful events of September 26, 2014, and that prior to Respondent's published testimony in December 2014, no one had questioned the "historical truth" presented by the Mexican government. (Hr'g (Dec. 6, 2018).) Ms. Hernández also stated that Respondent's initial statement opened an investigative line for her, and that Respondent "would become a key element for overturning the state's official version of events." (*See Ex. 36, ANABEL HERNÁNDEZ, A MASSACRE IN MEXICO 166 (Verso, 2018)*.)



Respondent also credibly testified that he suffered threats and has a well-founded fear of future persecution in Mexico as the initial whistleblower of the Mexican government's actions on September 26, 2014. (*Id.*) Respondent testified that he was threatened with detention by a representative of the Mexican Attorney General for questioning during the initial investigation. (Hr'g (May 9, 2016).) Respondent stated that he, and other Iguala police officers, were taken to the offices of the state police by local law enforcement. (*Id.*) At the state police office, all Iguala police officers were subjected to a test for gunpowder residue. (*Id.*) Respondent was told that there was an ongoing investigation, and he was interviewed by the representative of the Mexican Attorney General about the disappearance of the students. (*Id.*) Respondent was also forced to undergo similar testing, including a test for gunpowder residue, and the taking of his fingerprints. (*Id.*) After he completed the testing, Respondent was released, but several officers, including Respondent's brother-in-law, remained in custody. (*Id.*) Before Respondent departed the state police station, however, Respondent testified that a representative for the Mexican Attorney General threatened him. (*Id.*) The representative told Respondent that he may not be detained today, but he will be detained eventually. (*Id.*) The representative stated that he did not like Respondent's behavior in the interview, specifically Respondent questioning the representative's knowledge of the situation involving the missing students. (*Id.*)

On October 2, 2014, Mexican state police officers dressed in civilian clothes searched and ransacked Respondent's mother's home. (Ex. 9, Ayotzinapa Report I, pg. 65; *see also* Hr'g (May 9, 2016).) The armed state police officers threatened Respondent's mother and his other relatives at gunpoint, and hit one of his relatives with a pistol, mistaking the relative for Respondent. (Hr'g (May 9, 2016).) The police officers asked about Respondent's whereabouts during the search. (*Id.*) The police officers also threatened Respondent's family with their pistols. (*Id.*) The officers also took several of Respondent's belongings, such as new pants and shirts, and stole some of Respondent's mother's money. (*Id.*) Respondent was not present during this search, but his mother later informed him of the search. (*Id.*)

Even after Respondent left to live with his brother for approximately three months, Mexican state police and military continued to observe his mother's home. They parked in front of her home, took pictures of the house, and questioned neighbors about Respondent's whereabouts. (*Id.*) In the Ayotzinapa Report, in which Respondent was interviewed, Respondent stated that when he reported to the office of the Federal Public Secretary, the presence of members of the military became more frequent at his residence. (*Id.*)

In December 2014, Ms. Hernández published her article "The True Night of Iguala in *Proceso* magazine, which exposed "several falsehoods" in the original "historical truth." (*See* Ex. 36, ANABEL HERNÁNDEZ, A MASSACRE IN MEXICO 225–26 (Verso, 2018).) In this article, Ms. Hernández published part of Respondent's first testimony. (*Id.*, at pg. 305.) Ms. Hernández wrote in her book that immediately after the article's publication, the Attorney General of Mexico issued an order for Respondent's arrest claiming that he had interrogated the students, and that he was working with the Guerreros Unidos. (*Id.*, at pg. 305–06.) In reality, however, Respondent "was the first witness to assert that the Army was indeed in the streets during the attacks that night..." (*Id.*, at pg. 306.) Ms. Hernández also testified that, after she published her December 2014 article featuring Respondent's testimony, Respondent started to be followed, as did another public officer from Iguala to whom Ms. Hernández had also spoken. (Hr'g (Dec. 6, 2018).) Ms. Hernández stated that Respondent's life is in danger. (*Id.*)



In light of Respondent's credible testimony regarding the circumstances demonstrating the harm he faces in Mexico, the Court finds that Respondent has demonstrated that he faces the prospect of persecution because of a protected ground, namely his political opinion as a whistleblower of the Mexican government's involvement in the 43 students' disappearances. *See* INA § 101(a)(42)(A); *see, e.g. Kebede*, 366 F.3d at 812; *see e.g., Duarte de Guinac*, 179 F.3d at 1162; *see also Navas*, 217 F.3d at 646. Respondent has been threatened due to his questioning of the Attorney General with regard to the investigation of the missing students, and Respondent has been tracked and watched by the Mexican government, particularly after speaking to the international press. (Hr'g (May 9, 2016); *see also* Ex. 36, ANABEL HERNÁNDEZ, A MASSACRE IN MEXICO 225–26 (Verso, 2018).) The Mexican government even went as far as issuing an arrest warrant and an Interpol Red Notice for Respondent. (Ex. 8, Tab A, Certified Translation of Apprehension Order; *see also* Ex. 40, Resp't Interpol Red Notice.) Consequently, the Court finds that the Respondent has established that he faces the prospect of persecution on account of a protected ground. *See* INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b)(1).

*a. Particular Social Group*

In the alternative, even if Respondent has not established that he faces the prospect of future persecution on account of his political opinion as a whistleblower, the Court would find Respondent has established that he faces future persecution on account of his membership in a particular social group (“PSG”). Here, Respondent alleges that he faces future persecution on account of his membership in a cognizable PSG, which the Court interprets as “whistleblowers of the Mexican government’s fabricated ‘historic truth’ regarding the 43 students’ disappearances on September 26, 2014.”

When claiming membership in a PSG, a respondent must prove that the alleged group is cognizable and that he is, in fact, a member of that group. *See Matter of A-B-*, 27 I&N Dec. 316, 318–20 (AG 2018) (overruling *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014)); *Matter of W-G-R-*, 26 I&N Dec. 208, 221–23 (BIA 2014). To do so, the respondent must establish that the group in which he is claiming membership is: “(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.” *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014). A common immutable characteristic is one that is so fundamental to the identity or conscience of each group member that it cannot or should not be changed; it can be an innate characteristic, such as sex or family relation, or a shared past experience. *See Acosta*, 19 I&N Dec. at 222. “[A] ‘particular social group’ is one united by a voluntary association, including a former association, or by an innate characteristic that is so fundamental to the identities or consciences of its members that members either cannot or should not be required to change it.” *Henriquez-Montiel v. INS*, 225 F.3d 1084, 1092–93 (9th Cir. 2000) (Mexican gay men with female sexual identities constitute a particular social group), *overruled on other grounds by Thomas v. Gonzales*, 409 F.3d 1177 (9th Cir. 2005) (en banc). Particularity requires the group to be “discrete and have definable boundaries” rather than being “amorphous, overbroad, diffuse, or subjective.” *W-G-R-*, 26 I&N Dec. at 214. Social distinction requires the group to be “perceived as a group by society.” *M-E-V-G-*, 26 I&N Dec. at 240.

Once the respondent has established the existence of a cognizable particular social group, he must demonstrate that he is a member of the delineated group. *See W-G-R-*, 26 I&N Dec. at 221–23. The respondent must then demonstrate that the persecution alleged was inflicted “on account of”



his membership in that group. *See* 8 C.F.R. § 1208.16(b). To meet his burden of proof, he must provide some evidence, direct or circumstantial, that the persecutor's motive to harm him arose from the asserted protected ground. *See Matter of N-M-*, 25 I&N Dec. 526, 529 (BIA 2011).

Here, the Court finds that Respondent has established that he is a member of a cognizable PSG. *See A-B-*, 27 I&N Dec. at 318–20. Respondent's proffered PSG contains members who share common and immutable characteristics, it is defined with particularity, and the group is socially distinct. First, the PSG contains members who share a common experience — speaking out against the Mexican government's cover-up of the 43 students' disappearances. *Acosta*, 19 I&N Dec. at 222; *see also Enriquez-Montiel*, 225 F.3d at 1092–93. Furthermore, the PSG is defined with particularity, and is not “amorphous, overbroad, diffuse, or subjective.” *W-G-R-*, 26 I&N Dec. at 214. Finally, although the PSG is not literally visible, the group is still “socially distinct.” *See M-E-V-G-*, 26 I&N Dec. at 227, 238. Respondent was a prior magistrate at the Iguala Police Department, and served many roles at the Police Department, such as checking in those who were arrested and charged with a crime, and documenting a detainee's information in the official register. Furthermore, Respondent has been identified by name in several publications which identify Respondent as calling into question the “historic truth”, and identifying the Mexican government's cover-up of the disappearance. (*See* Ex. 36, ANABEL HERNÁNDEZ, A MASSACRE IN MEXICO 77, 166, 185, 304–09, 338 (Verso, 2018); *see also* Ex. 17, Resp't Submission of *Proceso* News Magazine Articles, at Tab A, *The Ayotzinapa Case: New testimonies refute the official history*, PROCESO Jun. 14, 2015; *see also* Ex. 9, Ayotzinapa Report I, pg. 65–66.)

Respondent has provided evidence that the Mexican government's motive to harm him arose from his asserted protected ground. *See N-M-*, 25 I&N Dec. at 529. Respondent credibly testified that he was threatened with detention by a representative of the Mexican Attorney General for questioning the Mexican government's initial investigation of the students' disappearances. (Hr'g (May 9, 2016).) Furthermore, Mexican state police officers dressed in civilian clothes searched and ransacked Respondent's mother's home. (Ex. 9, Ayotzinapa Report I, pg. 65; *see also* Hr'g (May 9, 2016).) The armed state police officers also threatened Respondent's family at gunpoint, and the officers took several of Respondent's belongings, such as new pants and shirts, and stole Respondent's mother's money. (Hr'g (May 9, 2016).) Additionally, even after Respondent left to live with his brother for approximately three months, Mexican state police and military continued to observe his mother's home. (*Id.*)

Ms. Hernández wrote in her book that immediately after her December 2014 *Proceso* article's publication, the Attorney General of Mexico issued an order for Respondent's arrest claiming that he had interrogated the students, and that he was working with the Guerreros Unidos. (*See* Ex. 36, ANABEL HERNÁNDEZ, A MASSACRE IN MEXICO 305–06 (Verso, 2018).) Ms. Hernández also testified that, after she published her December 2014 article featuring Respondent's testimony, Respondent started to be followed, as was another public officer to whom Ms. Hernández had also spoken. (Hr'g (Dec. 6, 2018).)

Accordingly, in the alternative, the Court finds that Respondent had demonstrated his membership in a cognizable PSG of “whistleblowers of the Mexican government's fabricated ‘historic truth’ regarding the 43 students' disappearances on September 26, 2014.” Respondent has also demonstrated his well-founded fear of future persecution is “on account of” his membership in that group. *See* 8 C.F.R. § 1208.16(b). As a result, this Court concludes that Respondent has met his burden of establishing his eligibility for asylum based on his well-founded fear of future



persecution in Mexico.

#### 4. Whether the Government is Unable or Unwilling to Control the Prosecution

A respondent must further establish that the persecution he suffered was either at the hands of the government or by persons that the government is unable or unwilling to control. *Acosta*, 19 I&N Dec. at 222. In other words, the persecution must be inflicted under government sanction or by groups the government is unable or unwilling to control. *See Baghdasaryan v. Holder*, 592 F.3d 1018, 1023 (9th Cir. 2010); *see also Rahimzadeh v. Holder*, 613 F.3d 916, 923 (9th Cir. 2010) (substantial evidence supported the determination that Dutch authorities were willing and able to control extremists that attacked the alien); *see also Desir v. Ilchert*, 840 F.2d 723, 727–28 (9th Cir. 1988) (persecution by quasi-official Haitian security force).

Furthermore, when a government is responsible for the persecution, there is no need to inquire whether a respondent sought help from the police. *See Baballah v. Ashcroft*, 367 F.3d 1067, 1078 (9th Cir. 2004); *see also Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1088 (9th Cir. 2005). In cases where the respondent failed to file a report, there is not a heightened burden of proof requirement. *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1069–70 (9th Cir. 2017) (en banc).

Respondent has also met his burden to demonstrate the requisite government nexus to his claimed persecution. The Court has found Respondent credible, and the Court finds through his cumulative experiences that Respondent has established that he fears future persecution on account of his political opinion as a whistleblower at the hands of the Mexican government. (Ex. 4, Form I-589; *see also* Hr’g (May 9, 2016).) Specifically, Respondent testified that the Mexican military and state police are responsible for his fear of future persecution. (*Id.*)

Respondent testified that he was threatened with detention by a representative of the Mexican Attorney General after questioning the Mexican government’s investigation of the students’ disappearances. (Hr’g (May 9, 2016).) Respondent’s mother’s home was also ransacked and searched by Mexican state police officers. (*Id.*) The officers threatened Respondent’s family at gunpoint, and also stole several of Respondent’s belongings, as well as his mother’s money during the search. (*Id.*) Respondent testified that the Mexican police officers continued to search for Respondent by observing and patrolling his mother’s home, even after Respondent left to live with his brother. (*Id.*) Furthermore, Respondent stated that when he reported to the office of the Federal Public Secretary, the presence of members of the military became more frequent at his residence. (Ex. 9, Ayotzinapa Report I, pg. 65.)

Overall, the evidence of record demonstrates that the persecution Respondent suffered was at the hand of the Mexican government, namely by the Mexican military and state police. Thus, Respondent has met his burden to establish that it is more likely than not that he would suffer future threats to his life or freedom at the hands of the government or forces the government is unable or unwilling to control. Consequently, Respondent has demonstrated a well-founded fear of future persecution on account of a protected ground by the Mexican government. *See* INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b)(1).



**B. Discretion**

Once a respondent has established that he is statutorily eligible for a grant of asylum, he must further show that he merits such relief as a matter of discretion. INA § 240(c)(4); 8 C.F.R. § 1240.8(d); *see also Kalubi v. Ashcroft*, 364 F.3d 1134, 1137 (9th Cir. 2004). Here, the Court finds that Respondent merits a favorable exercise of discretion. Respondent testified credibly about his fear of returning to Mexico. The Court believes that the Respondent sincerely fears for his life in Mexico, and finds that general humanitarian considerations mitigate in Respondent's favor. *See id.* Moreover, the Court believes that Respondent is capable of finding employment and becoming a contributing member of society in the United States. Finally, Respondent has not engaged in any activities indicating that he would not be a desirable member of society. *See supra* §§ II, III. Although there is an active arrest warrant for Respondent, as well as an Interpol Red Notice, the Court finds the issuance of these notices were politically charged, and believes that Respondent is being targeted by the Mexican government due to his political opinion as a whistleblower of the Mexican government's involvement with the students' disappearances. Consequently, the Court concludes that Respondent warrants a favorable exercise of discretion. *See* INA § 240(c)(4)(A).

**VI. WITHHOLDING OF REMOVAL UNDER INA § 241(b)(3)**

As the Court is granting Respondent's application for asylum under INA § 208, the Court will not address Respondent's concurrent application for withholding of removal under INA § 241(b)(3) and will hold a decision on Respondent's application for such relief in abeyance. *See Mogharrabi*, 19 I&N Dec. at 449; *see also INS v. Bagamasbad*, 429 U.S. 24, 25 (1976).

**VII. PROTECTION UNDER THE CONVENTION AGAINST TORTURE**

As the Court is granting Respondent's application for asylum under INA § 208, the Court will not address Respondent's concurrent application for protection under the Convention Against Torture ("CAT"). The Court will hold a decision on Respondent's application for protection under the CAT in abeyance.

**VIII. CONCLUSION**

For the foregoing reasons, the Court finds that Respondent is credible, that he has established his eligibility for asylum, and that he warrants relief as a matter of discretion. *See* INA §§ 208(a), 241(b)(3). As the Court is granting Respondent's application for asylum, it will hold his concurrent application for withholding of removal and protection under CAT in abeyance. *See Mogharrabi*, 19 I&N Dec. at 449; *see also Bagamasbad*, 429 U.S. at 25 ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").



In light of the above, the Court will enter the following orders:

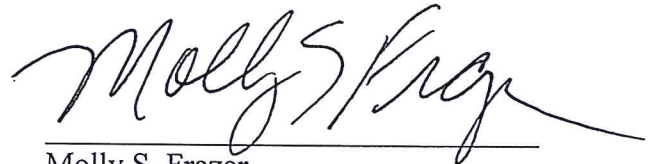
**ORDERS:**            **IT IS HEREBY ORDERED THAT** Respondent's application for Asylum under section 208 of the Act is **GRANTED**.

**IT IS FURTHER ORDERED THAT** Respondent's application for Withholding of Removal under section 241(b)(3) of the Act is **HELD IN ABEYANCE**.

**IT IS FURTHER ORDERED THAT** Respondent's application for protection under Article III of the Convention Against Torture is **HELD IN ABEYANCE**.

JAN 07 2020

Date



Molly S. Frazer  
Immigration Judge

**RIGHT OF APPEAL PRESERVED:** Any right of appeal is reserved to both parties, Respondent and DHS, with any Notice of Appeal due to be filed with and received at the Board of Immigration Appeals (BIA), in Virginia, within 30 days of this Order.

**CERTIFICATE OF SERVICE**

**THIS DOCUMENT SERVED BY:** (M) MAIL (P) PERSONAL SERVICE  
**TO:** ( ) ALIEN ( ) ALIEN c/o Custodial Officer (X) ALIEN'S ATTY (X) DHS  
**DATE:** 1/7/2020 **BY COURT STAFF:** [Signature]  
**Attachments:** ( ) EOIR-33 ( ) EOIR-28 ( ) Appeal Forms ( ) Other