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NON-DETAINED

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
NEW YORK IMMIGRATION COURT
290 BROADWAY, NEW YORK, NY 10007**

_____)
In the Matter of:)
)
IM)
HB)
)
In Removal Proceedings)
_____)

**File Nos.: XXX-XXX-XXX
XXX-XXX-XXX**

Immigration Judge: XXX

Individual Hearing: X XX, XXX

**RESPONDENT'S BRIEF IN SUPPORT OF APPLICATION FOR ASYLUM,
WITHHOLDING OF REMOVAL, AND PROTECTION UNDER CAT¹**

¹ Details have been altered and names have been changed to protect the asylum seekers' identities.

Respondents, I-M (“Ms. I-M”) and her daughter H-B (“H-B”), by and through undersigned counsel, respectfully submit this brief in support of their application for asylum, and alternatively for withholding of removal or protection under the Convention Against Torture (CAT). Ms. I-M seeks asylum based on her past persecution and well-founded fear of future persecution on account of her two particular social groups comprising of the family members of E-F and Honduran crime witnesses who report to law enforcement, as well as her imputed political opinion of defiance and opposition against a cartel.

STATEMENT OF FACTS

Ms. I-M was born on January 1, 1980 in Comayagua, Honduras.² She has two half-brothers, with whom she shares a mother, named E-F and E-R.³ Ms. I-M has three children, H-B, M-J and Y-A.⁴ H-B is here with Ms. I-M in the United States, and her other two children remain in Honduras. Ms. I-M’s mother raised Ms. I-M and her siblings. The family was very active and well-known in their community. Ms. I-M’s mom was a Sunday school teacher and was active in their church. Indeed, as Ms. I-M stated in her affidavit, “Comayagua is small, and so everyone knows everyone.”⁵

Ms. I-M’s Brother, E-F, Was Killed By Cubeta’s Cartel

In 2018, Ms. I-M’s brother, E-F, was targeted by Mario José Cáliz Hernández, better known as “Cubeta,” and his cartel. Specifically, Cubeta wanted E-F to sell drugs for him at E-F’s

² See Exhibit C, Sworn Declaration of Ms. I-M (hereinafter “I-M Decl.”) and Exhibit D, Birth Certificate of Ms. I-M. All exhibits referred to in this brief can be found in Respondent’s Index of Exhibits in Support of Relief, being submitted contemporaneously with this legal brief. Unless otherwise indicated, the facts in this section of the brief can be found in Ms. I-M’s declaration.

³ See Exhibit E, Birth Certificates for E-F and E-R, Ms. I-M’s brothers.

⁴ See Exhibit F, Birth Certificates for Ms. I-M’s three children.

⁵ I-M Decl. See also Exhibit G, declaration of B-M, declaration of Ms. I-M’s former neighbor, who explains that everyone knows one another in Comayagua and that Ms. I-M and her family were known as humble and hard working people.

school. Although Ms I-M does not know all of the details,⁶ she knows that E-F owed Cubeta money and that Cubeta wanted E-F to work for him in order to pay off the debt. Throughout 2018, E-F received threatening messages from Cubeta's cartel, including directly from Cubeta himself, telling E-F that they were going to kill him if he did not pay his debt.

As discussed further below, *infra* "Country Conditions," Cubeta is a wealthy politician, businessman, and a powerful cartel leader from Gracias who has deep ties throughout the Honduran government. He leads a large-scale transnational drug and weapons trafficking organization, something he continued to run while he was vice mayor of Gracias from 2014 to 2018. Cubeta used the police and government officials for his own security and protection, at the expense of families like Ms. I-M's.

On September 4, 2018, E-F received calls from the cartel throughout the day. The cartel wanted to see E-F and continued to threaten him. E-F told Ms. I-M that if he did not go see the cartel, something bad would happen to their family. Ms. I-M understood this to mean that the cartel would kill her family. Before he left, E-F gave Ms. I-M his cellphone, which contained recordings of Cubeta and his cartel threatening to kill E-F. E-F left to go meet the cartel near the town's central park, not far from where they lived.

Around 9:00pm, Ms. I-M heard gun shots. Shortly after, Ms. I-M's aunt called and told her that people in the town were saying that E-F was killed by Cubeta's men. Ms. I-M ran over to the park and found her brother's body on the ground, leaving her and her family devastated.⁷

Ms. I-M and her family members were interviewed by local media about the murder. E-F's

⁶ Ms. Y-B, the former girlfriend of E-F, and F-L, E-F's father, indicate that E-F had borrowed the money from Cubeta to pay for school. *See* Exhibit H, Declaration of Ms. Y-B and Exhibit I, Declaration of F-L. E-F knew Cubeta through his son, Mario Edgardo Calix (aka "El Marito").

⁷ *See* Exhibit J, containing the Death Certificate for Mr. E-F as well as a photo of his deceased body.

father was quoted as saying: “I ask that they [the police] do what they have to do because many deaths go unpunished.”⁸

Ms. I-M Was Threatened and Extorted By Cubeta and His Cartel

In December 2018, two known hitmen for Cubeta’s cartel, nicknamed Cho Cho and Chelebuho, found Ms. I-M as she was leaving work. They shoved and hit Ms. I-M, causing her to fall to the ground. The men knew Ms. I-M’s name and that she was E-F’s sister. They threatened Ms. I-M and said “if you don’t pay your brother’s debt, you will end up like a dog – the way we left your brother.” *Ms. I-F Decl.* After this attack, Ms. I-M went to the police to file a police report against Cubeta and his cartel. She took E-F’s phone to the police station as evidence that the cartel was after her and her family. The police refused to write down Ms. I-M’s statement or make a report. They told Ms. I-M that they were doing her a favor by not writing down what she was telling them. The police told Ms. I-M that if the cartel discovered that she reported them, that she would be in trouble. The police sent Ms. I-M off, but took E-F’s cellphone. When Ms. I-M followed up with the police a few weeks later, they told her that the cellphone had disappeared. Ms. I-M believes that the police made this evidence disappear on purpose because they are known to be paid by the cartel.

Not long after she tried to report the cartel to the police, Cho Cho and Chelebuho found Ms. I-M again, and told her that if she ever tried to file a police report against them, that they would kill her. Ms. I-M believes that the police informed the cartel that she had reported them.

Ms. I-M continued to receive threats from the cartel, on at least a weekly basis for the next several months. They would drive by her home on their motorcycles, point at her and say “you better be ready, or you’re going to be next.” Ms. I-M understood this to mean that she

⁸ See Exhibit K, a news article describing E-F’s murder.

needed to pay her brother's debt, or else she would be killed. Under the threat of death, Ms. I-M was forced to pay E-F's debt to Cubeta and his cartel.

At first, the cartel demanded approximately half of Ms. I-M's income, which put a significant strain on her ability to provide for her children. The cartel then demanded approximately three-fourths of Ms. I-M's income, making it nearly impossible to pay her bills, purchase food, and provide for her children's needs. When she complained to the cartel, they told her to begin prostituting herself to make more money. She declined.

Ms. I-M's Brother, E-R, Was Disappeared by Cubeta's Cartel

In March 2019, Ms. I-M's older brother, E-R, confronted Cubeta's son, "El Marito," at a soccer game. E-R told him that everyone in Comayagua knew that the cartel had killed E-F. Many people from Comayagua observed the argument. A few days after this confrontation, E-R disappeared. Ms. I-M believes that the cartel kidnapped him because she and her family do not have any enemies besides Cubeta, his family, and associates. E-R is presumed to be dead.

E-F's Father and His Lawyer Tried to Hold Cubeta Accountable, but Failed

In early 2019, E-F's father, F-L, worked with a local prosecutor in Gracias to investigate E-F's death in an attempt to hold the cartel accountable. After some investigation, the prosecutor discovered that E-F's murder file had completely disappeared from a central database which stores murder cases. The prosecutor also tried to bring charges against Cubeta and his cartel; however, the prosecutor was fired from her job after she attempted to file these charges. The prosecutor advised Mr. F-L to stop investigating and that "someone powerful" was behind the cover-up of E-F's murder. After this, Mr. F-L stopped searching for answers out of fear for his and his family's lives.

The Cartel Threatened to Kill Ms. I-M's Daughter, H-B

In April 2019, Ms. I-M's infant son, Y-A, got sick with pneumonia, and she needed to buy him medicine. Buying the medicine made it impossible for Ms. I-M to also pay the cartel's extortion. When the cartel came around to collect payment for E-F's debt, Ms. I-M told them that she couldn't pay and needed some more time. The cartel then threatened to kill Ms. I-M's daughter, H-B, if she did not pay. The threat to murder her then- nine-year-old daughter was the last straw.⁹ The cartel knew H-B's name and told Ms. I-M that they knew where she went to school. Terrified for both her and her daughter's safety, Ms. I-M made plans to escape Honduras and seek refuge in the United States. In May 2019, Ms. I-M and her daughter fled Honduras.

Ms. I-M is Forced to Live in Dangerous Conditions in Mexico

Ms. I-M and her daughter arrived at the U.S./Mexico border on August 1, 2019, seeking protection and safety. Instead, Ms. I-M and H-B were forced to wait in Mexico for nearly two years pursuant to the Migrant Protection Protocols. During this time, Ms. I-M lived in constant fear. On two occasions, she was assaulted and robbed by cartel members who infiltrated the makeshift camp where they were living. Because Ms. I-M had to care for her daughter and could not work, she live in squalid conditions without reliable access to clean water and food. Due to the unsanitary conditions in which they were forced to live, Ms. I-M and H-B both contracted numerous illnesses and Ms. I-M's mental health suffered substantially. *Exhibit L.*¹⁰

COUNTRY CONDITIONS

Honduras is considered one of the most violent and corrupt countries in the world. Exh. M; *see also* Exh. N. Violence is largely perpetrated by local drug trafficking groups, gangs, corrupt

⁹ See Exhibit L, Psychological Evaluation of Ms. I-, conducted by Dr. Jones, concluding that Ms. I-M is suffering from both depression and post-traumatic stress disorder.

¹⁰ Ms. I-M and her daughter never applied for or received a legal status in Mexico. Moreover, she is fearful of returning to Mexico given the violence she faced there and the fact that the Honduran criminal organization she fears also operates in Mexico.

government officials, and transnational criminal organizations Exhs. M-N. The violence in Honduras continues with impunity due to the lack of law enforcement, as well as the high prevalence of corruption within the government. *Id.*

a. Mario José Cálix Hernández (“Cubeta”) and Honduran Transnational Criminal Organization

For at least the past twenty years, the Honduran government has been deeply involved in the illicit trafficking of narcotics to the United States. As outlined in the Superseding Indictment (Exh. O) filed by the US Attorney for the Southern District of New York,

From at least in or about 2004, up to and including in or about 2016, multiple drug-trafficking organizations in Honduras and elsewhere worked together, and with the support from certain prominent public and private individuals, including Honduran politicians and law enforcement officials, to receive multi-ton loads of cocaine sent to Honduras....

The Superseding Indictment continues to detail that from around 2014 to 2018, Cubeta served as deputy mayor of Gracias, Lempira, Honduras. Exh. O, at ¶ 3. At least from 2005 to 2016, Cubeta was also a “large-scale drug trafficker who worked with other drug traffickers in, among other places, Colombia, Honduras, Guatemala, and Mexico, to import cocaine into the United States.” *Id.* Cubeta’s cartel is so entrenched in the Honduran government that the Honduran National Police provided “heavily armed security” for the cocaine shipments. *Id.*

Among others who have been discovered to be involved with this large scale operation is Juan Antonio “Tony” Hernández, the brother of current Honduran president, Juan Orlando Hernández. Exh. P. US Attorneys allege that President Hernández received millions in drug money to support his political campaigns, and his brother and other traffickers, like Cubeta, were intimately involved in facilitating those transactions. *Id.*; see also, Exh. Q: *USA v. Hernandez Alvarado*, Superseding Indictment (S.D.N.Y. Nov. 26, 2018). Dozens of other powerful figures,

including mayors and political officials, many of whom are family members or close friends of Tony and Cubeta, are suspected of being involved. Exh. P; *see also*, Exh. R.

Moreover, Cubeta's family is deeply interwoven into the political and judicial fabric of Honduras, demonstrating just how insulated and protected he is from criminal prosecution. For example, Cubeta's maternal cousin, Lourdes Alejandra Hernández Quan, is the Vice Minister of Security for the government of Honduras, and his other cousin, Soraya Calix, is the Director of the Office for the Fight Against Drug Trafficking in the Attorney General's office. Exh. S. Cubeta's brother, Jacobo Antonio Cálix Hernández, is a former Magistrate in the Supreme Court, and was one of the judges who ordered the ouster of former President Manuel Zelaya during current President Hernández's coup d'état. Exh. R. His brother Jacobo has also been accused of protecting drug traffickers from convictions. *Id.* His other brother, Mario Leonel Cálix Hernández, is a business associate of President Hernández's spouse. *Id.* Cubeta's brother-in-law is Feryd Bascha Sahury, the Vice-Minister of the Presidential palace. *Id.*

Despite Cubeta's recent indictment in the United States, Honduras has not extradited him for prosecution, likely because of his numerous ties to power. Exh. T

b. Lack of Police Protection

Crime is committed with impunity in Honduras because there is little enforcement of the law, and because those perpetrating the crimes have ties to law enforcement. The judiciary and police remain largely ineffective because their operations are marred by corruption and abuse. Exh. U. "Honduran citizens suffer from an almost complete lack of protection by the police and the judiciary due to pervasive corruption of security institutions, which have been penetrated by" criminal networks. Exh. N.

Police and Honduran national security forces are deeply entrenched with criminal organizations. It is widely reported these security forces accept payment from criminal organizations to either concede authority or participate in illicit activities. Exh. O, N, and W.

The US government has recognized just how intertwined the Honduran government and transnational crime organizations are, by way of its indictment and prosecution of the President's brother. Exhs. P, Q. Because of this level of corruption at every level of government, sources indicate that at least 80 percent of crimes in Honduras go unsolved. Exh. X.

c. Witnesses of Cartel Crimes in Honduras

Witnessing a cartel-related murder or crime is often fatal in Honduras. When a crime witness reports criminal activity to the police, cartel members kill that witness. Exh. U, at 49. According to expert Dr. Eric Hershberg, "gangs view as opponents both witnesses to crimes perpetrated by their members and those who report such incidents to the authorities. Gangs target such individuals for violence as a form of both retribution and punishment." Exhibit N.

Honduras's Witness Protection Law has largely failed because there have been numerous reports of protected witnesses being attacked or killed. Exh. U, at 39. Therefore, the risk of being a witness is widely recognized in Honduras, and law enforcement officials are unable to protect them.

ARGUMENT

I. MS. I-M AND H-B ARE ELIGIBLE FOR ASYLUM

To demonstrate eligibility for asylum, one must be unable or unwilling to return to their country of origin due to past persecution or possess a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 208(b)(1)(B)(i).

Ms. I-M and her daughter are eligible for asylum due to the past persecution Ms. I-M suffered on account of her particular social group of “family members of E-F” and “Honduran witnesses to a crime who report to with law enforcement,” as well as because of her imputed political opinion of defiance against Cubeta’s cartel. As described above, Ms. I-M was threatened by Cubeta and his cartel to pay her brother’s debt, received credible threats to her and her daughter’s life for failure to pay her brother’s debt, and received credible threats to her life for reporting the cartel’s crimes to the police. Ms. I-M is entitled to a presumption of a well-founded future fear on the same grounds. Assuming arguendo that Ms. I-M has not established past persecution, she can establish a well-founded fear of future persecution on account of the same enumerated grounds where she has received credible threats to her and her daughter’s lives.

A. The Harm Ms. I-M Suffered Rises to the Level of Past Persecution

The BIA has defined “persecution” as “either a threat to life or freedom of, or infliction of suffering or harm upon those who differ in a way regarded as offensive.” *See Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985). The BIA and the Second Circuit have found that although persecution must rise above mere harassment, the infliction of suffering or harm “need not be physical, but may take other forms, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or other essentials of life.” *Matter of Laipenieks*, 18 I&N Dec. 433, 456-457 (BIA 1983). Persecution can thus include threats to freedom or life and non-life-threatening violence. *Ivanishvili v. DHS*, 433 F.3d 332, 341 (2d Cir. 2006); see also, *Laipenieks*, 18 I&N Dec. at 457 (persecution may encompass “mental” aspects); see also, *Zaman v. Gonzales*, 168 Fed. Appx. 470, 472 (2d Cir. 2006) (remanding for IJ to “explicitly consider the evidence” of death threats, “decide whether that evidence is credible, and if so, whether such threats constitute past persecution”); *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1998)

(persecution “encompasses a variety of forms of adverse treatment, including...non-physical forms of harm”).

Furthermore, adjudicators must weigh the “cumulative” significance of multiple instances of harm. *Poradisova v. Gonzales*, 420 F.3d 70, 79 (2d Cir. 2005) (finding that the IJ below erred in “addressing the severity of each event in isolation, without considering its cumulative significance”); *Manzur v. DHS*, 494 F.3d 281, 290 (2d Cir. 2007) (taking isolated incidents out of context may be misleading; the cumulative effect of the applicant’s experience must be taken into account); *Matter of O-Z- & I-Z-*, 22 I&N Dec. at 25–26 (beatings and threats may constitute persecution “in the aggregate”).

Here, Ms. I-M was physically assaulted, received credible threats to her life and her daughter’s life, was extorted by Cubeta and his cartel, and suffered severe mental distress due to Cubeta and his cartel’s actions against her and her family. Exh. C. Independently and cumulatively, each rises to the level of persecution; when assessed cumulatively, it is abundantly clear that Ms. I-M suffered past persecution.

B. Ms. I-M Suffered Past Persecution on Account of Her Particular Social Group Comprising of Family Members of E-F

Matter of Acosta held that a particular social group is comprised of persons who hold a common, immutable characteristic. 19 I&N Dec. at 211. A particular social group must also be defined with particularity and be socially distinct. *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); see also *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014). Immutability has been defined as a characteristic that one cannot change or is so fundamental that individual should not be required to change it. *Mater of Acosta*, 19 I&N Dec. at 211. Particularity means that the group cannot be indeterminate, too subjective, inchoate, or variable. *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69,

76 (BIA 2007). Lastly, social distinction requires that the group be perceived as a group by the society in which it exists. *Matter of W-G-R-*, 26 I&N Dec. at 216.

1. Ms. I-M's Proposed Particular Social Group Consisting of Family Members of E-F is Cognizable

Family has consistently been recognized as a cognizable social group. *Vumi v. Gonzales*, 502 F.3d 62, 66-70 (2d. Cir. 2007) (membership in a nuclear family may support social group finding where woman from DRC was persecuted because the government sought her husband in connection with president's assassination).

In the instant case, the proposed social group comprising of "family members of E-F" is cognizable. This group is immutable where it is defined by kinship ties, a characteristic defined by genetics, and thus, cannot be changed. *Acosta*, 19 I&N Dec. at 232-33 ("A purely linguistic analysis of [the PSG] ground of persecution suggests that it may encompass [...] people of like class or kindred interests, such as [...] family background.")

The "family members of E-F" formulation is also defined with particularity, where it is clear who is a member of this group and who is not. For example, Cubeta is clearly not a member of this group where he does not share a family surname with E-F. By contrast, Ms. I-M is a member of this group whereby she shares surname with E-F (M-), and where Ms. I-M and E-F resided with one another in the same house as a family unit. Exhs. C, G. They grew up with one another, and were known in their community to be siblings. *Id.*

Finally, the "family members of E-F" formulation is socially distinct within the society in question. *Matter of W-G-R-*, 26 I&N Dec. at 216. Ms. I-M's family was well known within the society in question (here, Comayagua, Lempira, Honduras), including to Cubeta and his cartel. *See* Exh. C; *see also* Exh. G. *See also*, e.g., *Matter of M-E-V-G-*, 26 I&N Dec. at 243 (finding that "persecution limited to a remote region of a country may invite an inquiry into a more limited

subset of the country's society, such as in *Matter of Kasinga*, 21 I&N Dec. at 366, where we considered a particular social group within a tribe.”). Furthermore, family units are recognized as distinct groups within the greater Honduran society generally. The Honduran constitution considers the family to be so important that there is a guaranteed right to family, which is protected by the State. See, Political Constitution of the Republic of Honduras (“*Constitución Política de la República de Honduras*”), Arts. 76 & 111 (“The right to honor, to personal privacy, to family, and to one's dignity is guaranteed [...] The family, marriage, motherhood and childhood are under the protection of the State.”) (emphasis added). Families are the cornerstone of Honduran society, and are thus clearly understood as distinct social groups. Accordingly, “family members of E-F” is a cognizable particular social group.

2. Ms. I-M Was Persecuted on Account of Her Particular Social Group Consisting of Family Members of E-F

No matter what the cartel's motivations were for killing E-F, it is abundantly clear that Ms. I-M was targeted by Cubeta's cartel because she is the sister of E-F. When she was first attacked by Cubeta's cartel, Cho Cho and Chelebuho told Ms. I-M that they knew her name and knew she was E-F's sister. Exh. C. The cartel threatened Ms. I-M and said “if you don't pay your brother's debt, you will end up like a dog – the way we left your brother.” *Id.*

The cartel's emphasis on Ms. I-M's familial relationship to her brother demonstrates that this is the cartel's main motive for attacking and targeting Ms. I-M. See, e.g., *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996) (finding that “the motive for harm should be determined by considering the statements or actions of the perpetrators”). Critically, had she not been the sister of E-F, the cartel would not target Ms. I-M and threaten to kill her if she did not pay E-F's debt. In other words, Ms. I-M's familial relationship to her brother was “one central reason” why Cubeta and his

cartel targeted her. INA § 201(b)(1)(B)(i); see also, *Salgado-Sosa v. Sessions*, 882 F.3d 451, 457-59 (4th Cir. 2018) (kinship ties were “one central reason” for persecution where applicant was threatened by gang members on account of his familial relationship to stepfather, even though the stepfather may have been targeted for financial gain or personal vendettas). Accordingly, the characteristic found offensive by the cartel – the one they sought to overcome – was Ms. I-M’s membership in the particular social group comprising of “Family Members of E-F.” *Matter of Mogharrabi*, 19 I&N Dec. 437, 446 (BIA 1987).

C. Ms. I-M Suffered Past Persecution on Account of Her Particular Social Group Comprising of Crime Witnesses Who Report to Law Enforcement

1. Ms. I-M’s Proposed Particular Social Group Comprising of Crime Witnesses Who Report to Law Enforcement is Cognizable

The particular social group comprising of “crime witnesses who report to law enforcement” is cognizable. *Garcia v. Att’y Gen.*, 665 F.3d 496 (3d Cir. 2011) (citing *Acosta*, holding that applicant shared a “common immutable characteristic” with other civilian witnesses who have the “shared past experience” of assisting law enforcement against gangs that threaten communities because it is a characteristic that members cannot change); see also, *Gashi v. Holder*, 702 F.3d 130 (2d Cir. 2012) (holding that the group was immutable due to the shared past experience of witnessing a crime and cooperating with law enforcement, was socially visible due to Gashi being labeled as a traitor for meeting with international investigators).

In Ms. I-M’s case, the particular social group consisting of “crime witnesses who report to law enforcement” is immutable where it is defined by an unchangeable past experience. *Matter of Acosta*, 19 I&N Dec. at 233. The past experience is particular in a person’s history because of the

specific acts and experiences that the group evokes – witnessing the crime itself and reporting the crime to the police – compared to non-witnesses who are unfamiliar with those procedures.

Lastly, this group is socially distinct where it is well understood in Honduran society that crime witnesses are perceived to be a separate group within the country. As country conditions reports make clear, discussed *supra*, being a witness to a crime is often lethal. Exhs. N and U. Hondurans are afraid to report crimes because they fear that they may be seen at the police station, labeled as an informant, and later murdered for trying to report a crime. *Id.* It is well-known in Honduran society that witnesses to crimes committed by criminal organizations, such as gangs and cartels, face retaliatory violence or death. Exh. U, at 49. Furthermore, the Honduran government has recognized “crime witnesses” to be a particular social group in need of protection by way of its Witness Protection Law. *Id.* at 39. Although the law has proven to be wholly ineffective, it nevertheless provides evidence that crime witnesses are a distinct group within Honduras. *Id.* Accordingly, the “crime witness” particular social group formulation is cognizable.

2. Ms. I-M Was Persecuted On Account of Her Membership in the Particular Social Group Comprising of Crime Witnesses Who Report to Law Enforcement

As explained, Ms. I-M had valuable evidence pertaining to her brother’s murder, by way of recordings of Cubeta and his cartel’s threats to E-F on E-F’s cellphone. Exh. C. In addition, she had witnessed the crime committed against her when she was shoved, extorted, and threatened by Cubeta’s cartel. *Id.* Ms. I-M attempted to report to the police, showing her face at the police station with evidence, demanding to give her report and be heard by officers who refused to help her. *Id.* In so doing, she called attention to herself as a witness and became a threat to the cartel. The police, recognizing Ms. I-M as a witness and thus a threat, then told the cartel that she had reported them. *Id.* When the cartel next saw Ms. I-M, they explicitly threatened to kill her if she ever tried to talk

to the police again. *Id.* In other words, Ms. I-M's attempt to report the cartel's crimes to the police "one central reason" why Cubeta and his cartel threatened her with death. INA § 201(b)(1)(B)(i).

Beyond this direct evidence of the cartel's motive to threaten to kill Ms. I-M on account of her membership in the particular social group comprising of "crime witnesses who report to law enforcement," there is country conditions evidence to support the claim that it is the pattern or practice of cartels killing witnesses to crimes and/or police informants, discussed *supra*. Exhs. M, N, and U; *see also*, C.F.R. §§ 208.13(b)(2)(iii), 1208.13(b)(2)(iii). Indeed, even E-F's father, was advised by a public prosecutor that if he continued to seek justice for E-F's death, he would likely be killed by the cartel for trying to report their crimes. Exh. I. The danger faced by Mr. F-L provides further evidence that not only are crime witnesses and/or open and notorious police informants in serious danger of being killed by cartels, but that they are a recognized and distinct group within Honduran society, and that cartels believe them to be a threat. Accordingly, Ms. I-M suffered past persecution on account of her membership in the particular social group comprising of crime witnesses who report to law enforcement.

D. Ms. I-M Suffered Past Persecution on Account of Her Imputed Political Opinion

What constitutes "political opinion" is broad and fact-specific, and courts view the applicant's claim within the political context of the country. *Castro v. Holder*, 597 F.3d 93, 102-106 (2d Cir. 2010). Additionally, an applicant need not actually hold a particular political opinion, but rather "an imputed political opinion, whether correctly or incorrectly attributed, can constitute a ground of political persecution." *Gao v. Gonzales*, 424 F.3d 122, 129 (2d Cir. 2005). The applicant may show, through direct or circumstantial evidence, that the persecutor's motive arises from the applicant's actual or perceived political belief. *Hernandez Chacon v. Barr*, 984 F.3d 94 (2d Cir. 2020).

The Second Circuit recently reiterated in *Hernandez-Chacon v. Barr* that political expression “involves a complex and contextual factual inquiry into the nature of the asylum applicant’s activities in relation to the political context in which the dispute took place.” *Id.* Where opposition within a certain political context “transcends mere self-protection and represents a challenge to the legitimacy or authority of the ruling regime” it amounts to a political opinion that warrants asylum protection. *Id.* In *Hernandez-Chacon*, the Second Circuit held that the IJ below erred by not considering the petitioner’s imputed political opinion claim, that is, whether the persecutor – a gang member who raped the applicant – did so believing that the petitioner held a political opinion in opposition to sexist cultural norms. 984 F.3d at 105. In so holding, the Second Circuit cited to *Alvarez Lagos v. Barr*, 927 F.3d 236 (4th Cir. 2019), which recognized that the refusal to acquiesce to gang violence can constitute an expression of political opinion. 927 F.3d at 254-55 (where record contained evidence that gang in question would view refusal to comply with demand for sex as “political opposition,” refusal to acquiesce to gang violence and flight to United States could demonstrate imputed anti-gang political opinion that constitutes protected ground for asylum).

1. Ms. I-M Was Persecuted On Account of Her Imputed Political Opinion of Defiance of Cubeta’s Cartel

As explained above, Cubeta was vice mayor from 2014 to 2018, during which time he continued to operate his drug trafficking business in collaboration with the President’s brother, Tony Hernandez. Exh. O; Exh. Q. Before and after his tenure as vice mayor, Cubeta acquired and maintained considerable political power, which he still maintains today. See generally Exhs. O-U.

Also in 2018, Cubeta loaned E-F money for school, and thereafter demanded that E-F work for him by selling drugs in order to pay him back. Exh. C. E-F refused to help Cubeta sell drugs.

Id. Because E-F refused to work for Cubeta's cartel, he was seen as acting in defiance of Cubeta's authority, and was killed because of that defiance. See, e.g., Exh. I (explaining, "Cubeta killed him because E-F disrespected his authority. Cubeta did not need my son's money. He wanted to prove a point, I think, to the town that he was the boss and he was in control.>").

Similarly, after Cubeta's cartel murdered E-F, they began threatening Ms. I-M. The cartel threatened to kill Ms. I-M if she did not pay off her brother's debt. Exh. C. Failure to pay would be seen as an overt act of defiance and opposition to Cubeta and his cartel. *Id.* In other words, the cartel would impute a political opinion of defiance and opposition to Cubeta and his cartel to Ms. I-M for her failure to pay. Ms. I-M knew this, and so when she could no longer afford to pay the cartel, she and her daughter H-B knew the cartel would kill them. *Id.*

Additionally, Ms. I-M attempted to report Cubeta's crimes to the police. Exh. C. Upon the police informing the cartel that Ms. I-M attempted to report them, the cartel threatened to kill Ms. I-M if she sought out help again. *Id.* In other words, if Ms. I-M attempted to undermine or defy Cubeta's authority again, and thereby express opposition to Cubeta's power, the cartel would kill her.

Cubeta remains a powerful political and public figure in Honduras by way of his many familial connections in government, his multiple businesses, and considerable wealth. *See generally* Exhs. O-U. Cubeta still controls the police and has vast authority to carry out illicit acts with impunity. Exh. G-I. Indeed, his continued ability to carry out these illicit acts after his departure from political office demonstrates his continued political power in Honduras and his insulation from prosecution.

Freedom from prosecution and accountability for illicit actions is political power. More specifically, Cubeta's freedom to extort civilians, and murder those who defy him, without

accountability is political power. Thus, when Ms. I-M failed to pay her brother's debt to Cubeta and attempted to report the cartel's crimes to the police, it is seen as an act of political defiance, or political opposition, to Cubeta's power. Cubeta's cartel threatened her and her daughter's lives because of her failure to respect that authority by way of failing to pay E-F's debt and attempting to report the cartel to the police. *Castro*, 597 F.3d at 100 (holding that resisting corruption and abuse of power, including non-governmental abuse of power, can be an expression of political opinion).

While the extortion and concrete death threats amount to persecution in and of themselves giving rise to a presumption of future fear, they also independently create a powerful case for a fear of future persecution based on Ms. I-M's political opinion in defiance of Cubeta's cartel, as discussed below.

E. The Honduran Government is Unable and Unwilling to Protect Ms. I-M

It is well established that private acts may constitute persecution if the government has proven unwilling to control such actions. *Ivanishvili*, 433 F.3d at 342. An applicant for asylum fleeing persecution from private actors must show that the "government protection from such harm in their home country is so lacking that their persecutors' actions can be attributed to the government." *Matter of A-B-*, 27 I&N Dec. 316, 317 (A.G. 2018).

Here, it is abundantly clear that the Honduran government is neither able nor willing to avail Ms. I-M of protection: because (1) the local government, in and of itself, was responsible for some of her traumatic experiences; and (2) to the extent that the death threats were carried out by private actors, the government was unwilling and unable to control them. As discussed *supra* in the country conditions section, Cubeta has close ties to the Honduran government. Cubeta was even the vice mayor of Gracias, Lempira from 2014 to 2018. Cubeta has numerous family

members and close friends in powerful positions throughout the Honduran government and judiciary. Exhs. O-S. Numerous members of the Honduran government were found to have worked directly with Cubeta in the transnational trafficking of drugs and weapons through Honduras and into the United States. Exh. O. As explained in Ms. I-M's affidavit, the witness affidavits herein, and country conditions reports, it is well-known that Cubeta pays officials to shield him and his cartel from prosecution and to inform Cubeta of any activity which would threaten his business, such as witnesses reporting his cartel's crimes. Exhs. C, G-I, O-Q. Finally, the Honduran government's failure to extradite Cubeta to the United States for criminal prosecution demonstrates an unwillingness, or at a minimum, an inability, to hold Cubeta accountable for his crimes. Exh. T.

F. Ms. I-M Is Entitled to a Presumption of Future Persecution

Upon a showing of past persecution, the burden of proof shifts to the government, who must demonstrate that the conditions in the applicant's home country have fundamentally changed to the degree that the danger no longer exists, or that the applicant could avoid future persecution by internal relocation, which must be reasonable. 8 CFR § 208.13(b)(1)(i).

1. Ms. I-M Cannot Reasonably Relocate Within Honduras

Cubeta has substantial ties to the Honduran government, including the President himself, which controls the whole of Honduras. *See generally*, Exhs. O-P. As explained by Ms. I-M in her affidavit, "Cubeta is powerful throughout the entire country, and he has ties all the way up to the President himself. We cannot be safe anywhere in Honduras." Exh. C. Internal relocation is not reasonable where Cubeta will have the power to find her and kill her regardless of where she resides in Honduras.

Beyond being detected by Cubeta, Ms. I-M would face other serious harm if she was forced to return to Honduras and relocate internally by way of pervasive gang crime in the country. 8 C.F.R. § 1208.13(b)(1)(iii)(B). *See generally* Exhs. N, U-Z. Other serious harm does not need to occur on account of a protected ground; rather, it need only rise to the severity of persecution. 65 FR 76121 to 76, 133 (2000); *Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012).

2. Country Conditions Have Not Fundamentally Changed Since the Family Fled to the United States

OPLA counsel cannot meet their burden to demonstrate that there has been a fundamental change in country conditions in Honduras such that the danger Ms. I-M no longer exists. 8 C.F.R. § 208.13(b)(1)(i)(A). As explained above, despite Cubeta being indicted in the Southern District of New York for drug and weapons trafficking into the United States in January 2019, nearly twenty months ago, he remains in Honduras and insulated from extradition to the US. Exh. T. Many high-level drug traffickers in Honduras were extradited in 2019, but Cubeta remains safe from prosecution in Honduras. *See, e.g.,* Exh. P.

G. Assuming Arguendo That She Has Not Established Past Persecution, Ms. I-M Can Establish a Well-Founded Fear of Future Persecution

1. Ms. I-M Has a Subjectively Reasonable Fear of Future Persecution

Should the Court not find that Ms. I-M suffered past persecution, she can independently establish a well-founded fear of future persecution on account of her two particular social groups (“family members of E-F” and “Honduran crime witnesses who report to law enforcement”)¹¹ and imputed political opinion.

Her fear is subjectively genuine as demonstrated in Ms. I-M’s affidavit (Exh. C), her psychological evaluation (Exh. L), and as can be confirmed through credible testimony at her

¹¹ The cognizability of Ms. I-M’s particular social groups comprising of “family members of E-F” and “crime witnesses” were articulated *supra* subsections I.B & I.C, and need not be duplicated here.

Individual Hearing. In her affidavit, Ms. I-M explains that Cubeta's cartel killed her brother E-F and is believed to have killed her other brother, E-R. Exh. C. They later extorted Ms. I-M to pay her brother's debt, and threatened to kill her if she did not comply. *Id.* By murdering both of her brothers, Cubeta's cartel has demonstrated a propensity and ability to kill Ms. I-M's family without consequence, and accordingly, her fear that she will continue to be extorted or killed is subjectively genuine. *Id.*

The harm Ms. I-M fears, specifically extortion and death, rises to the level of persecution. The feared harm of death and extortion is on account of her membership in the particular social group consisting of family members of E-F. It is not required to show evidence that Ms. I-M would be singled out individually for persecution because she has established that – with the death of her two brothers and the threats to her daughter – there is a pattern and practice of persecution of her family. *See* 8 CFR 1208.13(b)(2)(iii). Nevertheless, as explained above, Ms. I-M has shown that she would be singled out. When Ms. I-M was first attacked by Cubeta's cartel, they told her that they knew her name and knew she was E-F's sister. Exh. C. The cartel threatened Ms. I-M and said “if you don't pay your brother's debt, you will end up like a dog – the way we left your brother.” *Id.* The cartel's emphasis on Ms. I-M's familial relationship to her brother demonstrates that this is the cartel's motive for targeting Ms. I-M. *Matter of S-P-*, 21 I&N at 486 (finding that “the motive for harm should be determined by considering the statements or actions of the perpetrators”). Critically, it is clear that had Ms. I-M not been the sister of E-F, the cartel would not target her and threaten to kill her if she did not pay E-F's debt. Accordingly, the characteristic found offensive by the cartel – the one they seek to overcome – is Ms. I-M's membership in the particular social group comprising of “Family Members of E-F.”

Lastly, Ms. I-M also fears death on account of her particular social group comprising of Honduran crime witnesses who report to law enforcement. When she first tried to report the cartel's crimes to the police, the cartel found out and threatened to kill Ms. I-M if she tried to report them. Exh. C. Ms. I-M genuinely fears that if forced to return to Honduras, the cartel will carry out that threat, especially since she has now returned from the US and will be presumed to have informed authorities of Cubeta's cartel's crimes while in the US. *Id.*

Additionally, Ms. I-M has a subjectively genuine fear of future persecution on account of her imputed political opinion; namely, opposition to Cubeta and his cartel. As explained above, freedom from prosecution and accountability for illicit actions is political power. More specifically, Cubeta's freedom to extort civilians, and murder those who defy him, without accountability is political power. Thus, when Ms. I-M failed to pay her brother's debt to Cubeta, and when she attempted to report Cubeta's crimes to the police, it is seen as an act of political defiance, or political opposition, to Cubeta's power. Cubeta's cartel threatened her and her daughter's lives because of her failure to respect that authority by way of failing to pay E-F's debt and reporting the cartel to the police, which forced Ms. I-M to seek refuge in the United States. *Castro*, 597 F.3d at 100 (holding that resisting corruption and abuse of power, including non-governmental abuse of power, can be an expression of political opinion); *Delgado*, 508 F.3d at 706 (holding that refusing to give technical assistance to the FARC in Columbia can be expression of political opinion); *Yueqing Zhang*, 426 F.3d at 542, 546-48 (holding that retaliation for opposing corruption of local officials can constitute persecution on account of political opinion); *Osorio*, 18 F.3d at 1029-31 (holding that "union activities [can] imply a political opinion," and not merely economic position).

Moreover, once Ms. I-M fled Honduras, the cartel will now presume defiance, if it had not done so already. According to expert Dr. Thomas Boerman, “the act of fleeing or going into hiding to avoid gangs’ [or cartels’] demands and risk of harm is perceived as a challenge and antagonistic act...[so] attempting to escape by fleeing will result in even more serious reprisals.” Exh. AA. According to Boerman, once threatened, the threat does not diminish over time; should a person flee, that threat is amplified because “the intent is to convey a message to the larger community that attempting to escape by fleeing will result in even more serious reprisals.” Exh. AA.

Accordingly, because Cubeta and his cartel believe Ms. I-M to hold a political opinion in opposition to Cubeta and his cartel, they will certainly target her for persecution in the form of death upon her return to Honduras.

2. Ms. I-M’s Fear of Future Persecution is Objectively Reasonable

Ms. I-M’s fear is corroborated extensively by objective country conditions reports, including the US Department of Justice, as well as other major publications, such as UNHCR, the Congressional Research Service, Human Rights Watch, among others which have documented Cubeta’s crimes explicitly and have discussed the level of impunity with which cartels commit crime generally in Honduras. See, Exhs. N-Z. Her fear is also corroborated by the witness affidavits she submitted. Accordingly, Ms. I-M’s fear is objectively reasonable since there is at least a ten percent chance that Ms. I-M will be killed upon return to Honduras.

II. IN THE ALTERNATIVE, MS. I-M AND HER DAUGHTER ARE ENTITLED TO WITHHOLDING OF REMOVAL

Should the Court deny Ms. I-M and H-B’s applications for asylum, they are alternatively entitled to withholding of removal. A finding of past persecution gives rise to a presumption of future persecution sufficient to establish eligibility for withholding of removal. 8 C.F.R. §§

208.16(b)(1)(i), 1208.16(b)(1)(i). Even an applicant who has not shown that he has suffered past persecution is statutorily eligible for withholding of removal if it is “more likely than not [that he] would be persecuted” on account of a statutory ground and that it would not be unreasonable to internally relocate. 8 C.F.R. § 1208.16(b)(2). As discussed, Ms. I-M suffered past persecution and fears future persecution on account of her membership in two particular social groups: (1) family members of E-F and (2) Honduran crime witnesses who report to law enforcement, as well as her imputed political opinion of defiance to Cubeta and his cartel’s authority. The arguments above, as supported by country conditions documented herein, demonstrate that it is more likely than not Ms. I-M and her daughter H-B will be persecuted on the aforementioned protected grounds if forced to return to Honduras. Therefore, the Court must grant Ms. I-M and H-B’s application for withholding of removal.

III. THE CONVENTION AGAINST TORTURE

Should Ms. I-M and H-B’s application for asylum and withholding of removal be denied, they must be granted protection under CAT. Under *In Re J-E-*, 23 I&N Dec. 291 (BIA 2002), for an act to rise to the level of torture, it must satisfy each of the following elements: “(1) the act must cause severe physical or mental pain and suffering; (2) the act must be intentionally inflicted; (3) the act must be inflicted for a proscribed purpose; (4) the act must be inflicted by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim; and (5) the act cannot arise from lawful sanctions.” In analyzing a CAT claim, all evidence relevant to the possibility of future torture “must be considered.” *Id.*; 8 C.F.R. § 208.16(c)(3). As described at great length above and addressed explicitly herein, Ms. I-M is more likely than not to be tortured upon return to Honduras.

1. Ms. I-M Will Be Tortured Upon Return to Honduras

Upon return to Honduras, Ms. I-M fears that she will be killed by Cubeta and his cartel. She also fears that her daughter, H-B, will be killed with the explicit purpose of punishing Ms. I-M for not paying off her brother's debt to Cubeta. Death constitutes torture. *Garay Reyes v. Lynch*, 842 F.3d 1125, 1141-42 (9th Cir. 2016) (finding murder to constitute severe physical pain and suffering). Furthermore, threats of death to a child may also constitute torture. See, e.g., *Kone v. Holder*, 620 F.3d 760, 765-66 (7th Cir. 2010) (where child may be subject to FGM if returned to country, parent may suffer direct psychological harm cognizable under CAT). Accordingly, the harm Ms. I-M fears upon forced return to Honduras rises to the level of torture.

2. Ms. I-M Will Be Tortured with the Acquiescence of a Public Official for Unlawful Purposes

As established in the country conditions reports discussed herein, Cubeta and his cartel are insulated from criminal prosecution in Honduras due to Cubeta's numerous familial and personal connections to Honduran government officials. *See generally* Exhs. M-R. Cubeta himself was vice mayor of Gracias, Honduras and therefore a public official who used his position of power to trafficking drugs and weapons through Honduras to the United States. Exh. N.

CONCLUSION

It is respectfully submitted that Ms. I-M and H-B are statutorily eligible for asylum, or alternatively withholding of removal or protection under CAT.

Respectfully Submitted,

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Dated: XX XXXX