

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
18201 SW 12TH ST, BLDG 1 STE C
MIAMI, FL 33194

Serving Immigrants Inc.
Cuprys, Magdalena
4011 West Flagler St. Suite 501
Miami, FL 33134

IN THE MATTER OF _____ FILE A _____ DATE: Oct 4, 2017

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

✓ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 22041

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
18201 SW 12TH ST, BLDG 1 STE C
MIAMI, FL 33194

___ OTHER: _____


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IMMIGRATION COURT

CC: VILLA, OLGA, ESQ.,
18201 SW 12TH STREET
MIAMI, FL, 33194

FF

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
KROME SERVICE PROCESSING CENTER
MIAMI, FLORIDA**

IN THE MATTER OF:

A#

RESPONDENT

IN REMOVAL PROCEEDINGS

CHARGE:

Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA):
An alien who has been convicted of, or who admits having committed, or
who admits committing acts which constitute the essential elements of a
crime involving moral turpitude (other than a purely political offense) or an
attempt or conspiracy to commit such a crime.

Section 212(a)(6)(A)(i) of the INA: An alien without being admitted or
paroled, or who arrives in the United States at any time or place other than
as designated by the Attorney General.

Section 212(a)(7)(A)(i)(I) of the INA: Any alien who at the time of
application for admission, is not in possession of a valid unexpired
immigrant visa, reentry permit, border crossing card, or other valid entry
document required by the Act, or who is not in possession of a valid
unexpired passport, or other suitable document, or identity and nationality
document if such document is required by regulations issued by the
Attorney General pursuant to Section 211(a) of the Act.

APPLICATIONS: Section 208 of the INA: Asylum.

Section 241(b)(3) of the INA: Withholding of Removal.

Sections 1208.16 and 1208.17 of Title 8 of the Code of Federal Regulations
(C.F.R.): Withholding or Deferral of Removal under the Convention
Against Torture (CAT).

ON BEHALF OF RESPONDENT

Magdalena E. Cuprys, Esq.
Law Offices of Magdalena Cuprys
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ON BEHALF OF DEPARTMENT

Rodion Tadenev, Assistant Chief Counsel
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18201 SW 12th Street
Miami, Florida 33194

WRITTEN DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

██████████ (Respondent) is a native and citizen of Honduras who arrived in the United States at an unknown place on approximately June 15, 2005. *See* Exh. 1, Notice to Appear; *See* Exhibit 4, Form I-589. Respondent entered without being admitted or paroled. *Id.*

On January 3, 2017, the Department of Homeland Security (DHS) served Respondent with a Notice to Appear (NTA), charging him with removability under INA §§§ 212(a)(2)(A)(i)(I), 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). *See* Exh. 1, NTA.

On January 4, 2017, DHS filed the NTA with the Court, thereby initiating removal proceedings and vesting the Court with jurisdiction. *See* 8 C.F.R. § 1003.14(a) (2017). At a master hearing on January 24, 2017, Respondent admitted the factual allegations set forth within the NTA, conceded inadmissibility and declined to designate a country of removal. Based on the Respondent's admissions and concession, the Court sustained the charges of inadmissibility by clear and convincing evidence and designated Honduras as the country of removal. *See* INA § 240(c)(2)(A) (2017). At that time, Respondent was represented by Attorney Alexander Alfano (Alfano). Attorney Alfano requested time to prepare Respondent's case. The Court continued the case to February 7, 2017.

At a master calendar hearing on February 7, 2017, a new attorney entered a notice of appearance. At the hearing, Attorney Daniel Ricciulli (Ricciulli) of Varga's Immigration Attorneys requested a continuance to prepare Respondent's case. The Court granted Attorney Ricciulli's request. At the next master calendar hearing on February 14, 2017, the Court continued the case again to allow Attorney Ricciulli to file an asylum application on Respondent's behalf. However, Attorney Ricciulli did not file an asylum application at the next master calendar hearing on February 28, 2017. Instead, he requested a continuance for attorney preparation. At the next master calendar hearing on March 16, 2017, no asylum application was filed. Attorney Ricciulli requested yet another continuance to prepare the asylum application, which the Court granted.

On April 24, 2017, Attorney Magdalena Cuprys entered her appearance as the attorney of record. On May 1, 2017, Respondent, through counsel, filed Form I-589, Application for Asylum and Withholding of Removal. *See* Exh. 4.

The Court conducted an individual hearing on July 31, 2017, at which time Respondent and his aunt, ██████████ provided testimony. The Court ran out of time on July 31, 2017 and reset the case to August 3, 2017 to issue its decision orally.

On August 3, 2017, Respondent requested additional time to file written closing arguments. The Court granted Respondent's request and gave Attorney Cuprys until August 14, 2017 to file written arguments. The Court also gave DHS until August 24, 2017 to file a written response. Finally, the Court scheduled a master calendar hearing on August 31, 2017 to issue an oral decision.

Respondent's attorney missed her filing deadline. On August 30, 2017, Respondent filed a Motion to Continue Master Calendar Hearing to Accept Additional Country/Background Information Filed and Motion to Extend Time for Counsel to File Closing Brief. On the same date, Respondent filed three separate Notices of Filing of Documents in Support of Respondent's Defense in Removal Proceedings.¹ The first filing contains Tabs A-F. *See* Exh. 9. The second filing contains Tabs G-K. *See* Exh. 10. The third filing contains Tabs L-M. *See* Exh. 11.

At the master calendar hearing on August 31, 2017, Respondent filed a fourth Notice of Filing of Documents in Support of Respondent's Defense in Removal Proceedings containing Tabs N-R. *See* Exh. 12. At that hearing, the Court orally denied Respondent's motions. Further, the Court gave DHS until September 14, 2017 to respond to Respondent's new evidentiary filings and submit written arguments, if so desired. The Court reserved its decision. To date, DHS has not filed a written response.¹

II. SUMMARY OF THE EVIDENCE

The record in this proceeding consists of documentary exhibits one (1) through twelve (12) and the testimony of Respondent and ████████. Pages six (6) through eight (8) of Exhibit five (5) contain news articles in Spanish with no English translation. Having heard no objections to the remaining pages of Exhibit five (5), the Court admitted the exhibit with the exception of pages six (6) through eight (8) at the individual hearing on July 31, 2017. Having heard no objections to Exhibits one (1) through four (4) and six (6) through eight (8), the Court admitted the aforementioned exhibits into the evidentiary record at the individual hearing on July 31, 2017.

On August 31, 2017, DHS objected to the newly filed exhibits, namely nine (9) through twelve (12), as untimely. The Court agrees that Respondent did not timely file exhibits nine (9) through twelve (12); however, the Court afforded DHS two weeks to respond. Further, the Court has considered Respondent's young age, the traumatic nature of his arrival to the United States, which the Court will discuss at further length later, and Respondent's due diligence to pursue avenues of relief. Lastly, one of the main issues in the case is whether extraordinary circumstances justify tolling the one-year filing deadline. In order to toll the one-year filing deadline based on ineffective assistance of counsel, Respondent must comply with the requirements set forth in *Matter of Lozada*. *See* 8 C.F.R. § 208.4(a)(5)(iii); *See generally* 16 I&N Dec. 637 (1988). Respondent attorney argued that she felt it was incumbent upon her to thoroughly investigate the work (or lack therefore) done by Respondent's prior attorneys before filing a formal bar complaint of ineffective assistance of counsel. Attorney Cuprys commenced her representation on April 24, 2017 and in a relatively short period undertook the preparation of Respondent's asylum case and an investigation into Respondent's ineffective assistance of counsel claims. Only recently did she feel that she had enough information upon which to base such a claim. *See* Exhs. 11, Tab M and Exh. 12, Tab P. Lastly, the wealth of country condition documents demonstrates the viable nature of Respondent's asylum claim and goes to show that it would have been feasible to file at least a

¹ The Court takes note that Hurricane Irma hit South Florida over the weekend of September 8th and into Monday, September 11, 2017. The Court reopened on September 18, 2017. As of today's date, DHS has not requested an extension to file any additional arguments or evidence.

B. Testimonial Evidence

i. Testimony of Respondent

a. Direct Examination

Respondent testified that he was born on January 27, 1997 in Tegucigalpa, Honduras. Respondent came to the United States in 2005 at the age of eight (8). Respondent was staying with his maternal grandmother in Honduras in 2005 when he was abducted by unknown individuals. The kidnappers pulled up in a van, covered Respondent's face and held him in a house for a "couple months." The kidnappers demanded that Respondent's mother pay a ransom and threatened to sexually abuse Respondent if the ransom went unpaid. Respondent managed to escape and flag down a bystander who called the McAllen, Texas police.

The police contacted Respondent's mother in the United States. Respondent's mother contacted her sister, [REDACTED], Respondent's aunt, who flew from Florida to take custody of Respondent. Respondent states that extortion was the purpose of the abduction. He is not aware of any arrests made in relation to his abduction.

Respondent's first arrest took place in 2015 for leaving the scene of an accident and driving under the influence of alcohol. The State did not pursue charges against Respondent for this arrest.

Respondent's second arrest took place in October 2015 for strong-arm robbery and petit theft. Respondent got a ride from a taxi driver to his father's house. Respondent told the driver that he did not have the funds to pay the fare, but that his father would be able to pay upon arrival. During the course of the ride, the driver told Respondent that he would call the police to make sure he got paid and he would keep Respondent's backpack as collateral. Respondent tried to grab his bag from the driver. Respondent plead guilty to strong-arm robbery to avoid any further jail time without thinking of the consequences. Respondent received a sentence of two years' probation, 100 hours of community service and court costs.

Respondent was also arrested in May 2016 for fleeing/eluding. Respondent was driving a vehicle with three passengers. A police vehicle activated its lights and sirens. Respondent did not see the lights at first. Once he saw the lights, he got nervous because Respondent witnessed a bar fight earlier that night, so he delayed in pulling over. Respondent was not involved in the fight, but the victim accused Respondent of pointing a gun at her. The police found a firearm in the vehicle. Neither the vehicle nor the firearm belonged to Respondent. The car owner was drunk, so Respondent volunteered to drive. Surveillance footage from a nearby tattoo shop confirmed that Respondent was not the perpetrator. The firearm charge was dropped. Respondent was only charged with fleeing/eluding. Respondent plead guilty to fleeing/eluding. He was sentenced to two years' probation.

Respondent is on a payment plan to satisfy his court costs. He has not violated probation. He was in the midst of completing his court-ordered community service when he was arrested by DHS.

Respondent received Deferred Action for Childhood Arrivals (DACA) in 2013 at the age of 16. He was scheduled to renew his DACA status in 2018, but the United States Citizenship and Immigration Service revoked his DACA status on July 21, 2016 due to his convictions.

Respondent's mother, stepfather, two-year-old brother and grandmother reside in the United States. Respondent's younger brother was born in the United States. Respondent's grandmother is a United States citizen. Respondent's mother is the beneficiary of an I-130 visa petition filed by her mother (Respondent's grandmother). Respondent has two aunts in the United States. [REDACTED] is a United States citizen and [REDACTED] is seeking asylum.

Respondent's biological father, [REDACTED] resides in the United States, but is undocumented.

Respondent has identified as bisexual since the age of 15. He prefers relationships with males. Respondent has been involved in one homosexual relationship with [REDACTED] since age 15. Respondent's first sexual encounter was with [REDACTED] at the age of 16. Respondent hid the relationship from various individuals until age 18 or 19, specifically his biological father. In other words, Respondent did not openly date [REDACTED] until age 18. Respondent has always been open about his sexuality with his mother. Respondent reports that he and [REDACTED] went to the beach, restaurants, shopping and the beach together. [REDACTED] ended the relationship when Respondent was detained by DHS. Respondent has kissed other men, but does not consider these to be relationships.

Respondent has several tattoos. One is an "eight ball" with a crown. Respondent believes that people in Honduras might construe this to represent membership in the Mara 18 gang. Respondent also believes that gangs might perceive his "305" tattoo and markings around it to add up to the number 18. He also has a "SB" tattoo, which stands for "South Beach." From one vantage point, the tattoo looks like "13," which might lead some people to perceive Respondent as a member of the MS-13 gang.

Gang members forcibly took over Respondent's Uncle Walter's home in Honduras and nearly beat him to death because he is gay.

Respondent's [REDACTED] came to the United States due to gang threats against her and her children (Respondent's cousins). The gangs attempted to recruit [REDACTED] sons, [REDACTED] and [REDACTED], but they refused to join. [REDACTED] made a report to the police indicating that the gangs threatened her family. The gangs learned of the report and "tagged" [REDACTED] and her family for revenge. [REDACTED] also has an "eight ball" tattoo similar to Respondent's tattoo. [REDACTED] and her children abandoned their home to prepare to come to the United States. Respondent's cousin [REDACTED] resides in Miami and Respondent's cousin [REDACTED] lives in Houston.

Respondent is afraid that gangs will target him based on these tattoos, his homosexuality and the actions the gangs took against Respondent's aunt and cousins. He fears death. Gang members in particular view homosexuals as "perverted." He reports that the gangs and the police work hand in hand, so he would not be able to receive protection.

b. Cross Examination

Respondent stated that gangs seek revenge against anyone who files a police report implicating them in criminal activity.

Respondent admitted that prior to being pulled over for fleeing/eluding, he saw his friend/codefendant pull the gun at the bar and point it at the victim. This was the first time Respondent saw the gun. Respondent just wanted to "get out of there" (the bar). Respondent's friend/codefendant was very drunk, so Respondent drove the codefendant's car and the codefendant sat in the passenger seat. Respondent did not tell police that his friend/codefendant had a gun.

[REDACTED] knows that Respondent is bisexual. While Respondent has never explicitly informed [REDACTED] of his sexuality, Respondent's mother informed [REDACTED] that Respondent is bisexual. [REDACTED] met [REDACTED] during a family holiday celebration. She witnessed Respondent and [REDACTED] kissing. Respondent's cousins and friends are also aware of his sexuality.

At the age of 19, Respondent informed his biological father about his sexuality. Respondent's father was upset. Respondent's father does not think bisexuality is appropriate. Respondent dated a woman named [REDACTED] at the age of 17 to appease his father.

ii. Testimony of Respondent's [REDACTED]

a. Direct Examination

[REDACTED] was born on [REDACTED]. She is 48 years old. She worked as a beauty consultant in Honduras and made a good living.

[REDACTED] identified Exhibit 5, page 4 as the report she gave to police in Honduras regarding the gangs' attempts to recruit her sons and harm her family.

In April 2014, [REDACTED] stopped working due to the gangs' efforts to threaten, harass and harm her family. Gangs approached [REDACTED] sons outside school to recruit them. On one occasion in 2013, a teacher had to intervene to stop the gangs from taking her sons. This incident led [REDACTED] to file a police report in July 2013. The police took no action. The gangs also passed by the [REDACTED] home on motorcycles. They surrounded the [REDACTED] home and asked for money. They threatened to harm the family - "we know you have family in the United States and we know that you travel." [REDACTED] speculates that the gangs targeted her family because they had family in the United States and they were perceived to have money.

[REDACTED] sent her children to the United States on August 6, 2013, while she remained behind to gather her affairs. [REDACTED] believes that her children were in more danger due to the gangs' pattern of recruiting youth. [REDACTED] moved to a "different zone" two and half-hours away from the capitol [REDACTED] while she wound down at work and prepared to depart Honduras. While in Danli,

Ortega was attacked by the "same gang" and beaten. The attackers said they had been "looking for me."

On May 20, 2014, [REDACTED] came to the United States permanently. Prior to that, [REDACTED] visited the United States approximately 17 times. Each visit lasted a few weeks.

The gangs took [REDACTED] Uncle Walter's home in 2014 and beat him. The gang took the house because the gang wanted to use it for operations. They beat Walter because he would not leave the house. [REDACTED] speculates that the gangs targeted him because he is from a family of means, he has ties to the United States and he is gay. Walter informed [REDACTED] that the gangs referenced his sexual orientation when they beat him. In Honduras, gay people are viewed as "less than" other people. Walter now lives in a city outside the capitol and works in the fields.

Ortega discussed Respondent's kidnapping in 2005. She confirmed that Respondent was abducted by unknown individuals. [REDACTED] thinks Respondent was abducted to extort money from Respondent's family. She also believes that Respondent was brought to the United States as part of an employment or organ trafficking operation.

Approximately five (5) years ago, [REDACTED] learned of Respondent's sexual orientation from her sister (Respondent's mother). Respondent's mother had her suspicions about Respondent's sexual orientation, which were confirmed when she saw him being intimate with another boy. [REDACTED] met Respondent's partner, [REDACTED], two years ago at her home. Respondent introduced [REDACTED] as his boyfriend and [REDACTED] recalls witnessing them kissing. [REDACTED] also attended [REDACTED]'s baby shower.

[REDACTED] states that a woman named [REDACTED] is the only female that Respondent dated. [REDACTED] met [REDACTED] at a party. [REDACTED] described [REDACTED] as a 19-year-old Cuban student. [REDACTED] states that Respondent dated [REDACTED] to hide his sexual orientation from family members who may not approve. Respondent's father does not approve of his sexual orientation.

[REDACTED] believes that Respondent will be harmed or killed in Honduras due to his sexual orientation and his tattoos. She also believes the same people who harmed her family might harm Respondent. Respondent will not be safe anywhere because the gangs have spies everywhere.

b. Cross-Examination

[REDACTED] believed her children were at risk because the gangs recruit youth. She felt that she faced less risk because she is a grown woman. As a result, she stayed behind in Honduras for several months after she sent her children to the United States.

The gangs specifically target gay youth for recruitment. They are also regularly beaten.

Respondent's mother asked [REDACTED] to keep Respondent's sexuality a secret. Only [REDACTED], Respondent's mother and Respondent's cousin are aware of his sexuality.

III. COUNTRY CONDITIONS

The Court has considered the country condition evidence placed in the record. The Respondent presented several articles pertaining to violence and intimidation by state agents, individuals, and gangs against members of the LGBTI community in Honduras. See Exhs. 5, 7, 9-11.

The 2016 Honduras Department of State Human Rights Report indicates, among other things, that Honduras is a constitutional, multi-party republic. See Exh. 5, at 1. In November 2013, the country held national and local elections; International observers generally recognized the elections as transparent, credible and fair. *Id.*

Human rights problems include violence against and harassment of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. *Id.* Other serious human rights violations were widespread impunity due to corruption and institutional weakness. *Id.* There are multiple reports that the government or its agents committed arbitrary or unlawful killings. *Id.* at 2. Further, some members of police committed crimes, including crimes linked to local and international organizations. *Id.* at 2, 10. While the government took some steps to prosecute and punish officials who committed abuses, the legal proceedings moved too slowly or failed to convict the responsible parties. *Id.* at 2. There were also allegations of judicial corruption. *Id.*

Further, organized criminal elements, including local and transnational gangs and narcotics traffickers, were significant perpetrators of violent crimes and committed acts of murder, extortion, kidnapping, torture, human trafficking, and intimidation of journalists, women and human rights defenders. *Id.* at 1.

The law states that sexual orientation and gender identity characteristics merit special protection from discrimination and includes these characteristics in a hate crime amendment to the penal code. *Id.* at 34. Nevertheless, societal discrimination against the LGBTI community was widespread. *Id.* Since 2009, there have been 218 reports of violent deaths against LGBTI persons (emphasis added). *Id.* Non-governmental organizations documented multiple instances of assault and discrimination against members of the LGBTI community. *Id.*

The law provides criminal penalties for corruption by officials; however, the government did not implement the law effectively and officials often engaged in corrupt practices with impunity. *Id.* at 21. From 2008 to 2015, there were 3,471 complaints about public corruption. *Id.* at 22. The government issued 283 indictments – 9 resulted in a conviction, 29 were resolved without a conviction and 14 remained pending for more than three years. *Id.*

The law in Honduras prohibits torture and other cruel, inhuman, or degrading treatment or punishment, but NGOs reported complaints of abuses by members of security forces on the street and in detention centers. *Id.* at 5. The United Nations Committee Against Torture expressed concern over numerous reports of human rights violations, including torture, by members of the security forces. *Id.* As of September, there were 221 complaints implicating members of the security forces or other government officials in torture or other cruel or inhuman treatment in 2016. *Id.* The Public Ministry had 49 active torture cases against members of the police and military as of October 2016. *Id.*

Respondent filed additional country reports from various news outlets, including a 2016 article from Pink News indicating a drastic increase in the risk of torture, prison and murder of LGBT people since left-wing president Manuel Zelaya was ousted in 2009. *See* Exh. 5, page 14. Similarly, a Guardian article states that Honduras has one of the highest numbers of transgender murders relative to its population. *Id.* at 17. The author notes that people have been able to kill with impunity, regardless of the victim's sexuality. *Id.* According to the Inter-American Commission on Human Rights, LGBT murders are more likely to go unpunished due to discriminatory stereotypes popular among the police. *Id.* at 18.

A 2014 article from Insight Crime reports that the principal victimizers of Honduras' LGBTI community are police and criminal gangs. *Id.* at 19. Criminal organizations forced members of the LGBTI community to sell drugs and perform sexual acts. *Id.* A 2017 article from the same source reports that death is inevitable for gay gang members. *Id.* at 52. Respondent has submitted other similar articles from CNN, the BBC, and Human Rights Watch. Respondent's late-filed exhibits on August 30, 2017 contain additional articles from sources such as the Center for Gender & Refugee Studies, contain further support for the timely-filed country condition reports found at Exhibits five (5) and seven (7).

IV. BURDEN OF PROOF AND CREDIBILITY

Respondent bears the burden of proving that he is statutorily eligible for relief and, where applicable, that he merits a favorable exercise of the Court's discretion. *See* INA § 240(c)(4)(A); 8 C.F.R. § 1240.8(d). The Court will consider whether the testimony offered is credible, persuasive, and fact-specific when determining whether Respondent has satisfied his burden of proof. *See* INA § 240(c)(4)(B). Credibility is an "individualized assessment" which requires the Court to consider all evidence and testimony set forth by an applicant for relief. *See Wu v. U.S. Att'y Gen.*, 712 F.3d 486, 497 (11th Cir. 2013). In applying the "totality of the circumstances" approach, the Court will assess:

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). An applicant's testimony alone may be sufficient to meet his burden of proof without corroboration if it is credible, persuasive, and fact-specific. *See Matter of L-A-C-*, 26 I&N Dec. 516, 518 (BIA 2015) (citing INA § 208(b)(1)(B)(ii)); 8 C.F.R. § 1208.13(a).

Overall, Respondent was responsive, detailed and candid. Further, Respondent's testimony was internally and externally consistent, particularly in relation to Ortega's testimony and the evidentiary record. Based on the totality of the circumstances, the Court finds the Respondent to be credible.

The Court also finds Ortega to be credible. Her testimony was responsive, articulate and genuine. Her testimony was consistent with Respondent's testimony, the police report located at Exhibit 5, page 4 and other documents within the evidentiary record.

V. APPLICATION FOR ASYLUM, WITHHOLDING OF REMOVAL, AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE

A. Asylum

To qualify for asylum under INA § 208, Respondent must establish that: (1) his application was timely filed under INA § 208(a)(2)(B); (2) he is not statutorily barred from relief under INA § 208(b)(2); (3) he is a "refugee" within the meaning of INA § 101(a)(42)(A); and (4) he merits asylum in the exercise of discretion under INA § 208(b)(1)(A). *See* 8 C.F.R. § 1208.13(a); *see also* *Matter of Acosta*, 19 I&N Dec. 211, 218–19 (BIA 1985), *modified on other grounds by* *Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987).

i. Timely application

An applicant who seeks asylum must establish by clear and convincing evidence that he filed his application within one year of his last arrival in the United States. *See* INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2). Respondent entered the United States on or about June 15, 2005 and filed his Form I-589 with the Court on May 1, 2017. *See* Exh. 4. Respondent filed his I-589 application nearly twelve (12) years after arriving in the United States. *See* INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2).

An application for asylum that fails to meet the one-year deadline may be considered if the applicant demonstrates to the satisfaction of the Attorney General the existence of changed circumstances which materially affect the applicant's eligibility or extraordinary circumstances relating to the delay in filing an application. *See* INA § 208(a)(2)(D); 8 C.F.R. § 1208.4(a)(4)-(5).

Extraordinary circumstances may include, among other things, serious illness or mental or physical disability, ineffective assistance of counsel or a legal disability such as being an unaccompanied minor. *See* INA § 208(a)(2)(E); 8 C.F.R. § 1208.4(a)(5)(ii) (identifying having a legal disability (e.g. being an unaccompanied minor) during the one year period after arrival as an extraordinary circumstance)). The Court conducts an individualized analysis of the facts of each particular case to determine whether (i) extraordinary circumstances exists, (ii) the extraordinary circumstances are directly related to the applicant's failure to file the application within the one year period, and (iii) the delay in filing was reasonable under the circumstances. *Id.* at 287-88. Additionally, the applicant must establish that the circumstances "were not intentionally created by the alien through his or her own action or inaction." *Id.* at 288; 8 C.F.R. § 1208.4(a)(5).

Respondent's arrival in the United States is not typical. An unidentified criminal organization abducted Respondent from his grandmother's home in Honduras when he was eight (8) years old and transported him to the United States. The ransom demand suggests that the abductors were motivated by money. Respondent managed to escape and flag down a bystander in McAllen, Texas. His aunt Marylu took custody of Respondent and brought him to Florida.

While Respondent's parents were already in the United States at that time and was legally "accompanied" after he was safely in the care of his family, he was a very young boy when he was transported into the United States against his will. As a result, the Court finds that Respondent's minority constitutes an extraordinary circumstance.

Respondent reached the age of majority on January 27, 2015. However, Respondent applied for and received DACA in 2013 at the age of sixteen (16). Upon receiving DACA, he had no reason to pursue any other form of relief. 8 C.F.R. § 1208.4(a)(5)(iv) (explicitly list as an extraordinary circumstance "an applicant who maintained Temporary Protected Status, lawful immigrant or nonimmigrant status, or was given parole").

USCIS revoked Respondent's DACA status on July 21, 2016. From the Court's point of view, the crux of the one-year filing deadline issue is whether Respondent filed within a reasonable period after his status expired. A little more than nine (9) months passed between the date Respondent's DACA status expired and the date he filed his asylum application. Case law indicates that a 6-month presumption applies beyond the extraordinary circumstances but exceeding six months may be unreasonable. *Matter of T-M-H- & S-W-C-*, 25 I&N Dec. 193 (BIA 2010) (citing regulatory history). While the timing of Respondent's I-589 filing takes him outside the presumptively reasonable timeframe, the Court still *may* find the timing of the filing reasonable under the circumstances.

Several factors weigh in favor of finding that the nine (9) month delay is reasonable in this case. First, Respondent was unaware that USCIS revoked his DACA status on July 21, 2016. To this day, he has not seen the USCIS notice revoking his status. He only learned of the revocation when DHS detained him in January 2017.

Second, since learning of his DACA revocation, Respondent actively pursued an asylum claim long before his asylum application was filed. Through no fault of his own, his prior attorneys failed to file an asylum application promptly. Respondent, his mother and his father provided written affidavits regarding their communications with Attorneys Alfano and Ricciulli, as well as their expectations based on the attorneys' representations. *See* Exh. 12, Tabs N-P. Within days of being detained by DHS, Respondent's mother retained Attorney Alfano. *Id.* She informed Attorney Alfano about Respondent's sexual orientation and inquired as whether this would be a potential basis for asylum. *Id.* Attorney Alfano asked Respondent's mother to fill out a number of forms and provide a copy of Ortega's asylum application. *Id.* He also indicated that he would promptly file an asylum application on Respondent's behalf. *Id.*

Respondent's initial master calendar hearing took place on January 10, 2017. Attorney Alfano entered his appearance on January 19, 2017. If Alfano had diligently prepared and filed a bare-bones asylum application shortly after proceedings commenced in early January 2017, Respondent's application would have fallen within the 6-month presumptive period. Yet, Attorney Alfano never filed an application for asylum. Once Respondent learned that Attorney Alfano was not meeting his expectations, his family hired a new attorney, Matus Varga. *Id.* at Tab P. Upon retaining Attorney Varga, the Respondent informed him that he wanted to seek asylum. *Id.* Attorney Daniel Ricciulli, an associate at Varga's Immigration Associates, entered an appearance at a master calendar hearing on February 7, 2017 and requested a continuance to prepare

Respondent's case. On February 14, 2017, Attorney Ricciulli appeared again and the case was continued to February 28, 2017 to file an asylum application. *Id.* No asylum application was presented on February 28, 2017 or at the subsequent master calendar hearing on March 16, 2017. Again, when Respondent learned that his attorney was not meeting his expectations, he hired a third attorney, Magdalena Cuprys. Attorney Cuprys entered an appearance on April 24, 2017 and filed an asylum application within one (1) week on May 1, 2017. *See* Exh. 4.

The Court acknowledges that Respondent did not fully comply with the three *Lozada* requirements until August 31, 2017, after the individual hearing concluded. *See* 8 C.F.R. § 1208.4(a)(5)(iii). However, the Court also takes into consideration Attorney Cuprys' hesitance to file a formal complaint against Respondent's two prior attorneys without fully investigating the scope of representation and the efforts that both attorneys made to meet the terms of representation. In other words, Attorney Cuprys did not take filing a complaint against her colleagues lightly, as it requires making allegations against her colleagues. On August 8, 2017, Respondent's mother completed a Florida Bar Inquiry/Complaint form regarding Attorney Alfano's representation. *See* Exh. 11, page 337. On August 31, 2017, Respondent's mother completed a Florida Bar Inquiry/Complaint form regarding Attorney Varga's representation. *See* Exh. 12, page 360. Attorney Cuprys indicated that both complaints were filed with the Florida State Bar. She acted diligently, but not rashly. The Court finds Attorney Cuprys' arguments to be reasonable and justifiable under the circumstances. The Court also finds that Attorney Cuprys acted with reasonable diligence to remedy prior attorneys' errors.

In light of the aforementioned factors, the Court finds that Respondent actively and relentlessly pursued an asylum claim from the time he learned of his DACA revocation in January 2017. Through no fault of his own, his application for asylum was not presented to the Court until May 1, 2017. Respondent and his family hired three different attorneys and conveyed their desire to seek asylum to all three attorneys. Despite Respondent's efforts, his prior two attorneys did not promptly file an asylum application. Based on Respondent's relative youth, the circumstances of his arrival in the United States in 2005 and his diligent pursuit of an asylum claim, the Court finds the existence of extraordinary circumstance and that Respondent filed his asylum application within a reasonable time given those extraordinary circumstances.

ii. Statutory bars

An alien is statutorily ineligible for asylum if he has been convicted of a particularly serious crime. INA § 208(b)(2)(A)(ii). Similarly, a conviction for a particularly serious crime poses a statutory bar to withholding of removal under the INA and CAT. *See* § 241(b)(3); *see also* 8 C.F.R. § 1208.16(d)(2). An aggravated felony conviction with a sentence of at least five years of incarceration is considered a *per se* particularly serious crime for withholding of removal. *See* INA § 241(b)(3)(B) of the Act.

Even in the absence of a five year confinement sentence, an offense can be considered a particularly serious crime under the circumstance-specific approach set forth in *Matter of N-A-M-*, 24 I&N. Dec. 336, 342 (BIA 2007). The Court must consider (1) the nature of the conviction; (2) the circumstances and underlying facts of the conviction; (3) the type of sentence imposed. *Id.* Due to Respondent's sentences, none of his convictions fall within one of the

aggravated felony subsections of INA § 101(a)(43). Therefore, the Court will proceed to the circumstance-specific approach.

The Respondent's criminal history over the past two years causes great concern to this Court. Respondent has been arrested on at least three occasions since 2015. He was arrested in 2015 for driving under the influence of alcohol and leaving the scene of an accident. No convictions resulted from this arrest.

Respondent was arrested in late 2015 for strong-arm robbery and petit theft. Respondent claims when the taxi driver pulled up to Respondent's home, the taxi driver took Respondent's backpack as collateral for an unpaid cab fare while Respondent exited the vehicle to enter the home and ask his father to pay for his cab fare. Respondent attempted to grab his backpack from the taxi driver. While these are serious charges, Respondent's testimony and the police report consistently indicate that nobody was harmed as result of the incident. *See* Exh. 2. In fact, Respondent injured his knee and wrist during the incident. *Id.* Respondent accepted a plea deal because the case would be completely swiftly and he would not serve any additional jail time. On June 14, 2016, Respondent received a sentence to two years probation, community service and court costs. *Id.*

Finally, Respondent was arrested in 2016 for fleeing/eluding and aggravated assault with a firearm. Respondent claimed no involvement in the firearm offense. He indicated that the prosecutor dropped the firearm charge due to video footage exonerating him from the allegation that Respondent pointed a firearm at someone. The record supports Respondent's claim that the firearm charge was dropped, as he was only indicted for fleeing/eluding. *See* Exh. 3. In terms of Respondent's conduct, he testified that he was driving his friend's vehicle because the friend was intoxicated. When the police activated lights and sirens, Respondent became nervous due to the fact that he witnessed his friend point a gun at someone at a bar earlier that evening. He hesitated, but ultimately pulled over. Nobody was injured. On June 14, 2016, Respondent received a sentence of two years probation, a suspended license and court costs. *Id.*

While the Court is not pleased with Respondent's three arrests since he reached the age of majority, the circumstances surrounding each offense are minor in nature and did not result in physical injuries. Respondent has never been sentenced to a term of imprisonment and has not violated the terms of his probation. His conduct is not advisable or wise, but it also was not particularly serious in nature. The Court finds that none of Respondent's convictions constitute particularly serious crimes; therefore, he is not statutorily barred from seeking asylum and withholding of removal.

iii. "Refugee" Within the Meaning of INA § 101(a)(42)(A)

An applicant for asylum must demonstrate that he is a "refugee" within the meaning of INA § 101(a)(42)(A). A "refugee" within the meaning of INA § 101(a)(42)(A) is a person who is outside of his country of nationality or last residence, unable or unwilling to return to that country, and unable or unwilling to avail himself of the protection of that country because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. *See* INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b)(1). The applicant's fear of persecution must be countrywide. *See Acosta*, 19 I&N

Dec. at 235. Additionally, the persecution must be inflicted either by the government or by persons the government is unable or unwilling to control. *Id.* at 222.

a. Past Persecution

Determining what constitutes persecution is a “highly fact-intensive inquiry” which requires a “totality of the circumstances” approach. *Shi v. U.S. Att’y Gen.*, 707 F.3d 1231, 1235–36 (11th Cir. 2013) (citation omitted). The term “persecution” means harm or suffering inflicted upon an individual as punishment for possessing a belief or characteristic, which the persecutor seeks to overcome. *See Acosta*, 19 I&N Dec. at 222. It is an “extreme concept” requiring “more than a few isolated incidents of verbal harassment or intimidation, unaccompanied by any physical punishment, infliction of harm, or significant deprivation of liberty.” *Shi*, 707 F.3d at 1235 (citations and internal quotation marks omitted). In evaluating a claim of past persecution, the Court must consider the cumulative effect of the alleged persecutory harms an applicant has endured. *See Mejia v. U.S. Att’y Gen.*, 498 F.3d 1253, 1257 (11th Cir. 2007) (finding past persecution where the applicant received threats and attempted attacks over an eighteen month period which culminated in an attack at gun point); *see also Niftaliev v. U.S. Att’y Gen.*, 504 F.3d 1211, 1214, 1217 (11th Cir. 2007) (holding that the cumulative effect of multiple attacks, arrests and a fifteen day detention constituted past persecution).

In the instant case, Respondent testified that he was kidnapped at the age of eight (8) and held hostage for two months. This type of conduct might rise to the level of past persecution; however, the kidnappers’ ransom demands indicate that they were motivated by money, as opposed to Respondent’s race, religion, nationality, political opinion or membership in a particular social group. Respondent discussed no other abuse, harassment or harm in Honduras and he has resided in the United States since he fled from his captors in McAllen, Texas in 2005. As such, Respondent’s claim cannot be based on past persecution. The Court finds that Respondent has not suffered past persecution based on one of the five statutory grounds.

b. Well-Founded Fear of Future Persecution

Respondent is not entitled to a rebuttable presumption of future persecution, so in order to be eligible for asylum, he must show that future persecution is reasonably possible. *See* 8 C.F.R. § 1208.13(b)(1). An applicant has a well-founded fear of future persecution if: (1) the applicant has a fear of persecution in his or her country of nationality or, if stateless, in his country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) there is a reasonable possibility of suffering such persecution if he were to return to that country; and (3) he is unable or unwilling to return to, or avail himself of the protection of, that country because of such fear. *See* 8 C.F.R. § 1208.13(b)(2)(i). A well-founded fear of persecution does not exist where the applicant could avoid persecution by relocating to another part of the country and such relocation would be reasonable. *See* 8 C.F.R. § 1208.13(b)(2)(ii). In other words, the applicant’s fear of persecution must be countrywide. *See* 8 C.F.R. § 1208.13(b)(3); *D-I-M-*, 24 I&N Dec. at 450; *Matter of Acosta*, 19 I&N Dec. at 235.

Respondent’s credible testimony established that he has a subjectively genuine fear of persecution on account of his homosexuality in Honduras. Further, in addition to Respondent’s testimony, the evidence demonstrates that Respondent’s subjective fear of persecution at the hands

of the police or government officials and/or gang members is objectively reasonable, given the country conditions there, as will be shown below. See Exhs. 5, 7.

1. Particular Social Group

An applicant who alleges persecution on account of membership in a PSG, bears the burden of establishing that the alleged PSG 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, 244 (BIA 2014). An immutable characteristic is a trait “that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *Castillo-Arias v. U.S. Att’y Gen.*, 446 F.3d 1190, 1193 (11th Cir. 2006) (quoting *Acosta*, 19 I&N Dec. at 233)); see also *Matter of W-G-R-*, 26 I&N Dec. 208, 212 (BIA 2014). It may be an innate trait, such as sex or race, or a shared past experience. *Acosta*, 19 I&N Dec. at 233. A group defined with particularity has “discrete and have definable boundaries” and is not “amorphous, overbroad, diffuse, or subjective.” *W-G-R-*, 26 I&N Dec. at 214. A group is socially distinct when the society in question perceives or recognizes the persons sharing the particular characteristic as constituting a group. *Id.* at 217. Evidence that suggests that a group is distinct in a particular society includes “country conditions reports, expert witness testimony, [] press accounts of discriminatory laws and policies [and] historical animosities.” *M-E-V-G-*, 26 I&N Dec. at 244.

Respondent proposes four (4) different social groups: (1) family; (2) sexual orientation; (3) deported, tattooed males; and (4) homosexual, tattooed males. The Court only needs to reach the first proposed social group to resolve this case.

Immutability

An immutable characteristic is one that is either “beyond the power of an individual to change or is so fundamental to individual identity or conscience that it ought not be required to be changed.” *Acosta*, 19 I&N Dec. at 233. The shared characteristic may be an innate trait or some extrinsic shared group experience, to be analyzed on a case-by-case basis. *Id.* A group united by homosexuality is clearly united by an immutable characteristic that it “ought not be required to . . . change.” See *Acosta*, 19 I&N Dec. at 233; See also *Matter of M-E-V-G-*, 26 I&N Dec. 227, 245 (BIA 2014); *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822–23 (BIA 1990), *adopted as precedent in all future proceedings*, Att’y Gen. Order No. 1895-94 (June 16, 1994) (affirming the grant of withholding of removal where Respondent asserted the immutable characteristic of homosexuality). The Court finds that sexual orientation is an immutable characteristic, as it is inherent to one’s very identity as a person. See *Matter of Toboso-Alfonso*, 20 I&N Dec. 819 (BIA 1990).

Particularity

A proposed social group is sufficiently particular when its immutable characteristic “provides[s] a clear benchmark for determining who falls within the group.” *M-E-V-G*, 26 I&N Dec. at 239 (citing *Matter of A-M-E & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007)). In *Matter of S-E-G-*, 24 I&N Dec. 579, 582, the BIA further refined its definition of a “particular social group” as “requir[ing] that the group have particular and well-defined boundaries, and that it possess a

recognized level of social visibility.” The essence of the “particularity” requirement is whether the proposed group can accurately be described in a manner sufficiently different that the group would be recognized, in the society in question, as a discrete class of persons. *S-E-G-*, 24 I&N Dec. at 585.

Homosexuality is not “subjective, inchoate, [or] variable.” *A-M-E- & J-G-U-*, 24 I&N Dec. at 76. The group is based on an immutable characteristic that provides an adequate benchmark for defining members of the group, and it does not rely on vague or subjective characteristics. The defining immutable characteristic of homosexuality—a romantic and sexual affinity for one’s same gender—defines a “discrete” group of individuals without relying on “vague or subjective” interpretations by members of the relevant society. *M-E-V-G-*, 26 I&N Dec. at 245 (citing *Toboso-Alfonso*, 20 I&N Dec. at 820–22). The country condition reports, as well as Respondent’s credible testimony, establish that LGBTI communities suffer many types of very serious discrimination in Honduras, including intimidation, verbal and physical aggression, and arbitrary detention by municipal and police. *See* Exh. 3 at 5. Respondent is particularly susceptible to this serious discrimination against the LGBTI community because, as he testified, he accepts that he is bisexual and has lived openly since becoming an adult. A group with sufficient particularity is not amorphous, diffuse, overbroad, or subjective. *M-E-V-G-*, 26 I&N Dec. at 239. It has “discrete and ...definable boundaries.” *Id.* Because homosexuals are not a “potentially diffuse segment of society,” and for the reasons above, the Court finds that homosexuality is sufficiently particular to define a particular social group. *See S-E-G-*, 24 I&N Dec. at 584–85.

Social Distinction

A cognizable particular social group is also one that is recognized as distinct within its own society. *M-E-V-G-*, 26 I&N Dec. at 239. The term “social distinction” changes the form—not the substance—of prior Board precedent requiring that a particular social group demonstrate “social visibility.” *Id.* at 236–37. It is not necessary for the characteristic to be “visible” in the literal sense; status as a member of a particular group in which it is possible for mistreatment to occur because of such status in appropriate circumstances could be found to be persecution on account of . . . membership in a particular social group. *Id.* at 245 (citing *Toboso-Alfonso*, 20 I&N Dec. at 820–22). In sum, society can consider persons to comprise a group without being able to identify the group’s members on sight. *Id.*

To be social distinct, society must perceive it as such. *M-E-V-G-*, 26 I&N Dec. at 240. Society’s perception, as opposed to that of the persecutor, is what counts. *Id.* at 242. The key is whether society makes a meaningful distinction based on upon the common immutable characteristic. *Matter of A-R-C-G-*, 26 I&N Dec. 388, 393 (BIA 2014).

The Court finds that members of the LGBTI community are socially distinct. As discussed above, the Honduran reports within the evidentiary record indicate that gang organizations, police, government civilians and private citizens target members of the LGBTI community and engage in harassment, intimidation, discrimination and violence against such members. *See* Exhs. 5, 7. Further, there is widespread impunity for crimes committed against LGBTI persons. *Id.* Members of the LGBTI community are perceived by society as “different,” or as Respondent and Ortega states, “perverted.”

Based on the foregoing, the Court finds that Respondent is a member of a particular social group comprised of LGBTI individuals.

2. Nexus

Respondent also must establish that there is a reasonable possibility that he will be persecuted on account of his membership in the aforementioned social group. *See* INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b)(1). An applicant who seeks asylum bears the burden of showing a “nexus” between the persecution and the claimed protected ground. *See Rodriguez Morales v. U.S. Att’y Gen.*, 488 F.3d 884, 890 (11th Cir. 2007). The protected ground must serve as at least one central reason for the persecution suffered. *See* INA § 208(b)(1)(B)(i); *Sanchez Jimenez v. U.S. Att’y Gen.*, 492 F.3d 1223, 1232 (11th Cir. 2007). In order to establish a claim, an applicant must provide some evidence, direct or circumstantial, that the persecutor’s motive to persecute actually arises from the asserted protected ground. *See Matter of N-M-*, 25 I&N Dec. 526, 529 (BIA 2011). It cannot play a minor role in the applicant’s mistreatment. *Id.* at 531. It also cannot be incidental, tangential, superficial, or subordinate to another reason for the harm. *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007) (citing *Matter of S-P-*, 21 I&N Dec. 486, 490 (BIA 1996)). Furthermore, the applicant must demonstrate that the persecutor would not have harmed the victim if the trait did not exist. *N-M-*, 25 I&N Dec. at 531.

While many Honduran citizens are vulnerable to threats by intimidation and harm by criminal elements and the law enforcement officers who collude with them, it is clear from Respondent’s and Ortega’s testimony, as well as the country condition reports, that Respondent is especially vulnerable to harm by the groups based on his sexuality. Harm could include murder, rape, strangulation, stabbings, arbitrary detention, sexual assault, etc. *See* Exh. 5, page 23, 44, 176. Since 2009, there have been more than 200 reports of violent deaths against LGBTI persons. *See* Exh. 7, page 34; *See also* Exh. 5, pages 14-15, 17, 19, 44-45, 99, 108, 110. From 1994 to 2008, only two (2) LGBTI persons were murdered in comparison to thirty-one (31) per year since 2009. *Id.* at 45.

Widespread corruption within all levels of government creates an environment that allows private and government actors to harm LGBTI persons with impunity. The law provides criminal penalties for corruption by officials; however, the government did not implement the law effectively and officials often engaged in corrupt practices with impunity. *See* Exh 7, page 21; *See also* Exh. 5, page 17-19, 22, 44, 67, 110; Exh. 9, page 176, 210. From 2008 to 2015, there were 3,471 complaints about public corruption. *Id.* at 22. The government issued 283 indictments – 9 resulted in a conviction, 29 were resolved without a conviction and 14 remained pending for more than three years. *Id.*

Gangs also operate with impunity and often in concert with government officials. While the Court acknowledges that gangs often commit arbitrary violence, they often single out LGBTI persons for recruitment, violence and death. *See* Exh. 5, page 52; *See also* Exh. 9, page 177, 204, 206, 210.

While some portions of the government are attempting to enforce laws banning corruption and laws that protect LGBTI individuals, those efforts have been stymied, aside from a very small number of convictions. Corruption, government collusion with gangs and impunity

still reign in Honduras. *See id.* The Court finds that Respondent has met his burden of demonstrating that there is a reasonable possibility that he will be persecuted on account of his sexual orientation in Honduras.

3. Unwillingly or Unable to Control

An applicant must also 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. An applicant who alleges persecution by a private actor must present evidence that he reported the persecution to his local government authorities or that he could not rely on his local authorities, because they would have been unable or unwilling to protect him. *Ayala v. U.S. Att'y. Gen.*, 605 F.3d 941, 950 (11th Cir. 2010); *see also Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000) (finding that an alien was eligible for asylum even though she did not seek protection from her government, because the country conditions report indicated that they would have been unable or unwilling to help her).

There are two groups of potential persecutors in this case – law enforcement personnel and private citizens. The Court will address these groups separately.

Law Enforcement

The country conditions reports for Honduras demonstrate discrimination and various forms of violence against Respondent's particular social group. In Honduras, police are not only aware of the violence against members of the LGBTI community, but contribute to it as well. *See* Exh 7, page 21; *See also* Exh. 5, page 17-19, 22, 44, 67, 110; Exh. 9, page 176, 210. From 2008 to 2015, there were 3,471 complaints about public corruption. *Id.* at 22. While the government issued 283 indictments related to corruption, only nine (9) resulted in a conviction, 29 were resolved without a conviction and 14 remained pending for more than three years. *Id.* Clearly, the laws were not implemented effectively because officials still often engage in corrupt practices with impunity. *See* Exh. 3 at 80.

Additionally, Respondent and Ortega testified credibly that the police do not effectively investigate crimes, bring perpetrators to justice or protect victims. Ortega noted that while the police took her statement in Danli regarding the harassment of her children, the police appeared to take no steps to investigate. Subsequent to the report, Ortega was beaten in Danli by the gang members who were the subject of the report.

Not only does the record support a finding that the government is unwilling and unable to protect Respondent, it also supports a conclusion that the government actively participates in violence toward LGBTI individuals.

Gang Members/Private Actors

As discussed above, gang members often single out LGBTI persons for recruitment, violence and death. *See* Exh. 5, page 52; *See also* Exh. 9, page 177, 204, 206, 210. Further, as law enforcement officers often collude with the gangs. *Id.* Even in the absence of collusion with law enforcement, the government of Honduras has been ineffective in arresting, prosecuting and securing convictions for perpetrators of crimes based on sexual orientation. *See* Exh. 5, page 52;

See also Exh. 9, page 177, 204, 206, 210. Any anti-corruption enforcement efforts have proved to be only marginally effective. This Court finds that the Honduran government would be unable and unwilling to protect Respondent from harm at the hands of private criminal gangs and other private citizens.

4. Individualized Persecution or Pattern

An applicant for asylum must either demonstrate that the danger of persecution is individual to him, or that there is a pattern or practice of persecution of a group of people and that he or she is a member of that group. See 8 C.F.R. 1208.13(b)(2)(iii)(A)–(B). The evidence must demonstrate systematic persecution of a group on account of one of the five protected grounds, and the applicant's membership therein. *Id.* In evaluating whether Respondent demonstrated a well-founded fear of persecution, the applicant need not provide evidence that there is a reasonable possibility he would be singled out individually for persecution if:

(A) The applicant establishes that there is a pattern or practice in his or her country of nationality or, if stateless, in his or her country of last habitual residence, of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and (B) The applicant establishes his or her own inclusion in, and identification with, such group of persons such that his or her fear of persecution upon return is reasonable.

See 8 C.F.R. § 1208.13(b)(2)(iii). As made clear in the previous sections, Respondent has established membership in the LGBTI community. The country condition materials show that members of the LGBTI community are at risk of being harassed, intimidated and physically harmed throughout the country of Honduras, by both private actors and government actors. The record demonstrates that there are widespread reports of law enforcement enabling gang violence by both condoning and participating in violence against members of the LGBTI community. For this reason, this Court finds Respondent's fear of gang violence to demonstrate a fear of police as well, because—at least on this record—they amount to one-in-the-same. The Court also finds that Respondent has established a pattern or practice of persecution of people like him by both criminal gangs and public officials.

In accordance with 8 C.F.R. § 1208.13(b)(2)(iii), Respondent has established through country conditions and his consistent testimony that there is persecution in Honduras of persons similarly situated to him and that his personal identification with the group provides a reasonable fear of persecution. Respondent testified that he has identified as bisexual or homosexual since the age of 15 and was in a long-term relationship with Mr. Ordonez. He was open to various family members and displayed affection for Mr. Ordonez in their presence. The gangs harmed Respondent's uncle in part to gain control of his home, but also in part due to his homosexuality. Respondent fears the same fate. That Ortega's police report resulted in no action and led to subsequent harm by the gang members that were the subject of the report support the conclusion that Respondent faces harm nationwide. Based on the entirety of the record, the Court finds a pattern of persecution against individuals similarly situated to Respondent.

5. Internal Relocation

In order to succeed in a claim to a well-founded fear of future persecution, Respondent bears the burden of demonstrating that it would not be reasonable under the circumstances to internally relocate. The 2016 Department of State Human Rights Report indicates widespread corruption throughout Honduras. Law enforcement officials, military officials and other governmental officials collude with the cartels regularly. Respondent would be a target regardless of the place he resides in Honduras. Further, Respondent has not resided in Honduras since the age of eight (8). His parents reside in the United States, albeit unlawfully. He also has several cousins, aunts and uncles in the United States. Respondent's relative youth when he arrived in the United States, his unfamiliarity with Honduras and his lack of ties in Honduras would make relocation incredibly challenging. As such, I find that internal relocation is not reasonable in this particular case.

VI. CONCLUSION


Respondent met his burden of establishing a reasonable possibility that he will be persecuted in the future persecution and therefore is entitled to asylum under INA § 208. Given that the Court grants Respondent's application for asylum, the Court will not address his concurrent application for withholding of removal and protection under the CAT, because Withholding of Removal and Withholding protection under the CAT provides for a lesser form of relief than asylum. *See I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999).

In light of the foregoing, the following order is entered:

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that Respondent's asylum application pursuant to INA § 208 is **GRANTED**.

DATED this 4th day of October, 2017.


Sarah Mazzie
Immigration Judge

APPEAL DATE: November 3, 2017