

No. 21-1436

In the Supreme Court of the United States

LEON SANTOS-ZACARIA,

Petitioner,

v.

MERRICK GARLAND, U.S. Attorney General,

Respondent.

**On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit**

JOINT APPENDIX

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Relevant Docket Entries

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

LEON SANTOS ZACARIA,
Petitioner,

v.

MERRICK GARLAND, ATTORNEY GENERAL,
Respondent

No. 19-60355

<u>No.</u>	<u>Date</u>	<u>Description</u>
1	05/28/2019	IMMIGRATION CASE docketed ***
12	06/12/2019	IMMIGRATION RECORD FILED ***
14	07/22/2019	PETITIONER'S BRIEF FILED ***
19	08/29/2019	RESPONDENT'S BRIEF FILED ***
23	09/19/2019	APPELLANT'S REPLY BRIEF FILED ***

29	01/10/2022	PUBLISHED OPINION FILED

30	01/10/2022	JUDGMENT ENTERED AND FILED

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DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

_____)
In the Matter of:)
SANTOS-ZACARIA, Leon) File No.: A 098-372-
In Removal Proceedings.) 949
_____)

APPEAL BRIEF

I. Factual and Procedural History

Respondent, Leon Santos Zacarias (“Estrella”), reentered the U.S. without inspection on May 25, 2018 from which the Department of Homeland Security

(“DHS” or “Department”) sought to reinstate Respondent’s prior order of removal pursuant to INA § 241(a)(5). After a finding that Respondent established a reasonable fear of persecution on August 31, 2018, the DHS issued a Notice of Referral for an Immigration Judge. Exh. 2. Respondent filed an Application for Withholding and protection under the Convention Against Torture on October 5, 2018, seeking protection from returning to Guatemala based on past incidents of harm and fear of future harm on account of her sexual orientation and gender non-conformity. Exh. 3.

Respondent’s individual hearing took place on November 29, 2018. At the individual hearing, Respondent was the sole witness. Respondent testified as to her experiences in Guatemala and the reasons she came to the United States to seek humanitarian relief. Tr. at 28-63.

The IJ denied all relief in an oral decision issued the same day at the individual hearing. I.J. 1-7. The IJ found Respondent to “to be credible in most respects” and “on the material issues [she] found him [sic] to be credible.” I.J. at 2. The IJ acknowledged that Respondent’s membership in his proposed particular social groups (“PSG”) as a gay Guatemalan and transgender Guatemalan. I.J. at 3, 4. However, in her decision the IJ never conducted an individual analysis on each proposed PSG, appearing to lump sexual orientation and gender identity together in her decision. The IJ found that the sexual assault that Respondent suffered at 12 years-old, the death threats and harassment did not constitute past persecution, but it is unclear if she considered them cumulatively. I.J. at 5. Specifically discussing the sexual assault of Respondent as a child, the IJ stated that there was no indication “this individual was motivated for any improper

purpose,” although the attacker specifically mentioned the assault occurred because Respondent was gay. I.J. at 6; Exh. 4, Tab B, i at 17.

The IJ found that Respondent’s fear that she would be persecuted in Guatemala because of her “gay or transgender lifestyle” to be speculative, and thus found that Respondent could not succeed in establishing relief through a well-founded fear. I.J. at 6, 7. The IJ mentions that it is possible for an applicant to meet their burden through a “pattern and practice of an identifiable group,” but then never conducts any analysis utilizing any of the record apart from Respondent’s live testimony. I.J. at 6.

The IJ also found that Respondent had not established that the Guatemalan government is unable or unwilling to protect her, again without any reference to the country conditions or exhibits in the record discussing the Guatemalan governments normal treatment of gay or transgender individuals. *Id.*

Without any analysis or reference to the record, the IJ also denied Respondent’s application for protection under the Convention Against Torture in one sentence. Tr. at 7.

Respondent timely filed her Notice of Appeal with the Board of Immigration Appeals on December 3, 2018.

II. Standard of Review

The Board of Immigration Appeals (“BIA” or “the Board”) reviews factual findings of immigration judges for clear error. 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, judgment, and all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

III. Summary of Record Evidence

A. Respondent’s Testimony

Respondent testified that she left Guatemala for Chiapas, Mexico when she was around 13 or 14 years-old. Tr. at 30. Respondent, who now identifies as a woman, said she left Guatemala at such an early age because she felt discriminated against on account of being a gay male. Tr. at 30, 32-34. Respondent first noticed she had feelings for the same sex around the age of 10. Tr. at 32.

As a child in Guatemala, people would make fun of the way she walked or talked and threatened to kill her if she did not leave. *Id.* At the age of 12, Respondent was raped by a man in the community. Tr. at 34. When questioned about the motives of the rapist, Respondent said the perpetrator specifically referenced her homosexuality. Tr. at 35. Respondent did not go to the police to report the rape because she did not feel like the police would help homosexuals. *Id.* Respondent stated that she had discussed the issue with other homosexuals and they told her “the police is [sic] never going to protect us.” *Id.*

On a return visit to Guatemala later in life to see her father, Respondent was questioned about why she did not “walk like a man” and that members of the community wanted her “to get out of there.” Tr. at 33. When Respondent did return to Guatemala, she felt that she had to cut her hair and “dress like a man” to avoid scrutiny and danger. *Id.* Respondent would travel to her parents’ home in Guatemala in a taxi because people on the microbus would make fun of her. Tr. at 41. On the last trip to visit her mother before she came to the United States, Respondent never went outside, going directly from the taxi to inside the house and not leaving. Tr. at 45. Respondent was also sexually assaulted by four men in Chiapas, Mexico in 2018 prior to entering the United States for the last time. Tr. at 38.

Respondent fears that she will be killed if returned to Guatemala because she is “gay and the way [she] act [sic] it’s different.” Tr. at 51. She stated that the police in Guatemala would not protect her and that the police do not help people like her. *Id*

Respondent struggled in her direct testimony and often gave non-responsive answers that received repeated reprimands from the IJ. Tr. at 41, 43, 44, 48, 49. In an effort to appease the IJ Counsel had Respondent verify that everything she told the Asylum Officer in her Reasonable Fear interview was true and correct to the best of her knowledge and adopt her statements in the Reasonable Fear Interview as her testimony for purposes of the individual hearing. Tr. at 50.

B. Respondent’s Reasonable Fear Interview

In Respondent’s Reasonable Fear Interview with the Asylum Office, Respondent stated that she had previously entered the United States in 2008 and 2012 for the same reasons she had entered this time. Exh. 4, Tab B, ii at 17. Respondent said that she was raped by a neighbor at 12 years-old, who kept insulting her during the assault telling her, “You want this because you are this way.” *Id* at 18. The assailant also told her, “You are a ‘maricon’¹ and I want you to suffer this pain so you know how it feels.” *Id*. Respondent felt the neighbor knew she *was* gay from the way she walked and talked. *Id*.

Respondent stated that gay people in Guatemala are treated badly by other members of society in Guatemala suffering from insults and incidents of

¹ “Maricon” is the derogatory slang term often used in Latin American Countries that translates as “queer” or “fag.” Collins Spanish-English Dictionary, found at: <https://www.collinsdictionary.com/us/dictionary/spanish-englishmaric%C3%B3n>.

violence. *Id.* at 19. She felt like she would be targeted in Guatemala if returned because she is gay and “how [she] act[s].” *Id.*

C. Psychological Evaluation of Respondent

Respondent submitted a psychological evaluation from Serena Chaudhry, a Licensed Clinical Social Worker. Exh. 4, Tab B, iii. Mrs. Chaudhry found that Respondent presented with intrusive symptoms of Post-Traumatic Stress Disorder (“PTSD”). *Id.* at 34. Mrs. Chaudhry found “[t]he intrusive nature of Leon’s PTSD symptoms and her placement in segregation are compounded by fear, discrimination and abuse she has experienced at the macro and micro levels of society.” *Id.* at 38. Furthermore, Mrs. Chaudhry concluded in her “clinical opinion that given Leon’s trauma history, the stigma gay and transgender people face in Guatemala, her forced return home could exacerbate her symptoms of PTSD and put her at risk for being ostracized, stigmatized and harmed.” *Id.*

D. Expert Witness Declaration

Respondent offered the testimony and declaration of Clara Jimeno (“Mrs. Jimeno”), an expert witness on Guatemalan country conditions with a specialty in gender-based violence and sexual orientation rights. Ex. 4, Tab B, iv. Respondent’s counsel inquired at a master hearing on October 5, 2018 what the IJ’s preference of the presentation of the expert’s testimony would be. Tr. at 11. After offering to either present the expert’s testimony “telephonic[ally]” or in “declaration” form, the IJ accepted the expert testimony in the form of a written declaration with the simple condition to make Mrs. Jimeno available in case DHS required *voir dire* or cross-examination. *Id.* The Department never sought *voir dire* of Mrs. Jimeno, never objected to the admission of the written declaration as

Mrs. Jimeno's expert testimony, and never requested any cross-examination of Mrs. Jimeno.

In composing her declaration, Mrs. Jimeno spoke with Respondent. Exh. 4, Tab B, iv. Respondent discussed her experiences in Guatemala and the reasons she feared returning to Guatemala. Respondent also revealed to Mrs. Jimeno that when she was raped as a child, the persecutor of the rape in Guatemala "called [her] 'faggot' and told Mr. Santos-Zacarias he wanted [her] to suffer the pain, so that [she] will know how it felt." *Id.* at 63.

Mrs. Jimeno found that Respondent's fears of being returned to Guatemala were "entirely consistent with what [she has] learned through [her] research over the years" and that Respondent's fears were also corroborated by the Human Rights Report for Guatemala from the United States Department of State and other country reports. *Id.* at 46. Quoting the United Nations High Commission for Refugees, Mrs. Jimeno states, "Discrimination against individuals of diverse sexual orientation and/or gender identities is reportedly widespread in Guatemala and such persons have reportedly been targeted for abuse, attacks and murder by gangs and sectors of society, including by the police and other public authorities." *Id.* at 47. "Instead of enacted [sic] laws to protect the equal rights of LGBT persons, Guatemalan Congress is pursuing an agenda to legitimate discrimination against LGBT individuals." *Id.* at 49.

Mrs. Jimeno described the documented increase in country-wide hate crimes and violence against LGBT individuals. *Id.* at 51. "Homosexuality is socially condemned. LGBT persons are rejected, despised and abused in both private and public spheres. Any demonstration of affection of a gay couple in a public space; such as holding hands or kissing is

considered immoral and justifies police intervention. In this context, hate crimes against LGBT members are condoned by the public, state and private institutions, and government officials.” *Id.* Mrs. Jimeno also found that discrimination against LGBT individuals has become “institutionalized” and “LGBT individuals are discriminated against at the labour market, schools, health institutions, housing, banking, or other public services.” *Id.* at 60. Mrs. Jimeno concluded that if returned to Guatemala, Respondent would face a substantial risk of violent homophobia “effectively sanctioned by government authorities” with no safe-haven in Guatemala where Respondent could live openly with her sexual orientation or as a transgender woman. *Id.* at 62.

E. Additional Submissions and Guatemalan Country Conditions for Gay or Transgender Individuals

Record evidence indicates that gay and transgender individuals’ human rights are often neglected and there is a pattern of violence and abuse of gay and transgender persons in Guatemala. *See* Exh. 4, Tab C, *passim*. Respondent submitted over three hundred pages of human rights reports, country conditions reports, and articles that focus on the violent, abusive and discriminatory treatment of gay and transgender individuals in Guatemala and the lack of protections available to gay and transgender individuals. Exh. 4, Tab C at 72-421. Specific evidence corroborating Respondent’s experience in Guatemala and the conditions detailed in the country conditions evidence was provided Respondent’s brother, Alejandro Santos Zacarias. Exh. 4, Tab B, ii. Respondent’s brother discussed that the community in San Pedro Soloma, Guatemala, Respondent’s hometown, “had a community meeting and they told Leon that

[she] could not live in San Pedro Soloma anymore” and they threatened Respondent that if she “did not leave then they were going to bum or kill [her]”

Furthermore, the 2017 United States Department of State Human Rights Report for Guatemala confirms a pervasive pattern of discrimination and violence against gay and transgender individuals with no protection from the Guatemalan government. Exh. 5. The report states that one of the major human rights violations plaguing Guatemala is “police violence against lesbian, gay, bisexual, transgender, and intersex individuals.” *Id.* The report continues on that “[t]he country’s antidiscrimination laws do not apply to LGBTI individuals. LGBTI rights groups stated that police officers regularly engaged in extortion and harassed male and transgender individuals they believed to be sex workers. There was general societal discrimination against LGBTI persons in access to education, health care, employment, and housing. The government undertook minimal efforts to address this discrimination.” *Id.*

IV. Argument

A. Immigration Judge failed to address any of the significant corroborating country conditions evidence that pertained to Respondent’s claims for relief.

The IJ seemed to base her entire decision on the Respondent’s testimony, never once acknowledging any of documentary submissions from the Respondent, including the expert witness declaration or any of the articles discussing country conditions in Guatemala for LGBTQ individuals. An IJ cannot willfully ignore documentary evidence that supports a respondent’s claim in an effort to justify denying relief. See *Adekpe v. Gonzales*, 480 F.3d 525, 530-33 (7th Cir.

2007) (finding that IJ's failure to consider documentary evidence bolstering the applicant's claim was error even if the IJ believed the applicant lacked credibility); *Forgue v. Atry Gen. of the U.S.*, 401 F.3d 1282, 1287 (11th Cir. 2005) (noting that "an adverse credibility finding does not alleviate the IJ's duty to consider other evidence produced by an asylum applicant"); *Camara v. Ashcroft*, 378 F.3d 361, 369-71 (4th Cir. 2004) (upholding the adverse credibility finding but reversing denial of relief where IJ overlooked documentary evidence that provided a strong basis to support claim).

B. The IJ improperly conflates two PSGs in her analysis.

Respondent put forth membership in two PSGs as viable claims for relief that should have been individually analyzed.² The IJ does not separate out Respondent's sexual orientation or gender identity when making her decision and appears to lump them together as being identical. I.J. at 1-7. Sexual orientation and gender identity should not be confused as the same things and each carry different risks. In *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1082 (9th Cir. 2015), the United States Court of Appeals for the Ninth Circuit concluded that "[t]he unique identities and vulnerabilities of transgender individuals must be considered in evaluating a transgender applicant's asylum, withholding of removal or CAT claim." The IJ should have addressed Respondent's claim based on her sexual orientation and separately analyzed the

² Although not directly addressed, the U's decision seems to indicate she believes the both "Gay Guatemalan" and "Transgender Guatemalan" are cognizable PSGs and that issue was never contested by DHS during the entire pendency of proceedings.

possibility of harm that she would face as a transgender individual if returned to Guatemala.

C. Respondent has established past persecution or a well-founded fear on account of a protected ground.

i. Respondent suffered past persecution.

The IJ applied the wrong standard of persecution to Respondent, as much of the harm she suffered was as a child. It would clearly be a traumatizing experience for a 12-year-old child to be harassed, insulted, threatened, and raped. When conducting the analysis of whether Respondent suffered past persecution or not, that harm must be viewed from the vantage point of a child.

It is well established that persecution suffered as a child is defined more liberally than the standard for adults. U.S. Dep't of Justice, Guidelines for Children's Asylum Claims, 1998 WL 34032561 (1998); *see Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir.2004) ("age can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted or whether she holds a well-founded fear of future persecution"); *Jorge—Tzoc v. Gonzales*, 435 F.3d 146,150 (2d Cir.2006) (same); *Abay v. Ashcroft*, 368 F.3d 634, 640 (6th Cir.2004) (same).

Under the correct standard, the harm Respondent suffered as a child would constitute past persecution. The harm Respondent suffered is a direct result of individuals in Guatemala targeting her on account of her sexuality or her identifying as a woman. The rapist specifically said during the assault that his motivation was Respondent's sexuality and effeminate behavior. Exh. 4, Tab B, i at 18.

ii. Respondent has a reasonable fear of future persecution.

Respondent's fear of being singled out for persecution is objectively reasonable based on her own personal experience when in Guatemala and also given the evidence in the documentary portion of the case. Persecution is "conduct [that goes] beyond what might reasonably be characterized as mere harassment in order to rise to the level of persecution." *Gilaj v. Gonzales*, 408 F.3d 275, 285 (6th Cir. 2005). "Nonphysical forms of harm, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment, or other essentials of life, may amount to persecution." *Matter of T-Z-*, 24 l&N Dec. 163 (BIA 2007).

When Respondent briefly returned to Guatemala several times to visit her parents, she felt obligated to change her hairstyle and manner of dress to avoid persecution from other members of the community. Tr. at 33. To avoid harassment and threats, Respondent also felt the need to contract private transportation and remain hidden in her parents' home. Tr. at 41, 45. Even ignoring the physical harm and death threats towards Respondent, the level of discrimination and on restraints on Respondent's ability to live as an openly gay or transgender individual are persecution that she should not be forced to bear.

iii. Respondent has met her burden through a pattern and practice claim.

Given the recent country conditions information, the record supports the conclusion that a pattern and practice of persecution against gay and transgender individuals in Guatemala is occurring at this time. "To establish a pattern or practice of persecution, the key for the applicant is to show the thorough or systematic nature of the persecution [s]he fears." *Tang v. Lynch*, 840 F.3d 176, 181 (4th Cir. 2016) (internal quotations and citation omitted). The country conditions and

expert witness testimony reflect severe discrimination and repeated incidents of violence and abuse of gay and transgender individuals in Guatemala. Exh. 4, Tab B, iii; Exh. 4, Tab C, *passim*. The record evidence also reflects that this persecution is systemic across all of Guatemala and tolerated by the Guatemalan government. Exh. 4, Tab B, iii at 48-54, 57-58, and 60-62.

D. The Government of Guatemala is unable and unwilling to protect Respondent.

According to the expert witness, the Guatemalan police “have either directly perpetrated the violence against LGBT persons or failed to investigate allegations.” Exh. 4, Tab B, iv at 57. The record is completely devoid of any efforts taken by the Guatemalan government to try to address any of the numerous and serious concerns laid out by the United Nations and other human rights organizations that have found major issues with the treatment of gay or transgender individuals in Guatemala, and any steps taken to provide them effective protection.

The sole proposition the IJ uses to support her assertion that the Guatemalan government is able and willing to protect Respondent is the fact that Respondent, at 12 years-old, did not report her rape to the police. I.J. at 6. Ignoring the unrealistic expectation that a 12 year-old who suffered a violent sexual assault should be required to be an effective advocate for themselves and understand the need to contact law enforcement, as noted by Mrs. Jimeno, going to law enforcement would have been futile as “hate crimes against LGBT members are condoned by the public, state and private institutions, and government officials.” Exh. 4, Tab B, iv at 51.

E. The Immigration Judge erred in not granting relief under the Convention Against Torture.

i. It is more likely than not that Petitioner will be tortured.

To succeed on an application for protection under the Convention Against Torture, the applicant must establish it is more likely than not he or she would be tortured if removed to the proposed country of removal, which may be established through credible testimony. 8 CFR § 1208.16(c)(2) (2017). In making this assessment, the Court should consider “all evidence relevant to the possibility of future torture. 8 CFR § 1208.16(c)(3).

Torture is defined as: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person [...] for any reason based on discrimination of any kind [...]” 8 CFR § 1208.18(a)(1) (emphasis added). The torture need not be on account of one of the five grounds for asylum or withholding of removal. *Matter of J-E-*, 23 I.&N. Dec. 291, 29799 (BIA 2002).

Respondent suffered rape as a child and subsequent death threats that she would be killed or burned if she did not leave. The expert witness in this case found that gay and transgender individuals in Guatemala “live under the constant threat of being physically attacked, raped, kidnapped, abducted and murdered and those who require medical assistance face exclusionary and arbitrary actions that jeopardize their health.” Exh. 4, Tab B, iv at 51. Based on this record evidence, a clear probability has been established that Respondent would face severe suffering, both mental and physical, if returned to Guatemala.

ii. A public official is likely to consent or acquiesce to Respondent's torture.

“A public official acquiesces to torture when, ‘prior to the activity constituting torture, [he or she] ha[s] awareness of such activity and thereafter breach[es] his or her legal responsibility to intervene to prevent such activity.’” *Reyes-Sanchez v. US Att’y Gen.*, 369 F.3d 1239, 1242-3 (11th Cir. 2004); see also *Matter of S-V*, 22 I&N Dec. 1306, 1312 (BIA 2000). Actual knowledge of the activity is not required; the official need only be aware that it could occur. *Matter of S-V*, 22 I&N Dec. at 1312.

The country conditions in the record, as well as the testimony from the expert witness, document that public officials are regularly consenting, acquiescing, and participating in harm to LGBTQ individuals in Guatemala. See Exh. 4, Tabs B and C. “29% of transgender woman [sic] have stated that police officers were the principal agents of violence and discrimination against them.” Exh. 4, Tab B, iv at 57. The Guatemalan government is aware of the human rights violations that occur against gay and transgender individuals and have taken no meaningful steps to address the discrimination and violence against gay and transgender individuals. As noted by Mrs. Jimeno, the social stigma The Respondent has shown that it is more likely than not that “a public official” would consent, participate in, or acquiesce to her being tortured in Guatemala. Therefore, the Immigration Judge should have granted relief under the Convention Against Torture.

Reasonable Fear Interview Excerpt (Aug. 31, 2018)

V. Conclusion

Credible written and oral testimony discussing the sexual violence, death threats, verbal abuse, and

discrimination that Respondent suffered on account of her sexuality and gender nonconformity, testimony in the form of a declaration from the expert witness and country reports documenting that reporting the harm to the police was futile and potentially dangerous, that other gay and transgender individuals had reported their abuse to the Guatemalan police to no avail, and country reports and news articles documenting official and private persecution of individuals on account of their sexual orientation and gender identity satisfies Respondent's burden.

Wherefore, Respondent respectfully requests that her application for withholding of removal or protection under the Convention Against Torture be granted based on the credible, uncontested information contained in the record. Even though the IJ woefully ignored the bulk of the testimony and documentary evidence, the record in its entirety reflects that Respondent established that she had suffered past persecution and has a well-founded fear of future harm on account of a protected ground. In the alternative, should the Board deem that additional fact-finding is necessary or that the record should be further developed, Respondent requests that her case be remanded to properly analyze her claim for relief under the proper standards and case law.

Respectfully submitted,

Benjamin J. Osorio, Esq.

Pro Bono Counsel for Respondent

STANDARD LANGUAGE ADDENDUM: WITH-
HOLDING OF REMOVAL

The following statements of law are hereby incorporated into the Immigration Judge’s oral decision. These statements are not the sole legal basis for the decision and are meant to be read in conjunction with any law cited in the oral decision itself.

CREDIBILITY & CORROBORATION

Before determining whether the applicant meets the statutory criteria for the requested relief, the Court should address his or her credibility. *See Chun v. INS*, 40 F.3d 76, 79 (5th Cir. 1994); *see also Zhang v. Gonzales*, 432 F.3d 339, 345 (5th Cir. 2005). Applications for relief made on or after May 11, 2005 are subject to the credibility assessment standards articulated in the REAL ID Act.¹ *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006). Under the Act, Immigration Judges are instructed “to follow a ‘commonsense’ approach while taking into consideration the individual circumstances of the specific witness and/or applicant.” *Matter of J-Y-C-*, 24 I&N Dec. 260, 262 (BIA 2007) (internal quotations omitted).

The applicant’s credibility, standing alone, may determine the outcome. *Wang v. Holder*, 569 F.3d 531 (5th Cir. 2009). A credibility finding may be based on the demeanor, caner, or responsiveness of the applicant; the inherent plausibility of the applicant’s account; the consistency between the applicant’s written and oral statements; the internal consistency of each statement; the consistency of such statements with other evidence of record; any inaccuracies in such

¹ REAL ID Act, Div. B of Pub. L. No. 109-13, 119 Stat. 231, 305 (codified in pertinent parts at 8 U.S.C. § 1229a(c), INA § 240(c) (forms of relief other than asylum) and 8 U.S.C. § 1158(b), INA § 208(b) (asylum)).

statements; or any other relevant factor. INA § 240(c)(4)(C). The applicant should satisfactorily explain any material discrepancies or omissions. *Id.*

When the Court makes an adverse credibility finding, it must base this determination on specific and cogent reasons as supported by the record rather than speculations or generalizations. *Matter of S-A-*, 22 I&N Dec. 1328, 1331 (BIA 2000); *Mwembie v. Gonzales*, 443 F.3d 405, 40914 (5th Cir. 2006) (castigating the Immigration Judge’s credibility finding due to her “incorrect and irrational assumptions about human behavior and especially the behavior of people from foreign cultures”). Nevertheless, inconsistencies, inaccuracies, or falsehoods need not go to the heart of the applicant’s claim; rather, the Court may rely on *any* inconsistency or omission so long as the totality of the circumstances establishes a lack of credibility. *Wang v. Holder*, 569 F.3d at 53740 (adopting *Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008)).

If the Court is satisfied that the applicant’s testimony is “credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant has satisfied [his or her] burden of proof,” corroboration is unnecessary. INA § 240(c)(4)(B). Nevertheless, the Court may require the applicant to corroborate otherwise credible testimony where such evidence is reasonably obtainable. *Matter of S-M-J-*, 21 I&N Dec. 722, 725 (BIA 1997); *Rui Yang v. Holder*, 664 F.3d 580, 586 (5th Cir. 2011) (finding that an applicant’s credible testimony alone may be sufficient to sustain his burden of proof “*only if corroboration is not reasonably available*”) (emphasis in original). When the Court determines that an applicant should provide corroborating evidence, “such evidence *must be provided* unless the applicant demonstrates that [he or she] does not have the evidence and cannot reasonably

obtain the evidence.” INA § 240(c)(4)(B) (emphasis added).

WITHHOLDING OF REMOVAL

An applicant for withholding of removal must show that his or her “life or freedom would be threatened in that country because of [his or her] race, religion, nationality, membership in a particular social group, or political opinion.” INA § 241(b)(3)(A); *Roy v. Ashcroft*, 389 F.3d 132, 138 (5th Cir. 2004). This requires the applicant to establish a “clear probability” of persecution, meaning that it is “more likely than not” that he or she will be subject to persecution on account of a protected ground if returned to the country of removal. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 430 (1987); *Efe v. Ashcroft*, 293 F.3d 899, 906 (5th Cir. 2002). This standard of proof is a more stringent standard than the “well-founded fear” standard required for asylum. *INS v. Stevic*, 467 U.S. 407, 429-30 (1984). Therefore, if an applicant has failed to satisfy the requirements for asylum, he or she necessarily cannot meet the higher burden of proof to merit withholding of removal. *Dayo v. Holder*, 687 F.3d 653, 658-59 (5th Cir. 2012); *Majd v. Gonzales*, 446 F.3d 590, 595 (5th Cir. 2006).

There is no statutory time limit for bringing a withholding of removal claim. *Bouchikhi v. Holder*, 676 F.3d 173, 180 (5th Cir. 2012) (citing *Arif v. Mukasey*, 509 F.3d 677, 680 (5th Cir. 2007)). Unlike asylum, once an applicant establishes that he or she qualifies for withholding of removal, relief is mandatory—the applicant may not be returned to the country where he or she would suffer persecution. INA § 241(b)(3)(A); *Shaikh v. Holder*, 588 F.3d 861, 864 (5th Cir. 2009). Notably, there is no derivative benefit in withholding of removal. *Matter A-K-*, 24 I&N Dec. 275, 279 (BIA 2007).

In order to qualify for withholding of removal, “an [applicant] must show either persecution by the government in the country to which he [or she] is returnable, or persecution at the hands of an organization or person from which the government cannot or will not protect the [applicant].” *Matter of McMullen*, 17 I&N Dec. 542, 545 (BIA 1980). The applicant must demonstrate that the government “condoned [the non-governmental actor’s actions] or at least demonstrated a complete helplessness to protect the victims.” *Shehu v. Gonzales*, 443 F.3d 435, 437 (5th Cir. 2006).

Persecution is generally defined as “a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive.” *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987); *see also Abdel-Masieh v. INS*, 73 F.3d 579, 583 (5th Cir. 1996) (reiterating the BIA’s definition of persecution). Persecution, however, does not encompass all treatment that society regards as unfair, unlawful, or unconstitutional. *Matter of V-T-S-*, 21 I&N Dec. 792, 798 (BIA 1997); *Majd v. Gonzales*, 446 F.3d at 595. The harm resulting from persecution does not have to be physical. *Tamara-Gomez v. Gonzales*, 447 F.3d 343, 348-49 (5th Cir. 2006). It can 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.” *Abdel-Masieh v. INS*, 73 F.3d at 583 (quoting *Matter of Laipenieks*, 18 I&N Dec. 433, 456-57 (BIA 1983)). Whereas persecution does not require the applicant to establish permanent or serious injuries, *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1998), persecution nevertheless requires an “extreme” level of conduct. *Arif v. Mukasey*, 509 F.3d 677, 680 (5th Cir. 2007).

The nexus requirement for withholding of removal is similar to the requirement for asylum; therefore, when determining whether an applicant fears persecution “because of a protected ground, the Court may consider cases that discuss the “on account of” requirement. *INS v. Elias-Zacarias*, 502 U.S. 478, 481-83 (1992); see also *Matter of C-T-L-*, 25 I&N Dec. 341, 347-48 (BIA 2010). A protected ground must be “at least one central reason” for the persecution. *Shaikh v. Holder*, 588 F.3d 861 (5th Cir. 2009). Notably, country conditions, while relevant, are insufficient, standing alone, to obtain withholding. See *Matter of G-A-*, 23 I&N Dec. 366, 368-72 (BIA 2002). There applicant must provide evidence of specific grounds that demonstrate he or she would be personally at risk due to a characteristic that the persecutor seeks to overcome. *Id.*

If an applicant demonstrates that he or she suffered past persecution in the proposed country of removal, it is presumed that it is more likely than not that he or she would suffer persecution if removed. The burden shifts to the Department of Homeland Security to demonstrate either that a fundamental change in circumstances has occurred in that country or that the applicant could safely relocate to another area in the proposed country of removal to avoid future persecution. *Matter of D-I-M-*, 24 I&N Dec. 448, 450 (BIA 2008); 8 C.F.R. § 1208.16(b)(1)(i). Unlike asylum, withholding of removal does not require a showing that the applicant has a *subjective* fear of persecution. *Zhang v Gonzales*, 432 F.3d 339, 344 (5th Cir. 2005). Nevertheless, the clear probability of persecution standard requires the applicant to demonstrate a higher *objective* likelihood of persecution than required for asylum. See *Chen v. Gonzales*, 470 F.3d 1131, 1138 (5th Cir. 2006).

I. Statutory Bars to Withholding of Removal

Certain individuals who have an otherwise valid claim may nevertheless be denied withholding from removal. If the evidence indicates that one or more grounds for mandatory denial apply, the burden of proof shifts to the applicant to prove by a preponderance of the evidence that the grounds are inapplicable. 8 CFR § 1208.16(d)(2).

A. Genocide Bar

The applicant was a Nazi or engaged in genocide under INA § 237(a)(4)(D). INA § 241(b)(3)(B).

B. Persecutor Bar

The applicant ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, political opinion, or membership in a particular social group. INA § 241(b)(3)(B)(i); *Matter of A-H-*, 23 I&N Dec. 774, 783-85 (AG 2005). A limited exception exists if an applicant can establish that he or she acted under duress. *Matter of Negusie* 27 I&N Dec. at 367. An applicant must prove by a preponderance of the evidence that he or she:

- (1) acted under an imminent threat of death or serious bodily injury to himself [or herself] or others;
- (2) reasonably believed that the threatened harm would be carried out unless he [or she] acted or refrained from acting;
- (3) had no reasonable opportunity to escape or otherwise frustrate the threat;
- (4) did not place himself [or herself] in a situation in which he [or she] knew or reasonably should have known that he [or she] would likely be forced to act or refrain from acting; and
- (5)

knew or reasonably should have known that the harm he [or she] inflicted was not greater than the threatened harm to himself [or herself] or others.

Id. at 362-63.

C. Particularly Serious Crime

The applicant has been convicted of a particularly serious crime, and therefore, constitutes a danger to the community. INA § 241(b)(3)(B)(ii); *Matter of N-A-M-*, 24 I&N Dec. 336, 342-43 (BIA 2007) (noting that whether a conviction is for a particularly serious crime focuses on the “nature of the crime and not the likelihood of future serious misconduct”). Controlled substance trafficking is presumptively a particularly serious crime and will bar withholding absent extraordinary and compelling circumstances. *Matter of U-M-*, 20 I&N Dec. 327 (BIA 1991); *Matter of Y-L-*, 23 I&N Dec. at 270.

The underlying crime need not be an aggravated felony in order to be particularly serious; however, a person convicted of an aggravated felony for which he or she was sentenced to an aggregate term of imprisonment of at least five years is considered to have committed a particularly serious crime. INA § 241(b)(3)(B). Absent an aggravated felony conviction for which the sentence is five years or more, the Court should examine “the nature of the conviction, the type of sentence imposed, and the circumstances and underlying facts of the conviction.” *Matter of N -A -M-*, 24 I&N Dec. at 342 (citing *Matter of L-S-*, 22 I&N Dec. 645, 649 (BIA 1999)). Notably, “the sentence imposed is not the most accurate or salient factor to consider in determining the seriousness of an offense.” *N-A-M-*, 24 I&N Dec. at 343; *see also Matter of Y-L-*, 23 I&N Dec. at 273-74, 277-78. Harm or lack thereof upon a

victim is a “pertinent factor in evaluating whether a crime was particularly serious.” *Matter of G-G-S-*, 26 I&N Dec. 339, 343 (BIA 2014). Nevertheless, an Immigration Judge cannot consider a respondent’s mental health when determining if a conviction is for a particularly serious crime. *Id.*

D. Nonpolitical Crime

There is probable cause to believe that the applicant has committed a serious, nonpolitical crime before arriving in the United States. INA § 241(b)(3)(B)(iii); *Matter of E-A-* 26 I&N Dec. 1, 3 (BIA 2012). To assess the political nature of the crime, the Court should determine: (1) whether the act or acts were directed at a governmental entity or political organization; (2) whether they were directed toward modification of the political organization of the state; and (3) whether there is a close and direct causal link between the crime and the political purpose. *Matter of E-A26* I&N Dec. at 3.

E. Security Risk

There are reasonable grounds to believe that the applicant is a danger to the security of the United States. INA § 241(b)(3)(B)(iv). A non-trivial level of danger to the nation’s defense, foreign relations, or economic interests is sufficient. *Matter of A-H-*, 23 I&N Dec. 774, 787-90 (AG 2005). The appropriate standard for “reasonable grounds” envisions “probable cause.” *Id.*

CONVENTION AGAINST TORTURE (WITHHOLDING OF REMOVAL)

To be granted protection under the Convention against Torture (“CAT”), an applicant must establish that it is “more likely than not that he or she would be tortured if removed to the proposed country of removal.” 8 C.F.R. §§ 1208.16(c)(2). As with asylum and withholding of removal under the Act, an applicant’s credible testimony “may be sufficient to sustain the burden of proof without corroboration.” *Id.* § 1208.16(c)(2). Torture is “an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment.” *Id.* § 1208.18(a)(2). Unlike persecution, torture “does not require a nexus to specific statutory grounds.” *Tamara-Gomez v. Gonzales*, 447 F.3d 343, 350 (5th Cir. 2006); *see also* 8 C.F.R. § 1208.18(a)(1) (stating that torture may be inflicted “for any reason based on discrimination of any kind”). For an act to constitute torture, it must be:

- (1) an act causing severe physical or mental pain or suffering;
- (2) intentionally inflicted;
- (3) for a proscribed purpose;
- (4) 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) not arising from lawful sanctions.

Matter of J-E-, 23 I&N Dec. 291, 297 (BIA 2002) (citing 8 C.F.R. § 208.18(a) (defusing torture and offering guidance on acts that do and do not constitute torture)). Proscribed purposes include, but are not limited to: (1) punishment for an act the applicant committed or is suspected of committing; (2) intimidation or coercion; and (3) release of information or pronouncement of a confession. *See* 8 C.F.R. §

1208.18(a)(1). Adjudicating an application for relief under the CAT requires “a two part analysis.” *Tamara-Gomez*, 447 F.3d at 350.

I. “More Likely Than Not” Standard

First, the Court must determine whether an applicant “more likely than not” will be tortured if removed to his or her country of removal. *Id.* For an applicant to qualify for protection under CAT, “specific grounds must exist that indicate the individual would be personally at risk.” *Matter of S-V-*, 22 I&N Dec. 1306, 1313 (BIA 2000). The mere existence of a consistent pattern of human rights violations in a particular country does not constitute a sufficient ground for finding that a particular person would more likely than not be tortured upon return to that country. *Id.* In assessing whether the applicant has satisfied the burden of proof, the Court must consider all evidence relevant to the possibility of future torture, including:

- (i) Evidence of past torture inflicted upon the applicant;
- (ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;
- (iii) Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable;
- and (iv) Other relevant information regarding conditions in the country of removal.

8 C.F.R. § 1208.16(c)(3). Eligibility for CAT relief cannot be established by stringing together a series of suppositions to show that torture is more likely than not to occur unless the evidence shows that each step in the hypothetical chain of events is more likely than not to happen. *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006).

II. State Action

Second, the Court must determine whether there is “sufficient state action involved in that torture.” *Tamara-Gomez*, 447 F.3d at 351. An applicant establishes sufficient state action by demonstrating that he or she more likely than not will suffer torture “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” in the country of removal. *See* 8 C.F.R. § 1208.18(a)(1). “Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.” *Id.* § 1208.18(a)(7). “[B]oth actual knowledge and willful blindness fall within the definition of the term acquiescence.” *Hakim v. Holder*, 628 F.3d 151, 156 (5th Cir. 2010) (internal quotation marks and citations omitted). The Court must determine whether “the government [might] look the other way and therefore be at least complicit in whatever might happen to [the respondent] ... and ... if the government were aware of any penalties being meted out and took no action to protect the respondent.” *Id.* at 156 (quoting *Chen v. Gonzales*, 470 F.3d 1131, 1141-42 (5th Cir. 2006)). “Neither the failure to apprehend the persons threatening the [applicant], nor the lack of financial resources to eradicate the threat or risk of torture constitute sufficient state action for purposes of the [CAT].” *Tamara-Gomez*, 447 F.3d at 351.

Additionally, “government acquiescence need not necessarily be an officially sanctioned state action.” *Iruegas-Valdez v. Yates*, 846 F.3d 806, 812 (5th Cir. 2017) (quoting *Garcia v. Holder*, 756 F.3d 885, 891 (5th Cir. 2014)). Instead, “an act is under color of law when it constitutes a misuse of power, possessed by

virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” *Id.*; see also *United States v. Causey*, 185 F.3d 407, 442 (5th Cir. 1999). The “use of official authority by low-level officials, such a[s] police officers, can work to place actions under the color of law even where they are without state sanction.” *Iruegas-Valdez*, 846 F.3d at 813 (quoting *Garcia*, 756 F.3d at 892) (alterations in original).

CONVENTION AGAINST TORTURE (DEFERRAL
OF REMOVAL)

An applicant who is subject to the provisions for mandatory denial of withholding of removal under section 241(b)(3)(B) of the Act may still be considered for deferral of removal if he or she demonstrates that he or she is entitled to protection under the Convention against Torture (“CAT”). 8 C.F.R. § 1208.1.7(a). To be extended protection under CAT, an applicant must establish that it is “more likely than not that he or she would be tortured if removed to the proposed country of removal.” *Id.* § 1208.16(c)(2); see also *Matter of M-B-A-*, 23 I&N Dec. 474, 477-478 (BIA 2002). Unlike asylum or withholding of removal, “relief under the Convention Against Torture does not require a nexus to specific statutory grounds.” *Tamara-Gomez v. Gonzales*, 447 F.3d 343, 350 (5th Cir. 2006).

“Torture” is defined as the intentional infliction of severe physical or mental pain or suffering “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” 8 C.F.R. § 1208.18(a)(1). Only “extreme form[s] of cruel and inhuman treatment” rise to the level of torture. *Id.* § 1208.18(a)(2); *Matter of J-E-*, 23 I&N Dec. 291, 297 (BIA 2002). Torture does not encompass “threats that, while sinister and credible in nature, were not highly imminent or concrete or failed

to result in any physical violence or harm to the [applicant].” *Matter of G-K-*, 26 I&N Dec. 88, 97 (BIA 2013) (quoting *Chavarria v. Gonzalez*, 446 F.3d 508, 518 (3d Cir. 2006)). A pattern of human rights violations alone is not sufficient to show that the applicant is in danger of being tortured; specific grounds must indicate that he or she will personally be at risk of torture, at the direction or acquiescence of the government. *See J-E-*, 23 I&N Dec. at 303. In assessing whether an applicant has met his burden, an Immigration Judge must consider “all evidence relevant to the possibility of future torture” including torture the applicant suffered in the past; the possibility of internal relocation to a place where he or she is not likely to be tortured; “gross, flagrant, or mass violations of human rights within the country of removal”; and other pertinent information about conditions in the country of removal. 8 C.F.R. § 1208.16(c)(3). Moreover, eligibility for protection under CAT cannot be established by “stringing together a series of suppositions,” unless the evidence shows that each step in the hypothetical chain of events is more likely than not to happen. *Matter of J-F-F-*, 23 I&N Dec. 912, 918 (AG 2006).

Torture that would be inflicted by private individuals may warrant protection under CAT if a public official likely would acquiesce to such torture. 8 C.F.R. § 1208.18(a)(1). To qualify as “acquiescence,” a public official must “have awareness of” the activity constituting torture, prior to its commission, “and thereafter breach his or her legal responsibility to intervene to prevent such activity.” *Id.* § 1208.18(a)(7); *see also Ontunez-Tursios v. Ashcroft*, 303 F.3d 341, 354 (5th Cir. 2002). “Acquiescence” encompasses both actual knowledge and “willful blindness.” *Hakim v. Holder*, 628 F.3d 151, 156 (5th Cir. 2010). Further, the

requisite acquiescence need not be an officially state sanctioned action, but may be an act under color of law if it represents a misuse of power, “possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” *Garcia v. Holder*, 756 F.3d 885, 891 (5th Cir. 2014); *see also* *lruegas-Valdez v. Yates*, 846 F.3d 806, 812-13 (5th Cir. 2017).

In evaluating acquiescence, an Immigration Judge must determine whether “the government [might] look the other way and therefore be at least complicit in whatever might happen to [the applicant] ... and . . . if the government were aware of any penalties being meted out and took no action to protect the [applicant].” *Hakim*, 628 F.3d at 156 (internal citation omitted). However, “neither the failure to apprehend the persons threatening the [applicant], nor the lack of financial resources to eradicate the threat or risk of torture constitute sufficient state action.” *Tamara-Gomez*, 447 F.3d at 351; *see generally Garcia*, 756 F.3d at 892.

U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

In the Matter of File: A098-372-949

LEON SANTOS-SAC-) IN WITHHOLDING
ARIAS) ONLY PROCEEDINGS
)
APPLICANT) Transcript of Hearing
)

Before ANGELA MUNSON, Immigration Judge

Date: November 29, Place: JENA, LOUISI-
2018 ANA

Transcribed by Free State Reporting, Inc.-3

Official Interpreter:

Language: KONJOBAL

Appearances:

For the Applicant: BENJAMIN OSORIO
For the DHS: MR. JONES

JUDGE FOR THE RECORD: All right. This is United States Immigration Judge Angela Munson sitting in Jena, Louisiana. Today is November 29th, 2018. This is an Individual hearing on the issues of withholding and protection under the Convention against Torture in the matter of Leon Santos-Sacarias, file number 098-372-949. The respondent is present here at the LaSalle Detention Center and he's with his attorney, Mr. Benjamin Osorio. The Government is represented by Mr. Jones and we have a court certified Konjobal interpreter.

JUDGE TO INTERPRETER: Is that right?

INTERPRETER TO JUDGE: Yes.

JUDGE TO INTERPRETER: All right. And we need to place you under oath. Do you swear or affirm that the interpretation you will provide from English to Konjobal and Konjobal to English will be to the best of your ability?

INTERPRETER TO JUDGE: Yes, I do.

JUDGE TO INTERPRETER: Thank you.

JUDGE TO MR. JONES: All right. All right. It's my understanding, Mr. Jones, that the Government alleges that this respondent is subject to a previous order of removal. Is that correct?

MR. JONES TO JUDGE: That's correct, Your Honor. I think he's had as many as two prior orders of * * *.

* * *

JUDGE TO MR. SANTOS-SACARIAS: Okay. All right. So Mr. Santos-Sacarias, I want to make sure that I understand what you'd like to do today. You want to move forward with your application for asylum — actually it's withholding and protection under the Convention against Torture, is that correct?

MR. SANTOS-SACARIAS TO JUDGE: Yes, I want to continue today.

JUDGE TO MR. SANTOS-SACARIAS: All right. If you — you have the application that's been submitted to the Court before you. Have you reviewed that application prior to today?

MR. SANTOS-SACARIAS TO JUDGE: Not yet.

JUDGE TO MR. SANTOS-SACARIAS: All right. And did your attorney or someone working with your attorney prepare that application for you?

MR. SANTOS-SACARIAS TO JUDGE: Yes, he did.

JUDGE TO MR. SANTOS-SACARIAS: And did you provide the information that's contained in that application to your attorney or someone that works with him in order to submit that to the Court?

MR. SANTOS-SACARIAS TO JUDGE: Yes, I did.

JUDGE TO MR. SANTOS-SACARIAS: And have the people or persons that prepared that application on your behalf gone over with you the contents of the application?

MR. SANTOS-SACARIAS TO JUDGE: Yes, they did.

JUDGE TO MR. SANTOS-SACARIAS: And do you feel like you understand what's contained in that application that you are submitted to the Court for purposes of pursuing this relief?

MR. SANTOS-SACARIAS TO JUDGE: I don't understand.

JUDGE TO MR. SANTOS-SACARIAS: Do you have an understanding of what information is on that application even though it's not in your native language? Have — has your attorney or someone that works with him gone over the contents of that application and what it says before submitting it to the Court?

MR. SANTOS-SACARIAS TO JUDGE: Yes, I do.

JUDGE TO MR. SANTOS-SACARIAS: All right. And to the best of your knowledge is what's contained in that application true and correct?

MR. SANTOS-SACARIAS TO JUDGE: Yes.

JUDGE TO MR. SANTOS-SACARIAS: All right. If you would please raise your right hand? Do you swear or affirm that the information contained in this application is true and correct to the best of your knowledge?

MR. SANTOS-SACARIAS TO JUDGE: Yes.

JUDGE TO MR. SANTOS-SACARIAS: All right. And then I want to also go ahead and place you under oath for any testimony so if you'll raise your right hand? Do you swear or affirm that the testimony you will

provide in this proceeding will be the truth, the whole truth and nothing but the truth?

MR. SANTOS-SACARIAS TO JUDGE: Yes.

JUDGE TO MR. SANTOS-SACARIAS: All right. Thank you. You can put your hand down and if you've executed the document — if you've signed the document it can be provided back to the Court now.

MR. OSORIO TO JUDGE: Thank you, Your Honor. May I approach?

JUDGE TO MR. OSORIO: Yes. Thank you.

JUDGE FOR THE RECORD: All right. I'm dating and signing this document as well indicating that it was sworn and affirmed before me today.

JUDGE TO MR. OSORIO: All right. So now what that leaves is testimony and it's my understanding you're going to have the respondent testify? That's the only witness we have for today, is that correct?

MR. OSORIO TO JUDGE: That's correct, Your Honor.

JUDGE TO MR. OSORIO: All right. I'd be happy for you to call your client to the witness stand. All right. Mr. Osorio, he's your witness.

MR. OSORIO TO JUDGE: Thank you, Your Honor.

MR. OSORIO TO MR. SANTOS-SACARIAS: Can you state your full and complete name on the record, please?

MR. SANTOS-SACARIAS TO MR. OSORIO: Leon Santos-Sacarias.

MR. OSORIO TO MR. SANTOS-SACARIAS: And what is the name that you prefer to be called?

MR. SANTOS-SACARIAS TO MR. OSORIO: Estrella [phonetic sp.].

MR. OSORIO TO MR. SANTOS-SACARIAS: And where were you born?

MR. SANTOS-SACARIAS TO MR. OSORIO: San Pedro, Soloma.

MR. OSORIO TO MR. SANTOS-SACARIAS: Department of Huehuetenango.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. But what country is that department a part of?

MR. SANTOS-SACARIAS TO MR. OSORIO: Guatemala.

MR. OSORIO TO MR. SANTOS-SACARIAS: And how long did you live in Guatemala?

MR. SANTOS-SACARIAS TO MR. OSORIO: I didn't live for a long time in Guatemala because I was — because I am gay so I was discriminated so since I was little I didn't live with them for a long time so I moved to Chiapas.

MR. OSORIO TO MR. SANTOS-SACARIAS: But just in terms of my question here how long — the first time that you lived in Guatemala — before you ever left how long was that?

MR. SANTOS-SACARIAS TO MR. OSORIO: About 13 or 14 years.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. And when was it — if you can remember, when was the approximate year that you would have left Guatemala?

MR. SANTOS-SACARIAS TO MR. OSORIO: I think I move out of Guatemala in 2012.

MR. OSORIO TO MR. SANTOS-SACARIAS: 2012 would have been the first time you left Guatemala?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes, that was the first time when I move out there.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. So what year were you born?

MR. SANTOS-SACARIAS TO MR. OSORIO: I was born in 1988.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. So if you left when you were 13 or 14 that would have been 2002 so I — can you help me understand why you're saying 2012?

MR. SANTOS-SACARIAS TO MR. OSORIO: Well, I think I — I am confused. I am kind of lost because a lot of sad things happened on my life because my father is sick and all things like this situation that I am on right now. This make me confused a lot so I forget a lot of things.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. So— look. Everybody here is just trying to figure out

your story to the best ability possible. If you could just try and relax? So I just want to be clear and you don't have to name a year. How old approximately do you think it was when you left Guatemala the first time?

MR. SANTOS-SACARIAS TO MR. OSORIO: It was about 13 or 14 years old when I move out there.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. And why did you leave Guatemala at that time?

MR. SANTOS-SACARIAS TO MR. OSORIO: Because—I move out there. My father was sick and my mother cannot help us to support us and I was trying to find a way that—to stay there but I was discriminated a lot because I am gay so every time I go out people make fun of me because the way that I walk or that I talk. So that's one of the reasons that I move out there.

MR. OSORIO TO MR. SANTOS-SACARIAS: And when did you first figure out that you were gay?

MR. SANTOS-SACARIAS TO MR. OSORIO: Well, I noticed when I was about ten years old that I not acting like a little boy and I find out that I prefer to play with my sisters and play the games that they does — that they do and my brothers want me to go with them. I don't like to stay with them so that's how I noticed that I am not a normal boy.

MR. OSORIO TO MR. SANTOS-SACARIAS: And you said earlier that they would make fun of how you walk. What do you mean by that?

MR. SANTOS-SACARIAS TO MR. OSORIO: I mean—when I say that—because people doesn't like me. They discriminate me a lot and they come to me and tell me that they don't want to see me because the way that I do things and they tell me one time that—either get out there or they're going to kill me so I was scared because I don't want to die so I just decided to move to Chiapas but when I get to Chiapas I face the same situation. I was harmed one time there because I am gay.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. Look, I understand that you're very nervous. There's a lot riding on this for you but I need you to pay attention not only when I'm asking you questions but in case, you know, the Judge has questions and when the Department has questions. My question is what did you mean they made fun of you by the way you walk?

MR. SANTOS-SACARIAS TO MR. OSORIO: For example, when I went in Guatemala to visit my father and—they told me why—and ask me why I am walking like that—if I can walk like a man and if I don't want to change—so they don't want to see me there. They ask me to get out there so that's why I moved back to Chiapas again.

MR. OSORIO TO MR. SANTOS-SACARIAS: And when you're not detained what type of clothes do you generally wear?

MR. SANTOS-SACARIAS TO MR. OSORIO: I wear girl's pants, blouses and when I was in Chiapas I let my hair grow. It was long. So that's how I dress but when my father passed away I went to Guatemala so I had to cut my hair and try to dress like a man

because they never know—I never told them that I am a gay so I didn't want to make them feel bad so that's why I changed the way that I dress but just when I went down there.

MR. OSORIO TO MR. SANTOS-SACARIAS: And would you say that you identify more as a man or as a woman?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes.

MR. OSORIO TO MR. SANTOS-SACARIAS: Yes which one?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes, more women than men.

MR. OSORIO TO MR. SANTOS-SACARIAS: And—

JUDGE TO MR. OSORIO: What does that mean? Does he identify more as a man as a woman—or a woman. What do you mean by that?

MR. OSORIO TO JUDGE: Is that for the respondent, Your Honor?

JUDGE TO MR. OSORIO: I'm letting you know I don't understand what that question means so if you want to ask him different questions? But I don't understand what the statement of I identify more as a woman than a man. I don't know what that means. Identifies as.

MR. OSORIO TO MR. SANTOS-SACARIAS: And just to clarify when you think of yourself as a gender which gender do you think of yourself as?

MR. SANTOS-SACARIAS TO MR. OSORIO: Women.

MR. OSORIO TO MR. SANTOS-SACARIAS: Now, before you left Guatemala the first time you said that, you know, people would harass you. Apart from harassment were you ever threatened or harmed before you left Guatemala the first time?

MR. SANTOS-SACARIAS TO MR. OSORIO: I was harmed.

MR. OSORIO TO MR. SANTOS-SACARIAS: And—sorry. Go ahead.

MR. SANTOS-SACARIAS TO MR. OSORIO: When I was there I was harmed one time and they tell me that they hate me and at the age of 12—about 12 I was raped and this guy who raped me after that he told me that he don't want to see me anymore. He asked me to get out there or he's going to be killing me so—

MR. OSORIO TO MR. SANTOS-SACARIAS: And why did he tell you that he didn't want to see you there anymore?

MR. SANTOS-SACARIAS TO MR. OSORIO: Because he knows that he raped me and he doesn't want me to tell anybody that he did that to me.

MR. OSORIO TO MR. SANTOS-SACARIAS: And why do you think he raped you?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yeah, just because— he said that I'm—I am a gay. He just raped me and after that he said that he just doesn't want to see me at all anymore or he might be scared

that I'm going to tell anybody that he raped me so that's why he asked me to get out. Otherwise he's going to kill me. That's what he told me.

MR. OSORIO TO MR. SANTOS-SACARIAS: And did you ever report this rape to the police at all?

MR. SANTOS-SACARIAS TO MR. OSORIO: No, because the police in Guatemala is not going to help me. They don't protect the gay people. I talk with some other people that— they are homosexual. They told me as well that the police is never going to protect us.

MR. OSORIO TO MR. SANTOS-SACARIAS: When was the first time that you entered the United States?

MR. SANTOS-SACARIAS TO MR. OSORIO: In 2007 and then 2009.

MR. OSORIO TO MR. SANTOS-SACARIAS: And how long were you in the United States the first time that you were here?

MR. SANTOS-SACARIAS TO MR. OSORIO: It was a long time because I still—I was still coming in when I was apprehended in Nebraska.

MR. OSORIO TO MR. SANTOS-SACARIAS: My question is approximately how long were you here in the United States the first time.

MR. SANTOS-SACARIAS TO MR. OSORIO: No, it wasn't a long time. When I came here I came in California. I live a little while there and then keep going but in Nebraska I was apprehended by Immigration and was deported.

MR. OSORIO TO MR. SANTOS-SACARIAS: But, you know, when you say a long time that could mean a lot of different things to different people. When you say a long time are you saying that's six months? Six years? Can you give us any sort of time period?

MR. SANTOS-SACARIAS TO MR. OSORIO" Around six months or nine months.

MR. OSORIO TO MR. SANTOS-SACARIAS: And after you were deported where did you go?

MR. SANTOS-SACARIAS TO MR. OSORIO: I get to Guatemala.

MR. OSORIO TO MR. SANTOS-SACARIAS: And how long did you remain in Guatemala?

MR. SANTOS-SACARIAS TO MR. OSORIO: It wasn't a long time and after that I moved to Chiapas again.

MR. OSORIO TO MR. SANTOS-SACARIAS: You say— again, just—if you could try to be as specific as possible. You say it was a long time. How long approximately was it?

MR. SANTOS-SACARIAS TO MR. OSORIO: About a month or two weeks. Around there.

MR. OSORIO TO MR. SANTOS-SACARIAS: And during that time period that you were in Guatemala then did anything happen to you?

MR. SANTOS-SACARIAS TO MR. OSORIO: It's when they start making fun of me, tell me that—because in Guatemala gays they call a different name.

They call butoamerican [phonetic sp.] and that's how they call me.

MR. OSORIO TO INTERPRETER: Is that all?

INTERPRETER TO MR. OSORIO: Yeah.

MR. OSORIO TO INTERPRETER: It sounded a lot longer. All right.

MR. OSORIO TO MR. SANTOS-SACARIAS: So where—when you got returned to Guatemala that first time where in Guatemala did you go?

MR. SANTOS-SACARIAS TO MR. OSORIO: San Pedro. Soloma.

MR. OSORIO TO MR. SANTOS-SACARIAS: And who were you living with?

MR. SANTOS-SACARIAS TO MR. OSORIO: With my mother.

MR. OSORIO TO MR. SANTOS-SACARIAS: And you said that you returned to Chiapas after two weeks or a month. How long were in Chiapas before you entered the United States again?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yeah. It wasn't a long time because it is when I was harmed by four men. I—they raped me and they hit me really bad. I still have the scars on my face and my foot. I was bleeding a lot and they told me that they don't want to see me living there anymore. If we are going to see you next time we're going to kill you they said so that's why I didn't stay there for a long time.

MR. OSORIO TO MR. SANTOS-SACARIAS: When was that? When were you attacked in Chiapas?

MR. SANTOS-SACARIAS TO MR. OSORIO: That was about six months or eight months ago now.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. So in between six or eight months ago which would be some time in 2018 there's another time that you entered the United States and you would have had to have left Chiapas at some point. When was it the second time that you entered the United States?

MR. SANTOS-SACARIAS TO MR. OSORIO: That was in 2018.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. According to your own credible—reasonable fear interview and the Department's records you entered the United States twice. You told us about one time that you entered in—let's call it approximately 2007. Do you remember entering the United States a second time?

MR. SANTOS-SACARIAS TO MR. OSORIO: Around 2009.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. And when you were here in the United States that time can you remember approximately how long you were here?

MR. SANTOS-SACARIAS TO MR. OSORIO: No, it wasn't a long time. What—I think it was around six or eight months.

MR. OSORIO TO MR. SANTOS-SACARIAS: And when you were removed from the United States that time where did you go?

MR. SANTOS-SACARIAS TO MR. OSORIO: I don't have another place to go so I went back to Guatemala but then I came back again because I'm looking for protection and I know in this country I cannot have that protection that I'm looking for so that's why I come here again.

MR. OSORIO TO MR. SANTOS-SACARIAS: So you're saying from 2009 until when you came in 2018 you were in Guatemala that entire time?

MR. SANTOS-SACARIAS TO MR. OSORIO: I think — yeah, it's just in 2015 when I went back there when my father passed away. I went to his funeral and after that I came back again.

MR. OSORIO TO MR. SANTOS-SACARIAS: I'm confused. So you lived in Guatemala and just Guatemala from 2009 until now? Is that what you're saying?

MR. SANTOS-SACARIAS TO MR. OSORIO: No, Chiapas.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. And that's my question. You were deported to Guatemala in 2009. How long did you stay in Guatemala before you went back to Chiapas?

MR. SANTOS-SACARIAS TO MR. OSORIO: Just about for a week or two weeks.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. And then you lived in Chiapas that entire time before you came to the United States?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. And during that time from 2009 and 2018 how many times did you go back to Guatemala?

MR. SANTOS-SACARIAS TO MR. OSORIO: Three times.

MR. OSORIO TO MR. SANTOS-SACARIAS: And when was the first time?

MR. SANTOS-SACARIAS TO MR. OSORIO: I went back in 2014, 2015 and the last time it was this year when I came here.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. And why did you go back to Guatemala in 2014?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yeah, I just came there to visit my father and — because I haven't seen him for a long time and my father when he saw me he start crying, saying thank you for coming to visit me but he didn't know what was the reason that I am not living with him there.

MR. OSORIO TO MR. SANTOS-SACARIAS: And how long did you stay there in 2014?

MR. SANTOS-SACARIAS TO MR. OSORIO: I don't remember but it wasn't a long time. I think it was just for three or four 4 days.

MR. OSORIO TO MR. SANTOS-SACARIAS: And during that time period did anything happen to you while you were in Guatemala?

MR. SANTOS-SACARIAS TO MR. OSORIO: No, because I kind of hide myself when I get there. I don't get out so — if I ride the microbus people start laughing at me so instead of that I just pay a taxi to take me home to visit my father and that's what I did.

MR. JONES TO JUDGE: Your Honor, can we give the respondent an instruction, please? He's not directly answering any question but continuously insists on a narrative even to the most basic questions.

JUDGE TO MR. SANTOS-SACARIAS: Sir, if you would please just answer the question?

MR. SANTOS-SACARIAS TO JUDGE: Okay.

MR. OSORIO TO MR. SANTOS-SACARIAS: And so you said you also went back in 2015 to Guatemala. Why did you go back that time?

MR. SANTOS-SACARIAS TO MR. OSORIO: I come that time to visit my mother. I know she's the only one living and I know she's my mom so that's why I come to visit her to see how she's doing.

MR. OSORIO TO MR. SANTOS-SACARIAS: And you're talking about in 2015?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes.

MR. OSORIO TO MR. SANTOS-SACARIAS: And you said you'd gone to visit your father before. Where was your father in 2015?

MR. SANTOS-SACARIAS TO MR. OSORIO: In Guatemala.

MR. OSORIO TO MR. SANTOS-SACARIAS: And where is your father now?

MR. SANTOS-SACARIAS TO MR. OSORIO: He passed away.

MR. OSORIO TO MR. SANTOS-SACARIAS: And when did he pass away?

MR. SANTOS-SACARIAS TO MR. OSORIO: Three years ago.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. So he passed away in 2015?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. When was the last time you saw him?

MR. SANTOS-SACARIAS TO MR. OSORIO: I went there to visit him. He was there that time. He was the first time when I went there. I come to visit him and that's when I told you that he was crying, saying that he saw me. That was the last time and then I was told that he's sick, that I had to go back, so that's why I went back,

MR. OSORIO TO MR. SANTOS-SACARIAS: When was it that he was sick that you went back?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yeah, when I called my mom she told me that he is sick and she asked me to come see him so I decided to go down

there but when I get there he passed away already so I didn't talk to him anymore.

MR. OSORIO TO MR. SANTOS-SACARIAS: My question is when was that?

MR. JONES TO JUDGE: Relevance, Your Honor. I don't see how his father's health or even when he deceased is connected in any way to his claim for withholding.

JUDGE TO MR. JONES: I think Mr. Osorio is struggling to establish a timeline — that his client is not answering when he's asked a specific question.

JUDGE TO MR. SANTOS-SACARIAS: Sir, I'm going to caution you again. Please listen to the question and only answer what you are asked. Your lawyer is here to represent you and he will help you get the narrative out but you've got to answer the question.

MR. SANTOS-SACARIAS TO JUDGE: Okay. Thank you.

JUDGE TO MR. SANTOS-SACARIAS: All right. So when he asks you for a date just give him the date. When he asks you for what happened then you can give a narrative.

MR. SANTOS-SACARIAS TO JUDGE: Okay. Thank you.

MR. OSORIO TO MR. SANTOS-SACARIAS: So when was it that your mother called saying that your father was sick and you needed to go visit your father?

MR. SANTOS-SACARIAS TO MR. OSORIO: No, she didn't call me. I called her and she told me that he's sick so that's why I went back but when I get there he passed away already.

MR. OSORIO TO MR. SANTOS-SACARIAS: Well, my question—

JUDGE TO MR. SANTOS-SACARIAS: You didn't answer the question. He asked you when did you learn that your father was sick. What year? Just a number.

MR. SANTOS-SACARIAS TO JUDGE: I don't remember the date.

MR. OSORIO TO MR. SANTOS-SACARIAS: You said your father died in — about three years ago. That would have been 2015. Was that when you went back in 2015?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yeah, it was when I get there.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. All right. So in your last visit in 2018 why did you go back to visit?

MR. SANTOS-SACARIAS TO MR. OSORIO: I went down there just to tell my mom that I'm going to the United States to look for a job and that's what I tell her. I didn't tell her the truth; that I am trying to find protection here.

MR. OSORIO TO MR. SANTOS-SACARIAS: And how long were you in Guatemala that time?

MR. SANTOS-SACARIAS TO MR. OSORIO: I don't remember how long but I'm sure that it was a long time.

MR. OSORIO TO MR. SANTOS-SACARIAS: And when you say a long time I need — can you give me some type of idea? Weeks? Days? Months?

MR. SANTOS-SACARIAS TO MR. OSORIO: Maybe 15 days.

MR. OSORIO TO MR. SANTOS-SACARIAS: And did anything happen to you while you were in Guatemala that time?

MR. SANTOS-SACARIAS TO MR. OSORIO: Nothing happened to me that time because when I get there I just get inside the house and hide myself. I didn't get out. So basically when I get there I just get out of the car and get in the house.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. Who is Brian Santos Antonio [phonetic sp.]?

INTERPRETER TO MR. OSORIO: Can I ask for repetition?

MR. OSORIO TO INTERPRETER: Yes. Who is Brian Santos Antonio?

MR. SANTOS-SACARIAS TO MR. OSORIO: He's the little boy that was given to me for his mother. His mother is Cuhwana [phonetic sp.] and she just give him to me so I brought with me when I was in Chiapas. I registered him so I have all his birth certificate and everything.

MR. OSORIO TO MR. SANTOS-SACARIAS: When did you first start taking care of Brian?

MR. SANTOS-SACARIAS TO MR. OSORIO: When he was one year old.

MR. OSORIO TO MR. SANTOS-SACARIAS: And what year approximately would that have been, if you can remember?

MR. SANTOS-SACARIAS TO MR. OSORIO: I think he was given to me in 2006 or 2007.

MR. OSORIO TO MR. SANTOS-SACARIAS: And where did Brian stay when you came to the United States in 2007 and 2009? Did he come with you?

MR. SANTOS-SACARIAS TO MR. OSORIO: No, I left him with my mom.

MR. OSORIO TO MR. SANTOS-SACARIAS: And why did you decide to bring Brian with you this time?

MR. SANTOS-SACARIAS TO MR. OSORIO: I brought him here because I am trying to protect him with me. I don't want him to suffer down there so I am trying to find a best way to get good support for him and my mother is an old lady already so I'm not going to leave him with her and have her take care of him.

MR. OSORIO TO MR. SANTOS-SACARIAS: Was Brian living with you when you were living in Chiapas?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes, he lived with me there.

MR. OSORIO TO MR. SANTOS-SACARIAS: Did you have permission from his mother to bring him to the United States this time?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes, I get that.

MR. OSORIO TO MR. SANTOS-SACARIAS: And we have a birth certificate with your name on it but you're not claiming to be the biological father of Brian. How did your name get on that birth certificate?

MR. SANTOS-SACARIAS TO MR. OSORIO: Because his mother was really sick and she told me that she's not going to be able to take care of him so that's why she passed everything to me and asked me to raise him like my biological son.

MR. JONES TO JUDGE: Nonresponsive, Your Honor.

MR. OSORIO TO MR. SANTOS-SACARIAS: So, again, did you have — how did you get this birth certificate if you're not the biological father?

MR. SANTOS-SACARIAS TO MR. OSORIO: Well, I get all the information from his mother. Like I said, she was really sick at that time and his father he drinks too much and he's not able to take care of him so that's why his mother decided to give me all the right to have him as my son.

JUDGE TO MR. SANTOS-SACARIAS: How did your name get on the birth certificate? Not why. How.

MR. SANTOS-SACARIAS TO JUDGE: Because I take care of him for a long time so that's why I asked his

mother how he's going to be living with me if I don't have my name on him so that's why she gave me permission to register him with my name.

MR. OSORIO TO MR. SANTOS-SACARIAS: Did his mother help you put your name on his birth certificate?

JUDGE TO MR. SANTOS-SACARIAS: Yes or no.

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes, we went with his mother to register him.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay.

MR. SANTOS-SACARIAS TO MR. OSORIO: She gave her documents to register him.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. So you said that you were earlier attacked in Mexico about six to eight months ago. What happened in that attack?

MR. SANTOS-SACARIAS TO MR. OSORIO: When — that time I already said that I was harmed but I decided to come here because I am looking for protection and Brian doesn't know exactly who am I so that's— and right there I paid a lady who take care of him.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. Again, I know you're nervous. I know you're scared. I know that this is a new experience for you but I need you to pay attention to the question. My question is what happened in the attack in Chiapas?

JUDGE TO MR. OSORIO: I'm not really sure how that's relevant for an asylum claim going back to Guatemala.

MR. OSORIO TO JUDGE: I just want to make sure that — the resettlement issue because he spent so much time in Chiapas that there's no issue with him possibly arguing that he could resettle there.

JUDGE TO MR. OSORIO: But Chiapas is in Mexico, correct?

MR. OSORIO TO JUDGE: Yes, but for a resettlement in another country could prevent him from being granted withholding, Your Honor. I'll —

JUDGE TO MR. OSORIO: All right.

MR. OSORIO TO JUDGE: — move on if that's not an issue.

JUDGE TO MR. OSORIO: Go ahead but I'm not going to entertain a whole lot more of what your client's been doing where he doesn't answer the question.

MR. OSORIO TO JUDGE: Okay. I understand, Your Honor.

JUDGE TO INTERPRETER: And if you would please translate that?

JUDGE TO MR. SANTOS-SACARIAS: I'm not going to tolerate you not answering the question much more.

MR. OSORIO TO MR. SANTOS-SACARIAS: Do you understand that?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes, I do.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. Do you remember having your reasonable fear interview with an asylum officer?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. Is everything that you said in that interview true to the best of your knowledge?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes, it's true.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. And would you also adopt that as your testimony today? By that I mean—so that we can maybe try to avoid some of this. Is everything in there true to the best of your knowledge and you are also willing to say that that is included as your testimony here today?

MR. SANTOS-SACARIAS TO MR. OSORIO: Yes.

MR. OSORIO TO MR. SANTOS-SACARIAS: Okay. All right.

MR. OSORIO TO JUDGE: Just a couple of last questions, Your Honor. I think this will take care of it.

MR. OSORIO TO MR. SANTOS-SACARIAS: What do you think would happen to you if you were sent back to Guatemala?

MR. SANTOS-SACARIAS TO MR. OSORIO: I am scared to go back to Guatemala and like I said I'm

looking for protection. I think I'm will not go and stay in Guatemala because if I stay there they are probably going to kill me or people is going to decide what they are going to do with me because they don't like me there.

MR. OSORIO TO MR. SANTOS-SACARIAS: And why don't they like you there?

MR. SANTOS-SACARIAS TO MR. OSORIO: I don't want to go there because I know people don't like me because I am gay and the way that I act it's different so that's why they don't like me there.

MR. OSORIO TO MR. SANTOS-SACARIAS: And what do you think would happen if you went to the police for protection when you went back to Guatemala?

MR. SANTOS-SACARIAS TO MR. OSORIO: The police is not going to protect me. I know already that they don't help people like me so I'm not going to get that protection that I'm looking for from them.

MR. OSORIO TO MR. SANTOS-SACARIAS: And last question. is there anywhere that you think that you could safely live in Guatemala?

MR. SANTOS-SACARIAS TO MR. OSORIO: No. That whole country Guatemala it's going to be the same for me because there is no police in — anywhere that is going to protect me so I'm not going to get what I'm looking for so that's why I want to stay in this country because I know I'm going to have that protection here.

MR. OSORIO TO MR. SANTOS-SACARIAS: Thank you.

MR. OSORIO TO JUDGE: I have no further questions, Your Honor.

JUDGE TO MR. OSORIO: All right.

JUDGE TO MR. JONES: Mr. Jones, you can ask questions.

MR. JONES TO MR. SANTOS-SACARIAS: Good afternoon, sir.

MR. SANTOS-SACARIAS TO MR. JONES: Good afternoon.

MR. JONES TO MR. SANTOS-SACARIAS: What's your mother's name?

MR. SANTOS-SACARIAS TO MR. JONES: Ursula Sacarias Strigundo [phonetic sp.].

MR. JONES TO INTERPRETER: That's Ursula?

INTERPRETER TO MR. JONES: Ursula. U R S U L A.

MR. JONES TO MR. SANTOS-SACARIAS: Did your mother ever visit you in Chiapas?

MR. SANTOS-SACARIAS TO MR. JONES: No, never.

2MR. JONES TO MR. SANTOS-SACARIAS: Did your mother ever live in Chiapas?

MR. SANTOS-SACARIAS TO MR. JONES: No.

MR. JONES TO MR. SANTOS-SACARIAS: Okay. You told us that you left your son with your mother in 2009 and 2007, correct?

MR. SANTOS-SACARIAS TO MR. JONES: Yes, but it was in Guatemala.

MR. JONES TO MR. SANTOS-SACARIAS: You told us you were only in Guatemala — you came back the first time in 2014, the second time in 2015, and the last time in 2018. How could you have possibly given Brian to your mother in 2007 and 2009 in Guatemala if you weren't there?

MR. SANTOS-SACARIAS TO MR. JONES: No, I have a brother who came to pick him up from me to take him to my mother.

MR. JONES TO MR. SANTOS-SACARIAS: Your brother picked Brian up from where?

MR. SANTOS-SACARIAS TO MR. JONES: In Chiapas. He came to pick him up.

MR. JONES TO MR. SANTOS-SACARIAS: So you left Brian with your brother, not your mother?

MR. SANTOS-SACARIAS TO MR. JONES: No. My brother came all the way to pick up Brian and then bring him to my mother because she doesn't speak Spanish and she cannot swim — because we have to swim to cross a river to come to Chiapas so she came with my brother all the way out to Tacudama [phonetic sp.] and she wait there and my brother come to Chiapas to grab Brian and then when he get back in there he gave it — he gave him to her.

MR. JONES TO MR. SANTOS-SACARIAS: Sir, isn't it true that you only got this birth certificate with your name on it in the year 2018?

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: So all these years that you and your brother were taking this child, Brian, back and forth — different country's borders you had no papers stating that you had the authority to have Brian in your — guardianship over Brian?

MR. SANTOS-SACARIAS TO MR. JONES: Yes, it was until now in 2018 when I get his birth certificate of my name but before I — he just come with me like that crossing to the river, coming to Chiapas and back and forth-

MR. JONES TO MR. SANTOS-SACARIAS: Did you have-

MR. SANTOS-SACARIAS TO MR. JONES: — but with his mother permission.

MR. JONES TO MR. SANTOS-SACARIAS: But you had no documents other than his mother's permission?

MR. SANTOS-SACARIAS TO MR. JONES: Yes, that's it.

MR. JONES TO MR. SANTOS-SACARIAS: You didn't go to an adoption agency in Guatemala, did you?

MR. SANTOS-SACARIAS TO MR. JONES: No, never.

MR. JONES TO MR. SANTOS-SACARIAS: You didn't go to any authorities?

MR. SANTOS-SACARIAS TO MR. JONES: No.

MR. JONES TO MR. SANTOS-SACARIAS: His mother never wrote anything?

MR. SANTOS-SACARIAS TO MR. JONES: No, but she signed the documents and everything when I get the birth certificate. She went with me to get it.

MR. JONES TO MR. SANTOS-SACARIAS: And you know about Brian's father, don't you?

MR. SANTOS-SACARIAS TO MR. JONES: Yes, I know.

MR. JONES TO MR. SANTOS-SACARIAS: Have you ever talked to him?

MR. SANTOS-SACARIAS TO MR. JONES: With his father?

MR. JONES TO MR. SANTOS-SACARIAS: Yes. The one you said was a drunk and couldn't take care of him.

MR. SANTOS-SACARIAS TO MR. JONES: Not at the beginning. He was not living with Juana so when I get there I asked her who is the father and she told me that — who is Brian's father and I asked her if he needs to sign any documents to — that way I can get legal care of him but she said that his father doesn't need to do anything because she's the one who's making the decision over him and I already take care of him.

MR. JONES TO MR. SANTOS-SACARIAS: And how old were you when you got Brian?

MR. SANTOS-SACARIAS TO MR. JONES: I was about 16 or 17 years old.

MR. JONES TO MR. SANTOS-SACARIAS: Okay. That's about four years after some man raped you?

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: And you left Guatemala to try to go to Mexico?

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: So you couldn't even take care of yourself and you took somebody's child?

MR. OSORIO TO JUDGE: Objection, Your Honor. Argumentative.

JUDGE TO MR. JONES: I think it's begging the question.

MR. JONES TO JUDGE: Okay.

MR. JONES TO MR. SANTOS-SACARIAS: So tell me then, sir. You left your country because you had problems with your—with how people harassed you, right?

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: But your family didn't know you had these problems?

MR. SANTOS-SACARIAS TO MR. JONES: No.

MR. JONES TO MR. SANTOS-SACARIAS: Okay. Did Brian's mother know you had these problems?

MR. SANTOS-SACARIAS TO MR. JONES: No, she didn't know.

MR. JONES TO MR. SANTOS-SACARIAS: You mean you didn't tell Brian's mother that you were being threatened because of your lifestyle?

MR. SANTOS-SACARIAS TO MR. JONES: No, I never told her so that's why I pay another girl who is taking care of him.

MR. JONES TO MR. SANTOS-SACARIAS: You say that you were attacked in Guatemala and you were attacked in Mexico.

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: And both of these attacks happened before you got this birth certificate with your name on as Brian's father.

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: And you never disclosed this to his mother?

MR. SANTOS-SACARIAS TO MR. JONES: No, because I was scared and besides that I'm not I don't trust her mother his mother to tell her everything.

MR. JONES TO MR. SANTOS-SACARIAS: But you think your life was in danger.

MR. SANTOS-SACARIAS TO MR. JONES: Yes, I know.

MR. JONES TO MR. SANTOS-SACARIAS: Which also puts the boy's life in danger.

MR. SANTOS-SACARIAS TO MR. JONES: No, because I pay this lady to take care of him for me because while — I work in a kitchen in a restaurant right there so she was taking care of him so basically he grew up with this lady and her son right there too.

MR. JONES TO MR. SANTOS-SACARIAS: But you brought him with you to the United States in 2018?

MR. SANTOS-SACARIAS TO MR. JONES: Yes, I did.

MR. JONES TO MR. SANTOS-SACARIAS: Then he was detained.

MR. JONES TO INTERPRETER: He was detained.

MR. SANTOS-SACARIAS TO MR. JONES: Yes. Yes, it was on May 25th this year when we approached the border at McAllen — so we were apprehended so that's — at that time he was taken away from me.

MR. JONES TO MR. SANTOS-SACARIAS: And Immigration finally let him give you a phone call, right?

MR. SANTOS-SACARIAS TO MR. JONES: I tried to call him many times but I couldn't. I asked the sheriff that I need to talk to Brian but they said that I can't so I have never got any kind of communication with him since then until now.

MR. JONES TO MR. SANTOS-SACARIAS: But sir, hasn't Immigration at least twice allowed you to call Brian but the truth is Brian does not want to talk to you because he knows you're not his father?

MR. SANTOS-SACARIAS TO MR. JONES: No, because my brother — as far as I know my brother was trying to take him back with him in Guatemala but he has a son so he's not going to be able to take care of him.

MR. JONES TO MR. SANTOS-SACARIAS: That's not my question, sir. When you tried to call Brian didn't Brian refuse to speak to you?

MR. SANTOS-SACARIAS TO MR. JONES: No, he doesn't want to talk with me anymore because he's mad at me because I didn't let him go back with my brother.

MR. JONES TO MR. SANTOS-SACARIAS: So the answer to my question is yes, he does not want to talk to you.

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: And it's Brian's choice not to talk to you. Yes or no?

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: And Brian is speaking to his own biological father as far as you know, correct?

MR. SANTOS-SACARIAS TO MR. JONES: Yes, I think he's having communication with his father and also with his mother. That's why

MR. JONES TO MR. SANTOS-SACARIAS: And sir the two times you came to the United States in 2007 and 2009 you never told Immigration officials you had any child, did you?

MR. SANTOS-SACARIAS TO MR. JONES: No, I never.

MR. JONES TO MR. SANTOS-SACARIAS: After you've been deported twice this is the first time you now say you have a child?

MR. SANTOS-SACARIAS TO MR. JONES: I might be asked that question before but I don't speak Spanish very good so I probably didn't understand those questions very good and also I don't speak English so I couldn't answer in them.

MR. JONES TO MR. SANTOS-SACARIAS: Okay. So the worst thing that happened to you in your country was that time the man sexually assaulted you, right?

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: That was a long time ago, right?

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: Actually, you were the same age as Brian is.

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: Okay. Do you know that man's whereabouts at this point? Do you know the man's whereabouts? The one who attacked you.

MR. SANTOS-SACARIAS TO MR. JONES: It's probably — but it's not the only man because there's a lot of people that doesn't like me down there.

MR. JONES TO MR. SANTOS-SACARIAS: Only one man raped you that time.

MR. SANTOS-SACARIAS TO MR. JONES: Just one.

MR. JONES TO MR. SANTOS-SACARIAS: Do you know who he is?

MR. SANTOS-SACARIAS TO MR. JONES: Yes, I know him but he tricked me and he told me that if I'm going to tell anybody who is — him he's going to kill me any time.

MR. JONES TO MR. SANTOS-SACARIAS: Did you ever report him to any authorities at any time whether in Guatemala, Mexico or from the United States?

MR. SANTOS-SACARIAS TO MR. JONES: No. When I was in Guatemala I didn't report it because I was scared to do it and besides that I don't speak Spanish so I couldn't make a report.

MR. JONES TO MR. SANTOS-SACARIAS: Right but a lot has happened since then in Guatemala, right?

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: I mean gays and lesbians have gay pride parades just like they do here in the United States.

MR. SANTOS-SACARIAS TO MR. JONES: I know we have protection here but not down there. I have communication with other gays there and they said that it's impossible to dress like — the way that we want to because people doesn't like us and —

MR. JONES TO MR. SANTOS-SACARIAS: Don't people travel to places like Antigua Guatemala from all over the world to participate in gay and lesbian lifestyles?

MR. SANTOS-SACARIAS TO MR. JONES: I am scared because there's a difference between just coming to visit there and living down there.

MR. JONES TO MR. SANTOS-SACARIAS: Doesn't Guatemala even let you register yourself as a woman if you want to be a woman now legally? Yes or no?

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: So if you go to Guatemala you don't have to be Leon Santos. You can be the woman that you feel like you are, right? Yes or no?

MR. SANTOS-SACARIAS TO MR. JONES: Yes.

MR. JONES TO MR. SANTOS-SACARIAS: And did you ever try to move to a city that was more open and free than the one that you grew up in as a child?

MR. SANTOS-SACARIAS TO MR. JONES: But I don't know where to go down there. I don't know who would—kind — what kind of people I'm going to get there to live there.

MR. JONES TO MR. SANTOS-SACARIAS: But if you know of cities that are open to gay and lesbian and transgender lifestyles you would rather move to those cities than the one you lived in correct?

MR. SANTOS-SACARIAS TO MR. JONES: Yes, probably there is another place where I can live down there but I don't but I try to stay here to get this protection because besides that I have a brother living here so I'm trying to have him help me.

MR. JONES TO MR. SANTOS-SACARIAS: Okay. Thank you, sir.

MR. JONES TO JUDGE: I have nothing further, Your Honor.

JUDGE TO MR. JONES: All right.

JUDGE TO MR. OSORIO: Mr. Osorio, do you have anything that you feel you need to ask your client?

MR. OSORIO TO JUDGE: No, Your Honor.

JUDGE TO MR. OSORIO: Okay.

JUDGE TO MR. SANTOS-SACARIAS: All right. Sir, you may step down.

JUDGE TO MR. JONES: All right. Any evidence from the Government?

MR. JONES TO JUDGE: The last document we marked for identification. I don't —

JUDGE TO MR. JONES: Uh-huh.

MR. JONES TO JUDGE: — know if we really need to go into we can just leave the evidence where it is, Your Honor.

JUDGE TO MR. JONES: All right. You don't even want to put in the other order of removal?

MR. JONES TO JUDGE: I don't see — I don't have my fingers on it —

JUDGE TO MR. JONES: Okay.

MR. JONES TO JUDGE: — at this point.

JUDGE TO MR. JONES: That's fine.

MR. JONES TO JUDGE: We just know that — and I don't think it's contested.

MR. JONES TO MR. OSORIO: Right counsel?

MR. OSORIO TO MR. JONES: The —

MR. JONES TO MR. OSORIO: That he's been removed twice.

MR. OSORIO TO MR. JONES: No.

JUDGE TO MR. JONES: I just don't know anything about the dates surrounding that removal so the only dates that I have are what came out on the stand and what's in the record.

JUDGE TO MR. OSORIO: All right. Mr. Osorio, would you like to make your closing argument?

MR. OSORIO TO JUDGE: Yes, Your Honor. So I guess I would put forth two particular social groups, Your Honor, the first being gay Guatemalans and the second being transgender Guatemalans. With regards to the first particular social group, Your Honor, Matter of Toboso-Alfonso, it's 20 I&N Dec. 819. It's a BIA 1994 case. I think that an individual's sexuality has long been established to be a viable particular social group and then I think that obviously the next evolution would be that transgenders would also be recognized as a particular social group for the same reasons. Particularity. We know who's in the group and who's not in the group. We've got clear black and white boundaries. With regards to social distinction Guatemalan society obviously views it as a distinct group and has attached a stigma to that group as evidenced by respondent's country conditions evidence and it's immutable — it's not a trait that can be changed or that we would require to be changed. I think this falls within line of the Attorney General's decision in Matter of A-B- that this is something, you know, this isn't a ten word phrase that we're trying to get found to be a particular social group. It's something that common sense indicates would be a group within itself that society recognizes. With regards to nexus, Your Honor, the reason that Mr. Santos-Sacarias fears returning is on account of his status as a gay Guatemalan. Specifically that's the reason that he believed that he was targeted with harassment, discrimination, the rape in the past and that's the reason that he fears returning to Guatemala, you know, that's the reason that he didn't feel safe taking a bus to his parent's house when

he visited them, felt the need to take a taxi and then remain inside when he was there visiting them because he fears that persecution. Given the country conditions evidence that was filed in this case I think that that is a reasonable fear for him to have. The Guatemalan public health ministry has acknowledged itself that 71 percent of transgender women in Guatemala have been discriminated against and attacked and that's Guatemalan's own government. If you look at the reports that we filed; Amnesty International, even our own State Department document rampant discrimination and the Guatemalan government's failure to effectively provide protection for these individuals. So I think that there's no question that for that reason on account of his sexuality and on account of his gender identity that he fears returning to this country and that is the central reason. It's not the sole reason that he fears returning. In terms of persecution, you know, I take note of the Government's argument that, you know, he was only raped one time. I, you know, I think that's — it's odd that we say that you got raped more than once but, you know—

JUDGE TO MR. OSORIO: I don't — I just want to stop you right there so the record's clear. I don't take that the way he phrased that question to mean that it would have required multiple rapes. I took the question as — because your client was a very difficult witness.

MR. OSORIO TO JUDGE: I agree.

JUDGE TO MR. OSORIO: I took the question as that is the only harm that you have identified; only being singular, not a comment on the severity of it so—

MR. OSORIO TO JUDGE: And—

JUDGE TO MR. OSORIO: — I just want to make sure the record's clear about that. I did not take Mr. Jones' question to suggest that there would be a requirement of multiple rapes.

MR. OSORIO TO JUDGE: No, but my point is this, you know, he was raped at a very young age and it seems that he was targeted because of his behavior, because of his sexuality, because of the way that he was perceived and he left the country shortly thereafter, only returning for brief incidents, you know, he did talk about the discrimination he received when he came back. He felt the need to cut his hair, dress in men's clothes, change his behavior in order to try to avoid some of that discrimination and persecution he had faced previously and, you know, I know we're in the Fifth Circuit so that, you know, we need more than mere harassment here but I think in the totality of the circumstances when we view the behavior of a society and the culture, that he was harassed, that he was told that he couldn't walk a certain way, that he couldn't dress a certain way, that he couldn't act a certain way, that he couldn't, you know, be attracted to men. That is persecution. I mean more than physical persecution can constitute legal persecution under the law. Courts have consistently held that being forced to hide a fundamental aspect of one's life to avoid discriminatory punishment can qualify as persecution even in the absence of physical harm and even in the Fifth Circuit McGowan v. INS — it's 115 F.3d 299 at 303. It's a Fifth Circuit 1997 case, Your Honor. it says the harm or suffering need not only 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 and I would argue that depriving somebody of the ability to live their life in the manner that they want to meets that standard and so I would argue the past persecution that he suffered rises number one to the level of persecution and therefore creates a presumption of future persecution. That can only be rebutted by the Department showing beyond a preponderance of the evidence that Estrella could either reasonably relocate or that there has been a change in country conditions and, again, I took note of the point that the Government has submitted an article saying that Estrella can live in Antigua but how long could she live in Antigua and, you know, is that reasonable to require her to relocate? Does she have the financial resources to do that? She doesn't have any family member there. The only family member that she feels comfortable with is the brother here in LA and that brother has acknowledged that Estrella has suffered persecution and talks about her being threatened in her community and the fear that she has of being — if she gets sent back of being either killed or burned. So, again, Your Honor, even if you don't find past persecution I think that country conditions alone especially under a pattern and practice claim show that she should — had a well-founded fear of being returned to Guatemala on account of her protected grounds we put forth. So I don't think that there's any evidence that the police would be willing or able to help her. I know that she has not sought the protection of the police in the past because she felt that that might put her in more of a risk and that they wouldn't do anything. Again, Your Honor, relying entirely on documentary evidence I think that we've

established our burden. I think that there is again, the Guatemalan public health ministry is saying 71 percent. I think we could easily say that it's more likely than not that she would suffer some type of harm or deprivation of liberty if returned and, you know, I understand Government's point. We didn't file the 2018 U.S. State Department report but we did note why we did not file that. There is an article that we submitted in our documentary evidence that shows, you know, that a lot of the information has been pulled from the U.S. State Department report from 2017 to 2018 and that's why, you know, organizations like Amnesty International feel like the most accurate depiction of those country conditions is found in the 2016 but all of our other articles are recent, Your Honor. All of our other articles point to terrible conditions for transgender and gay individuals in Guatemala. Even the individuals that are fighting to have transgenders recognized acknowledge that they continue to suffer persecution. So I'm not saying that the United States is perfect on these issues. Obviously we still have our own battles here but I think that Estrella has met her burden of proof here today. With regards to the Brian issue I just don't see that it's relevant, you know, he's — she's had custody of Brian for a number of different years. Obviously, you know, it's a non-traditional relationship. I acknowledge that, you know, Brian has refused to talk to Estrella but I think that's more a product of a 12 year old not understanding why they're in ORR custody and then, you know, mom and dad saying, like, look we can bring you back home and Brian's just looking for a way to get out. He's probably upset, probably hurt. We don't really know but, again, I think that's a nonissue with regards to the protection

that we're seeking here today, Your Honor, and we would ask that some form of relief be granted.

JUDGE TO MR. OSORIO: All right. And just so the record is clear when you refer to Estrella you're referring to your client, the respondent?

MR. OSORIO TO JUDGE: Yes, Your Honor. As she stated that was her preferred name to go by.

JUDGE TO MR. OSORIO: Well, it's not the name on the Notice to Appear and it's not the name on the caption of this case so I'm just trying to make sure the record's clear.

MR. OSORIO TO JUDGE: Yes, Your Honor.

JUDGE TO MR. OSORIO: All right.

* * *

Reasonable Fear Interview

* * *

CLAIM OF PERSECUTION AND CONVENTION AGAINST TORTURE

Now I am going to ask you some questions about why you do not want to return to your country. Please answer the exact questions that I ask you. This helps me understand your story. Speak in one or two sentences at a time and allow your interpreter to interpret completely before you continue. Please keep our sentences short and do not speak at the same time as your interpreter.

<u>Officer</u>	<u>Applicant</u>
Why are you afraid to return to your home country?	The reason I left my country and came is because people over there do not want me because I am gay. That is the biggest reason.
What does it mean for you to be gay?	I am being discriminated against because I like men and they do not like that over there where I am from.

<u>Officer</u>	<u>Applicant</u>
Just to be clear, how do you like men?	This started since I was a child. I've always been more interested in men. I never appreciated women and now that I am grown I am more open about it. They don't want me because of that and they look down on me because of that.
Have you ever had a boyfriend?	No, I raped when I was about 12 years old.
I am very sorry you suffered this. Who harmed you?	My neighbor.
Did your neighbor say anything to you at the time he harmed you?	He came up to me and when he raped me he said, You want this because you are this way. That is what he kept telling me.
Did he insult you or call you any bad words or ugly names?	Yes, he kept telling me, You better change or else you are going to keep getting this every time. He kept telling me that and insulting me.

<u>Officer</u>	<u>Applicant</u>
Did he call you bad words or ugly names?	He kept telling me, You better not tell anybody because if you tell anybody you will never have a life here. That is what he kept telling me.
Did he call you any derogatory names for gay people?	He kept telling me, You are a “maricon” and I want you to suffer this pain so you know how it feels. He kept telling me this.
I am so sorry this happened to you.	Thank you
How did this neighbor know that you are gay?	I think because of the way I walk and talk. One time they asked me, Are you a girl?
(continued)	I walk a little differently, and a lot of men have told me, Walk like a man. Pont’ walk like a girl. That is what they have always told me.

<u>Officer</u>	<u>Applicant</u>
Besides what we have already talked about, were you harmed or threatened in any other way in Guatemala on account of being gay?	I got away from my country and moved to Chiapas in Mexico and the same thing happened to me there and I just got tired of it because they were always bothering me so that's when I decided to leave because I could not take it anymore.
For how long did you live in Mexico?	7 years
When did you move to Mexico?	When did I move there?
Yes	I don't remember the date.
Do you remember the year?	I think it was in 2012.
When did you leave Mexico?	The first of May I was in Chiapas.
So you left Mexico this year in May?	Yes
When were you last in Guatemala? Please tell me the year.	I went over there to where I'm from and then turned around and came over here.

Officer	Applicant
I understand. However, please tell me the last year you were in Guatemala.	It was in 2018.
You said the same thing happened to you in Mexico. What happened?.	I was abducted. They took my money and hurt me over there.
How did they hurt you?	They hit me and took my clothes off
Did they do anything more to hurt you?	They raped me and there were, four of them.
I and so sorry that you have suffered all of this pain. Who hurt you in Mexico?	They hurt me over there firstly because I am not from there. I could not so tell the police because I am not from there so I was very scared to go tell on them.
I understand. Do you know who hurt you?	I don't know because I was getting out of work and they chased me and hurt me.
When did this happen?	It's been about 6 months ago now.

<u>Officer</u>	<u>Applicant</u>
Are you afraid to return to Mexico?	Yes because they threatened me, If we see you again here then you will see what happens to your life, That is what they kept telling me.
Did you have any legal immigration status in Mexico? Like asylum, a work permit, residency or citizenship?	No, I don't have anything over there and that is why I could not tell the police and fight for my case.
When you lived in Guatemala, did you know of any other gay people like yourself?	Yes there are.
Did you know any of them?	No I didn't know them.
Do you know how gay people in general are treated in Guatemala?	They treat us bad and they hate us and insult us. At one point, I heard of people being burned for who we are.
Besides the neighbor, did anyone else ever harm you in your home country?	No, that's it. Nobody else.

<u>Officer</u>	<u>Applicant</u>
Was it common knowledge in your community in Guatemala that you are gay by the way that you presented yourself?	Yes. They notice who I am very quickly because of how I walk and that is why they do not want me over there where I am from.
Seek police/government protection?	No I never did.
Why not?	Because the man who hurt me told me not to tell anybody.
Did you tell your parents?	I didn't tell my mother. I did not want to tell anybody because my family does not want me.
What do you fear would happen to you if you return to your country now?	Most likely they will probably kill me and that is why I don't want to go back.
Do you fear anyone in particular will harm you or do, you fear Guatemalan society in general?	I'm scared of everybody. Unfortunately everyone looks at me different I love myself for who I am, but not everybody loves me for who I am.
For what reason would they want to harm you now?	Because I am gay and how I act. That's why.

<u>Officer</u>	<u>Applicant</u>
Do you think the police or the government could protect you?	No, I don't think so because the police do not protect gay people at all over there.
Why not?	I really don't know why. I just know they don't. Unfortunately I don't speak Spanish so I could not go to them and tell them.
Have you experienced any harm or mistreatment by a public official, like the government, police, or state or local authority?	No because I have not spent enough time there for that to happen so I don't think so,
Are you afraid of anyone who works for the government of your country, including the police?	Yes I'm scared of them because I'm scared of everybody over there because they don't want us in Guatemala.
Is there anywhere in Guatemala where you could live safely as a gay man?	No, nowhere in Guatemala because there is nowhere there that I would be protected as a man gay.

<u>Officer</u>	<u>Applicant</u>
Is there anything else you would like to tell me about that we have not already discussed?	I just want to let you know that I came to this country to have a better life to protect me and my child. I don't want to be hurt. I just want a better.
I understand, and I promise to do my very best to try to help you.	Thank you very much.

GUATEMALA 2016 HUMAN RIGHTS REPORT

Note: This report was updated 4/12/17; see Appendix F: Errata for more information.

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Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The country's antidiscrimination laws do not apply to LGBTI individuals. LGBTI rights groups alleged that police officers regularly engaged in extortion and harassed male and transgender individuals they believed to be sex workers. There was general societal discrimination against LGBTI persons in access to education, health care, employment, and housing. The government undertook minimal efforts to address this discrimination. After being elected as president of the country's first congressional women's caucus in September, the first openly lesbian member of Congress, Sandra Moran, was subject to discrimination in the form of an online petition that demanded her removal due to her LGBTI status. Moran filed a complaint with the PDH.

According to LGBTI rights groups, gay and transgender individuals often experienced police abuse. A lack of trust in the judicial system and a fear of further harassment or social recrimination discouraged victims from filing complaints. NGOs conducted sensitization training classes with police officials but noted that the number of trained officials remained low. The National Police and Public Ministry changed their complaint registration systems to include a field identifying whether the complainant is a member of the LGBTI community. Due to general fears of

discrimination, few LGBTI community members were comfortable self-identifying to officials.

LGBTI groups claimed that women experienced specific forms of discrimination such as forced marriages and forced pregnancies through so-called corrective rape, although these incidents were rarely, if ever, reported to authorities.

The Public Ministry and SVET took up the first case of trafficking in persons involving transgender individuals, rescuing and treating several victims and returning them to their home countries. The National Registry circulated an internal memo on nondiscrimination against the LGBTI community, although officials still barred transgender individuals from obtaining identification documents that reflected a different gender. Transgender individuals continued to face severe discrimination.