

No. 13-2141

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**R.R.D.,
Petitioner,**

v.

**ERIC H. HOLDER, Jr.,
Attorney General of the United States,
Respondent.**

**ON PETITION FOR REVIEW OF AN ORDER OF THE
BOARD OF IMMIGRATION APPEALS
Agency No. AXXX-XXX-XXX**

BRIEF FOR RESPONDENT

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TABLE OF CONTENTS

STATEMENT OF JURISDICTION.....1

STATEMENT OF THE ISSUES.....2

STATEMENT OF THE CASE AND FACTS3

 A. R.R.D. Enters The United States On A Nonimmigrant Visa,
 Overstays, And Subsequently Files An Affirmative Application
 For Asylum.....3

 B. R.R.D. And His Wife Testify In Support Of His Application,
 Claiming That R.R.D. Was And Would Be Persecuted Because
 Of His Then Status (And Now Former Status) As An Honest
 Law Enforcement Officer.....4

 C. An Immigration Judge Denies R.R.D.’s Application And
 Orders His Removal To Mexico11

 D. R.R.D. Appeals His Removal Order To The Board, And The
 Board Affirms The Immigration Judge’s Decision.....14

SUMMARY OF THE ARGUMENT16

ARGUMENT17

The Record Does Not Compel The Conclusion That R.R.D. Is A “Refugee”
Under The Immigration And Nationality Act.....17

 A. Standard And Scope Of Review.....17

 B. The Agency Reasonably Concluded That R.R.D. Did Not
 Establish Past Persecution.....18

 1. The Record Does Not Compel The Conclusion That
 R.R.D. Was Harmed In Mexico Because Of A Protected
 Ground.....19

 2. The Agency Did Not Commit Legal Error24

3.	The Evidence Presented Is Insufficient To Compel The Agency To Credit R.R.D.'s Belief That The Incidents Of Harm Arose Because Of His Status As An Honest Law Enforcement Officer	28
C.	The Agency Did Not Err In Determining That R.R.D. Failed To Establish A Well-Founded Fear Of Persecution Independent Of The Lack Of Past Persecution	35
	CONCLUSION	38
	CERTIFICATE OF COMPLIANCE WITH FED R. APP. P. 32(A)(7)	
	CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

CASES

Ahmed v. Ashcroft,
348 F.3d 611 (7th Cir. 2003) 19, *passim*

Auer v. Robbins,
519 U.S. 452 (1997),.....17

Bank of Am. v. Veluchamy,
643 F.3d 185 (7th Cir. 2011)4

Bathula v. Holder,
723 F.3d 889 (7th Cir. 2013) 24, 27, 33, 35

Castañeda-Castillo v. Holder,
638 F.3d 354 (1st Cir. 2011)..... 19, *passim*

Cece v. Holder,
733 F.3d 662 (7th Cir. 2013)21

INS v. Aguirre-Aguirre,
526 U.S. 415 (1999).....17

INS v. Bagamasbad,
429 U.S. 24 (1976)..... 26, 27

Jian Hui Shao v. Mukasey,
546 F.3d 138 (2d Cir. 2008)..... 24, 28

Kebe v. Gonzales,
473 F.3d 855 29, 36

Kiorkis v. Holder,
634 F.3d 924 (7th Cir. 2011) 25, 26

Madrigal v. Holder,
716 F.3d 499 (9th Cir. 2013) 27, 34

Matter of Fuentes,
19 I&N Dec. 658 (BIA 1988) 19, 20, 21, 31

Mekhtiev v. Holder,
559 F.3d 725 (7th Cir. 2009)36

Pablo-Sanchez v. Holder,
600 F.3d 592 (6th Cir. 2010)32

Pavlyk v. Gonzlaes,
469 F.3d 1082 (7th Cir. 2006) 26, 30

Surganova v. Holder,
612 F.3d 901 (7th Cir. 2010)17

Thomas v. Gonzales,,
547 U.S. 183 (2006)..... 26, 27

Xiao Ji Chen v. U.S. Dep’t of Justice,
471 F.3d 315 (2d Cir. 2006).....29

Yasinskyy v. Holder,
724 F.3d 983 (7th Cir. 2013)35

Zhou Ji Ni v. Holder,
635 F.3d 1014 (7th Cir. 2011) 35, 36

STATUTES

Immigration and Nationality Act of 1952, as amended:

Section 208(b)(1)(B),
8 U.S.C. § 1158(b)(1)(B)24

Section 208(b)(1)(B)(i),
8 U.S.C. § 1158(b)(1)(B)(i) 21, 31

Section 208(b)(1)(B)(ii),
8 U.S.C. § 1158(b)(1)(B)(ii) 27, 31

Section 237(a)(1)(B),
8 U.S.C. § 1227(a)(1)(B)3

Section 241(a)(1),
8 U.S.C. § 1251(a)(1).....2

Section 242(b)(1),
8 U.S.C. § 1252(b)(1)2

Section 242(b)(2),
8 U.S.C. § 1252(b)(2)2

Section 242(b)(4)(B),
8 U.S.C. § 1252(b)(4)(B) 18, 27

REGULATIONS

8 C.F.R. § 208.14(c)(1).....3

8 C.F.R. § 1003.1(b)(3).....2

8 C.F.R. § 1208.13(b)(1)..... 18, 35

8 C.F.R. § 1208.13(b)(2)..... 18, 35

8 C.F.R. § 1208.13(b)(2)(i).....18

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BRIEF FOR RESPONDENT

STATEMENT OF JURISDICTION

The jurisdictional statement in Petitioner’s opening brief is neither complete nor correct. *See* 7th Cir. R. 28(b). Petitioner R.R.D. seeks review of an order of the Board of Immigration Appeals (“Board”), dated April 29, 2013, affirming an immigration judge’s decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture. Certified Administrative Record (“A.R.”) 3-5.

The Board had jurisdiction to review the immigration judge's order under 8 C.F.R. § 1003.1(b)(3), which grants the Board the authority to review most orders issued in removal proceedings. This Court's jurisdiction derives from 8 U.S.C. § 1251(a)(1), which authorizes the courts of appeals to review "final order[s] of removal." R.R.D. timely filed his petition on May 28, 2013, within thirty days of the Board's order. 8 U.S.C. § 1252(b)(1). Venue is proper because the immigration judge completed proceedings in Chicago, Illinois, within this judicial circuit. 8 U.S.C. § 1252(b)(2).

STATEMENT OF THE ISSUES

- I. For a past event to be considered "persecution" under the Immigration and Nationality Act (the "Act"), at least one central reason for the perpetrator's actions must have been a protected ground. Does the record compel the conclusion that R.R.D. has met his burden of showing this requisite link between motive and a protected ground where, of the incidents he claims were persecution, he could neither specifically identify the perpetrators nor their motives?
- II. For a fear of persecution to be considered "well-founded," it must be subjectively genuine, objectively reasonable, and based on a protected ground. Does the record compel the conclusion that R.R.D. established a well-founded fear of future persecution independent of his claim of past

persecution, where R.R.D. had not established that the persons he fears in Mexico continue to take an interest in him more than eight years later?

STATEMENT OF THE CASE AND FACTS

A. R.R.D. Enters The United States On A Nonimmigrant Visa, Overstays, And Subsequently Files An Affirmative Application For Asylum

R.R.D., a Mexican national, entered the United States on February 9, 2005, on a nonimmigrant visitor's visa with authorization to remain through August 8, 2005.¹ A.R. 650. R.R.D. overstayed his visa. A.R. 650. On February 6, 2006, R.R.D. filed an affirmative application for asylum with the Department of Homeland Security ("DHS"). A.R. 334. The DHS ultimately referred R.R.D.'s application to an immigration judge for de novo review in removal proceedings by issuing to R.R.D. a Notice to Appear, which alleged that R.R.D. overstayed his visa. A.R. 650-51; *see* 8 U.S.C. § 1227(a)(1)(B); 8 C.F.R. § 208.14(c)(1).

At an initial "master calendar" hearing held before an immigration judge on April 4, 2006, R.R.D., through counsel, conceded his removability and renewed his request for asylum, withholding of removal, and protection under the Convention

¹ R.R.D.'s wife and child entered the United States on tourist visas six months after R.R.D.'s arrival. *See* A.R. 97, 327-28. R.R.D.'s wife and (now) children were not included as part of his asylum application. (All of R.R.D.'s children are United States citizens. *See* A.R. 327-28.)

Against Torture, with a request for voluntary departure in the alternative.² A.R. 95-96. The merits hearings to adjudicate that application took place on February 4 and 8, 2011. A.R. 142, 201-02. R.R.D. and his wife testified.

B. R.R.D. And His Wife Testify In Support Of His Application, Claiming That R.R.D. Was And Would Be Persecuted Because Of His Then Status (And Now Former Status) As An Honest Law Enforcement Officer

R.R.D. stated that he was a federal police officer in Mexico from September 1995 through about May 2004. A.R. 144-45, 202. According to R.R.D., his job entailed gathering information to secure search and arrest warrants, arresting persons, searching for drugs, confiscating drugs, assisting the military with the destruction of drugs, and transporting prisoners to the penitentiary. A.R. 146-47. R.R.D. stated that he performed his job well and that he brought to trial more criminals than many of his roughly 5,000 colleagues, placing him, in his estimation, in the top fifteen percent of agents. A.R. 179-80, 212-13. R.R.D. averred that in the last year he was a Mexican police officer, he testified on behalf of the government at roughly forty-five hearings. A.R. 203.

² The immigration judge did not rule on R.R.D.'s application for voluntary departure in her written decision denying R.R.D.'s other applications. *See* A.R. 80-91. While R.R.D. argued to the Board that the immigration judge erred in not adjudicating this application, *see* A.R. 36, he has not renewed his argument in his opening brief to the Court. It is therefore abandoned. *See, e.g., Bank of Am. v. Veluchamy*, 643 F.3d 185, 189-90 (7th Cir. 2011).

R.R.D. testified that he was shot twice while on the job: once in the foot, while executing a search warrant with colleagues — many of whom were also hurt; and once in the hip, while he was on patrol in a rural area. A.R. 204-08. R.R.D. averred that in addition to these physical injuries, he often received threats, the first beginning in 1996, soon after he started working as a federal agent in Mexico. A.R. 173. According to R.R.D, he again received threats in 1998, after he and fellow agents confiscated a trailer containing drugs. A.R. 172-75. R.R.D. stated that after this incident, he learned through wire taps that drug traffickers had put a price on his head. A.R. 172-75. R.R.D. testified that when his superiors were informed of the hit, he was warned to be careful and was transferred to another city in Mexico. A.R. 175.

According to R.R.D., in a subsequent incident he and other officers confiscated drugs flowing through a place that was under the protection of state and local police; R.R.D. averred that the information he provided led to the issuance of an arrest warrant against a person connected to an influential politician. A.R. 154-55; *see also* A.R. 484-85. R.R.D. testified that a subsequent investigation led to an arrest warrant being issued for the politician, after which, according to R.R.D, he started to receive threats over the telephone and by the politician's defense attorneys on the street, warning him not to testify. A.R. 154-55, 158-59. R.R.D. averred that he specifically recalled six-to-seven threats being

made over the telephone telling him he “was going to be sorry” and that he was “not going to live to tell what [he] did.” A.R. 158. R.R.D. added that three or four times individuals also tailed him as he drove.³ A.R. 159-60.

R.R.D. stated that after these incidents he was transferred to Mexico City, and he and his family lived with other family members; according to R.R.D., soon after his arrival, four of his neighbors “murmured that [undisclosed persons] were asking” about him. A.R. 161-62. R.R.D. testified that while in Mexico City, he was assigned a detail to continue to investigate the politician, but persons related to this individual tried to start a fight in the senate chambers. A.R. 162. R.R.D. stated that he was nonetheless able to obtain incriminating evidence and that although this information made it into his final report, nothing came of it. A.R. 162. R.R.D. averred that he believed Mexico’s Attorney General decided not to act for political reasons. A.R. 162-63.

R.R.D. testified that around this time, in 2003, his wife was followed by unknown assailants. A.R. 176. According to R.R.D., when his wife tried to call him by radio during the incident, the perpetrators fled, driving on the sidewalk.

³ R.R.D. testified that his wife told him unknown assailants also tried to enter the family home during this time frame, only to be scared away when they realized that his wife and child were home. A.R. 176-77. R.R.D. conceded that this attempted burglary may have been random violence, because he “never received a threat [from anyone] saying we went to your home,” and “he didn’t know why th[o]se armed people tried to enter the house and who they were.” A.R. 216-17.

A.R. 176. R.R.D. conceded that no one was able to identify the vehicle and that “it’s possible” that the incident could have been random violence. A.R. 215-16.

According to R.R.D., while living with his parents, unknown assailants shot in his father in the chest while his father, R.R.D, and others were standing outside (or near the outside) of their home. A.R. 147-50. R.R.D. testified that although his father partially recovered, his father lost the ability to lift his left arm and that he and his immediate family left to live with his mother-in-law after the incident.

A.R. 167-69. R.R.D. testified that he believed that he was the real target of the shooting. A.R. 151-52. R.R.D. stated that the shooting was reported to police, but the police told him “they didn’t have any information”; R.R.D. added that when he reported the shooting to his superiors, they advised him to seek new work if he could not safely relocate. A.R. 150.

According to R.R.D., he knew his line of work would “some day . . . cost [him] [his] life” and accepted that it could happen given “the quantity of persons that [he] put in jail.” A.R. 165. R.R.D. also acknowledged that he “was threatened many times” as a “consequence of [his] job,” with assailants “chas[ing] [him] with vehicles,” but testified that if he reported these events too often, it would look “like [he] [was] imagining things.” A.R. 229. R.R.D. stated that he always attempted to be discreet about his employment; never wearing his uniform or showing a weapon near where he lived and that he always considered his home life safe and the “last

place where [he] would expect something . . . to happen.” A.R. 229-30. R.R.D. added that he “never thought that [his job] was going to put [his] family in harm’s way.” A.R. 165.

R.R.D. testified that his family relocated to his mother-in-law’s house away from Mexico City, but he stayed in Mexico City to provide testimony for the remaining cases he had under investigation and to check on his father; R.R.D. stated that he during this roughly two-month period, he lived in a hotel and did not leave often. A.R. 169-70. R.R.D. stated that he ultimately rejoined his wife and children in May/June 2004 after resigning from the force. A.R. 180, 220. R.R.D. testified that he intended to start a business, but before he could open it, persons started asking around about him. A.R. 180-81, 219. When asked who these persons were, R.R.D. stated that while he could not say specifically, he discerned from the persons’ accents that they hailed from Mexico City and thought them to be involved with the earlier group of persons who sought to harm him. A.R. 181-83. R.R.D. said he feared these persons would shoot or torture him. A.R. 185. R.R.D. stated that he reported the namedropping to the local police, but was told “they couldn’t do anything” and he would have “to present a lawsuit . . . before the Public Ministry.” A.R. 224. According to R.R.D, he thus decided to come to the United States until the situation “calm[ed] down.” A.R. 184.

According to R.R.D., he decided to stay in the United States because, during the interim, he learned from persons living in Mexico of the deaths of some of his former law enforcement colleagues in Mexico at the hands of youths, fifteen to sixteen years of age, who were also looking for him. A.R. 186-89. According to R.R.D., drug cartels use youths as their eyes. A.R. 221-22, 225. When asked if he could live somewhere in Mexico unmolested, R.R.D. said he “would not be able to live in a society in which [he] was part of it. [He] believe[s] [he] could live in some place, in an isolated place, but with [his] name, with [his] registration, [he] couldn’t live there.” A.R. 191-92.

R.R.D.’s wife testified last. A.R. 231. She testified that R.R.D. never shared the details of his cases or work with her. A.R. 233. She stated, however, that she feared for his life and that she had also personally been afraid for her own and her child’s safety. A.R. 233-34. R.R.D.’s wife stated that when her father-in-law was shot, multiple bullets were fired in or near the house where she, R.R.D., and others were standing. A.R. 238-39. R.R.D.’s wife added that while her husband’s colleagues rushed to assist the family and tried to protect them by moving them to another residence, she did not feel safe. A.R. 240-41. According to R.R.D.’s wife, two months before R.R.D.’s father was shot, in or around December 2003, two unknown persons followed her as she departed with their daughter from their daughter’s school. A.R. 234-35. R.R.D.’s wife testified that

both she and her sister, who was also in the car, made it obvious to the assailants that they were trying to contact R.R.D. by using the radio and their cell phones.

A.R. 234-35. R.R.D.'s wife stated that because of traffic, the perpetrators had to take an off-ramp to the right and the event was resolved without further incident.

A.R. 235.

According to R.R.D.'s wife, she and R.R.D. jointly made the decision for him to resign from the force. A.R. 243. She stated that while they both knew "there were many dangers in his line of work," the attacks on his family were "a much greater risk compared to the one that [R.R.D.] was ready to accept." A.R. 243. R.R.D.'s wife stated that soon after her husband rejoined his family, in July 2004, youths began asking around for her husband and noting that they knew he was a federal police officer. A.R. 244-45. R.R.D.'s wife testified that she never found out who these people were and agreed that she would not be able to identify them; she nonetheless suspected that they were related to the drug traffickers R.R.D. encountered in his work. A.R. 248. R.R.D.'s wife stated that they decided R.R.D. would leave for the United States to see if his departure would cause tensions to drop and that while it "could be some months, [they] thought that [the assailants] would give up and just leave it." A.R. 247-48.

R.R.D.'s wife averred that she did not believe she and the family could safely return to Mexico. A.R. 250-51. She stated that persons continue to look for

her husband in her mother's hometown and in Mexico City. A.R. 251. When asked if the family could safely move to another location in Mexico other than those two places, R.R.D.'s wife stated she did not think so because her husband had worked in many parts of Mexico. A.R. 251.

C. An Immigration Judge Denies R.R.D.'s Application And Orders His Removal To Mexico

In a written decision issued on April 1, 2011, an immigration judge denied R.R.D.'s application for asylum, withholding of removal, and protection under the Convention Against Torture and directed R.R.D.'s removal to Mexico. A.R. 80-91. After finding R.R.D. removable as charged, the judge summarized R.R.D.'s and R.R.D.'s wife's testimony and much of the documentary evidence presented before concluding that R.R.D. failed to establish a well-founded fear of persecution or a clear probability of torture in Mexico. *See id.* Beginning with R.R.D.'s credibility, the immigration judge found his testimony "largely credible" but noted a discrepancy between R.R.D.'s and his wife's testimony concerning the date in which youths allegedly went looking for R.R.D. in his wife's hometown. A.R. 85-86 & n.2. The judge concluded that this discrepancy did not "greatly undermine"

R.R.D.'s testimony but declined to credit R.R.D.'s wife's statement that she heard the youths looking for R.R.D. may have had R.R.D.'s photograph.⁴ A.R. 86.

Turning to R.R.D.'s application for asylum, the immigration judge summarized the relevant case law in the area of past persecution to conclude that R.R.D. failed to establish that he had suffered past persecution. A.R. 86-87. On that point, the immigration judge determined that R.R.D. failed to produce enough evidence for her to draw an inference that a protected ground motivated the persons who sought to harm R.R.D. in Mexico. A.R. 87. The immigration judge noted R.R.D.'s acknowledgment that "much of the violence he [personally] experienced at the hands of criminals" did not fit the legal definition of "persecution" and that the events he did witness or experience in Mexico was not established to have been "on account of his past experience as a police officer, or alternatively his status as a person who stood up against drug trafficking organizations." A.R. 87-88. In so doing, the immigration judge explained that R.R.D. might have satisfied his burden of proof "[i]f, for instance, he [had] show[ed] that he was attacked as part of a broader aim of targeting honest police officers to intimidate all officers into accepting bribes." A.R. 88. The judge noted

⁴ R.R.D.'s wife testified that she never personally saw a photograph but heard from her brothers, who, in turn, heard from "the kids that were from the ranch [that] knew [her] and [her] brothers," that the youths had a photograph of R.R.D. A.R. 246.

that the evidence R.R.D. presented, however, indicated that he was targeted for “retribution for particular investigations.” A.R. 88. The immigration judge therefore concluded that R.R.D. had not establish that the past harm he experienced in Mexico was “on account of” a protected ground under the Act and that, as a result, R.R.D. was not entitled to a presumption of a well-founded fear of future persecution. A.R. 88.

As for R.R.D.’s evidence pertaining to prospective persecution regardless of his failure to establish past persecution, the immigration judge determined that R.R.D. failed to show that his fear is objectively reasonable, because he has “provided no evidence suggesting [that] he would be singled out for any harm” in Mexico because of a protected ground under the Act. A.R. 88. As such, the immigration judge also concluded that R.R.D. did not establish his eligibility for withholding of removal, which also requires fear of harm because of a protected ground. A.R. 89.

Finally, the immigration judge determined that R.R.D. had not established that it is more likely than not he would be tortured in Mexico by or with the acquiescence of the Mexican government. A.R. 89-90. The judge noted that it has been more than six years since R.R.D. had departed Mexico and he has not shown a clear probability that the organizations he fears in Mexico are targeting him. A.R. 90. Further, while noting R.R.D.’s apparent failed attempts at relocation in

Mexico, the judge noted that R.R.D. had tried living in what his own documentary evidence claimed was “the ‘cradle’ of drug traffickers in Mexico” and that R.R.D.’s past experiences of relocating to those regions is not persuasive evidence. A.R. 90. Further, the judge noted that the documentary evidence establishes that the Mexican government would not acquiescence to his torture at the hands of drug-traffickers. A.R. 90. The immigration judge therefore denied R.R.D.’s application for protection under the Convention Against Torture and directed R.R.D’s removal to Mexico.⁵ A.R. 90-91.

D. R.R.D. Appeals His Removal Order To The Board, And The Board Affirms The Immigration Judge’s Decision

R.R.D. appealed his removal order to the Board. A.R. 70-74. In a brief submitted to the Board, R.R.D. argued that the immigration judge clearly erred in finding that retribution motivated persons to shoot at his parents’ house and that the immigration judge additionally erred in stating that R.R.D. attributed the retribution to his investigation into the senate chambers in Mexico, when he, in fact, believed it stemmed from his continuing work on the corruption of a particular politician. A.R. 24-25. R.R.D. also argued that the immigration judge clearly erred in “minimizing” the threats he faced and in not finding that his

⁵ R.R.D. has waived review of his application for protection under the Convention Against Torture. *See* Petitioner’s Brief (“Pet’r Br.”) 11 n.3. That application will therefore not be addressed.

“failure to give in to [the assailants’] demands . . . led to the” shooting at his parents’ house in Mexico City. A.R. 25. Finally, R.R.D. argued that he was, in fact, “attacked as part of the broader aim of intimidating all [Mexican police] officers into accepting bribes” and that this motivation qualified as a protected ground. A.R. 26-31.

In a decision dated April 29, 2013, a three-member panel of the Board dismissed R.R.D.’s appeal and affirmed his removal order. A.R. 3-5. The Board held that the immigration judge did not clearly err in finding a desire to retaliate against R.R.D. “for actions that he took against them in the course of his duties as a police officer” motivated Mexican drug-trafficking organizations to threaten R.R.D. A.R. 4. The Board also upheld the immigration judge’s determination that R.R.D. “was specifically targeted for retribution for particular investigations he had conducted” as opposed to his claimed social group membership comprised of “honest law enforcement officers who refuse to accept bribes as part of drug trafficking organizations’ policy of ‘money or bullets.’” A.R. 4. As such, the Board agreed with the immigration judge that R.R.D. had not established past persecution in Mexico. *See* A.R. 4.

As for R.R.D.’s showing of future persecution independent of past persecution, the Board determined that R.R.D. had not established that his fear is “well-founded,” noting that R.R.D. did not experience persecution after he left the

police force; the record did not suggest a pattern of “persecution of former police officers”; and eight years have passed since he departed Mexico. A.R. 4. Finally, because R.R.D. did not meet his burden of proof for asylum, the Board agreed with the immigration judge that R.R.D. could not satisfy his burden for withholding of removal. A.R. 4. Accordingly, the Board dismissed R.R.D.’s appeal. A.R. 5. This petition for review followed.

SUMMARY OF THE ARGUMENT

Because the record does not compel the conclusion that R.R.D. is eligible for a discretionary grant of asylum, the Court should deny the petition for review. The agency reasonably concluded that R.R.D. did not satisfy his burden of proving that at least one central reason for persons seeking him out in Mexico was because of his membership in the proposed social groups of honest and uncorrupt law enforcement officers or his status as a former police officer. In its decision, the agency neither set forth broad legal pronouncements nor misconstrued any relevant legal precedent. Further, of the incidents that R.R.D. claimed were persecutory, he could identify none of the perpetrators and only surmise their motives. As such, while it may have been permissible for the agency to draw the inference R.R.D. requested from this circumstantial evidence, the agency was not required and permissibly declined to do so.

The agency also reasonably determined that R.R.D. did not show a well-founded fear of future persecution independent of past persecution. In addition to his failure to establish that his future fears are premised on a motive different from the motive the agency reasonably held not to be cognizable under the Act in the past persecution context, R.R.D. has resigned from the Mexican federal police force and eight years have passed since he resided in Mexico. The agency reasonably determined that given this state of events, R.R.D. has failed to show that the persons he fears continue to take an interest in him prospectively; the record does not compel a contrary conclusion. The Court should accordingly deny the petition for review.

ARGUMENT

The Record Does Not Compel The Conclusion That R.R.D. Is A “Refugee” Under The Immigration And Nationality Act

A. Standard And Scope Of Review

Where the Board adopts the immigration judge’s decision but provides reasoning of its own, the Court considers both opinions. *Surganova v. Holder*, 612 F.3d 901, 904 (7th Cir. 2010). Legal questions are reviewed de novo, with deference to the Board if the matter involves an ambiguous section of the Act or the agency’s own regulation. *See INS v. Aguirre-Aguirre*, 526 U.S. 415, 424 (1999); *Auer v. Robbins*, 519 U.S. 452, 461-62 (1997), *superseded on other grounds by* 28 C.F.R. § 541.603(a) (2009). Factual findings are examined for

substantial evidence and are considered “conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C.

§ 1252(b)(4)(B).

B. The Agency Reasonably Concluded That R.R.D. Did Not Establish Past Persecution

An applicant may demonstrate his eligibility for a discretionary grant of asylum in one of two ways: either by establishing that he endured past persecution in the relevant country on account of a “protected ground” under the Act (i.e., race, religion, nationality, membership in a particular social group, or political opinion),⁶ or by showing that he has a “well-founded” fear of future persecution irrespective of a demonstration of past persecution. *See* 8 C.F.R. § 1208.13(b)(1)-(2). For an applicant’s fear to be “well-founded,” three things must be shown: one, that the fear is on account of a protected ground; two, that a reasonable possibility exists that he would “suffer[] such persecution” giving rise to the fear (often referred to as the “objective component” to a well-founded fear); and three, that the applicant is unable or unwilling to return to, or avail himself of the protection of, his country because of such fear (often referred to as the “subjective component” to a well-founded fear). 8 C.F.R. § 1208.13(b)(2)(i). In this case, the immigration

⁶ If successful in making this showing, the applicant is entitled to a rebuttable presumption that he would be persecuted prospectively in the country in question. *See* 8 C.F.R. § 1208.13(b)(1).

judge and the Board both concluded that R.R.D. did not establish his eligibility for asylum under either approach. *See* A.R. 3-5, 86-90. They did not err in this assessment.

1. The Record Does Not Compel The Conclusion That R.R.D. Was Harmed In Mexico Because Of A Protected Ground

As pertinent to R.R.D's overall asylum claim, case law has settled two points. First, "dangers faced by policemen as a result of that status alone are not ones faced on account of" a protected ground." *Matter of Fuentes*, 19 I&N Dec. 658, 661 (BIA 1988). The Board adopted this rule twenty-five years ago, noting that "[s]uch dangers are perils arising *from the nature of* . . . employment and domestic unrest rather than 'on account of' immutable characteristics or beliefs." *Id.* (emphasis added); accord *Ahmed v. Ashcroft*, 348 F.3d 611, 616 (7th Cir. 2003) ("Confronting dangerous situations as an officer charged with keeping the peace is simply not the same as persecution."). On the other hand, the Board acknowledged in *Fuentes* the possibility "that mistreatment occurring because of [having been a police officer,] in appropriate circumstances[,] could be found to be persecution on account of" a protected ground. 19 I&N Dec. at 662. In that regard, *Castañeda-Castillo v. Holder* noted that while "the sheer fact of being on active duty is not dispositive under *Fuentes*," the alleged persecution still has to be "directed against [the applicant's] 'personal characteristics or political beliefs,'" not "in response to

the petitioner's role as a 'highly visible embodiment[] of the power of the state.'" 638 F.3d 354, 365 (1st Cir. 2011) (quoting *Fuentes*, 19 I&N Dec. at 661).

The agency concluded that persons targeted R.R.D. in Mexico "to retaliate against [him] for actions that he took . . . in the course of his duties as a police officer." A.R. 4. Specifically, the immigration judge found, and the Board affirmed, that R.R.D. was "targeted [in Mexico] as retribution for particular investigations" he had conducted. A.R. 4, 87-88. The agency further noted that to the extent drug-trafficking organizations even remain interested in R.R.D. today, R.R.D. has not established that their motives have changed: that is to say, R.R.D. "has not meaningfully distinguished his fear of future persecution from [what] he suffered in the past" and "provided no evidence suggesting he would be singled out for any harm other than [the] retaliatory violence" he originally experienced, which was found not to be on account of a protected ground.⁷ A.R. 88. In short, then, the agency concluded R.R.D. failed to establish that at least one central reason for the

⁷ R.R.D. misconstrues the immigration judge's decision in contending that this passage "erroneously assumes that retaliation can never constitute persecution on account of a protected status." Pet'r Br. 38 n.6. The immigration judge found that the motive for the past harm to R.R.D. in Mexico was not a protected ground. *See* A.R. 87-88. She therefore concluded that because R.R.D. presented no other evidence "suggesting he would be singled out for any harm other than the retaliatory violence" — i.e., the same harm that he experienced in the past in Mexico, which she found not to have been based on a protected ground — R.R.D. failed to show that he would be singled out in Mexico because of a protected ground prospectively. A.R. 88.

harm he experienced in Mexico in the past, or might experience in Mexico in the future, was or would be because of a protected ground.⁸ *See* 8 U.S.C.

§ 1158(b)(1)(B)(i). Because “substantial evidence support[s] the [agency’s] finding that the dangers [R.R.D.] experienced while serving as a . . . police officer arose from the nature of his employment,” the petition for review should be denied. *Ahmed*, 348 F.3d at 616.

As for the evidence presented to the agency, of the incidents R.R.D. claimed formed the basis for his asylum application⁹ — persons tailing him at times in Mexico, his father being shot, persons tailing his wife, and persons looking for R.R.D. after he relocated from Mexico City — R.R.D. presented no direct evidence of the perpetrators’ motives in any of them. *See* A.R. 87-88. While R.R.D. did present circumstantial evidence of motive, namely his testimony, R.R.D. conceded that he did not know who these persons were, including the assailants who shot his father (they said nothing and left nothing during the

⁸ As the immigration judge pointed out, this is a REAL ID Act case, and R.R.D. must show that “at least one central reason” for the motive behind the harm he experienced or fears he would experience was or would be because of a protected ground. *See* A.R. 87 n.2. This standard is stricter than the prior “at least in part” standard, to which much of the case law — and occasionally R.R.D. — refer. *See, e.g.*, Petitioner’s Brief (“Pet’r Br.”) 27; *Cece v. Holder*, 733 F.3d 662, 672 n.6 (7th Cir. 2013) (en banc).

⁹ R.R.D. disclaims reliance on two incidents where he was shot in the line of duty. *See* Pet’r Br. 5, 34.

shooting); R.R.D. nonetheless surmised that the shooters meant to target him, not just his father or any other person present, because of an investigation he had been doing. *See* A.R. 151-52. For her part, his wife stated that she had “no idea of the identity” of the shooters and that “it’s practically impossible to know” why the shooting occurred. A.R. 256-57.

The evidence presented to support motive in the other incidents is equally unconvincing to compel crediting R.R.D.’s theory that he was targeted specifically for being an honest and uncorrupt law enforcement officer: as for the incident involving his wife being tailed in Mexico City, R.R.D. acknowledged that the incident could have been a random attempted robbery, *see* A.R. 215-16. Further, as for the youths that were looking for him before he left for the United States, R.R.D. remarked that he could not “say who they were,” let alone state what their motive was; he surmised only that he “believe[d] they were the same people, same group of people that . . . were trying to harm [him]” earlier because drug cartels often hire “youths as their eyes.” A.R. 181, 225. For her part, his wife testified that even the townsmen who told her that persons were looking for her husband after the family relocated could not say who, exactly, was looking for her husband — let alone define their motives. A.R. 252-53. According to R.R.D’s wife, “[t]he only thing that [they] can be sure of is that these people that get close and [that] ask

and are looking for [her husband], they're not people from [the] police or from the government. They don't identify themselves." A.R. 252-53.

Finally, R.R.D.'s counsel acknowledged that of the documentary evidence submitted to support his claim, nearly all of it relates to active police officers who were harmed by drug cartels. A.R. 265. Indeed, the documentary evidence appears to neither discuss former police officers generally nor does it address a specific subset of police officers of which R.R.D. claims memberships: officers who were exceptional and uncorrupted.¹⁰ Petitioner's Brief ("Pet'r Br.") 20; *see Fuentes*, 19 I&N Dec. at 661 (noting that when law enforcement officials are attacked because of their being "highly visible embodiments of the power of the

¹⁰ The Board made this point in its decision. It noted that R.R.D. argued in his brief that he was "targeted due to his membership in the particular social group of honest law enforcement officers who refuse to accept bribes as part of drug trafficking organizations' policy of 'money or bullets.'" A.R. 4. The Board found its answer to the argument by pointing to the immigration judge's factual finding, which was not clearly erroneous, that the facts of this particular case did not support the contention that such group membership centrally motivated R.R.D.'s perpetrators. *See* A.R. 4. The Board also noted that R.R.D. failed to support his assertion that this subgroup of officers are targeted *in particular* with any objective evidence, noting that 400,000 police officers (in addition to soldiers) are active in Mexico today. Such evidence does not distinguish between subgroups of police officers. *See* A.R. 4 (citing A.R. 85, 287). *Contra* Pet'r Br. 24-26 ("The evidence in the record — which was credited by the Immigration Judge — showed that the cartels have a policy of targeting *honest policemen* in order to intimidate others into cooperating with them. . . . The record is choke full of evidence that the Mexican drug cartels have assassinated — often in gruesome ways — large numbers of police officers *who have refused to be corrupted*. . . .") (emphases added) (internal citations omitted).

state,” it is not persecution on account of a protected ground); accord *Castañeda*, 638 F.3d at 365. On the latter point, of the fifteen percent or so of officers whom R.R.D. believed performed the job the same way he did, R.R.D. testified that “it was probable” they had encountered similar problems in Mexico, but he could not “speak for them” and did not know. A.R. 214-15; see, e.g., *Bathula v. Holder*, 723 F.3d 889, 901 n.32 (7th Cir. 2013) (noting that, when making a protected group claim based upon social group membership, the applicant should present “evidence of vulnerability *intrinsic to the proposed group*”) (emphasis added). Given this evidence, or lack thereof, the agency did not err in concluding that R.R.D. failed to provide sufficient evidence supporting his theory that he was harmed in Mexico because of a protected ground, be it a specific subset of police officers who refused to take bribes and were exceptional at their jobs, or his current status as a former officer. See A.R. 87; 8 U.S.C. § 1158(b)(1)(B); *Jian Hui Shao v. Mukasey*, 546 F.3d 138, 157-58 (2d Cir. 2008) (“[W]hen a petitioner bears the burden of proof, his failure to adduce evidence can itself constitute the ‘substantial evidence’ necessary to support the agency’s challenged decision.”).

2. The Agency Did Not Commit Legal Error

R.R.D. suggests the Board’s decision may be read as setting forth a categorical rule that “if a persecutor acts with a retaliatory motivation and specifically targets the victim, the persecution cannot be on account of a protected

ground.” Pet’r Br. 13-14, 18-26. This paraphrasing misconstrues what the Board wrote, which was, “The Immigration Judge’s factual determination that the drug cartels were motivated by a desire to retaliate against [R.R.D] *for actions that he took against them in the course of his duties as a police officer*, is not clearly erroneous.” A.R. 4 (emphasis added). It was the motive behind the retaliation in this case specifically, not the fact that retaliation occurred generally, that focused the Board.¹¹ *Cf. e.g., Ahmed*, 348 F.3d at 617-18 (rejecting similar attempts to claim legal error in an agency decision, where “a careful reading of the BIA’s opinion shows that its rejection of Ahmed’s claim was not based on the view that political opinions cannot be attributed in this way,” but was “more properly read as finding insufficient both the quantum and the specificity of the evidence adduced by Ahmed”). To the extent R.R.D. argues otherwise, his construction does not overcome the presumption of regularity that attaches to agency decision-making. *See, e.g., Kiorkis v. Holder*, 634 F.3d 924, 928-29 (7th Cir. 2011).

R.R.D.’s similar argument — that the Board allegedly held that he “could not claim asylum and withholding based on past persecution he had suffered while

¹¹ As such, the Board had no need to “explain why the First Circuit’s nexus analysis should not also apply here,” Pet’r Br. 22 n.4, because the Board did *not* hold in this case that “[i]f a persecutor acts with a retaliatory motivation and specifically targets the victim, the persecution cannot be on account of a protected ground.” Pet’r Br. 18. As will be discussed below, the Board also permissibly distinguished *Castañeda* on its facts. *See infra* n.17 & accompanying text.

still he was a police officer” — makes the same mistake.¹² Pet’r Br. 15, 31-36. Again, the Board said no such thing, and R.R.D.’s contention does not overcome the presumption of regularity. *See, e.g., Kiorkis*, 634 F.3d at 928-29. The Board’s decision neither set forth a blanket rule nor did it state anything more than this: to the extent R.R.D.’s claims of motive are based on his “carrying out his lawful duties as a police officer” — which the Board held the immigration judge permissibly found to have been the case — such claims are not claims of persecution on account of a protected ground. *See* A.R. 4. This statement is not legal error. *See Pavlyk v. Gonzlaes*, 469 F.3d 1082, 1088-89 (7th Cir. 2006) (upholding the agency’s conclusion that the applicant’s “story chronicles individualized threats arising from two investigations,” which “[a]t most, . . . suggests that any persecution stemmed from [the applicant’s] conduct in these particular investigations and not because of his status as a member of a group” and citing, with approval, a passage in *Matter of C-A-*, 23 I&N Dec. 951, 957 (BIA 2006)). Indeed, the immigration judge explicitly acknowledged that “even a police

¹² The agency did not reach whether the events that occurred in Mexico rose to the level of persecution. Should the Court disagree with the agency’s finding as to the motive of the perpetrators, it should remand for the agency to reach this issue in the first instance. *See Thomas v. Gonzales*, 547 U.S. 183, 186-87 (2006) (per curiam); *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (per curiam).

officer can be persecuted,” A.R. 87 (citing *Ahmed*, 348 F.3d at 616-17), and spent several paragraphs explaining the situations in which a police officer may and may not be able to establish a valid claim to asylum, *see* A.R. 87-88. The Board took no exception to this reasoning. *See* A.R. 3-5. In short, this case involves a dispute over agency factual findings, not legal pronouncements.¹³ And on that point, the record does not compel the conclusion that a central reason R.R.D. was (or would be) harmed is a protected ground. *See* 8 U.S.C. §§ 1158(b)(1)(B)(ii), 1252(b)(4)(B).

¹³ The agency neither discussed nor rested its decisions on the constructions of R.R.D.’s proposed social groups; rather, it held that R.R.D. failed to show that the perpetrators were (or would be) motivated to harm him because of his proposed group memberships. *See* A.R. 4-5. As such, R.R.D.’s defense of the construction of his social groups is beside the point. *See* Pet’r Br. 15-16, 31-36; *Bagamasbad*, 429 U.S. at 25-26. Should the Court find resolution of the groups’ construction necessary, it should remand to the Board for the agency to reach the issue in the first instance. *See* *Thomas*, 547 U.S. at 186-87; *Bathula*, 723 F.3d at 901. Notably, neither *Castañeda*, 638 F.3d 354, nor *Madrigal v. Holder*, 716 F.3d 499 (9th Cir. 2013), addressed the issue of whether “honest officers who acted against the cartels” constitute a particular social group under the Act. *Contra* Pet’r Br. 14. The social group in *Castañeda* was “Peruvian military officers whose names became associated with the Accomarca massacre.” 638 F.3d at 363. And *Madrigal*’s group was comprised of “former Mexican army soldiers who participated in anti-drug activity.” 716 F.3d at 503

3. The Evidence Presented Is Insufficient To Compel The Agency To Credit R.R.D.'s Belief That The Incidents Of Harm Arose Because Of His Status As An Honest Law Enforcement Officer

R.R.D. argues that his evidence compels the conclusion that a central reason for his harm in Mexico was his honesty in his role as a police officer. Pet'r Br. 26-31; *see also* Pet'r Br. 24-25 (suggesting that credible evidence is necessarily sufficient evidence to carry a burden of proof); Pet'r Br. 30 n.5 (assuming that evidence an immigration judge finds "credible" is tantamount to that evidence being "convincing"). He contends that "[n]either the Immigration Judge nor the BIA identify any basis in the record, or offer any reasoned analysis, for rejecting [this] argument." Pet'r Br. 27. Both adjudicators did offer such analysis. The immigration judge wrote that R.R.D. had "simply not provided enough evidence to support" the inference he was asking her to draw: that "some of the harm he experienced was on account of his past experience as a police officer, or alternatively his status as a person who stood up against drug trafficking organizations." A.R. 87. This was after the immigration judge paraphrased his testimony, his wife's testimony, and much of the documentary evidence over four single-spaced pages, before proceeding to discuss specific aspects of R.R.D.'s testimony that she found unpersuasive. *See* A.R. 81-85, 87-88. The Board agreed with this analysis. *See* A.R. 3-5. Such reasoning is not only legally sufficient but also permissible given the agency's role as fact-finder. *See Jian Hui Shao*, 546

F.3d 157-58 (“[W]hen a petitioner bears the burden of proof, his failure to adduce evidence can itself constitute the ‘substantial evidence’ necessary to support the agency’s challenged decision.”).

On this latter point, neither the Board nor the immigration judge are required to “write an exegesis on every contention”; the agency must only indicate that it has “consider[ed] the issues raised, and announce its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted.” *Kebe v. Gonzales*, 473 F.3d 855, 857 (7th Cir. 2007) (quoting *Mansour v. INS*, 230 F.3d 902, 908 (7th Cir. 2000)). *Contra* Pet’r Br. 14-15. Further, the immigration judge “need not engage in ‘robotic incantations’ to make clear that [s]he has considered and rejected a petitioner’s proffered explanation,” particularly where, as here, the factfinder went through so much of that evidence in the written opinion. *Xiao Ji Chen v. U.S. Dep’t of Justice*, 471 F.3d 315, 336 n.17 (2d Cir. 2006). Finally, and most important, none of the evidence R.R.D. points to establishes that he was harmed in Mexico because of his being an honest police officer (or would be harmed in Mexico today because of his status as a former police officer), as opposed to the nature of R.R.D.’s prior employment, a nature

which, as R.R.D. repeatedly conceded, was a dangerous one that he knew may cost him his life someday.¹⁴ *See* A.R. 165.

R.R.D. points to news articles that describe “drug cartels frequently leav[ing] notes besides the bodies of police officers they kill, in order to threaten authorities” and “to intimidate other officers into working with the drug cartels.” Pet’r Br. 29 (citing A.R. 587-617, 610); *see also* Pet’r Br. 26 (assuming that documentary evidence discussing police killings and maimings focuses only on “police officers who have investigated the drug cartels” or who have “refused to be corrupted” which, in turn, presumably involves the fifteen percent or so of the federal officers with whom R.R.D. claims membership).¹⁵ *But see* A.R. 215 (R.R.D. testifying that while it is “probable” other members of his proposed group face similar problems as him, he does not know and “cannot speak for them”). Such evidence does not focus on former police officers and, more importantly, fails to establish that the specific group in which R.R.D. claims membership — a subset of police officers who are honest and uncorrupt — has its members targeted

¹⁴ R.R.D. testified that he accepted this risk out of a laudable belief that what he did made a difference. A.R. 165.

¹⁵ R.R.D.’s own testimony appears to acknowledge that even corrupt and dishonest officials can be targets. *See* A.R. 181-82 (“If *at any given time* you make a seiz[ure] or confiscation of something that belongs to them, you are in favor of the group who are the enemies of [the cartels].”) (emphasis added).

*in particular.*¹⁶ See *Pavlyk*, 469 F.3d at 1088-89 (“[E]ven assuming that the various threats and actions against Pavlyk constituted persecution and that the prosecutors constituted a social group, Pavlyk cannot demonstrate that the persecution was ‘because of’ his membership in a social group. Rather, Pavlyk’s story chronicles individualized threats arising from two investigations. At most, this suggests that any persecution stemmed from his conduct in those particular investigations and not because of his status as a member of a group of prosecutors.”); *Ahmed*, 348 F.3d at 616 (“In short, substantial evidence supported the BIA’s finding that the dangers Ahmed experienced while serving as a military and police officer *arose from the nature of his employment* and did not amount to past persecution for purposes of an asylum claim.”) (emphasis added). This

¹⁶ The Board did not “reason[] that, because the drug cartels have not succeeded in killing every police officer working against them, they must not have a policy of ‘money or bullets.’” Pet’r Br. 29-30 n.5. The Board held that R.R.D. did not meet his burden of proving that at least one central reason for his being targeted was because of his social group membership, which R.R.D. described as involving “money or bullets.” See A.R. 4. Further, while it may be true, as a matter of logic, that “the fact that there are many law enforcement officers who could become targets of the cartels does not in any way undercut the evidence” that cartels send a message through these killings, Pet’r Br. 29-30 n.5, the truth of that statement does not turn this evidence — which does not differentiate between groups of police officers — into evidence that is sufficiently persuasive and clear to carry R.R.D.’s burden to prove that he was targeted because of a *specific* social group membership. The applicant’s failure to submit sufficiently persuasive and specific evidence may result in the application’s denial. See 8 U.S.C. § 1158(b)(1)(B)(i)-(ii).

evidence, moreover, may just as well suggest that the cartels attack Mexican law enforcement officials because most officers “are (or are viewed as) extensions of the government’s military forces or simply because they are highly visible embodiments of the power of the state.” *Fuentes*, 19 I&N Dec. at 661. “In such circumstances, the dangers the police face are no more related to their personal characteristics or political beliefs than are the dangers faced by military combatants. Such dangers are perils arising from the nature of their employment and domestic unrest rather than ‘on account of’ immutable characteristics or beliefs. . . .” *Id.*

As for the other evidence R.R.D. presented, while his wife corroborated the fact that certain events occurred in Mexico, she offered no assistance as to the critical and ultimately dispositive question of what motivated or would motivate the perpetrators. *See* A.R. 233 (noting that R.R.D. never discussed his work with her); A.R. 252-53 (stating that she has no idea of the identity of the persons looking for her husband). This leaves R.R.D.’s testimony and, in particular, his suppositions that his doing his job well and refusing to give into bribes, is the reason behind the threats against him and the harm that has befallen his family in Mexico. While perhaps the agency could have drawn such an inference from R.R.D.’s testimony, it was not required to do so. *See Ahmed*, 348 F.3d at 615-16; *see also Pablo-Sanchez v. Holder*, 600 F.3d 592, 595 (6th Cir. 2010) (“The sole

link between Pablo-Sanchez’s political opinions and the assaults and threatening phone calls was a deep and strident voice he thought he recognized from one of his campaign rallies 18 months earlier. Inferring a motive from this kind of evidence requires several inferential leaps that strain the boundaries of circumstantial evidence.”).

Indeed, in the cases R.R.D. cites in support, there was always something more. In *Castañeda*, for example, many of the threats “included *specific intimations* of retribution” by the perpetrators because they believed, in his role as a military officer, Castañeda caused a civilian massacre. 638 F.3d 365-66 & n.10. The perpetrators left behind leaflets stating ““spilled blood will never be forgotten,”” referred specifically to Castañeda’s military codename, and dropped a note describing a motive when they planted an explosive next to the home of Castañeda’s parents.¹⁷ *Id.* Here, of the events R.R.D. claimed were persecutory,

¹⁷ As the Board held, this fact — that Castañeda was imputed with being involved in a civilian massacre — distinguishes that case from R.R.D.’s case. *See* A.R. 4. R.R.D. calls this distinction “bizarre” because “a person can receive asylum if he is targeted for unlawful acts *he took* when he was a police officer, but not if he is targeted for lawful acts.” Pet’r Br 22 n.4 (emphasis added). This distinction is one of R.R.D.’s own making. The Board wrote that Castañeda “claimed to be targeted on account of a *perception*” that he was involved in a civilian massacre. A.R. 4 (emphasis added). It was the perpetrators’ imputation that Castañeda committed a very serious unlawful act, not that Castañeda actually committed a serious unlawful act, which allowed Castañeda to claim asylum. *See* 638 F.3d at 362 (noting that the persecutor bar did not apply).

the perpetrators made no specific intimations of what motivated them to act, and both R.R.D. and his wife testified that it was possible that some of the events were unrelated to R.R.D.'s work as a law enforcement officer. *Compare* A.R. 181-82, 215-16, 248, *with Bathula*, 723 F.3d at 901 (“The petitioners rely primarily on the timing of the change in treatment—that it occurred following the change in power. Although that is *permissible* evidence that could support an inference of political motive, it is certainly not so strong as to require the Board to have accepted it.”) (emphasis in original).

Similarly, the motive in *Madrigal* was more discernible; one particular incident involved persons kidnapping, detaining, and beating the asylum applicant, a Mexican soldier, all the while threatening to kill the applicant for having transferred prisoners. 716 F.3d at 502. The kidnappers released him with a message for his commander: “that the 10 arrestees must be released or else all the people responsible for the arrest would be killed.” *Id.* The applicant reasoned that a specific drug cartel, who had ten members recently arrested, was responsible for the kidnapping. *Id.* at 502, 504-05. Based on this incident, and related testimony, the Court determined that the applicant’s suppositions were based on more “than pure speculation.” *Id.* at 505. R.R.D.’s testimony, in contrast, offered no such specifics as to the probable identity of the perpetrators, let alone their motives. *Cf. Ahmed*, 348 F.3d at 615-16 (“The Board was not required to defer to [Ahmed’s]

personal judgment that he was better off living in hiding, as it evaluated his claim of past persecution. Moreover, it was entitled to take into account Ahmed's failure to present any *detailed facts* suggesting that *he himself* suffered from *concrete acts* of persecution, or that his move to a remote desert farm was necessary to evade such acts.") (emphases added). In short, the record does not compel the conclusion that R.R.D. endured past persecution in Mexico. He is therefore not entitled to a rebuttable presumption of future persecution. *See* 8 C.F.R. § 1208.13(b)(1).

C. The Agency Did Not Err In Determining That R.R.D. Failed To Establish A Well-Founded Fear Of Persecution Independent Of The Lack Of Past Persecution

While R.R.D. may establish an independent claim to asylum by showing that he holds a well-founded fear of persecution, *see* 8 C.F.R. § 1208.13(b)(2), the record does not compel the conclusion that R.R.D. has done so. R.R.D. argues that the Board erred in stating that he "did not experience persecution after leaving the police force," A.R. 4, because "the record plainly establishes that [he] *did* experience persecution" insofar as "unknown young men began to ask his neighbors about him." Pet'r Br. 37 (emphasis in original). "Persecution," however, is a legal term meaning (among other things) that the harm experienced rose to a certain level of severity. *Yasinsky v. Holder*, 724 F.3d 983, 985 (7th Cir. 2013). The Board did not err in declining to consider "persecution" a set of youths asking about R.R.D. after he resigned from his law enforcement position,

particularly where, outside of threats, petitioner was never directly harmed in Mexico.¹⁸ *See, e.g., Bathula*, 723 F.3d at 900 (“[A]lthough the family was not under constant protection and had numerous personal encounters with members of the land mafia, no serious harm ever befell them, despite the fact that the group was willing to murder another opponent in plain sight of a crowd on a public street.”); *Ahmed*, 348 F.3d 616 (“[U]nfulfilled threats are generally insufficient to establish past persecution.”). Similarly, the three incidents of harm involving former law enforcement officials to which R.R.D. cites, *see* Pet’r Br. 39 (citing A.R. 398, 588, 612), do not compel the conclusion that the record “show[s] persecution of former police officers” in Mexico. A.R. 4; *see also Kebe*, 473 F.3d at 857 (noting that the agency is not expected to “write an exegesis on every contention”) (further citation omitted). Further, while R.R.D. discounts as “sheer speculation” the Board’s pointing to the passage of time since his last incident in Mexico as lessening his individual risk of persecution, Pet’r Br. 39-40, such observations are legally significant when the applicant carries the burden of proof.

¹⁸ R.R.D. disclaimed reliance on the two line-of-duty incidents. *See supra* n.9. Further, while he believed he was the real target of his father’s shooting, outside of threats, R.R.D. testified to no tangible harm to him in Mexico. *See Zhou Ji Ni v. Holder*, 635 F.3d 1014, 1018 (7th Cir. 2011) (recognizing that harm to a family member is generally not considered harm to an applicant).

See, e.g., Mekhtiev v. Holder, 559 F.3d 725, 730 (7th Cir. 2009).¹⁹ As such, the agency did not err in its conclusion that R.R.D. did not establish a well-founded fear of persecution independent of his failure to establish past persecution. Finally, because R.R.D. has “not met the laxer burden of proof required to establish eligibility for . . . asylum under the [Act],” he has necessarily failed to establish his eligibility for withholding of removal, which has similar elements to asylum. *Ahmed*, 348 F.3d at 619. The Court should accordingly deny the petition for review.

¹⁹ R.R.D. is correct to the extent that, if the Court determines that the record compels the conclusion that the past acts occurred because of a protected ground, a remand to the Board would be necessary. *See* A.R. 39-40. The agency might, however, determine that past acts did not rise to the level of persecution, *see supra* n.12, or address whether the Mexican government is able/willing to control the perpetrators, which would preclude the need to address the shifting of the burden of proof.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for review.

Respectfully submitted,

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Dated: December 12, 2013

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CERTIFICATE OF COMPLIANCE WITH
FED R. APP. P. 32(a)(7)

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(c), I certify that
Respondent's Brief:

1. was prepared using Times New Roman type, 14-point font;
2. is proportionately spaced;
3. contains no more than 8,200 words, exclusive of the tables of contents and citations and certificates of counsel.

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CERTIFICATE OF SERVICE

I certify that on December 12, 2013, I filed the foregoing with the Clerk of Court for the Court of Appeals for the Seventh Circuit. I certify that all party participants are CM/ECF members and that service will be accomplished by that system.

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