

No. 13-2141

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

R. R. D.,)	
)	
<i>Petitioner,</i>)	Petition for Review
v.)	
)	Board of Immigration Appeals
ERIC H. HOLDER, JR., Attorney)	
General of the United States,)	
)	
<i>Respondent.</i>)	
)	

REPLY BRIEF OF PETITIONER R. R. D.

Charles Roth
Lisa Koop
National Immigrant Justice Center
208 S. LaSalle
Suite 1818
Chicago, IL 60604
(312) 660-1613

Paul M. Smith
Matthew E. Price
JENNER & BLOCK LLP
1099 New York Avenue, N.W.
Suite 900
Washington, D.C. 20001
(202) 639-6000

Counsel for Petitioner R. R. D.

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

INTRODUCTION..... 1

ARGUMENT 3

I. The BIA Erred as a Matter of Law in Failing to Conduct a Mixed Motives Analysis 3

II. Substantial Evidence Does Not Support the BIA’s Rejection of Petitioner’s Claim That the Cartels’ Enforcement of “Money or Bullets” Was a Central Reason for His Persecution..... 9

III. Petitioner Has Established a Well-Founded Fear of Future Persecution on a Protected Ground 14

CONCLUSION 16

RULE 32(a)(7) CERTIFICATE OF COMPLIANCE 17

CERTIFICATE OF SERVICE 18

TABLE OF AUTHORITIES

CASES

Ahmed v. Ashcroft, 348 F.3d 611 (7th Cir. 2003) 4, 11

Al Yatim v. Mukasey, 531 F.3d 584 (8th Cir. 2008) 15-16

Ayele v. Holder, 564 F.3d 862 (7th Cir. 2009) 3, 11

Castaneda-Castillo v. Holder, 638 F.3d 354 (1st Cir. 2011) 2, 7

Escobar v. Holder, 657 F.3d 537 (7th Cir. 2011) 13

Espinosa-Cortez v. Attorney General, 607 F.3d 101 (3d Cir. 2010) 13-14

Gjerazi v. Gonzales, 435 F.3d 800 (7th Cir. 2006) 13

Kiorkis v. Holder, 634 F.3d 924 (7th Cir. 2011) 9

Long Hao Li v. Attorney General of United States, 633 F.3d 136 (3d Cir. 2011) 16

Mema v. Gonzales, 474 F.3d 412 (7th Cir. 2007) 13

Mohideen v. Gonzales, 416 F.3d 567 (7th Cir. 2005) 13

Mustafa v. Holder, 707 F.3d 743 (7th Cir. 2013) 13

Pavlyk v. Gonzales, 469 F.3d 1082 (7th Cir. 2006) 9, 10

Pablo-Sanchez v. Holder, 600 F.3d 592 (6th Cir. 2010) 4

Rashiah v. Ashcroft, 388 F.3d 1126 (7th Cir. 2004) 9

Sarhan v. Holder, 658 F.3d 649 (7th Cir. 2011) 2, 9

Shaikh v. Holder, 702 F.3d 897 (7th Cir. 2012) 5

Tapia Madrigal v. Holder, 716 F.3d 499 (9th Cir. 2013) 2, 8

Torres v. Mukasey, 551 F.3d 616 (7th Cir. 2008) 11

Zhou Ji Ni v. Holder, 635 F.3d 1014 (7th Cir. 2011) 16

STATUTES AND REGULATIONS

8 U.S.C. § 1158(b)(1)(B) 5

8 C.F.R. § 1208.13(b)(1) 14
8 C.F.R. § 1208.13(b)(1)(i)(A)..... 14
8 C.F.R. § 1208.16(b) 11

INTRODUCTION

The main theme of the government's brief is that the Board of Immigration Appeals ("BIA") should be affirmed because Petitioner failed to present sufficient evidence of his persecutors' motives, and thus, it is impossible to say what those motives might have been. Indeed, the government says, Petitioner could simply have been the victim of random crime completely unrelated to the investigations he undertook as a police officer. See Gov't Br. 16, 21-22, 33-34. That argument, however, is contradicted by the Immigration Judge ("IJ") and the BIA themselves. The IJ did not question that Petitioner "was specifically targeted as retribution for particular investigations." App. 12 (AR88). And the BIA affirmed "that the *drug cartels* were motivated by a desire to retaliate against [Petitioner] for actions that he took against them in the course of his duties as a police officer." App. 2 (AR4) (emphasis added).

Thus, according to the agency itself, this is not a case about whether Petitioner submitted sufficient evidence of motive. Rather, this case is about how that motive should be characterized: *solely* as a "non-persecutory personal dispute[]," App. 12 (AR88), as the Immigration Judge found and the BIA affirmed, or instead *also* as part of a policy of persecuting honest policemen who investigate and prosecute the drug cartels?

In answering that question, the IJ erred in holding, and the BIA erred in affirming, that drug cartels' motive must be regarded as "personal" because "the circumstantial evidence suggests that [Petitioner] was specifically targeted as retribution for particular investigations," as "people came looking for him

specifically.” App. 12 (AR88); App. 2 (AR4) (upholding IJ’s finding that cartels did not seek to harm Petitioner on a protected ground because “the facts of the case ... indicated that [Petitioner] was specifically targeted as retribution for particular investigations he had conducted”). The fact that Petitioner was “specifically targeted” is entirely consistent with his claim that the cartels’ policy of “money or bullets” – whereby the cartels assassinate police officers who act against them in order to intimidate others – was one central reason for Petitioner’s persecution.

Nor should the cartels’ retributory motive be fatal to Petitioner’s claim. Just as in *Castaneda-Castillo v. Holder*, 638 F.3d 354 (1st Cir. 2011) and *Tapia Madrigal v. Holder*, 716 F.3d 499 (9th Cir. 2013), the cartels’ desire for retribution was intertwined with their policy of harming police officers who engaged in anti-cartel activity. According to the agency’s logic, acts of violence by cartels toward officers who refuse to be bought off should simply be regarded as a collection of discrete, personal disputes, because in each instance, the victim is “specifically targeted as retribution.” App. 2 (AR4). But that misses the forest for the trees: as shown by Petitioner’s documentary evidence, and confirmed by the Amicus brief filed with this Court, there is a systematic pattern of violence by the cartels against people, like Petitioner, who have taken action challenging the cartels. The agency failed to consider that “a desire to retaliate,” *id.*, can have a mixed motivation, and thus it failed properly to consider Petitioner’s claim in light of the social context. *Cf. Sarhan v. Holder*, 658 F.3d 649, 656-57 (7th Cir. 2011).

To the extent that the government defends the BIA's decision on the ground that the BIA considered evidence of mixed motive and rejected it as insufficient, that conclusion is not supported by substantial evidence in the record. Petitioner's testimony – which the IJ found to be credible, a finding that the BIA affirmed – demonstrated that he had become a target for the drug cartels in 1996, when he began conducting raids and seizures against the cartels, and continued to be a target even after he fled the country in 2005. His testimony showed that the cartels' desire to harm him did not stem solely from any particular investigation he conducted, but rather resulted from a policy of “money or bullets,” in which cartels target incorruptible officers for gruesome assassinations in order to intimidate others. It is well-settled that an applicant's credible testimony is sufficient to carry his burden of proof. *See, e.g., Ayele v. Holder*, 564 F.3d 862, 871 (7th Cir. 2009). That is especially so when, as here, there was no contrary evidence or inconsistency. Moreover, Petitioner corroborated his testimony with extensive documentary evidence, including an interview with a former top narcotics officer in the Mexican police, who described the “money or bullets” policy. AR402; *see also* Amicus Br. of Everard Meade at 6-16. Accordingly, the case should be remanded.

ARGUMENT

I. The BIA Erred as a Matter of Law in Failing to Conduct a Mixed Motives Analysis.

The government's brief attempts to describe this case as involving sheer speculation about what might have been motivating the perpetrators who shot Petitioner's father, followed his and his wife's vehicle, and threatened

Petitioner's life. Repeatedly, the government asserts that Petitioner "did not know who these persons were" and "presented no direct evidence of [their] motives." Gov't Br. 21; *see also id.* at 16 (claiming that Petitioner "could identify none of the perpetrators and only surmise their motives"); *id.* at 22 (similar); *id.* at 33-34 (claiming that the "perpetrators made no specific intimations of what motivated them to act" and that "it was possible that some of the events were unrelated to [Petitioner's] work").

Contrary to the government's assertions, however, there is no question in this case about who was trying to harm Petitioner, or why. The BIA recounted the IJ's factual findings and stated that "[t]he Immigration Judge determined that the individuals who shot at [Petitioner] and his family members, injuring his father, and who sought him ... specifically targeted him in retribution for particular investigations he had conducted as a federal police officer." App. 1 (AR3). And the BIA further affirmed that the "drug cartels were motivated by a desire to retaliate against [him] for actions that he took against them in the course of his duties as a police officer." App. 2 (AR4). Thus, there is no question in this case that Petitioner was being specifically targeted by drug cartels for acts that he had undertaken in the past, as opposed to falling prey to random violence. *Cf. Pablo-Sanchez v. Holder*, 600 F.3d 592, 597 (6th Cir. 2010) (cited by Gov't Br. 32-33) (affirming denial of asylum claim where there was essentially no evidence connecting robbers and a sexual assailant with the applicant's political opponents); *Ahmed v. Ashcroft*, 348 F.3d 611, 614, 615-16 (7th Cir. 2003) (cited by Gov't Br. 34-35) (affirming denial of asylum claim

where the applicant had never himself been targeted for any harm). The government's efforts in its brief to cast doubt over who was targeting Petitioner, or why, are entirely without merit.

The question in this case, which the government's brief attempts to obscure, is *how to characterize* the cartels' desire to retaliate against Petitioner – solely as a personal dispute, or instead also as part of a general policy of the cartels to harm honest police officers who engage in anti-cartel activity. The statute and case law make clear that an applicant is eligible for asylum even when a persecutor is motivated by a combination of personal animus (which cannot justify asylum) and a desire to harm the victim for one of the reasons protected by the law. All that the applicant must show is that a protected status was “one central reason” for the persecution – not the only reason, and not even the primary reason. 8 U.S.C. § 1158(b)(1)(B); *Shaikh v. Holder*, 702 F.3d 897, 902 (7th Cir. 2012).

The BIA's legal error in this case was that it treated the cartels' retaliatory or retributory motivation as exclusively personal, on the ground that the cartels became interested in Petitioner as a result of specific investigations he conducted. Thus, while Petitioner argued that he had been targeted as part of the cartels' policy of “money or bullets,” the BIA rejected that contention on the ground that Petitioner “was specifically targeted as retribution for particular investigations he had conducted.” App. 2 (AR4). The IJ's decision, on which the BIA relied, similarly equated retribution or retaliation for specific investigations with a personal dispute. The IJ acknowledged that, if Petitioner

“could show that he was attacked as part of a broader aim of targeting honest police officers to intimidate all officers into accepting bribes, this might bring his claim into a status claim rather than a mere personal dispute.” App. 12 (AR88). But, the IJ continued, “the circumstantial evidence suggests that he was specifically targeted as retribution for particular investigations. According to [Petitioner], while living discretely ... in a small town ... people came looking for him specifically.” *Id.*

But by conducting those investigations, Petitioner also became a member of the social group of police officers who refused to accept bribes and instead took action against the cartels. The BIA failed to consider that the cartels’ efforts to harm Petitioner were not motivated purely by personal animus, but were *also* persecution on account of Petitioner’s protected status. The agency’s logic simply does not address the likelihood that the cartels were motivated by a *mixture* of personal animus and a desire to harm honest officers who engaged in anti-cartel activities.

As this Court and other Circuits have recognized, *see* Pet’r Br. 21-25, retaliation and retribution for a victim’s specific acts are often motivated by a combination of personal animus and the victim’s protected status – indeed, those two motivations are often intertwined. Thus, in *Castaneda-Castillo*, the First Circuit rejected the BIA’s holding that the applicant – a former military officer who was persecuted by Shining Path guerrillas in revenge for his alleged involvement in a massacre – could not establish harm on account of a protected status. The BIA had reasoned that “revenge is the motivation behind

the Shining Path's actions." 638 F.3d at 362-63. The First Circuit explained that "Castaneda's status as an officer associated with [the massacre] is precisely what explains the Shining Path's desire for revenge." *Id.* at 363.

The same logic applies in this case. While the government emphasizes the IJ's determination that the cartels were motivated by a desire to retaliate "for actions that [Petitioner] took against them in the course of his duties as a police officer," Gov't Br. 25 (quoting AR4), as in *Castaneda-Castillo*, it is precisely those actions that place Petitioner in the social group of honest officers who acted against the cartels, and that make the cartels' retaliation constitute persecution on account of a protected status. *See Castaneda-Castillo*, 638 F.3d at 363 ("We thus fail to discern a significant distinction between the proposition that the Shining Path targeted Castaneda because they wanted revenge for his alleged role in [the massacre], and that the Shining Path targeted him because he was a member of the group of former military officers that they believed to have been involved in [the massacre].").

The government attempts to distinguish *Castaneda-Castillo* on the ground that, in that case, there were "specific intimations of retribution." Gov't Br. 33 (quoting *Castaneda-Castillo*, 638 F.3d at 365-66 & n.10). But the same is true here. As the government itself recounted in its Statement of Facts, Petitioner testified that, after his investigation of an influential politician led to an arrest warrant, he received "threats over the telephone and by the politician's defense attorneys on the street, warning him not to testify," Gov't Br. 5, and Petitioner "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.’” Gov’t Br. 6 (quoting AR158) (alteration in original); see AR158-59. Not long afterwards, assassins shot at him as he stood with his family in front of his parents’ house, hitting his father in the chest. Gov’t Br. 7.

The government similarly distinguishes *Tapia Madrigal*, 716 F.3d 499, on the ground that “the motive ... was more discernible” in that case. Gov’t Br. 34. That response completely misses the point of that case, which involved a former Mexican soldier who, like Petitioner, was pursued by drug cartels in retribution for involvement in law enforcement activities. The BIA had held in that case, like this one, that cartels’ motive was “retribution” for actions that the applicant had taken while in the military, and as a result there was “no nexus to his social group membership.” 716 F.3d at 506. Thus, the question in the case was not whether the motive was “discernible,” Gov’t Br. 34, but rather how the motive – retribution – should be characterized. The Ninth Circuit held that a harm carried out with a retributory motive could still constitute persecution on a protected ground: “even if revenge partially motivated [the cartel’s] mistreatment of [the applicant], the record makes clear that their desire to intimidate members of his social group was another central reason for the persecution.” 716 F.3d at 506. The same is true here.

And the government does not even address *Sarhan*, in which this Court rejected the BIA’s holding that an attempted “honor killing” of a Jordanian woman accused of adultery stemmed solely from a personal dispute. The Court held that while “[t]he man who does the killing may have a personal

motivation,” it was necessary for the BIA to consider the “broader social significance” of such killings. 658 F.3d at 656-57. Just as in *Castaneda-Castillo*, *Tapia-Madrigal*, and *Sarhan*, the agency in this case conflated a retributory motive with a personal one, and failed to consider that retribution or retaliation might be personally motivated *and* be persecution directed at a social group. Accordingly, as in those cases, a remand is necessary.¹

II. Substantial Evidence Does Not Support the BIA’s Rejection of Petitioner’s Claim That the Cartels’ Enforcement of “Money or Bullets” Was a Central Reason for His Persecution.

The government also defends the decision below on the ground that Petitioner did not meet his burden of demonstrating that the cartels were motivated to harm him in connection with any larger policy of persecuting honest police officers who engage in anti-cartel activity. Gov’t Br. 28-29. In short, the government argues that this case is like *Pavlyk v. Gonzales*, 469 F.3d 1082 (7th Cir. 2006) (cited by Gov’t Br. 26, 31), in which this Court held that the applicant had merely alleged “individualized threats arising from two investigations,” which “[a]t most ... suggests that any persecution stemmed from [the applicant’s] conduct in those particular investigations and not because of his status as a member of a group.” *Id.* at 1088-89 (quoted by Gov’t Br. 26, 31).

¹ At several points in its brief, the government points to “the presumption of regularity,” see Gov’t Br. 25, 26, as though such a presumption requires a petitioner to overcome some special deference to the agency. All that the presumption of regularity means is that the petitioner bears the burden of establishing that an error occurred. *Kiorkis v. Holder*, 634 F.3d 924, 928 (7th Cir. 2011); *Rashiah v. Ashcroft*, 388 F.3d 1126, 1130 (7th Cir. 2004). Petitioner has met that burden here, for the reasons given above.

Such a conclusion, however, is not supported by substantial evidence in the record. Petitioner testified that he began receiving threats from the cartels in 1996, soon after he joined the police force and began carrying out anti-cartel investigations and seizures. App. 5 (AR81); AR173-74. He testified that his superiors frequently transferred him from city to city over the course of his eight years on the force for safety reasons. AR172. Petitioner also testified that other officers he worked with were assassinated. AR227. This testimony confirms that the persecution he suffered was not a unique consequence of particular investigations he conducted, *cf. Pavlyk*, 469 F.3d at 1088-89, but rather was endemic to law enforcement activity directed at the cartels. As Petitioner described the social context in which this cartel-directed violence took place: “There is in Mexico different groups ... dedicated to the trafficking. And they have the idea that one has to take the money that they offer you and not to do your job. If at any given time you ... seize or confiscat[e] ... something that belongs to them, you are in favor of the group who are the enemies of them.” AR181-82. Petitioner testified that the cartels targeted policemen who engaged in anti-cartel activity in order to intimidate and to show their power: “They have a say[ing] and they actually fulfill it. What they say is the money or the bullets, and it’s cheaper with the bullets. So, you decide.” AR230.

Contrary to the government’s assertion, the fact that honest police officers as a class are targeted for harm does not mean that Petitioner was subjected to harm merely because he was a “visible embodiment[] of the power of the state.” Gov’t Br. 32 (quoting *Matter of Fuentes*, 19 I. & N. Dec. 658, 661

(1988)). Petitioner was targeted not merely because he was a police officer, but rather because he was a police officer who refused to be bought off by the cartels and who engaged in law enforcement activity directed against them. Indeed, the cartels pursued Petitioner even when he was off duty and not in uniform. Petitioner took pains to remain discreet about his job when he was off duty, and testified that he never wore his uniform or his gun in public. App. 6 (AR82); AR147. Nevertheless, he was tracked to his parents' house, where assassins tried to kill him as he greeted his daughter on her way home from school. That distinguishes this case from *Ahmed*, in which the applicant had presented no evidence of any risk other than that faced by any soldier in uniform. See 348 F.3d at 615-16.

The IJ deemed Petitioner's testimony to be credible, App. 1 (AR3); App. 9 (AR85), and that testimony supports Petitioner's claim that the cartels were not merely motivated by a personal grudge against Petitioner for particular investigations, but also targeted Petitioner as part of a broader policy of killing honest police officers who challenged the cartels. "It is well-established that the credible testimony of an alien, without more, may be sufficient to sustain an asylum claim." *Ayele*, 564 F.3d at 871 (quotation marks omitted); *Torres v. Mukasey*, 551 F.3d 616, 626 (7th Cir. 2008) ("[A]n alien's credible testimony, by itself, is generally sufficient to sustain the alien's burden of proof."); 8 C.F.R. § 1208.16(b) (same for withholding of removal).

Further, Petitioner presented a large volume of documentary evidence establishing that the cartels, in order to demonstrate their power and

intimidate the police, regularly target police officers who have taken anti-cartel action. See AR587-617. According to the government, this “documentary evidence” does not “address a specific subset of police officers of which R.R.D. claims membership[]: officers who were exceptional and uncorrupted.” Gov’t Br. 23; *id.* at 23-24 & n.10, 30-31 & n.16. That is simply false. Just by way of example, one article recounted a shooting attack by a drug cartel on the family of a soldier who had died in a raid on a drug lord, AR588; another article explained that cartels leave notes nearby the dismembered bodies of police officers that simultaneously criticized the officers for crossing the cartels and warned others to toe the line. AR609-10. Yet another article consisted of an interview with the former top narcotics officer of the Mexican Federal Police, who described the cartels’ policy in the same terms as Petitioner’s testimony: the cartels assassinate officers who act against them in order to send a message to others – “money or bullets. You either accept the money or we’ll kill you....” AR402; *see also* Amicus Br. 6-16 (describing the cartel policy of “silver or lead”).

The government’s brief, like the BIA, simply ignores this evidence. Instead, the government merely recounts the IJ’s statement that Petitioner had “simply not provided enough evidence to support” his claim that he was targeted for a protected status. Gov’t Br. 28 (quoting AR87). But the IJ did not explain why Petitioner’s credible testimony and supporting documentary evidence did not suffice, or what additional evidence could reasonably have been expected. “An applicant for asylum is entitled to a reasoned analysis, not

one which wholly disregards relevant, probative evidence.” *Mema v. Gonzales*, 474 F.3d 412, 419 (7th Cir. 2007); *Gjerazi v. Gonzales*, 435 F.3d 800, 811 (7th Cir. 2006) (holding that a finding that ignores significant portions of the evidence is not supported by the record); *Mohideen v. Gonzales*, 416 F.3d 567, 571 (7th Cir. 2005) (reversing and remanding where the IJ ignored evidence of “mixed motive”).

The government appears to contend that Petitioner’s evidence is not sufficient to carry his burden because the cartels did not clarify in their threats or assassination attempt that they sought to harm Petitioner as a member of a social group as opposed to as an individual. See Gov’t Br. 20-22 (arguing, for example, that Petitioner presented “no direct evidence of the perpetrators’ motives”). But as this Court has recognized, there is no “requirement that persecutors recite a bill of particulars while they are holding a gun to someone’s head.” *Escobar v. Holder*, 657 F.3d 537, 549 (7th Cir. 2011). Here, Petitioner’s testimony and documentary evidence supports his argument that he was targeted for harm as part of the cartel’s “money or bullets” policy, and the BIA is not free simply to disregard that evidence – particularly when the BIA has identified no basis for calling its reliability into question, and there is no evidence to the contrary. *Id.* at 548; *Mustafa v. Holder*, 707 F.3d 743, 752, 754 (7th Cir. 2013) (reversing the BIA for “overlook[ing] significant circumstantial evidence when it rejected” the applicant’s argument that he was targeted at least in part on account of his membership in a social group rather than merely as a result of a personal dispute); *Espinosa-Cortez v. Att’y Gen.*,

607 F.3d 101, 114 (3d Cir. 2010) (reversing BIA for “overlook[ing] inescapable political overtones” in guerrilla group’s pursuit of applicant).

III. Petitioner Has Established a Well-Founded Fear of Future Persecution on a Protected Ground.

The government concedes in its brief that “if the Court determines that ... the past acts occurred because of a protected ground, a remand to the Board would be necessary.” Gov’t Br. 37 n.19. That is so not only because Petitioner would have made out a case for past persecution on account of a protected ground, but also because he would benefit from a presumption – which the government did not attempt to rebut² – that he would be persecuted in the future. 8 C.F.R. § 1208.13(b)(1) (cited by Gov’t Br. 18 n.6). But even independent of that presumption, Petitioner has introduced evidence establishing a well-founded fear of future persecution on account of his membership in the social group of former police officers.

The government disregards the fact that, even after Petitioner left the force, youths – who, based on his experience as a police officer, Petitioner believed to be scouts for the drug cartels – continued to ask in his wife’s village about his whereabouts. App. 6 (AR82); AR186-88, 224-25. According to the government, “a set of youths asking about R.R.D.” does not constitute harm

² The government suggests that the fact that time has passed since Petitioner left Mexico is “legally significant when the applicant carries the burden of proof.” Gov’t Br. 36. But under 8 C.F.R. § 1208.13(b)(1), because Petitioner has demonstrated persecution in the past, he enjoys a rebuttable presumption that he has a well-founded fear of persecution in the future. That shifts the burden to the government to show a “fundamental change in circumstances,” *id.* § 1208.13(b)(1)(i)(A), and the government has offered no evidence whatsoever to meet that burden.

rising to the level of severity required for a showing of persecution. Gov't Br. 35. The government misses the point. The harm that Petitioner fears is assassination. The cartels already attempted to kill him once, and he fears they will try again, and perhaps succeed. The fact that youths continued to ask about him even after he left the police force – and even after he left the country, AR249, 251 – is proof that his continued fear of assassination is well-founded, despite the fact that he is now a former officer and even though time has passed. *See also* Amicus Br. 19-22 (explaining that “police officers remain valuable cartel targets even after they leave their jobs” because “[o]stentatious displays of violence ... function to intimidate police officers into accepting bribes,” and cartel power would be weakened “if incorruptible police officers could disrupt cartel operations and then retire without consequence.”).

The government, remarkably, also argues that the attempted assassination of Petitioner at his parents' house does not constitute “persecution” because Petitioner himself was “never directly harmed” and that, even though his father was shot, “harm to a family member is generally not considered harm to an applicant.” Gov't Br. 36 & n.18. That argument should be rejected. Neither the IJ nor the BIA questioned that Petitioner was the intended target of the assassins' guns, nor did they question the credibility of Petitioner's testimony that his father had no enemies, and there was no reason why anyone would wish to kill him. AR166-67. Plainly, an attempted assassination constitutes persecution of the intended target, even if a bystander ends up being injured. *See e.g., Al Yatim v. Mukasey*, 531 F.3d 584,

587 (8th Cir. 2008) (“Persecution includes the credible threat of death, torture, or injury to one's person or liberty on account of a protected ground.”); *Long Hao Li v. Att’y Gen. of U.S.*, 633 F.3d 136, 149 (3d Cir. 2011) (“Our oft-quoted, non-exclusive list of examples of persecution include[s] threats to life...” (internal quotation marks omitted; alteration in original)).³

CONCLUSION

For the foregoing reasons, and those given in Petitioner’s opening brief, this Court should grant the Petition for Review and remand the case for further proceedings, both with respect to Petitioner’s asylum claim and with respect to Petitioner’s withholding of removal claim.

³ The government relies on *Zhou Ji Ni v. Holder*, 635 F.3d 1014, 1018 (7th Cir. 2011), but in that case, the Court ruled that the Petitioner had not been persecuted merely because his parents were arrested. That case is inapposite. Here, Petitioner was the intended target of the shooters who injured his father.

DATED: January 3, 2014

Respectfully submitted,

R. R. D.

/s/ Paul M. Smith
By: One of his Attorneys

Paul M. Smith
Counsel of Record
Matthew E. Price
JENNER & BLOCK LLP
1099 New York Ave. NW Suite 900
Washington, DC 20001
(202) 639-6000 (voice)
(202) 639-6066 (fax)
Email: psmith@jenner.com
mprice@jenner.com

Charles Roth
Lisa Koop
NATIONAL IMMIGRANT JUSTICE CENTER
208 S. LaSalle, Suite 1818
Chicago, IL 60604
(312) 660-1613 (voice)
Email: croth@heartlandalliance.org
lkoop@heartlandalliance.org

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

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(ii) because this brief contains 4,360 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Circuit Rule 32 and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in Bookman Old Style, Font Size 12.

Dated: January 3, 2014

/s/ Matthew E. Price
Matthew E. Price

CERTIFICATE OF SERVICE

Matthew E. Price, an attorney, hereby certifies that a true and correct copy of the foregoing Reply Brief of Petitioner R. R. D. was served on the following party via the Court's CM/ECF system:

Timothy Hayes
U.S. Department of Justice
Civil Division, Immigration Litigation
P.O. Box 878
Ben Franklin Station
Washington, DC 20044

/s/ Matthew E. Price
Matthew E. Price