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[1] XXXX XXXX XXXX XXXX XXXX (the principal appellant), his spouse, XXXX XXXX XXXX XXXX, and their children, XXXX XXXX XXXX XXXX and XXXX XXXX XXXX XXXX XXXX (the associate appellants) are citizens of Mexico. I am allowing their appeal for the reasons set out below.

a. The appellants fear returning to Mexico because they fear reprisals from the Jalisco Nueva Generación (JNG) [Jalisco New Generation] cartel. The male appellant alleges that he was accepted into the XXXX XXXX in XXXX and that the XXXX told him that, as soon as he started, he would be working for the JNG cartel. If he refused, he and his family would be killed.

b. The Refugee Protection Division (RPD) rejected the appellants' claim for refugee protection. It found that their allegations were credible; however, it concluded that the appellants had an internal flight alternative (IFA) in Campeche or Cancun. Since it does not appear that anyone from the JNG has been looking for or threatening them since they left Mexico, the RPD concluded that there was no evidence that they would be motivated to find them in either of those cities.

- c. The appellants are contesting the RPD's conclusions with respect to the IFA. They argue that they would not be safe in Cancun or Campeche because their agent of harm could find them. They note that the associate appellants saw the drug trafficker while they were hiding in Puerto Vallarta, which indicates that he would be able to find them in another region. They argue that they did not receive any threats because they were in hiding. They claim that the JNG is currently the foremost criminal threat in Mexico.

DETERMINATION

- [2] The appeal is allowed. I substitute my own determination that the appellants are persons in need of protection.
- [3] The determinative issue is the first prong of the IFA analysis, namely, whether the appellants would face a risk to their lives or a risk of cruel and unusual treatment or punishment in the proposed IFAs, Campeche and Cancun. Since I conclude that the appellants would not be safe there, there is no need for me to analyze the second prong, namely, whether it would be reasonable for the appellants to move there.

BACKGROUND

- [4] The RPD found that the appellants' allegations were credible. It noted some inconsistencies, but found that the principal appellant had explained them satisfactorily. The allegations can be summarized as follows:
- The principal appellant enrolled in the XXXX XXXX of pXXXX XXXX in XXXX to become a XXXX XXXX.
 - The principal appellant took several tests and exams to be admitted to the XXXX.
 - On XXXX XXXX XXXX 2018, the principal appellant was called into the office of the XXXX XXXX XXXX XXXX XXXX XXXX XXXX. The XXXX informed him that he would be hired on XXXX XXXX XXXX 2018, and that he would be in the service of the JNG cartel, for whom he would be distributing drugs and recruiting civilians to sell them. If he refused, he and his family would be tortured and killed. The XXXX told him that the cartel members had all his personal information and could harm him at any time.
 - The same day, the principal appellant was stopped in the street by a drug trafficker with the JNG cartel nicknamed XXXX XXXX, who congratulated him on being accepted into the XXXX.
 - On XXXX XXXX XXXX 2018, the appellants were stopped by XXXX XXXX, who made new threats against the principal appellant.
 - On XXXX XXXX XXXX 2018, the associate appellants went to hide at the home of a family member in Puerto Vallarta.

- Meanwhile, the principal appellant had decided to leave the country and had taken steps to obtain a passport.
- On XXXX XXXX XXXX 2018, the principal appellant received a telephone call asking him to explain his absence, as he had not shown up on the date he was scheduled to start at the XXXX. The appellant pretended he was sick.
- The principal appellant left Mexico on XXXX XXXX XXXX 2018.
- On XXXX XXXX, 2018, the principal appellant found out that XXXX XXXX XXXX had been murdered.
- In early XXXX 2018, the principal appellant's spouse informed him that she had seen XXXX XXXX in Puerto Vallarta, not far from where she was hiding. The male appellant then decided to claim refugee protection in Canada and bring his family here.

ANALYSIS

The Refugee Protection Division erred in its IFA analysis

- [5] I conclude that the RPD erred in concluding that the appellants had not established that the JNG cartel would be motivated to find them in the proposed IFAs, Campeche and Cancun.
- [6] The RPD concluded that the proposed IFAs were safe for the appellants, because the principal appellant had not received any telephone calls or threats after the telephone call from the academy on XXXX XXXX XXXX 2018, up until he left the country. The RPD also noted that the JNG cartel had not contacted the appellants' family members, who are still living in Mexico, to find out where they were. The RPD concluded that there was no evidence that XXXX XXXX presence in Puerto Vallarta was connected to the appellants. Lastly, the RPD concluded that, since the principal appellant had not filed a complaint and there were no witnesses to corroborate his acceptance into the XXXX XXXX, the cartel no longer had any reason to be interested in him and he was not a threat to the cartel.
- [7] The appellants are contesting these conclusions, arguing that the fact that they did not receive any threats after XXXX XXXX XXXX 2018, does not mean that the cartel was not looking for them, but that they were living in hiding. I agree with the appellants, in part. In most cases, evidence of being actively pursued by the cartel would be necessary to demonstrate that they have an interest in targeting the appellants.
- [8] However, in the appellants' case, I am of the opinion that the initial threat received by the principal appellant was sufficiently serious. The principal appellant defied the JNG cartel by refusing to join their ranks and, even in the absence of a complaint or witness, the heads of the cartel are aware of his recruitment and have his personal information, which was demonstrated by the threat received from XXXX XXXX.

- [9] The appellants criticize the RPD for incorrectly concluding that the male appellant is not a threat to the cartel. They argue that they demonstrated the opposite, namely, that the cartel is a threat to them. I conclude that this was merely awkward wording on the part of the RPD. The RPD concluded that, in the absence of a complaint against the cartel, they would have no interest in tracking down the principal appellant to punish him. Nevertheless, I am of the opinion that this conclusion is in error, because it is speculative and not based on the evidence.
- [10] The evidence shows that the principal appellant was threatened with serious consequences for simply refusing to work with the JNG cartel. The JNG cartel would therefore have an interest in tracking down the principal appellant because he dared them to follow through on their threats by refusing to work for them. Even in the absence of any evidence of ongoing threats or of the appellants being sought, I am of the opinion that it is likely that, if the JNG cartel were to find out where the appellants were, they would have an interest in following through on their threats.
- [11] What remains to be determined is whether the JNG cartel's area of influence is large enough that they could be informed of the appellants' presence if they were to move to Campeche or Cancun. The Refugee Protection Division failed to analyze the objective documentary evidence
- [12] The appellants criticize the RPD for failing to consider the fact that the JNG cartel is currently the foremost criminal threat in Mexico. However, they do not put forward any analysis based on the objective documentary evidence to support the conclusion that this would render the IFAs unsafe for them.
- [13] The RPD also failed to analyze the objective documentary evidence to support its conclusion that the appellants would be safe if they moved to Campeche or Cancun. As a result of this failure, the RPD's decision lacks justification.
- [14] After conducting my own analysis of the documentary evidence, I conclude that the JNG cartel has a sufficiently widespread presence in Mexico that they would likely be made aware of the appellants' presence in Cancun or Campeche. Considering the seriousness of the threat against the appellants and the violence for which this cartel is known, I consider that this is sufficient to conclude that the appellants would be at risk in the proposed IFAs.
- [15] The objective documentary evidence available to me indicates that the JNG cartel is known for its extreme violence¹ and is recognized by the Mexican government as one of the most dangerous cartels in the country.² It is the dominant criminal actor in Jalisco, Nayarit and Colima, at the port of Lazaro Cardenas in Michoacán, and in the states of Veracruz, Guanajuato (where the appellants are from), Puebla, Querétaro and Hidalgo.³ In addition to its dominant influence in these states, the JNG cartel has a presence in 27 of the 32 Mexican states.⁴ Other sources indicate that the cartel has some sort of presence in every state of Mexico, including a strong presence in the Riviera Maya, where Cancun is located.⁵ The regions in which the JNG cartel does not have a significant presence are Sinaloa and the

northern regions of Mexico, which are controlled by the cartel of that name.⁶

- [16] Even though there is no evidence that XXXX XXXX presence in Puerto Vallarta was connected to his search for the appellants, it confirms the information in the documentary evidence that the JNG cartel's area of dominance extends to the state of Jalisco, where that city is located.
- [17] This evidence leads me to conclude that the JNG cartel is formidable and has a network that extends practically across the country. Even though Campeche and Cancun are not located in the areas dominated by the JNG, the evidence shows that the cartel is present and has a drug-trafficking network in these locations.
- [18] I therefore conclude that it is likely that, if the appellants were to move to one of those locations, drug traffickers with the JNG cartel could be informed of their presence and convey the information to their network in the state of Guanajuato. XXXX XXXX, or his associates, would then likely be motivated to follow through on their threats.
- [19] I conclude that, even though the cartel has not been actively searching for the appellants through their family members in Mexico, the evidence is sufficient to conclude that the JNG cartel could be made aware of their presence in Campeche or Cancun and would then be motivated to follow through on their threats.
- [20] I would like to note that my conclusion with respect to the IFA applies only to the appellants' particular case and that, despite the JNG cartel's widespread presence, not everyone who has had contact with them would necessarily be at risk throughout the country. However, in the appellants' particular case, the initial threat is serious enough to believe that it would be carried out if the principal appellant were to cross paths again with people from this cartel elsewhere in the country. State protection is not available to the appellants
- [21] The appellants did not file a complaint with the authorities after they were threatened. The burden is on them to show that they have exhausted all available recourse before it can be concluded that protection is inadequate. However, they are not required to put their lives at risk by seeking state protection. In the appellants' case, since the JNG cartel has contacts within the police, the appellants would be placing themselves in more danger by filing a complaint.
- [22] I therefore conclude that adequate state protection against the JNG cartel is not available to the appellants.

CONCLUSION

- [23] Consequently, the appeal is allowed. I substitute my own determination that the appellants are persons in need of protection. The appeal is allowed. (signed) Zofia Przybytkowski Zofia Przybytkowski April 27, 2021 Date IRB translation Original language: French 1 National Documentation Package (NDP) on Mexico, September 30, 2020, Tab 7.12: ?Jalisco Cartel New Generation (CJNG), InSight Crime, July 8, 2020. 2 NDP on Mexico, September 30, 2020, Tab

7.2: Mexico: Organized Crime and Drug Trafficking Organizations, United States, Congressional Research Service, June S. Beittel, July 28, 2020, R41576, pp. 27-28. 3 NDP on Mexico, September 30, 2020, Tab 7.18: Crime and criminality, including organized crime, alliances between criminal groups and their areas of control; groups targeted by cartels; state response; protection available to victims, including..., Immigration and Refugee Board of Canada, September 21, 2020, MEX200313.E, p. 9. 4 Ibid. 5 Supra, endnote 1. 6 Ibid.

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