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UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE IMMIGRATION JUDGE  
SAN FRANCISCO, CALIFORNIA

In the Matter of:

\*\*\*

Respondents,

In Removal Proceedings.

Numbers: \*\*\*

Hearing Date: October \*\* 2015  
Hearing Time: 9:00 a.m.  
Before Hon. Dana Leigh Marks

**RESPONDENT \*\*\*'S BRIEF  
DEMONSTRATING ELIGIBILITY FOR ASYLUM, WITHHOLDING OF REMOVAL,  
AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE**

## I. INTRODUCTION

Respondent, \*\*\* \*\*\*, hereby respectfully submits a brief regarding her eligibility for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”) based on the persecution that she will face in El Salvador on account of Ms. \*\*\*’ membership in particular social groups and political opinion.

First, Ms. \*\*\* is eligible for asylum despite being in removal proceeding pursuant to Immigration and Nationality Act (“INA”) § 241(a)(5) for having a prior removal order and reentered unlawfully. INA § 208(a) explicitly provides that “an alien” regardless of his or her immigration status, may apply for asylum. INA § 208(a); 8 U.S.C. § 1158(a). The statute does not prohibit asylum applications from individuals who are inadmissible or deportable, who have prior removal orders, or who have re-entered illegally. Thus, contrary to 8 C.F.R. § 241.8(e), which provides that individuals who are subject to prior removal orders shall be considered for withholding of removal, and 8 C.F.R. § 208.31, which outlines the process for an IJ’s consideration of withholding of removal only, the INA unambiguously provides all aliens the right to apply for asylum, except for the limited classes of individuals delineated in the asylum statute. Ms. \*\*\* does not fall under one of the proscribed classes of individuals under INA § 208(a) who are excluded from applying for asylum. Therefore, under INA § 208(a), Ms. \*\*\* is eligible to apply for asylum despite the fact that she has a prior removal order and is in removal proceedings governed by INA § 241(a)(5).

Second, Ms. \*\*\* has suffered past persecution on account of her membership in the particular social groups of Salvadoran girls viewed as property, Salvadoran women who are unable to leave a relationship, Ms. \*\*\*’s nuclear family, and Salvadoran witnesses who testify against gang members. Ms. \*\*\* also suffered past persecution on account of her political

opinion. Ms. \*\*\* suffered physical and sexual abuse as a child by her father. When Ms. \*\*\* was a young teenager, her father would force her to have sex with men and he would keep the money the men paid to have sex with her. Ms. \*\*\* suffered domestic violence from her partner \*\*\*. He physically, sexually, and emotionally abused her. When she tried to leave, he found her and forced her to return to him. Ms. \*\*\* was a material witness and testified in a U.S. court against a coyote, \*\*\* (his nickname is \*\*\*), who had connections to gangs in El Salvador. She testified in open court in front of the man, and her testimony helped lead to his conviction and incarceration. \*\*\* and members of the MS-13 gang found Ms. \*\*\* and her children and attacked and threatened them due to the fact that Ms. \*\*\* had testified against him in court. In addition, Ms. \*\*\*'s family, who has ties to the MS-13 gang, threatened to kill Ms. \*\*\* after she reported to the police that her nephew had raped her young daughter \*\*\*. Furthermore, Ms. \*\*\* asserted her opinion that she is opposed to gang authority when she acted as a material witness and testified against the gang member in court and when she reported the rape of her daughter to the police. This constitutes a political opinion, and she suffered harm for this opinion.

Third, as Ms. \*\*\* has suffered past persecution, she has a presumption of well-founded fear that cannot be rebutted. The MS-13 gang, including members of her own family, has threatened to kill Ms. \*\*\* and her children because she reported her the rape of her daughter to the police. The MS-13 gang has also threatened to kill Ms. \*\*\* and her children because she testified against a man associated with the MS-13 gang in court and cooperated with law enforcement. The MS-13 gang found Ms. \*\*\* and her children when they fled to another part of El Salvador and violently attacked them. Thus, Ms. \*\*\* cannot reasonably and safely relocate in El Salvador given the fact that country conditions clearly indicate that violence against those who testify against gangs and oppose their authority is rampant throughout El Salvador and that

such acts are done with impunity.

Fourth, Ms. \*\*\* suffered past persecution and she faces other serious harm if she is forced to return to El Salvador. Therefore, this Court should find Ms. \*\*\* eligible for asylum even if the Department of Homeland Security (“DHS”) can rebut the presumption of well-founded fear.

Fifth, Ms. \*\*\* has an independent well-founded fear of future persecution on account of her membership in particular social groups and her political opinion. As demonstrated below, Ms. \*\*\* faces beatings, mutilation, or death on account of the fact that she served as a witness in a prosecution against a man associated with the MS-13 gang, is part of the immediate family of members of the MS-13 gang and reported their criminal act to the police, and opposes gang activities and supports the rule of law. Country conditions demonstrate that gangs do not allow witnesses who collaborate with the government in prosecuting their crimes to continue to live and take revenge on family members who speak out against the gang, and Ms. \*\*\* will be targeted for harm because of that reason. Ms. \*\*\* remains afraid of returning to El Salvador today.

As shown by the evidence and the Ninth Circuit and Board of Immigration Appeals’ (“BIA” or “the Board”) case law, Ms. \*\*\* has suffered past persecution on account of her membership in a particular social group and political opinion, and thus has a presumption of a well-founded fear of future persecution. Country conditions establish that persons who testify against gang members face extreme violence in all parts of El Salvador. In addition, Ms. \*\*\* has an independent well-founded fear of future persecution based on her membership in a particular social group and political opinion.

Moreover, as shown by the evidence and the Ninth Circuit Court of Appeals and BIA

case law, it is more likely than not that Ms. \*\*\*'s life or freedom will be threatened in El Salvador on account of her membership in a particular social group and political opinion. She will also demonstrate that she warrants protection under CAT.

Thus, this Court should find that Ms. \*\*\* has adequately shown that she warrants protection and relief from removal.

## II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Ms. \*\*\* and her three children \*\*\*, \*\*\*, and \*\*\* were born in El Salvador. Exh. A (Ms. \*\*\*); Exh. B (Copy of Ms. \*\*\*'s Salvadoran identification card); Exh. C (Copy of \*\*\* \*\*\*'s son \*\*\* \*\*\*'s Salvadoran birth certificate); Exh. D (Copy of \*\*\* \*\*\*'s daughter \*\*\* \*\*\*'s Salvadoran birth certificate); Exh. E (Copy of \*\*\* \*\*\*'s daughter \*\*\* \*\*\*'s Salvadoran birth certificate).

Ms. \*\*\* grew up with her parents and her six siblings. Exh. A. Her childhood was extremely tragic. Id. She was only able to go to school until she was 13 years old, and she was forced to work. Id. Her father was a very abusive man. Id. He beat her mother in front of her. Id. He beat Ms. \*\*\*'s siblings as well. Id. He was emotionally, physically, and sexually abusive to Ms. \*\*\*. Id. He began hitting her when she was about six years old. Id. When she started menstruating, he dragged her outside of the house and forced her to remain outside of the house until her she stopped menstruating. Id. When she was about 13 years old, her father started forcing her to have sex with men every weekend, and he would keep the money the men paid him to have sex with her. Id. When she was about 16 years old, he forced her to marry a man to pay off one of his debts. Id. Ms. \*\*\*, who was still a child, had no choice in this matter and soon found herself to be a wife. Id.

Ms. \*\*\*'s life with her new husband \*\*\* was also filled with abuse. Exh. A. His family mistreated her. Id. His brother \*\*\* drugged and repeatedly raped Ms. \*\*\*. Id. \*\*\* worked far

away. Id. This coupled with the fact that he and Ms. \*\*\* were not close, led to Ms. \*\*\* having no one to turn to for help. Id. Her family continued to abuse her whenever she went to her parents' house. Id. One time, when Ms. \*\*\* was eight months pregnant, her sister pushed her and told her she was trying to kill Ms. \*\*\*'s unborn child. Id. \*\*\* eventually went to the United States, leaving Ms. \*\*\* alone with their three children. Id.

Approximately eight months after \*\*\* went to the United States, Ms. \*\*\* became involved with a man named \*\*\*. Exh. A. They had briefly dated prior to Ms. \*\*\*'s marriage to \*\*\*, and their relationship rekindled after \*\*\* left. Id. At the beginning, Ms. \*\*\*'s relationship with \*\*\* was good. Id. However, it soon became abusive. Id. He physically, verbally, and sexually abused Ms. \*\*\*. Id. One time in 2007, he came home with friends after drinking and using drugs, and he ordered Ms. \*\*\* to cook them food. Id. After she cooked them food, he put a leash around her neck and told everyone that she was his dog. Id. He beat and sodomized Ms. \*\*\*. Id. He sometimes forced the children to watch. Id.

Ms. \*\*\* tried to leave \*\*\* three times. Exh. A. However, each time she left, \*\*\* found her and used death threats against her and her children to force her to return to him. Id. One time, he kidnapped her daughter from school and told her that she would never see her daughter again unless she returned. Id. Ms. \*\*\* knew the police would not protect her. Id.

In April of 2010, \*\*\* came home drunk one night and started beating Ms. \*\*\*. Exh. A. He said the house was not clean enough and to punish her, he put her in very cold water. Id. He made the children look at her, and he told them that this is the way you treat a woman. Id. He then forced her to stay outside the house. Id. Her neighbors refused to help her. Id. It was this incident that Ms. \*\*\* decided she had to leave or \*\*\* would kill her. Id. She took her children

to her mother's house and fled El Salvador. Id. Although her family had abused her, she never believed they would harm her children. Id.

Ms. \*\*\* first entered the United States in May of 2010 with the assistance of a smuggler named \*\*\* (his nickname is \*\*\*). Exh. A. They were apprehended by immigration officials. Ms. \*\*\* was found to have a credible fear of returning to El Salvador. After she had been in immigration custody for approximately 15 days, immigration officials took her to a court. Exh. A; Exh. H (Copy of EARM Case Summary, evidencing that Ms. \*\*\* was a material witness). In the court, Ms. \*\*\* was called as a witness before a judge and was asked to identify the man who brought her into the United States. Id. Although she was very scared, because \*\*\* was in the courtroom and could see her testifying, Ms. \*\*\* identified \*\*\*. Id. He was sentenced to two years in jail. Id.

Her immigration court proceedings were initiated in San Antonio, Texas. After approximately six months in custody, Ms. \*\*\*'s husband \*\*\* was about to pay her bond. Exh. A. Ms. \*\*\* joined \*\*\* in San Jose, California. Ms. \*\*\* continued to receive threats from \*\*\*. Id. She was terrified of returning to El Salvador. Id.

On February \*\* 2011, Ms. \*\*\*, without the assistance of counsel, sent a letter to the San Antonio Immigration Court requesting that the venue of her proceedings be changed to San Francisco, California, as she was living in San Jose, California. On March \*\* 2011, Immigration Judge Bertha A. Zumiga denied lead Respondent's Motion to Change Venue because lead Respondent did not plead to the charges on the Notice to Appear ("NTA"). On August \*\* 2011, Respondent was ordered removed in absentia.

Having a feeling that something was wrong with her children who were still in El Salvador, Ms. \*\*\* returned to El Salvador in July of 2012. Exh. A. She found that her children

were being severely maltreated and abused by her family. Id. Ms. \*\*\* learned that her nephew had raped her youngest daughter, \*\*\*. Id. She immediately took \*\*\* to a doctor who confirmed that \*\*\* had been raped and had in fact contracted a sexually transmitted disease from the rapes. Id.

Ms. \*\*\* confronted her family, who in turn, accused \*\*\* of lying. Exh. A. Her family, who has ties to the MS-13 gang, threatened to kill Ms. \*\*\* and her children if she reported the rape. Id. Despite the threats, Ms. \*\*\* reported the rapes to the police. Id. While the police initially held Ms. \*\*\*'s nephew, they released him as soon as Ms. \*\*\*'s sister came to the police station. Id. The police took \*\*\* to a medical examiner who confirmed that she had been raped and had contracted an infection. Id. A few days later, Ms. \*\*\* received a call from a police officer saying that the medical findings would be presented at court. Id. That same day, Ms. \*\*\*'s brother confronted her and said that they knew of her cooperation with the police and that if she continued with the case, they would send MS-13 members to kill her. Id. He said that the police know of their involvement with the MS-13, and that the police will not do anything to protect her. Id.

Fearing for her life and the life of her children, Ms. \*\*\* fled with her children to Chalatenango to live with \*\*\*'s uncle. Exh. A. Ms. \*\*\* and her children continued to receive threats from her family. Id. Ms. \*\*\* reported the threats to the police, but the police said they could not do anything. Id. In addition, Ms. \*\*\* received threats from \*\*\*'s family. Id.

After a few months of Ms. \*\*\* and her children living in Chalatenango, they were attacked and threatened by \*\*\*. Exh. A. \*\*\* along with a few members of the MS-13 came to where Ms. \*\*\* was living. Id. \*\*\* said he was going to kill Ms. \*\*\* because she testified against him. Id. He grabbed Ms. \*\*\* by the hair and threw her to the ground. Id. When \*\*\*



tried to help his mother, \*\*\* stabbed him in the shoulder. Id. On another occasion, \*\*\* tried to kidnap \*\*\*. Id. Fearing for both her and her children's lives, Ms. \*\*\* fled to the United States with her children. They entered the United States on August \*\* 2014.

\*\*\*, \*\*\*, and \*\*\* were issued Notices to Appear on August \*\* 2014. Ms. \*\*\* was allowed to enter the United States on an Order of Supervision. At her children's Master Calendar hearing before this Court on October \*\* 2014, this Court instructed that Immigration Customs Enforcement ("ICE") provide Ms. \*\*\* with a Reasonable Fear Interview ("RFI"). Ms. \*\*\*'s children were scheduled for a hearing on December \*\* 2014, which was rescheduled by the Court to January \*\* 2014.

Respondents retained the office of undersigned counsel on November 6, 2014. Ms. \*\*\* had a RFI on November \*\* 2014, and she was found to have a reasonable fear of persecution on November \*\* 2014. On December \*\* 2014, the Court consolidated Ms. \*\*\*'s case with her children's since they are immediate relatives and two of her children are minors. Respondents appeared with undersigned counsel at their January \*\* 2015 Master Calendar Hearing before this Court. Respondents requested additional time to prepare their four applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). The Court set Respondents' Master Calendar hearing to April \*\* 2015 at 1:00 p.m. Requiring more time to prepare their applications, Respondents, through undersigned counsel, filed a motion for continuance that was granted by this Court. A master calendar hearing was scheduled for July \*\* 2015.

On July \*\* 2015, Ms. \*\*\* and her three children appeared before this Court for their Master Calendar hearing. At this hearing, Ms. \*\*\* and each of her three children submitted Forms I-589 and initial supporting documents, and each indicated that they would be applying

for asylum, withholding of removal, and protection under CAT. This Court set Ms. \*\*\* and her children's case for an individual calendar hearing on October \*\* 2015 at 9:00 A.M..

Ms. \*\*\* is terrified to return to El Salvador. Exh. A. She believes she will be killed by the MS-13 gang, \*\*\*, my family, or the family of \*\*\*. Id. Ms. \*\*\* does not believe the police will protect her or her children because the police in El Salvador are corrupt and did not protect them before. Id. There is nowhere in El Salvador they can safely live as the MS-13 gang has connection throughout the country. Id. Ms. \*\*\* suffers from lasting mental health problems due to the harms she suffered. Exh. I5.

### III. ARGUMENT

#### A. Ms. \*\*\* is Eligible for Asylum

Ms. \*\*\* will be able to demonstrate that she warrants asylum on account of her well-founded fear of future persecution on account of her membership in a particular social group, Salvadoran witnesses who testified against gang members, her membership in a particular social group, nuclear family members of Ms. \*\*\*'s political and imputed political opinion.

In order to be eligible for asylum, an applicant must have suffered past persecution or have a well-founded fear of persecution "on account of" one or more of the five grounds enumerated in INA § 101(a)(42)(A): race, religion, nationality, membership in a particular social group, or political opinion. See INA § 101(a)(42)(A); INS v. Elias-Zacarias, 502 U.S. 478, 481-82 (1992). The applicant's well-founded fear must be both subjectively genuine and objectively reasonable. Mgoian v. I.N.S., 184 F.3d 1029, 1035 (9th Cir. 1999). In addition, race, religion, nationality, membership in a particular social group, or political opinion must be at least one central reason for persecuting the applicant. INA § 208(b)(1)(B)(i). Furthermore, the source of the persecution must be the government, a quasi-official group, or persons or groups that the government is unwilling or unable to control. See Avetovo-Elisseva v. INS, 213 F.3d 1192, 1196

(9th Cir. 2000). Moreover, an applicant must demonstrate that she could not reasonably relocate within her country of origin to avoid persecution. 8 C.F.R. § 1208.13(b)(2)(ii). Ms. \*\*\* meets this standard.

1. *Ms. \*\*\* Is Eligible for Asylum Despite Being in Removal Proceedings Pursuant to INA § 241(a)(5)*

INA § 208(a) explicitly provides that “an alien” regardless of his or her immigration status, may apply for asylum. INA § 208(a); 8 U.S.C. § 1158(a). Therefore, contrary to 8 C.F.R. § 241.8(e), which provides that individuals who are subject to prior removal orders shall only be considered for withholding of removal, and 8 C.F.R. § 208.31, which outlines the process for an IJ’s consideration of withholding of removal only, the INA unambiguously provides all aliens the right to apply for asylum, except for the limited classes of individuals delineated in the asylum statute. It would be improper to deny Ms. \*\*\* consideration for asylum solely on the basis of having returned to the United States after having been removed. DHS’s mistaken belief, which is reflected in the regulations governing reinstatement of removal, INA § 241(a)(5), that individuals such as Ms. \*\*\* are not eligible for asylum serves to exclude those such as Ms. \*\*\* who endured persecution both before and after being initially ordered removed from the U.S.

a. The Regulations Contradict Unambiguous Provisions of the INA

The INA does not preclude individuals subject to reinstatement orders from applying for asylum. To the contrary, as discussed supra, the INA unambiguously gives all “aliens” the right to apply for asylum, except for limited classes of individuals delineated in the asylum statute. INA § 208 provides a comprehensive scheme for determining when individuals are eligible to apply for asylum. First, the statute creates a general rule that “[a]ny alien who is physically present in the United States or who arrives in the United States..., **irrespective of such alien’s status**, may apply for asylum.” INA § 208(a)(1)(emphasis added). See also Matter of Benitez,

19 I. & N. Dec. 173, 176 (BIA 1984)(interpreting “any alien” literally to mean “any”); Matter of M-R-, 6 I. & N. Dec. 259, 260 (BIA 1954)(same). Second, the statute provides limited exceptions to the eligibility to apply for asylum. INA § 208(a)(2). Finally, the statute creates a separate category of individuals eligible to apply for asylum, but who are made substantively ineligible to be granted that status. INA § 208(b)(2).

Individuals are barred from applying for asylum under INA § 208(a)(2) if: 1) they are subject to a Safe Third Country Agreement; 2) if they file their application more than a year after arrival and do not meet an exception; or 3) if they previously applied for asylum and were denied and there are no changed circumstances. INA § 208(b)(2) prohibits a grant of asylum to individuals who 1) have persecuted others; 2) been convicted of a serious non-political crime; or 3) are a danger to national security. The statute does not prohibit asylum applications from individuals who are inadmissible or deportable, who have prior removal orders, or who have re-entered illegally. INA § 208(a)(2)(c) governs individuals who previously applied for asylum and their applications were denied. Under the statute, the individual may only apply for asylum again if the individual can demonstrate the existence of changed circumstances that materially affect the individual’s eligibility for asylum. Id.

INA § 241(a)(5) states,

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for *any relief* under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

Id. (emphasis added).

Although the reinstatement purports to bar “any relief” to individuals subject to prior orders of removal, neither that provision nor any other provision in the INA defines “relief” and there is no fixed, consistent use of that term in the INA. Moreover, the “relief” referred to in INA § 241(a)(5) does not encompass withholding of removal; however, withholding of removal would likely be a form of relief from deportation and is commonly referred to as “relief” by the Board in published decisions. See, e.g., Matter of E-A-, 26 I. & N. Dec. 1, \*1 (BIA 2012)(referring to “relief pursuant to sections 208(b)(2)(A)(iii) and 241(b)(3)(B)(iii) of the Act”); Matter of G-K-, 26 I. & N. Dec. 88, \*89 (BIA 2013)(referring to “respondent’s requests for relief from removal” including withholding and protection from torture). Therefore, it cannot be said that INA § 241(a)(5)’s reference to relief is so specific as to bar asylum eligibility, particularly in light of conflicting statutory provisions that permit it.

While the regulations issued pursuant to INA § 241(a)(5) implicitly treat asylum as a type of “relief” and thus prohibit any individual who has a prior removal order from seeking asylum, this runs contrary to the INA. See 8 C.F.R. § 241.8(a), (e); INA § 208(a). An interpretation that INA § 241(a)(5) prohibits asylum applications by individuals subject to removal orders also renders that provision inconsistent with INA § 208(a)(2)(C), which governs the filing of an asylum application by an alien who “has previously applied for asylum and had such application denied.” Under that provision, an individual whose prior application was denied may apply again if the applicant can demonstrate “the existence of changed circumstances which materially affect the applicant’s eligibility for asylum.” INA § 208(a)(2)(D). The previous denial (in absence of other relief) would trigger an order of removal or of voluntary departure. See Matter of I-S & C-S-, 24 I. & N. Dec. 432, 433 (BIA 2008)(requiring entry of removal order where asylum was denied). However, upon reentry, orders of removal and of voluntary departure are

subject to reinstatement under INA § 241(a)(5). See Morales-Izquierdo v. Gonzalez, 486 F.3d 484, 496 n. 14 (9th Cir. 2007)(en banc). As a result, those individuals who “previously applied for asylum and had such applications denied” under INA § 208(a)(2)(C) would be prohibited from applying for asylum under the regulations pursuant to INA § 241(a)(5) despite the fact that INA § 208(a)(2)(C) expressly authorizes a second asylum application premised on changed circumstances. Such an express contradiction is untenable. See Bona v. Gonzalez, 425 F.3d 663, 670 (9th Cir. 2005)(invalidating regulation that excluded parolees from applying for adjustment of status because it directly conflicted with a provision of the INA and created “absurd results when viewed in light of the larger statutory scheme.”).

As the regulations are contrary to the statute, they must be invalidated under the canons of statutory interpretation. See Federiso v. Holder, 605 F.3d 695, 697 (9th Cir. 2010); Nijjar v. Holder, 689 F.3d 1077, 1083 (9th Cir. 2012). INA § 241(a)(5)’s generalized prohibition on relief cannot trump INA § 208(a)’s specific rules governing asylum eligibility. Where two conflicting statutes, one general and one specific, cover the same ground, the specific will be interpreted to qualify and provide exceptions to the general. See United States v. Gallenardo, 579 F.3d 1076, 1085 (9th Cir. 2009); United States v. Navarro, 160 F.3d 1254, 1256-57 (9th Cir. 1998). Therefore, INA § 241(a)(5)’s broad prohibition on “relief” to aliens subject to prior orders of removal cannot trump INA § 208(a)(1)’s specific eligibility rules for one particular form of relief afforded to aliens -- namely, asylum.

- b. Congress Intended Individuals Subject to Prior Orders of Removal to be Eligible to Apply for Asylum

Furthermore, legislative history supports that Congress intended for individuals with prior removal orders to be eligible to apply for asylum. The asylum statute INA § 208(a) effectuates a chief objective of the asylum statutory scheme – to address “the urgent needs of persons subject to persecution in their homelands,” Refugee Act of 1980, Pub. L. No. 96-212, § 101, 94 Stat. 102 (1980), and thus “to provide a haven for refugees and asylum-seekers...unable or unwilling to return to their home country because of persecution,” CONG. BUDGET OFFICE, IMMIGRATION POLICY IN THE UNITED STATES 6 (2006). When Congress enacted the reinstatement of removal provision, INA § 241(a)(5), it simultaneously made amendments to the asylum statute, INA § 208. Congress reworded the prior INA § 208(a) (now INA § 208(a)(1)) but retained the language extending asylum eligibility to “any alien” “irrespective of such alien’s status.” See INA § 208(a) (1992), *amended by* Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. No. 104-208, § 604, 110 Stat. 3009-690 (1996). Congress also expanded the grounds of ineligibility for asylum, adding the enumerated exceptions to the general eligibility to apply for asylum in INA § 208(a)(2) and the prohibition on granting asylum to certain categories of individuals in INA § 208(b)(2).<sup>1</sup> Notably, however, Congress did not exclude individuals subject to prior orders of removal from asylum eligibility. INA § 208(a)’s omission of any reference to INA § 241(a)(5) is striking given that Congress crafted the two provisions at the same time. It is also significant that Congress

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<sup>1</sup> IIRIRA added both (1) the changed-circumstances exception to the bar against successive asylum applications and (2) INA § 21(a)(5)’s prohibition on “relief” from prior orders of removal. In simultaneously making both additions, Congress obviously saw no inconsistency between them, and understood that INA § 241(a)(5)’s prohibition on “relief” did not eliminate the ability of individuals to apply for asylum based on circumstances arising after the “original date” of the prior order of removal. Moreover, the legislative history of IIRIRA evidences that Congress expressly intended the changed circumstances exception to provide a safe harbor for truly legitimate asylum claims that would otherwise be subject to IIRIRA’s new measures for preventing meritless applications. See 104 CONG. REC. S11, 839-40 (1996).

contemporaneously added an inadmissibility ground that relates to reinstatement, IIRIRA, Pub. L. No. 104-208, div. C, §301, 110 Stat. 3009, *codified at* 8 U.S.C. §1182(a)(9)(C)(i)(II)(deeming inadmissible one who is ordered removed and then enters or attempts to enter without being admitted). Although inadmissibility grounds not specifically listed in INA § 208(a) do not bear on asylum eligibility, but INA § 212(a)(9)(C)(i)(II) is nonetheless notable because it shows that Congress acted explicitly when it wished to make post-order reentry relevant.

INA § 241(a)(5) does not purport to repeal, amend, or modify INA § 208(a) in any fashion. It does not include any “notwithstanding” clause that would suggest it is intended to trump other statutory provisions – unlike INA § 208 which applies “irrespective of such alien’s status.” Had Congress intended in 1996 that a prior order of removal prohibit an application by a first-time applicant, it could have said as much. This is what Congress did when it incorporated terrorism-related inadmissibility and deportability grounds as an exception to the general provision that one who meets the “refugee” definition may be granted asylum. See 8 INA § 208 (b)(2)(A)(v)(cross referencing INA § 212(a)(3)(B)(i) and §237(a)(4)(B)(relating to terrorist activity) to create an exception as to who may be granted asylum. The fact that Congress took steps to narrow the asylum statute at the same time in enacted INA § 241(a)(5) demonstrates an intent to maintain asylum eligibility for individuals subject to reinstatement of a removal order. See MacEvoy Co. v. United States, 322 U.S. 102, 107 (1944)(“However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the enactment.”).

As the Supreme Court has taught, the “general/specific canon explains that the ‘general language’” of one clause “although broad enough to include it, will not be held to apply to a matter specifically dealt with in another clause. RadLAX Gateway Hotel, LLC v. Amalgamated



Bank, 132 S.Ct. 2065, 2071-72 (2012). Like the statute at issue in RadLAX, there are no “textual indications” suggesting that INA § 241(a)(5)’s general provision supplants INA §208(a)’s specific directives; indeed the “structure here would be a surpassingly strange manner of accomplishing that result[,]” which “would normally be achieved by setting forth the” prohibition directly in INA § 208(a). Id. at 2072.

To read INA § 241(a)(5) as barring asylum, one would have to believe that Congress wanted the word “relief” in INA § 241(a)(5) to burrow its way into INA § 208(a) without referencing INA § 208(a) or asylum at all, despite the varying understandings of “relief” and the broader, clearer terms Congress had at its disposal. Additionally, one would have to believe that Congress meant INA § 241(a)(5), unlike any other INA provision, to be an additional “exception” besides those that Congress specifically set forth in INA § 208(a). Neither belief is sustainable. Simply put, INA § 241(a)(5) cannot bar asylum because INA §208(a) creates a closed universe for asylum. Unless INA § 208(a), on its own or by explicit incorporation of another provision, bars a noncitizen from seeking or being granted asylum, that person must be permitted to pursue such protection. INA § 208(a) leaves no doubt about this in providing the authority to promulgate imposing “additional limitations and conditions” on asylum eligibility must be “*consistent with this section.*” INA § 208(b)(2)(C)(emphasis added); *see also* INA § 208(d)(1)(Attorney General may “establish a *procedure* for the consideration of asylum applications.”)(emphasis added). The words “consistent with this section” plainly bar DHS from borrowing a different section to exclude from asylum those who reenter the United States after a prior removal order when nothing in INA § 208(a) suggests that such an exclusion is authorized and in fact conveys the opposite message.

Accordingly, INA § 241(a)(5) cannot bar asylum. DHS cannot derive power from that section to exclude from consideration for asylum those whom INA § 208(a) otherwise permits to apply, including those who return after removal. DHS lacks authority for the reinstatement regulations limiting protection from persecution to withholding of removal.

c. Asylum Availability is Consistent with the United States' Obligations Under International Law

Furthermore, interpreting INA § 241(a)(5) to permit Ms. \*\*\* to apply for asylum is also consistent with the United States' obligations under international law. Federal law "ought never to be construed to violate the law of nations if any other possible construction remains." Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 64 (1804). This is particularly relevant with respect to asylum, given that Congress expressly enacted the asylum statute in order to conform federal law to the United Nations' Protocol to the Status of Refugees, Nov. 1, 1968, 19 U.S.T. 6223 (*hereinafter* the "Protocol"), which the United States adopted in 1968. While the withholding statute, INA § 241(a)(5), prevents the return of individuals to a country where they are likely to be persecuted, this is not the only requirement of the Protocol. The Protocol, for instance, also requires the United States to provide documented refugees or asylees with various benefits, including the right to travel internationally. Protocol art. 1, 19 U.S.T. 6223 (adopting Convention Relating to Status of Refugees art. 28). Although federal regulations permit "refugee travel documents" to be provided to aliens granted asylum or refugee status, 8 C.F.R. § 223.1, they do not extend similar benefits to individuals who are recognized as refugees through a grant of withholding of removal under INA § 241(b)(3). Rather, if an individual is granted withholding of removal under INA § 241(b)(3), she is not permitted to travel abroad and any departure from the United States thereafter constitutes a self-deportation. 8 C.F.R. § 241.7. As a result, an individual who would otherwise qualify for asylum in the United States, but who is

limited to withholding of removal because of a prior removal order, is effectively denied the protections of the Protocol.

d. The Rule of Lenity Confirms that Ms. \*\*\* Should Be Permitted to Apply for Asylum

To the extent the relationship between the asylum statute, INA § 208, and the reinstatement of removal provision, INA § 241(a)(5), is ambiguous, any ambiguity should be resolved in Ms. \*\*\*'s favor, in light of the “longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien.” Cardoza-Fonseca, 480 U.S. at 449. This is especially true in the asylum context, since removal is “a harsh measure... all the more replete with danger when the alien makes a claim that he or she will be subject to death or persecution if forced to return to his or her home country.” Id. Since Congress has protected an individual's right to seek and ability to obtain asylum regardless of immigration status, that protection should not be constrained any more than is clearly necessary under the statute. Costello v. INS, 376 U.S. 120, 128 (1964)(“Since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the word used.” (quoting Fong Haw Tan v. Phelan, 333 U.S. 6, 10 (1948))).

Ms. \*\*\* does not fall under one of the proscribed classes of individuals under INA § 208(a) who are excluded from applying for asylum. Therefore, under INA § 208(a), Ms. \*\*\* is eligible to apply for asylum despite the fact that she has a prior removal order and is in removal proceedings governed by INA § 241(a)(5).

2. *The Harm Ms. \*\*\* Suffered Constitutes Persecution*

The Ninth Circuit has defined persecution as “the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive.” Li v. Holder, 559 F.3d 1096, 1107 (9th Cir. 2009) *citing* Gromley v. Ashcroft, 364 F.3d 1172, 1176 (9th Cir. 2004) (internal quotation marks omitted). It is well established that physical violence is persecution under INA § 101(a)(42)(A). *See* Li, 559 F.3d at 1107; Guo v. Ashcroft, 361 F.3d 1194, 1197-98, 1202-03 (9th Cir. 2004) (finding beatings of a Chinese detainee to rise to the level of persecution); (Chand v. INS, 222 F.3d 1066, 1073 (9th Cir. 2000) (“Physical harm has consistently been treated as persecution.”); Matter of O-Z- & I-Z, 22 I & N Dec. 23, 25 (BIA 1998) (holding that persecution “encompasses a variety of forms of adverse treatment, including non-life threatening violence and physical abuse or non-physical abuse forms of harm”). Rape and sexual assault have also been established as forms of persecution. *See* Boer-Sedano v. Gonzales, 418 F. 3d 1082, 1088 (9th Cir. 2005) (forced sex is past persecution); Shoafra v. INS, 228 F.3d 1070, 1075 (9th Cir. 2000) (rape is persecution); Lopez-Galarza v. INS, 99 F.3d 954 (9th Cir. 1996) (rape and abuse constitute persecution); Lazo-Majano v. INS, 813 F.2d. 1432 (9th Cir. 1987) (rape and other gender-based violence is persecution) (*overruled in part by* Fisher v. INS, 79 F.3d 954 (9th Cir.) (en banc) (1996)). In amending section 243(h) of the INA, Congress intended for persecution to include more than bodily harm: “tyranny over the mind and spirit of a person has been demonstrated as more fearsome than the ancient measures of torture.” Kovac v. INS, 407 F.2d 102, 106-07 (9th Cir. 1969). Death threats alone have been held to constitute persecution. Navas v. INS, 217 F.3d 646, 658 (9th Cir. 2000). Repeated death threats, especially when coupled with other forms of abuse, “require[s] a finding of past persecution.” Smolniakova v. Gonzales, 422 F.3d 1037, 1049 (9th Cir. 2005); *see also* Mamouzian v. Ashcroft,

390 F.3d 1129, 1134 (9th Cir. 2004) (finding past persecution when "harm was "inflicted [on petitioner] on more than one occasion ..., and where the physical abuse was combined with other incidents, such as detention and threats"); but see Lim v. INS, 224 F.3d 929, 933, 936 (9th Cir. 2000) (finding the death threats hollow, when there had been nothing more than threats and Mr. Lim had lived in the country for six years undisturbed and the perpetrators had lost power significantly).

Moreover, special consideration must be taken into account when assessing harm an applicant suffered as a child as children may be more susceptible to harm than adults and may experience the harm differently. See Hernandez–Ortiz v. Gonzales, 496 F.3d 1042, 1046 (9th Cir. 2007) (holding that when the petitioner is a child, the adjudicator must assess the alleged persecution from a child's perspective). The United Nations High Commissioner for Refugees Child Asylum Claims under Articles 1(A)(2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees ("UNHCR Child Asylum Guidelines") state

Actions or threats that might not reach the threshold of persecution in the case of an adult may mount to persecution in the case of a child...Immaturity, vulnerability, undeveloped coping mechanisms and dependency as well as the differing stages of development and hindered capacities may be direction related to how a child experience or fears harm.

UNHCR Child Asylum Guidelines, at ¶ 15, *available at* [http://www.unhcr.org/refworld/](http://www.unhcr.org/refworld/docid/4b2f4f6d2.html)

[docid/4b2f4f6d2.html](http://www.unhcr.org/refworld/docid/4b2f4f6d2.html). In addition, memories of traumatic events may linger in a child's mind and may result in on-going, long-term psychological harm. Id. at ¶ 16.

Furthermore, "[i]n addition to the many forms of persecution adults may suffer, children may be particularly vulnerable to sexual assault, ...forced labor, severe parental abuse, and other forms of human rights violations such as deprivation of food and medical treatment." AOBTC Guidelines for Children's Asylum Claims, USCIS, RAIO, Asylum Division, September 1, 2009,

at 39. The Convention on the Rights of the Child lists fundamental rights “that may rise to the level of persecution if violated”. Id. These rights include the right to “receive an education” and “to be protected from economic exploitation”. Id. at 40. “The impact of these harms on the child must be explored in order to determine whether the violations, considered individually or cumulatively amount to persecution.” Id.

Under Ninth Circuit and Board precedent, the rapes, child abuse, beatings, denial of education and forced labor, physical attacks, and death threats suffered by Ms. \*\*\* constitute persecution. Ms. \*\*\* suffered physical beatings by her father starting at the age of six. Exh. A. He beat her mother in front of her and forced Ms. \*\*\* to stay outside when she was menstruating. Id. He forced her to have sex with men starting when she was 13 years old and sold her into a marriage at the age of 16 years old. Id.; See also Exh. G (Copy of Ms. \*\*\*’s marriage certificate). She suffered abuse and rapes by her husband’s family. Id. She suffered years of physical, emotional, and sexual abuse by her partner \*\*\*. Id. Ms. \*\*\* suffered death threats from her gang-affiliated family after she reported the rape of her young daughter to the police. Id. She also received death threats from gang members because she testified against \*\*\* in the United States. Id.; Exh. H. These threats alone would constitute persecution. Kovac, 407 F.2d at 106-07; Navas, 217 F.3d at 658. The threats Ms. \*\*\* received were not “hollow” as she was attacked, her son was stabbed, and the gang tried to kidnap her daughter. Exh. A; Smolniakova, 422 F.3d at 1049; Mamouzian, 390 F.3d 1129; see also Lim, 224 F.3d at 933, 936.

In addition, the threats that Ms. \*\*\* received from her family, \*\*\* and the gang are not hollow and Ms. \*\*\*’s fears are not unfounded as gangs in El Salvador kill and terrorize with impunity. See Exh. J5 (El Salvador Debates: Which is Worse, Gangs or Police?); Exh. J6 (Police v. Gangs War As El Salvador Murders Hit Record Highs) (“In May alone, more than 411 people,

an average of 21 a day, were murdered in El Salvador.”); Exh. K2 (Gang Violence Is Why Most Children Flee El Salvador, Survey Finds) (“News accounts, as well as people we interviewed, allege that cops have given gangs the identity of witnesses to crimes and the identity of victims who have come forward to police”); Exh. K3 (El Salvador: Crime and state efforts to combat crime; state protection programs for victims and witnesses; requirements to access programs; statistics on granted and refused applications for protection; duration and effectiveness of these programs) (“the presence of Mexican drug cartels in Central America has represented an increase in violent crimes such as kidnapping, bribery, and torture”); Exh. J1 (U.S. Department of State, El Salvador 2014 Human Rights Report). In fact, on July 29, 2015, the gangs in El Salvador “paralyzed the capital city of San Salvador... after the killing of at least nine transportation workers in a challenge to the government's crackdown on violence... The targeting of the capital's public transportation system sends a brazen message that the gangs retain the power to sow disorder and fear.” Exh. J14 (Gang killings of bus workers freezes San Salvador's transportation system); Exh. I1 (Expert Affidavit by Elizabeth Kennedy) (“El Salvador had the second highest homicide rate in the world outside war zones since 2010”). Ms. \*\*\* lives in fear that the gangs will find her and seriously hurt or kill her and her children. Exh. A; see also, Kovac, 407 F.2d at 106-07 (“tyranny over the mind and spirit” constitutes persecution).

Therefore, Ms. \*\*\* clearly suffered past persecution.

3. *Ms. \*\*\* Suffered Past Persecution On Account of Her Membership in a Particular Social Group of Salvadoran Witnesses Who Testify Against Gang Members*
  - a. **Salvadoran Witnesses Who Testify Against Gang Members is a Cognizable Social Group**

The Board and the Ninth Circuit have provided a framework for determining what constitutes a particular social group. In Matter of Acosta, the Board held that a particular social group referred to individuals who hold a “common, immutable characteristic,” which may be “an innate one such as sex, color, kinship ties, or in some circumstances.... a shared past experience....” Matter of Acosta, 19 I. & N. Dec. 211, 233-234 (BIA 1985), overruled in part on other grounds by In re Mogharrabi, 19 I. & N. Dec. 439 (BIA 1987). The Board specified that the immutable characteristic must be one “that the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *Id.* Since the issuance of the decision in Acosta, this Board has further clarified its definition, indicating that a particular social group must possess social distinction and particularity. *See e.g., Matter of M-E-V-G-*, 26 I. & N. Dec. 232 (BIA 2014); Matter of W-G-R-, 26 I. & N. Dec. 208 (BIA 2014); Matter of S-E-G, 24 I. & N. Dec. 579, 588 (BIA 2008); Matter of C-A, 23 I. & N. Dec. 951, 959-961 (BIA 2006). However, the particular social group does not “generally require a ‘voluntary relationship,’ ‘cohesiveness,’ or strict ‘homogeneity among group members.’” In re A-M-E & J-G-U-, 24 I. & N. Dec. 69, 75-76 (BIA 2007).

The Ninth Circuit has clarified that a particular social group is one in which the members are united by a voluntary association or an innate characteristic that is so fundamental to the identities or consciences of its members, that the members of the particular group either can not or should not be required to change it. Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000). In the instant case, Ms. \*\*\* belongs to the particular social group of Salvadoran witnesses who testify against gang members.

In Henriquez-Rivas, 707 F.3d 1081 (9th Cir. 2013), the Ninth Circuit stated that witnesses who testify against gang members can establish eligibility for asylum. The respondent



in Henriquez-Rivas was a woman in El Salvador who assisted law enforcement and eventually testified against two gang members. 707 F.3d at 1086. The two gang members were convicted. Id. Henriquez-Rivas fled El Salvador after gang members started looking for her and asking about her. Id. The Ninth Circuit, applying Board precedent regarding “social visibility” and “particularity”, held that witnesses who testify against gang members could constitute a cognizable particular social group. 707 F.3d 1081 (9th Cir. 2013).<sup>2</sup> In determining the cognizability of the social group, the Ninth Circuit took particular note of the fact that the Salvadoran legislature enacted a special witness protection law to protect individuals who testify against gangs in Salvadoran court. 707 F.3d at 1092.

(1) *The Social Group of Salvadoran Witnesses Who Testify Against Gang Members Share Immutable Characteristics*

Salvadoran witnesses who testify against gang members is a group that is united by nationality and a shared past experience. In Matter of Acosta, the Board held that a particular social group referred to individuals who hold a “common, immutable characteristic,” which may be “an innate one such as sex, color, kinship ties, or in some circumstances.... a shared past experience....” Matter of Acosta, 19 I. & N. Dec. 211, 233-234 (BIA 1985). In Matter of Fuentes, 19 I. & N. Dec. 658, 662 (BIA 1988), former Salvadoran police were recognized as sharing a past experience through their profession. A shared past experience is immutable because an experience is something that “cannot be changed... to avoid persecution.” Hernandez–Montiel v. INS, 225 F.3d 1084, 1092–93 (9th Cir.2000), overruled on other grounds by Thomas v. Gonzales, 409 F.3d 1177 (9th Cir.2005) (en banc). In Pirir-Boc, 750 F.3d 1077,

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<sup>2</sup> While Henriquez-Rivas was decided prior to the Board’s decisions in Matter of M-E-V-G- and Matter of W-G-R-, the Ninth Circuit held that these Board’s decisions did not affect the validity of the decision in Henriquez-Rivas. Pirir-Boc, 750 F.3d 1077 (9th Cir. 2014).

1082 (9th Cir. 2014), the Ninth Circuit found that “Pirir–Boc's proposed group clearly satisfies the BIA's [immutability] standard. The steps Pirir–Boc took in opposition to the gang are a “shared past experience” and “something ... that cannot be changed.” (internal citations omitted). Both the Board and Ninth Circuit have recognized that “witnesses who testify against gang members” is a social group that possesses immutable or fundamental characteristics. Henriquez-Rivas, *supra*.

In the instant case, the status as a witness who testifies against gang members is an immutable trait. Ms. \*\*\* testified against a gang member in court. Exh. A; Exh. H. Like the respondents in Henriquez-Rivas and Pirir-Boc, Ms. \*\*\* cannot change the fact that she assisted law enforcement in providing them information regarding \*\*\* and ultimately testified as a witness in a case leading to his conviction. *Id.* Therefore, Ms. \*\*\*’s social group possesses immutable characteristics.

(2) *The Social Group of Salvadoran Witnesses Who Testify Against Gang Members Possess Social Distinction and Particularity*

The Board has recently reaffirmed the importance of social distinction (previously called social visibility) and particularity as a factor in the particular social group determination<sup>3</sup>. See Matter of M-E-V-G-, 26 I. & N. Dec. 227 (BIA 2014); Matter of W-G-R-, 26 I. & N. Dec. 208 (BIA 2014). See also, In Re A-M-E & J-G-U-, 24 I. & N. Dec. 69 (BIA 2007); Matter of C-A-, 23 I&N Dec. 951, 957 (BIA 2006). In addition to possessing the requisite immutable and

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<sup>3</sup> While the Respondent believes her social group satisfies the BIA’s requirements of “social distinction” and “particularity”, she does not believe that the BIA’s requirements of “social distinction” and “particularity” constitute a reasonable interpretation of “particular social group.” In Henriquez-Rivas, the Ninth Circuit held that the term “particular social group” is ambiguous. 707 F.3d at 1087, 1091. Respondent asserts that the Board’s interpretation is not reasonable and thus is not owed deference.

fundamental characteristics, Salvadoran witnesses who testify against gang members display social distinction and particularity.

In Matter of M-E-V-G-, the Board reaffirmed that the “social visibility” element is required to establish a cognizable “particular social group” and upheld the progeny of cases laying out this requirement. See, i.e., Matter of S-E-G, 24 I. & N. Dec. 579 (BIA 2008); In Re A-M-E & J-G-U-, 24 I. & N. Dec. 69 (BIA 2007); Matter of C-A-, 23 I&N Dec. 951, 957 (BIA 2006). However, the Board clarified that “social visibility” does not mean literal or “ocular” visibility and renamed the element as “social distinction”. Id. at 236. The Board held that the social distinction is determined by the perception of the society in question. Id. The Board explained,

The particular social group analysis does not occur in isolation, but rather in the context of the society out of which the claim for asylum arises. Thus, the ‘social distinction’ requirement considers whether those with a common immutable characteristic are set apart, or distinct, from other persons within the society in some significant way. In other words, if the common immutable characteristic were known, those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it. A viable particular social group should be perceived within the given society as a sufficiently distinct group. The members of a particular social group will generally understand their own affiliation with the grouping, as will other people in the particular society.

Matter of M-E-V-G-, 26 I. & N. Dec at 238.

In Matter of M-E-V-G-, the Board declined to make a ruling on whether the group of “Honduran youths who were actively recruited by gangs but who refused to join” constituted a cognizable social group and remanded the case for further fact-finding. 26 I. & N. Dec at 251. However, the Board stated that there is no “blanket rejection of all factual scenarios involving gangs.” Id. See also, Matter of W-G-R-, 26 I. & N. Dec at 221 (BIA 2014); Matter of A-M-E &

J-G-U, 24 I. & N. Dec. 69, 74 (BIA 2007) (holding that a determination of social visibility must be considered in the context of the country of concern and the persecution feared).

In Pirir-Boc v. Holder, the Ninth Circuit held that the Board's decisions in Matter of M-E-V-G- and Matter of W-G-R- are consistent with its decision in Henriquez-Rivas v. Holder, 707 F.3d 1081 (9th Cir. 2013).<sup>4</sup> 750 F.3d 1077, 1080-1085 (9th Cir. 2014). In Henriquez-Rivas, the Ninth Circuit, applying Board precedent regarding "social visibility" and "particularity", held that witnesses who testify against gang members could constitute a cognizable particular social group. 707 F.3d 1081 (9th Cir. 2013). The Ninth Circuit held that the determination as to whether a particular group is a cognizable social group is a case-by-case analysis based on the recognition of the particular society in question. Pirir-Boc, 750 F.3d at 1083-84. The Ninth Circuit in determining the cognizability of the social group took particular note of the fact that the Salvadoran legislature enacted a special witness protection law to protect individuals who testify against gangs in Salvadoran court. 707 F.3d at 1092. Moreover, the Court overruled its previous holding that a group of informants would need to show an additional element of shared birth, racial origin, or other homogenous aspect to find a particular social group. Id. at 1093 (overruling Velasco-Cervantes v. Holder, 593 F.3d 975, 978 (9th Cir. 2010) and Soriano v. Holder, 569 F.3d 1162 (9th Cir. 2009)). This decision falls within the holding in Matter of C-A-, which held that informants "who testify against cartel members are socially visible" because they are discovered by the fact that "they *appear as witnesses or otherwise come to the attention of cartel members.*" Henriquez-Rivas, 707 F.3d at 1092 (emphasis in original).

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<sup>4</sup> The Ninth Circuit noted that the Board in Matter of M-E-V-G- gave the persecutor's perspective in determining "social visibility" less weight than the Court has suggested in Henriquez-Rivas. Pirir-Boc, Fn. 6. In Henriquez-Rivas, the Ninth Circuit had suggested that the perspective of the prosecutor may be *the most important* factor, while the Board held that it was *one factor* among others to be considered in determining "social visibility." Id.

In addition, the Board in In Re A-M-E & J-G-U-, held that “[a]lthough a social group cannot be defined exclusively by the fact that its members have been subjected to harm, we noted that this may be a relevant factor in considering the group's visibility in society.” 24 I. & N. Dec. at 74. In finding that the respondents’ proposed social group failed to possess social visibility, the Board confirmed the IJ’s finding that there was little evidence in the record to show that “wealthy Guatemalans” would be recognized as a group that was more frequently targeted than the general Guatemalan population. Id.

Furthermore, in Matter of E-A-G-, 24 I. & N. Dec. 591 (BIA 2008), the Board rejected a claim that “persons resistant to gang membership,” constituted a particular social group based on a lack of social visibility. The Board held that there was no evidence to establish that “members of Honduran society, or even the gang members themselves, would perceive those opposed to membership as a social group.” Id. at 591. The Board explained that the respondent could not establish that the group would be sufficiently visible, noting that “respondent does not allege that he possesses any characteristics that would cause others in Honduran society to recognize him as one who has refused gang recruitment.” Id. at 594.

In Matter of M-E-V-G-, Matter of W-G-R-, and Matter of S-E-G, the Board further discussed the issue of particularity. In Matter of W-G-R-, decided on the same day as Matter of M-E-V-G-, the Board considered the social group of “former members of the Mara 18 gang in El Salvador who have renounced their gang membership”. 26 I. & N. Dec at 221. The Board found that the proposed group was not a cognizable social group due to a lack of evidence in the record that demonstrated that Salvadoran society recognized former gang members who have renounced their gang membership as a distinct social group. Id. at 222. The Board also found that the proposed social group lacked particularity because “the boundaries of a group are not sufficiently

definable unless the members of society generally agree on who is included in the group, and evidence that the social group proposed...is recognized within the society is lacking in this case.” Id at 221.

In Matter of S-E-G-, the Board found that Salvadoran youth to whom gang recruitment attempts had been made did not constitute a particular social group. The Board ultimately held that, based on the specific facts of the case, the group lacked both particularity and visibility. Id. at 585-586. In dealing with particularity, the Board explained that the group lacked any unifying relationship or characteristic, which was required to “narrow this diverse and disconnected group.” Id. at 586 (citing Ochoa v. Gonzales, 406 F.3d 1166 (9th Cir. 2005)). Also important was this Board’s finding that the proposed class was not sufficiently particular because “the motivation in targeting young males could arise from motivations quite apart from any perception that the males in question were members of a class.”

In Henriquez-Rivas, the Ninth Circuit held that the proposed social group of witnesses who testified against gangs had sufficient particularity. In support of its finding, the Court found that the social group referred to those who “had testified against M-18 gang members in open court, and thus, ‘can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, a discrete class of persons.’” 707 F.3d at 1093 (citing S-E-G-, 241 I. & N. Dec. 579, 584 (BIA 2008)).

Ms. \*\*\*’s case is akin to Henriquez-Rivas and Pirir-Boc and can be readily contrasted to the facts presented in Matter of M-E-V-G-, Matter of W-G-R, Matter of A-M-E & J-G-U-, and Matter of E-A-G, and Salvadoran witnesses who testify against gang members are a group that the Ninth Circuit has held shows sufficient social distinction. The Ninth Circuit held that Henriquez-Rivas’ social group satisfied social distinction because the group is limited by those

who “appear as witnesses or otherwise come to the attention of cartel members.” Henriquez Rivas, 707 F.3d at 1091 (citing Matter of C-A-, 23 I. & N. Dec at 960). Ms. \*\*\* testified in court and came to the attention of gang members through her cooperation with law enforcement. Exh. A. Moreover, her status as a witness, like the respondent in Henriquez-Rivas, can be “easily verified—and thus delimited—through court records documenting group members' testimony.” Henriquez-Rivas v. Holder, 707 F.3d 1081, 1093 (9th Cir. 2013). The record of her status as a material witness can easily be searched for on PACER (Public Access to Court Electronic Records).

While Henriquez-Rivas addressed the situation of a witness who testified in El Salvador against gang members, the holding applies in this case even though Ms. \*\*\* testified against a gang member in a U.S. court. The Ninth Circuit’s holding was based on evidence that witnesses who testify against gangs are viewed by Salvadoran society as being targeted and requiring protection. The fact that Ms. \*\*\* testified in a United States court does not change the fact that she, like Henriquez-Rivas, testified against her persecutor in open court and in his presence. Others saw her going to court as well and a search for this case would list her as a material witness. Exh. H. Two years later, \*\*\* and other gang members tracked down Ms. \*\*\* and told her she had to pay for testifying against \*\*\*. Exh. A. Regardless of where the testimony takes place, Salvadoran society understands the risk that witnesses who testify against gang members face and views these persons as “set apart, or distinct, from other persons within the society in some significant way.” See M-E-V-G-, supra. See also, Exh. K2 (“News accounts, as well as people we interviewed, allege that cops have given gangs the identity of witnesses to crimes and the identity of victims who have come forward to police.”); Exh. K3 (“the Victim and Witness Protection Area (Área de Protección de Víctimas y Testigos) is the agency responsible for

[translation] "providing protection measures, and assistance to victims, witnesses and other persons involved in judicial processes or crime investigations"). The Ninth Circuit has held that "[i]t is difficult to imagine better evidence that a society recognizes a particular class of individuals as uniquely vulnerable, because of their group perception by gang members, than that a special witness protection law has been tailored to its characteristics." Henriquez-Rivas, 707 F.3d at 1092.

Elizabeth Kennedy explains the perils Ms. \*\*\* faces as a witness who testified against gangs.

The Salvadoran press has for a substantial period of time reported on the murder of persons who served as protected witnesses (supposedly under 24-hour state protection) and police informants. Some were shot dead as they left the court room where they testified.

Exh. II.

Furthermore, Ms. \*\*\*'s past experience evidences that she has been viewed as belonging to the group of Salvadoran witnesses who testified against gang members. She testified against a gang member in court. Exh. A; Exh. H. Moreover, the gang members knew of her cooperation, and the gang members tracked her down and attacked Ms. \*\*\* and her children. Exh. A. Therefore, Ms. \*\*\* has shown that her social group possesses the requisite social distinction and particularity that Board precedent requires.

**b. Ms. \*\*\* Was Persecuted on Account of Her Membership in This Particular Social Group**

To qualify for asylum, the applicant must establish the protected ground "was or will be at least one central reason for persecuting the applicant." INA § 208 (b)(1)(B)(i) (emphasis added). However, the applicant need not demonstrate that the protected ground will be the dominant central reason. Parussimova v. Mukasey, 555 F.3d 734, 741 (9th Cir. 2009). "[A]



motive is a ‘central reason’ if that motive, standing alone, would have led the persecutor to harm the applicant.” Id. To demonstrate a nexus between persecution and a statutorily protected ground, the applicant must provide “direct or circumstantial evidence.” See Sangha v. INS, 103 F.3d 1482, 1486-87 (9th Cir. 1997).

The evidence in this case demonstrates that in El Salvador gangs routinely target witnesses who testify against them. Exh. K3 (“Another *La Prensa Gráfica* report indicates that six hours after a witness had testified without a voice distorter, two of his family members were attacked resulting in one of them being killed”); Exh. J1 (“Intimidation and killing of police officers, crime victims, and witnesses created a climate of fear, complicating investigations of violent crimes and other alleged human rights abuses...Some judges denied anonymity to witnesses at trial, and gang intimidation and violence against witnesses contributed to a climate of impunity from criminal prosecution.”); Exh. J4 (In El Salvador, there’s a love/hate relationship between churches and gangs); Exh. J11 (Children on The Run) (“The children described their everyday challenges of evading extortion; witnessing murders; and navigating threats to themselves and their families, friends and neighbors”); Exh. K1 (US Department of State, Overseas Security Advisal Council, Bureau of Diplomatic Security El Salvador 2013 Crime and Safety Report) (“Reyes Chavez had alerted the PNC that he had received death threats. The media reported that prior to the killing, intelligence officials had notified PNC authorities three times about visits of strangers to the detention center and encouraged authorities to increase security, yet the PNC did not take action.”); Exh. K2; Exh. K5 (Asesinados por el "pecado" de haber sido testigos (y III entrega) (“Murdered for the "sin" of being a witness (and III part)); Exh. K6 (The Death Foretold of an El Salvador Gang Informant); Exh. J1; Exh. II. As one report discusses,

Policemen and other investigators – especially if they are seen as zealous – may thus *attract enmity of the criminal group*, as will other persons who denounce the group to the authorities. This includes criminal turncoats – such as the *pecetas* hated and hunted down by the *maras* – and *inhabitants who report crimes as either a victim or witness*.

Exh. K4 (emphasis added). Recognizing the particular vulnerability of witnesses who testify against gangs, El Salvador enacted a specific law addressing witnesses who testify against organized crime, Decreto No. 1029/2006, *Ley Especial para la Protección de Víctimas y Testigos* [“Special Law for Victim and Witness Protection”], (May 11, 2006).

In the instant case, the evidence clearly demonstrates that testifying against gang members is “one central reason” Ms. \*\*\* has received threats of harm and death to her and her children, was physically attacked, and her son was stabbed. Ms. \*\*\* was clearly identified as a witness as she was called to court to testify in front of a judge against \*\*\*. Exh. A; Exh. H. Approximately two years later, \*\*\* along with other MS-13 members hunted her down. Exh. A. \*\*\* told Ms. \*\*\* that he was going to kill her because she testified against him. Id. He grabbed her by the hair and threw her to the ground. Id. When her son \*\*\* tried to intervene, \*\*\* stabbed him in the shoulder. Id. \*\*\* continued to threaten Ms. \*\*\* and her children. He attempted to kidnap her daughter \*\*\*. Id.

Salvadoran gangs harm and kill those who testify against them. See Exh. K1 (“On March 2, the PNC detained two officers for the killing of prisoner Mario Alexander Reyes Chavez, who was being held in a police detention center in Los Planes de Renderos as a protected witness to a drug trafficking case.”) Exh. K2; Exh. K3 (“La Prensa Gráfica, a San Salvador-based newspaper, reports that according to the Office of the Attorney General (Fiscalía General de la República, FGR), [translation] “at least” 10 witnesses have been obliged to provide testimony without voice distortion or balaclavas by some judges”); Exh. K6; Exh. I1 (“In this sense, the MS-13 and M-18

engage in exercising political power at its most basic element: obey the rules and orders of the MS-13 and M-18 or face violent reprisals.”). Therefore, Ms. \*\*\*’s social group is one central reason she has suffered physical harm and repeated death threats to her and her children.

4. *Ms. \*\*\* Suffered Past Persecution On Account of Her Membership in a Particular Social Group of Ms. \*\*\*’s Nuclear Family Defined by Kinship Ties*

a. *Ms. \*\*\*’s Nuclear Family Constitutes a Cognizable Social Group*

The Ninth Circuit has held that the immediate members of a certain family would constitute “a prototypical example of a ‘particular social group’”. Sanchez-Trujillo v. INS, 801 F.2d 1571, 1576 (9th Cir. 1986). DHS has also acknowledged that a nuclear family could be a social group for purposes of asylum, where the evidence establishes that the victim was targeted because of membership in the family. DHS L-R- brief at 16. Furthermore, USCIS’ ABOTC training course states that “[i]n most societies, for example, the nuclear family would qualify as a particular social group.” AOBTC Eligibility Part III: Nexus, USCIS, RAIO, Asylum Division, March 12, 2009. In Lin v. Ashcroft, the Ninth Circuit clarified that family qualifies as a social group “[w]here family membership is a sufficiently strong and discernible bond that it becomes the foreseeable basis for personal persecution.” Jie Lin v. Ashcroft, 377 F.3d 1014, 1029 (9th Cir. 2004).

In the instant case, Ms. \*\*\*’s nuclear family is a group that is defined by kinship ties. Kinship ties are immutable traits as they cannot be changed. Furthermore, the social group of Ms. \*\*\*’s nuclear family possesses social distinction and particularity. The evidence demonstrates that families in El Salvador are perceived as a unit and that members of Ms. \*\*\*’s nuclear family are recognizable by members of Salvadoran society. See Exh. J9 (Brutal Gang Violence Reigns in El Salvador, David Boeri, WBUR) (“Rival gangs think the same way: When

one joins, the whole family joins. And so they are marked, and marked forever, according to gang mentality.”). One report highlights how families are viewed and targeted in Salvadoran society.

When a family keeps its children out of the gangs, the gangs have a way of still getting to the family. The case of the former residents of San Luis Ranch repeats itself ceaselessly. Every month, you see a newspaper headline announcing a new group abandoning their homes. The families are threatened for all sorts of reasons: because their sons didn’t want to join a gang, because a family member filed a police report, because they won’t let a gang member rape their daughter. Or simply because they visited their grandfather in enemy territory.

Exh. J10 (The Deadly, Invisible Borders Inside El Salvador, Oscar Martinez, The New Republic).

Therefore, Ms. \*\*\*’s nuclear family is the type of “cohesive, homogeneous group” that the Board and Ninth Circuit have found to be show sufficient particularity and social distinction. See, Perdomo, 611 F.3d at 666.

**b. Ms. \*\*\* Suffered Persecution On Account of Her Membership in the Particular Social Group of Her Nuclear Family**

As discussed supra, DHS found that in cases of domestic violence evidence can demonstrate that an abuser targets the victim because of the “perception of the subordinate status she occupies within that domestic relationship.” DHS L-R- Brief, at 15. In the instant case, the evidence demonstrates that the fact that Ms. \*\*\* membership in her nuclear family was at least one central reason for the abuse she suffered as a child and the death threats she suffered after she learned that her nephew had raped her daughter \*\*\*.

All the beatings and emotional abuse that Ms. \*\*\* suffered as a young child was at the hands of or instigation of family members who believed they had a right to dominate her because they were related to her. See Exh. A. Her family members knew they could act with impunity against Ms. \*\*\* as she was part of their family. Exh. A. Legal and societal norms in El Salvador

supported their beliefs. See Exh. I3; Exh. I9 (Expert Declaration of Dr. Roberto Rodriguez Melendez)(“Underlying the violence and abuse children and adolescents experience in El Salvador are pervasive cultural norms and views of children that place them in the most vulnerable position in the Salvadoran social structure.”); Exh. J1 (“Child abuse was a serious and widespread problem.”); Exh. J11; Exh. L3 (Amnesty International, *On the Brink of Death, Violence Against Women and the Abortion Ban in El Salvador*)(“Violence against women and girls is pervasive in El Salvador... Despite these limitations, the figures that are available paint a picture of widespread and entrenched sexual violence, especially against girls and young women.”); Exh. L5 (Nina Lakhani, *Violence Against Women Rises in El Salvador*)(“Information gathered by the feminist organisation Ormusa (the Organisation of Salvadoran Women for Peace) reveals that most sexual assaults involve girls aged between 12 and 17 and take place at home. Sexual crimes are usually committed by a close relative or family acquaintance while the mother is out working.”); Exh. M1 (*Americas/El Salvador - Child Abuse By Parents Or Their Guardians Continue*)(“Abandonment, sexual abuse, neglect or disinterest are the most common situations among children and adolescents in the Country.”); Exh. M2 (CRIN Child Rights International Network 2013 *El Salvador: Persistent Violations of Children’s Rights*); Exh, M3 (Speizer IS, et. al., *Dimensions of Child Sexual Abuse before Age 15 in Three Central American Countries: Honduras, El Salvador, and Guatemala*). Professor Abrego explains “In the context of a government that has repeatedly proven to be unable to help victims of violence, Salvadoran women and girls are especially vulnerable to physical and sexual abuse due to a deeply entrenched, violent patriarchal social structure.” Exh. I3 (Declaration of Professor Leisy Abrego). Dr. Rodriguez Melendez states “[c]hildren and adolescents in El Salvador are seen as

the property of their parents or other caretakers, who feel they can treat children any way they wish.” Exh. I9.

Ms. \*\*\* suffered physical, emotional, and sexual abuse at the hands of her father and siblings based on her status within the family. Exh. A. Her father physically beat her starting when she was only six year old. Id. He beat her mother and her siblings as well. Id. He forced her to have sex with men. Id. Ms. \*\*\*’s siblings also abused her. Id. Her sister Sandra threw hot water on her. Id. Another time when Ms. \*\*\* was eight months pregnant, her sister pushed her and said that she wanted to kill Ms. \*\*\*’s unborn child. Id. Ms. \*\*\* spent three days in the hospital due to this abuse. Id. Therefore, Ms. \*\*\* was targeted for repeated beatings, sexual abuse, denial of education, forced labor, and emotional abuse because of her familial relationship to them.

Ms. \*\*\*’s family members were part of the MS-13 gang. Exh. A. Ms. \*\*\* was repeatedly threatened with death by her family when she stood against them and reported the rape of her daughter to the police. Id. Her family viewed her action as acting against the family, which was unacceptable. Id. Country conditions reports evidence that gangs view families as a unit and target family members who act contrary to the gang. Exh. J10; Exh. J9. The United States Department of State reports,

Authorities believe a significant number of disappearances are related to gang activity, since many of the missing were in gangs or were friends or family members of gang members. **Police sources claim that the families of gang members often face the same risks of being killed or disappearing as the gang members themselves.**

Exh. J16 (El Salvador Travel Warning, U.S. Department of State, updated June 22, 2015) (emphasis added).

Elizabeth Kennedy further explains the danger family members of gangs face in El Salvador.

To further instill fear and require obedience, the MS-13 and M-18 not only murder the “offender”. It is not uncommon for the “offender’s” family or friends to also be murdered.

Exh. II.

Therefore, one central reason that Ms. \*\*\*’s family threatened her with death is because of her familial relationship to them.

5. *Ms. \*\*\* Suffered Past Persecution On Account of Her Membership in a Particular Social Group of Women in El Salvador Who Are Unable to Leave Their Relationship Defined by Her Gender, Nationality, and Her Status Within Salvadoran Society*

a. **Women In El Salvador Who Are Unable to Leave Their Relationship Is a Cognizable Social Group**

In the Department of Homeland Security’s (“DHS”) Supplemental Brief in Matter of L-R- (“DHS L-R- Brief”), DHS stated that victims of domestic violence can establish eligibility for asylum. See DHS’ Supplemental Brief, Matter of L-R-, dated April 13, 2009. In discussing an appropriate articulation for social groups of victims of domestic violence, DHS stated that the particular social group “is best defined in light of the evidence about how the respondent’s abuser and her society perceive her role within the domestic relationship.” Id. at 14. DHS found that “Mexican women who are viewed as property by virtue of their positions within a domestic relationship” would constitute a cognizable social group. Id.

In Matter of A-R-C-G-, 26 I. & N. Dec. 388 (BIA 2014), the Board of Immigration Appeals (“BIA” or “the Board”) found that “married women in Guatemala who are unable to leave their relationship” constituted a cognizable social group. The Board held that the “inability to leave the relationship may be informed by societal expectations about gender and subordination”. Id. at 393.

Women in El Salvador who are unable to leave their relationship is a group that is united by gender, nationality, and status in society. These shared characteristics are immutable, as a person cannot change his or her gender, nationality, or how they are viewed in society.

Hernandez-Montiel, *supra*. The Ninth Circuit has recognized similar groups as possessing an immutable characteristic. See Perdomo v. Holder, 611 F.3d 662, 668 (9th Cir. 2010) (holding that young women in Guatemala subject to femicide may be a social group and rejecting that a person is ineligible for social group consideration because the “persecuted group may simply represent too large a portion of a population.”); Karouni v. Gonzales, 399 F.3d 1163, 1172 (9th Cir. 2005) (holding that “all alien homosexuals are members of a ‘particular social group’”); Mihalev v. Ashcroft, 388 F.3d 722, 726 (9th Cir. 2004) (holding that Gypsies are an identifiable ethnic group and that being a Gypsy is a protected ground for asylum). Moreover, in 2014 the Board found a similar social group to possess immutable characteristics. Matter of A-R-C-G-, 26 I. & N. Dec. 388 (BIA 2014) (finding “married women in Guatemala who are unable to leave their relationship” constitutes a cognizable social group).

The Ninth Circuit and Board have held that gender is an immutable characteristic. In Mohammed v. Gonzales, 400 F.3d 785 (9th Cir.2005), the Ninth Circuit held that that gender is an “innate characteristic” that is “fundamental to [one's] identit[y].” *Id.* at 797. Moreover, in the seminal decision of Acosta, the Board expressly held that one’s sex is a prototypical example of an immutable characteristic. Matter of Acosta, 19 I. & N. Dec. at 233-234. See also Matter of A-R-C-G-, 26 I. & N. Dec. at 392 (“the group is composed of members who share the common immutable characteristic of gender.”). USCIS guidance also states that gender is an immutable trait. USCIS AOBTC Female Asylum Applicants and Gender-related Claims, USCIS, RAIO, Asylum Division, March 12, 2009, at 30.



Furthermore, in the instant case, the status of “unable to leave their relationship” is an immutable trait. In the DHS L-R- Brief, DHS stated that an applicant’s status within a domestic relationship can be immutable. DHS L-R- Brief, at 16. In determining if a status is immutable, something that the applicant can or could not change, an adjudicator must consider the “context of the social, political, and historical conditions of the country.” Id. “[A]ll relevant evidence should be considered including the applicant’s individual circumstances and country conditions information about the applicant’s society.” Id. at 16-17. In Matter of A-R-C-G-, the Board held that characteristics such as marital status can be immutable where the individual cannot leave the relationship. 26 I. & N. Dec. at 392-393. The Board found that a range of factors can be relevant in this determination including “a respondent’s own experiences”. Id. at 393.

In the instant case, country conditions reports regarding El Salvador are replete with violence against women generally and domestic violence specifically, demonstrating that women are considered to be unable to leave their relationship without their partner’s consent in Salvadoran society. Exh. I3 (describing El Salvador as “a society where women are perceived to be property of men”.); Exh. L1 (“Last year, nearly 4,000 El Salvadoran women ended up in hospital because of domestic and or sexual abuse in the home... The victims' former or current boyfriends, husbands...are often the perpetrators.”); Exh. L3 (“Entrenched discriminatory and harmful stereotypes around women’s sexuality and their roles and responsibilities in the family, including as mothers and child bearers, permeate all levels of society.”); Exh. L4 (Deborah Hastings, In Central America, Women Are Killed ‘With Impunity’ Just Because They Are Women)(“Women are seen more as posses[s]ions than human beings, advocates say.”); Exh. L5 (“Endemic levels of sexual abuse and gender based violence have made El Salvador one of the most dangerous countries in the world for girls and women, amid entrenched "machismo"

attitudes and a criminal justice system that too often fails victims.”); Exh. L6 (Edgardo Ayala, Impunity, Machismo Fuel Femicides in El Salvador)(“Women are seen as someone’s property; there is an idea that women can be ‘corrected’, and this legitimates violence against us”).

The U.S. Department of State states that “[v]iolence against women, including domestic violence, was a widespread and serious problem.” Exh. J1. To illustrate this, the U.S.

Department of State provides the following example:

In October a man killed his estranged partner in front of their daughter. The victim had filed a restraining order a few days before her death. Authorities reportedly granted the restraining order but did not provide further protection to the victim. The Observatory on Violence against Women run by the Organization of Salvadoran Women for Peace (ORMUSA) reported that, in August alone, 12 women were killed by their partners.

Id.

Moreover, Ms. \*\*\*’s own experiences evidence that the immutability of these statuses. She tried to leave her partner \*\*\* on several occasions; however, he always found her and forced her to return to him. Exh. A. He ordered Ms. \*\*\* around, and one time he put a leash around her neck in front of friends and called her his dog. Id. Another time, to punish her for not cleaning the house properly, \*\*\* put Ms. \*\*\* in cold water and told her children that this is the way you treat a woman. Id. In addition, her neighbors, who knew about the abuse, never did anything to intervene. Id. Thus, there was nothing that Ms. \*\*\* could have done to change her status of being “unable to leave her relationship.”

**b. The Social Group of Salvadoran Women Who Are Unable to Leave Their Relationship Possess Social Distinction and Particularity**

In addition to possessing the requisite immutable and fundamental characteristics, women in El Salvador who are unable to leave their relationship display social distinction and particularity. In Matter of A-R-C-G-, the Board found that the social group “married women in

Guatemala who are unable to leave their relationship” is socially distinct. 26 I. & N. Dec. at 393-394. The Board held that,

When evaluating the issue of social distinction, we look to the evidence to determine whether a society...makes meaningful distinctions based on the common immutable characteristics of being a married women in a domestic relationship that she cannot leave. Such evidence would include whether the society in question recognizes the need to offer protection to victims of domestic violence, including whether the country has criminal laws designed to protect domestic abuse victims, whether those laws are effectively enforced, and other sociopolitical factors.

Id. at 394.

The Board found that the “unrebutted evidence that Guatemala has a culture of ‘machismo and family violence’” supported the existence of social distinction. Id.

As in the case of Matter of A-R-C-G-, country condition reports in the instant case demonstrate that women in El Salvador who are unable to leave their relationship are generally recognizable by others in the society. See Exh. I3; J1; L1-L6. While Salvadoran society has identified domestic abuse as a problem and enacted laws to protect victims of domestic abuse regardless of marital status, the laws are not effectively enforced. Exh. J1; Exh. L1. According to one report,

Despite the advancements of human rights protection and institution building since the end of the 12 year civil war in 1992 and the particular achievements of the Salvadoran women’s movement, including a new law on violence against women—the 2012 Special Integral Law for a Life Free from Violence for Women—gender inequality and sex discrimination persist in El Salvador. Entrenched discriminatory and harmful stereotypes around women’s sexuality and their roles and responsibilities in the family, including as mothers and child bearers, permeate all levels of society.

Violence against women and girls is pervasive in El Salvador. High rates of violence, low reporting, and impunity are factors which hinder progress in addressing this serious human rights violation.

Exh. L3.

The U.S. Department of State reports,

Violence against women, including domestic violence, was a widespread and serious problem. As of September the PNC reported 1,233 cases of alleged domestic violence. A large portion of the population considered domestic violence socially acceptable, and, as with rape, its incidence was underreported.

Exh. J1.

Moreover, Ms. \*\*\*'s own experience evidenced that she was viewed by her partner and her society that she could not leave her relationship on her own accord. Exh. A. Thus, Ms. \*\*\*'s case is akin to Matter of A-R-C-G- and can be readily contrasted to the facts presented in Matter of M-E-V-G-, Matter of W-G-R-, Matter of A-M-E & J-G-U-, and Matter of E-A-G-, and women in El Salvador who are unable to leave their relationship is the type of “cohesive, homogeneous group” that the Board and Ninth Circuit has found to be show sufficient social distinction. See, Perdomo, 611 F.3d at 666; Matter of A-R-C-G-, 26 I. & N. Dec. 388 (BIA 2014) (recognizing that “married women in Guatemala who are unable to leave their relationship” constitutes a cognizable social group given the cultural conditions of the country and the individual’s personal experience); In re Fauziya Kasinga, 21 I. & N. Dec. 357, 366 (BIA 1996) (holding that women who belong to a particular tribe and who oppose female genital mutilation constitute a cognizable social group).

In the DHS L-R- Brief, DHS stated that a social group of “Mexican women who are viewed as property by virtue of their positions within a domestic relationship” could meet the requirement of social visibility. DHS L-R- Brief, at 17. In support of this conclusion, DHS cited the respondent’s testimony regarding how people outside the relationship refused to intervene to stop the abuse and country conditions relating to the social perception in Mexico of domestic violence. Id. In the instant case, Ms. \*\*\*'s neighbors and friends of her partner knew about the

abuse she suffered and did nothing about it. Exh A. Moreover, country conditions clearly demonstrate that the pervasive nature of domestic violence in Salvadoran culture has created an entrenched notion that Salvadoran women cannot leave their relationship. Exh. I3; Exh. J1; Exh. L1-L6. This evidence reflects a societal view that the status of Salvadoran women in a relationship are “a segment of society that will not be accorded protection from harm inflicted” in a domestic relationship and considered to not be able to leave their relationship. DHS L-R- Brief, at 18.

6. *Ms. \*\*\* Suffered Past Persecution On Account of Her Membership in a Particular Social Group of Salvadoran Girls Viewed as Property Defined by Her Gender, Age, Nationality, and Her Status Within Salvadoran Society*

a. **Salvadoran Girls Viewed As Property Is a Cognizable Social Group**

In the instant case, Ms. \*\*\* belongs to the particular social group of Salvadoran girls of viewed as property. Salvadoran girls viewed as property is a group that is united by gender, nationality, and status in society. These shared characteristics are immutable, as a person cannot change his or her gender, nationality, or how they are viewed in society. Hernandez-Montiel, *supra*. As discussed *supra* gender is an immutable characteristic. Mohammed v. Gonzales, 400 F.3d at 797; Matter of Acosta, 19 I. & N. Dec. at 233-234; Matter of A-R-C-G-, 26 I. & N. Dec. at 392. In the instant case, the status of “viewed as property” is an immutable trait. See, i.e., DHS L-R- Brief, at 16; Matter of A-R-C-G-, 26 I. & N. Dec. at 392-393. Furthermore, country conditions reports regarding El Salvador are replete with violence against children, forced labor of children, and sexual abuse of children, demonstrating that children are viewed as property in Salvadoran society. Exh. I3 (“Girls are especially likely to be abused in a context where the lives of women and girls have been devalued.”); Exh. J1 (“Child abuse was a serious and widespread problem.”); Exh. L5 (“Two thirds of the reported 636 rapes and sexual offences were

committed against children under the age of 18.”); Exh. M1 (Americas/El Salvador - Child Abuse By Parents Or Their Guardians Continue)(“Abandonment, sexual abuse, neglect or disinterest are the most common situations among children and adolescents in the Country... Begging, ill-treatment, sexual and economic exploitation are other violated rights of Salvadoran children and adolescents.”); Exh. M2 (CRIN Child Rights International Network 2013 El Salvador: Persistent Violations of Children’s Rights)(“The most common forms of child abuse persisting in El Salvador include the exploitation of young girls as domestic servants; trafficking of children; sexual abuse and incest...exploitation of children in the sugar cane fields and coffee fields; the high rate of school drop out and gang membership...violence; corporeal punishment; and enforced disappearances.”); Exh. M4 (Head Teacher Abuse Allegations Shock El Salvador)(“a head teacher at a publicly run school, who openly sexually abused and raped female pupils as young as 12 on a daily basis, and apparently behaved violently towards male pupils too.”). The Ninth Circuit and the Board have recognized similar groups as possessing an immutable characteristic. See Perdomo, 611 F.3d at 668; Karouni, 399 F.3d at 1172; Mihaley, 388 F.3d at 726; Matter of A-R-C-G-, 26 I. & N. Dec. 388 (BIA 2014); In re Fauziya Kasinga, 21 I. & N. Dec. at 366 (BIA 1996). Ms. \*\*\*’s own experiences reflect that she was viewed as property. Her father beat her and sold her to men for sex when she was just a child. Exh. A. Thus, there was nothing that Ms. \*\*\* could have done to change her status of being viewed as property.

In addition to possessing the requisite immutable and fundamental characteristics, Salvadoran girls viewed as property display social distinction and particularity. Country condition reports demonstrate that Salvadoran girls are generally recognizable by others in the society. See Exh. I3; J1; L5; Exhs. M1-M4. Moreover, the evidence in the instant case

demonstrates that Salvadoran girls are much more likely than other persons in Salvadoran society to suffer sexual assault, be kidnapped, and be forced to perform labor. Id. Furthermore, El Salvador has enacted laws recognizing the harm against women and girls in Salvadoran society and these laws seek to provide protection for women and girls. Exh. I3; Exh. J1; Exh. L3. Thus, Ms. \*\*\*'s case can be readily contrasted to the facts presented in Matter of M-E-V-G-, Matter of W-G-R-, Matter of A-M-E & J-G-U-, and Matter of E-A-G, and Salvadoran girls viewed as property are the type of “cohesive, homogeneous group” that the Board and Ninth Circuit has found to be show sufficient social distinction. See, Perdomo, 611 F.3d at 666; Matter of A-R-C-G-, 26 I. & N. Dec. 388 (BIA 2014) (recognizing that “married women in Guatemala who are unable to leave their relationship” constitutes a cognizable social group given the cultural conditions of the country and the individual’s personal experience).

In the DHS L-R- Brief, DHS cited the respondent’s testimony regarding how people outside the relationship refused to intervene to stop the abuse and country conditions relating to the social perception in Mexico of domestic violence. DHS L-R- Brief, at 17. In the instant case, others in Ms. \*\*\*’s life knew about the abuse she suffered and did nothing about it. Exh A. For example, one a weekly basis, Ms. \*\*\*’s father sold her to men for sex. Id. Moreover, country conditions clearly demonstrate that Salvadoran society perceives girls as property. Exhs. M1-M4; Exh. J1; Exh. L5; Exh. I3. This evidence reflects a societal view that Salvadoran girls viewed as property are “a segment of society that will not be accorded protection from harm inflicted”. DHS L-R- Brief, at 18.

The evidence in the instant case confirms that Salvadoran girls viewed as property have the requisite particularity. The evidence in this instant case demonstrates that “girls” and “viewed as property” have commonly accepted definitions in Salvadoran society. Exh. M1-M5;

J1; I3. Given the perceived roles of women and girls in society and the fact that perpetrators of crimes against women and girls can harm or kill with impunity, it is evident that girls or women are seen at the property of their families, spouses, or their employer. See, i.e., Exh. I3; Exh. J1; Exhs. L1-L6; Exh. M1-M4. Like the respondent's social group in Matter of A-R-C-G-, Salvadoran girls being viewed as property is informed by societal expectations about gender and subordination as well as legal constraints. Id.

Therefore, Ms. \*\*\* has shown that she possesses the social distinction and particularity that Board precedent requires and that she is part of a cognizable social group.

**b. Ms. \*\*\* Was Persecuted on Account of Her Membership in This Particular Social Group**

DHS has stated that in cases of domestic violence evidence can demonstrate that an abuser targets the victim because of the “perception of the subordinate status she occupies within that domestic relationship.” DHS L-R- Brief, at 15. Moreover, in patriarchal societies, like El Salvador, men target girls for abuse as they know they can act with impunity. Exh. I3; Exh. J1; Exh. J11; Exh. L5; Exhs. M1-M4.

In the instant case, the evidence demonstrates that the fact that Ms. \*\*\* was a Salvadoran girl viewed as property was at least one central reason for the harm that she suffered. As the persecution she suffered occurred while she was a young child, it is difficult for Ms. \*\*\* to fully articulate the reasons she suffered beatings and sex abuse. However, as stated in the USCIS AOBTC Guidelines for Children's Asylum Claims, “[a] child's incomplete understanding of the situation does not necessarily mean that a nexus between the harm and a protected ground does



not exist.” AOBTC Guidelines for Children’s Asylum Claims, USCIS, RAIO, Asylum Division, September 1, 2009, at 43.

Ms. \*\*\*’s abusers knew they could harm her with impunity because she was a Salvadoran girl viewed as property. In her declaration, Ms. \*\*\* explains how her father and older siblings beat her and how her father earned money by forcing her to have sex with men. Exh. A. Moreover, she was forced into a marriage at the age of 16. *Id.* Lastly, country condition evidence supports that Salvadoran girls are viewed as property. Exhs. I3; J1; L5; M1-M4.

7. *Ms. \*\*\* Suffered Past Persecution On Account of Her Political Opinion*

“Political opinion” has a broad meaning and is not limited to traditional concepts of political parties or partisan politics. *See, e.g., Sagaydak v. Gonzales*, 405 F.3d 1035, 1041-45 (9th Cir. 2005) (retaliation against auditor for exposing corruption is persecution on account of political opinion); *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993) (feminism can be a political opinion). Political opinion may be expressed through actions as well as words. *See, e.g., Ahmed v. Keisler*, 504 F.3d 1183, 1193-98 (9th Cir. 2007) (finding a political opinion where the respondent voiced opposition to treatment of Biharis through hunger strike and demonstrations). It is also settled that “an applicant may establish a political opinion for purposes of asylum relief by showing an ‘imputed political opinion’” *Kumar*, 444 F.3d at 1053. An applicant must show that the persecutors believed she held this opinion and this was “one central reason” why she suffered harm. *Baghdasaryan v. Holder*, 592 F.3d 1018, 1023 (9th Cir. 2010); *Mukasey*, 555 F.3d at 740. Ms. \*\*\*’s opinions that she 1) opposed the gang’s authority and 2) would cooperate with government authority in prosecuting gang members for their crimes, meet the definition of “political opinion” within the meaning of the Refugee Act.

One central reason that Ms. \*\*\* suffered threats of harm and death is because of her opinions. Ms. \*\*\* did not believe that men and gangs should be able to harm with impunity. Exh. A. When she learned that her gang-affiliated nephew had raped her young daughter, Ms. \*\*\* went to the police. Id. Despite death threats from her gang-affiliated family, she cooperated with law enforcement and obtained medical evidence of the rapes. Id. The gang views these actions as actions against their authority and the ensuing threats were a direct result of Ms. \*\*\*'s stance against their authority.

As discussed in one report,

the mere act of speaking to a policeman can arouse suspicions... In many instances, the family of the person is also a target for vengeance or a means to exert pressure on the individual. Occasionally, this extends also to other associates or even the whole community. [footnote] For instance, a case was reported in Olancho, Honduras, where one youth in a group had problems with a transportista group and all 12 members of the group were killed one-by-one (Interview 38). In urban El Salvador, there are cases where a violent clika's suspicion of an informant in their neighbourhood led them to say "we will finish with community" and unleashed series of killings as a result of which 20–30 families fled.

Exh. K4.

Elizabeth Kennedy explains that for gangs "[f]irst and foremost is the desire for their control to be respected." Exh. II. Discussing the ruling gangs in El Salvador, she explains,

In this sense, the MS-13 and M-18 engage in exercising political power at its most basic element: obey the rules and orders of the MS-13 and M-18 or face violent reprisals. The refusal to obey rules and orders is viewed by the MS-13 and M-18 as defiance to their control. To maintain their control, the MS-13 and M-18 brutally suppress defiance in whatever form it takes.

Id.

Therefore, Ms. \*\*\*'s actions would be perceived by the gang to be a stance against their power. One central reason that Ms. \*\*\* and her children received death threats is because of her actions against the gangs and perceived opposition to their authority.

8. *Ms. \*\*\* Suffered Past Persecution On Account of Her Imputed Political Opinion*

“An imputed political opinion arises when ‘[a] persecutor falsely attributes an opinion to the victim, and then persecutes the victim because of that mistaken belief about the victim’s views.’” Baghdasaryan v. Holder, 592 F.3d 1018, 1024 n.6, 1024-25 (9th Cir. 2010) (quoting Canas-Segovia, 970 F.2d at 602) (concluding that the record suggested a political opinion was imputed to alien, where “top law enforcement official indicated that [alien] was detained and beaten because he was ‘defaming’ and ‘raising his head’ against” government corruption); *see also* Garcia-Milian v. Holder, 755 F.3d 1026, 1031-32 (9th Cir. 2014). Under the imputed political opinion doctrine, the applicant’s own opinions are irrelevant. *See* Kumar v. Gonzales, 444 F.3d 1043, 1054 (9th Cir. 2006) (Indian police persecuted applicant based on their false belief concerning his terrorist affiliation). An imputed political opinion claim may arise from the applicant’s associations with others, including family, organizational, governmental or personal affiliations, which cause assumptions to be made about him. *See* Silaya v. Mukasey, 524 F.3d 1066, 1070-71 (9th Cir. 2008) (“[E]vidence that the alleged persecutor acted because of a petitioner’s family’s political associations is sufficient to satisfy the motive requirement.” (internal quotation marks and alteration omitted)).

Ms. \*\*\* testified against \*\*\* in an U.S. court. Exh. A. As discussed supra, such an action would be perceived by \*\*\* and the MS-13 as being against the authority of a gang. Years later, \*\*\* and other MS-13 gang members tracked down Ms. \*\*\*. Exh. A. They told her that she had to be punished because she testified against \*\*\*. Id. They attacked Ms. \*\*\* and her children. Id. Therefore, one central reason that Ms. \*\*\* suffered harm in the past is because of her imputed political opinion as well as her actual political opinion.

9. *The Salvadoran Government is Unwilling or Unable to Control Ms. \*\*\*'s Persecutors*

An asylum applicant must demonstrate that the persecution was or will be inflicted by either the government or by persons the government is unable or unwilling to control. Avetovo-Elisseva, 213 F.3d at 1196. The applicant is not required to report third-party persecution to the government where it would be futile or result in further abuse. See Castro-Martinez v. Holder, 641 F.3d 1103 (9th Cir. 2011) (holding that reporting is not a necessary condition to establish government's unwillingness to protect from harm); Afriyie v. Holder, 613 F.3d 924, 931 (9th Cir. 2010) (holding that an applicant may use generalized country conditions information to show that reporting harm would be futile); Ornelas-Chavez v. Gonzales, 458 F.3d 1052, 1057 (9th Cir. 2006) (holding that failure to report is not required if doing so would be futile or subject the applicant).

The country condition evidence clearly demonstrates that Salvadoran witnesses who testify against gang members, family members of gang members, women in El Salvador who are unable to leave their relationship, girls viewed as property, and those who otherwise oppose gang authority are not protected by El Salvador's government, either because they are unable or unwilling. In fact, it is often agents of the Salvadoran government causing harm to witnesses against gangs, family members of gang members, or those who oppose the gangs. Exh. J2 ("But Cotto and police reform in El Salvador run up against a long history of police repression, corruption and public distrust. News accounts, as well as people we interviewed, allege that cops have given gangs the identity of witnesses to crimes and the identity of victims who have come forward to police."); Exh. II. As one report states,

'The gangs began to attack, and police have to defend themselves.' ... For some police, frustration is mounting. They get paid about \$500 a month and want raises. Some don't have proper uniforms. Citizens withhold information. Now that the police killings have risen, many live in fear... The aggressive posture of police

and soldiers worries human rights groups in El Salvador. Jeanne Ridders, who has worked on police and human rights issues for years in San Salvador, said that as she takes testimony from citizens about disappeared relatives or other abuses, 'people are reporting things to you that sound like the '80s.' 'It is a police force that is riddled with corruption and has a very strong tendency to abuse authority under the pretext of security,' Ridders said. 'The general impression is the police can do whatever they want.'

Exh J5; Exh. J13 ("Mutating" Gangs Sow Terror in Central America) ("A new law in effect in El Salvador since September 2010 banning maras [...] [has] triggered a violent backlash by the gangs."). El Salvador's government routinely fails to protect witnesses.

On March 2, the PNC detained two officers for the killing of prisoner Mario Alexander Reyes Chavez, who was being held in a police detention center in Los Planes de Renderos as a protected witness to a drug trafficking case.... On March 7, nine of the 14 police officers who were working in the detention center were jailed and were awaiting trial... On October 10, a judge absolved a gang member accused of being the mastermind of the murder.

Exh. K1. Corruption in the Salvadoran government is rampant, and "despite the absence of publicly available information, organizations involved in criminal activities such as arms trafficking, human trafficking and money laundering "possess the capital, manpower, and networks required to run sophisticated enterprises and to penetrate state institutions at high levels." Exh. F3 (internal citations omitted).

Elizabeth Kennedy explains,

First, corruption is endemic and widespread at every level of government, including the highest levels of government (BDHRL 2014; HRW 2014; UNODC 2012, 2013; USHCFA 2013). Many citizens believe that gangs collaborate with corrupt police and military officers.

...  
[A] number of police are perceived and do in fact collaborate with gangs. They do so in a number of ways. One is telling gang members the names, addresses and phone numbers of those who report a crime. The police are aware that the gang members will then seek to exact their own form of justice for this disloyalty.

Exh. I1.

While a law has passed in El Salvador specifically to protect witnesses, the law has proven ineffective. One study reports that,

the state does not provide assistance with relocation alternatives, finding employment, or changing identity (ibid.). According to the Director of the Anti-homicide Specialized Unit (Unidad Especializada Anti homicidios), the program does not have sufficient resources; the unit had a budget of US\$1.7 million in 2010, down from US\$2.7 million in 2008.

Exh. K3 (internal citations omitted). See also Exh. J1. (An ineffective public security strategy, inadequate government funding and training of the PNC, and ineffective senior-level leadership made it difficult to identify, arrest, and prosecute perpetrators of human rights abuses and other crimes, thus diminishing public confidence in the justice system.); Exh. G6.

Moreover, the Salvadoran government routinely fails to protect women from violence from the partners and girls from harm. Exh. J1; Exhs. L1-L6; Exh. M1-M4.

Professor Abrego explains,

Like other governments in the region, the Salvadoran government has proven itself unable or unwilling to help abused or threatened women, or children. Women, in particular, face significant obstacles in achieving justice. There exists a misogynistic culture of violence against women that permeates the public security institutions in El Salvador.

Exh. I3.

Thus, the government of El Salvador was and would be unable or unwilling to protect Ms. \*\*\* if she returned to El Salvador.

10. *Because Ms. \*\*\* Has Established That She Suffered Past Persecution On Account Of Her Membership in a Particular Social Group and Political Opinion, She Is Entitled to a Presumption of a Well-Founded Fear of Future Persecution That Cannot Be Rebutted*

Ms. \*\*\* suffered past persecution on account of her social group and political opinion, and therefore, she is entitled to a presumption of a well-founded fear of future persecution. 8

C.F.R. § 1208.13(b)(1). The government bears the burden of overcoming this presumption by proving by a preponderance of the evidence that there have been changed circumstances in the applicant's home country so that she no longer has such a fear, or that the applicant can avoid future persecution through reasonable internal relocation. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B).

Country conditions clearly demonstrate that violence against witnesses, those who oppose gang authority, and women and girls is rampant, and that the Salvadoran government cannot or will not protect such persons from the perpetrators of this violence. Exhs. I1; J1-3, J5, J13, K1, K3, K6; L1-L6; M1-M4. See also, supra, Section III.A.2-A9. Therefore, it cannot be established that conditions have changed in El Salvador so that Ms. \*\*\* and her children no longer have a fear of harm or that they can avoid future harm through internal relocation.

11. *Ms. \*\*\* Suffered Past Persecution and Faces "Other Serious Harm" and Is Entitled to Asylum*

Ms. \*\*\* is entitled to a grant of asylum even in the absence of a well-founded fear of persecution because she suffered past persecution on account of her particular social groups and political opinion and faces "other serious harm" should she return to El Salvador. Exh. A. 8 C.F.R. § 1208.13(b)(1)(iii)(A); Matter of L-S-, 25 I. & N. Dec. 705 (BIA 2012) (in "other serious harm" cases focus should include current conditions such as civil strife and psychological harm to the applicant). If Ms. \*\*\* is forced to return to El Salvador, she will be forced to return to a place where she suffered physical and sexual abuse as a child, years of vicious domestic violence, and where gangs have threatened her and her children with death. Exh A. Given the conditions in El Salvador, the gangs, including her gang-affiliated family, will be able to kill Ms. \*\*\* with impunity. Exhs. I1; J1-J15; Exhs. L1-L6. Ms. \*\*\* suffers from severe mental illnesses. Exh. I5. She will not be able to receive such treatment in El Salvador. Exh. J1. Therefore, Ms. \*\*\* and her children face serious harm if they are forced to return to El Salvador.

12. *Ms. \*\*\* Has an Independent Well-Founded Fear of Persecution On Account of Her Membership In A Particular Social Group and Political Opinion*

a. **Ms. \*\*\*'s Well-Founded Fear of Persecution Is Subjectively Genuine and Objectively Reasonable**

An asylum applicant's well-founded fear of persecution must be subjectively genuine and objectively reasonable to qualify for asylum. See Mgoian v. I.N.S., 184 F.3d 1029, 1035 (9th Cir. 1999); Korablina v. INS, 158 F.3d 1038, 1044 (9th Cir. 1998). An applicant satisfies the subjective component by credibly testifying that she genuinely fears persecution. Id. An applicant generally satisfies the objective component in one of two ways: either by establishing that she has suffered persecution in the past or by showing that she has a good reason to fear future persecution. Mgoian v. I.N.S., 184 F.3d 1029, 1035 (9th Cir. 1999). Even if there is only a one-in-ten possibility of an event occurring, such a possibility can give rise to a well-founded fear of persecution. See INS v. Cardoza-Fonseca, 480 U.S. 421, 431 (1987).

In the instant case, Ms. \*\*\*'s fear of returning to El Salvador is subjectively genuine. In support of her applications, Ms. \*\*\* submits a declaration stating that she continues to fear returning to El Salvador. Exh. A. She has suffered physical and sexual violence as a child and young woman, repeated threats to her life, physical attacks by the man she testified against and other gang members, and she knows that gangs continue to harm and kill people at high numbers with impunity in El Salvador. Exh. A. She is afraid that if she returns to El Salvador she and her children will be killed because she testified against the gang and because of stood against her gang-related family.

Ms. \*\*\*'s fear is objectively reasonable. As demonstrated by the evidence in this case and discussed in detail supra in Sections III.A.3-A8, Salvadoran witnesses who testify against gang members, family members of gangs, women, and those who oppose gang authority are



targeted for extreme violence and are not provided adequate protection in El Salvador.

Therefore, Ms. \*\*\* has established that she has a “good reason to fear future persecution.”

Mgoian v. I.N.S., 184 F.3d 1029, 1035 (9th Cir. 1999). See also Avetova-Elisseva v. I.N.S., 213 F.3d 1192, 1201 (9th Cir. 2000) (finding that evidence in the record of Armenian harassment in Russia creates “a strong likelihood of persecution, possibly resulting in physical harm or death.”)(internal quotations omitted).

**b. The Harm Ms. \*\*\* Faces Rises to the Level of Persecution**

As discussed supra, persecution has been defined as “the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive.” Li, 559 F.3d at 1107. It is well established that physical violence is persecution under INA § 101(a)(42)(A). See Li, 559 F.3d at 1107; Guo, 361 F.3d at 1197-98; Chand, 222 F.3d at 1073; Smolniakova, 422 F.3d at 1048-49; Matter of O-Z- & I-Z, 22 I. & N. Dec. at 25. Death threats alone constitute persecution. Navas v. INS, 217 F.3d 646, 658 (9th Cir.2000), see also Mamouzian v. Ashcroft, 390 F.3d 1129, 1134 (9th Cir. 2004).

Country conditions demonstrate that not only are Salvadoran witnesses who testify against gang members and those who oppose gangs subject to death threats and physical harm, but also often death sentences. When witnesses are killed, they may be tortured and/or mutilated beforehand. Exh. K1 (“A PNC commissioner said Chavez was shot between 25 and 28 times.”); Exh. J3. (“Each different group or clique kills people in a different way,’ he tells me. ‘Dismembering or strangling. Or a blow to the head. They all have their own execution style.’”) Exh. J9 (“When a head is found but no body, he says, that’s a gang murder.”). Sexual violence and rape is also common against women. Exh. I1; Exh. K1; Exh. K11. These harms clearly rise to the level of persecution.

Country conditions also demonstrate that women in El Salvador are frequently subjected to sexual and physical violence as well as death. Exh. J1 (“Rape and other sexual crimes against women were widespread.... Violence against women, including domestic violence, was a widespread and serious problem.”); Exh. L1; Exh. L2 (“El Salvador has one of the highest rates of femicide in the world.”); Exh. L3 (“Violence against women and girls is pervasive in El Salvador.”); Exh. L4; Exh. L5 (“Endemic levels of sexual abuse and gender based violence have made El Salvador one of the most dangerous countries in the world for girls and women.”); Exh. L6. These harms clearly rise to the level of persecution.

c. **Ms. \*\*\* Has a Well-Founded Fear of Future Persecution On Account of Her Membership in a Particular Social Group of Salvadoran Witnesses Who Testify Against Gang Members**

(1) Salvadoran Witnesses Who Testify Against Gang Members Constitute a Cognizable Social Group

As discussed in Section III.A.3, supra, Salvadoran witnesses who testify against gang members constitute a cognizable particular social group. See Henriquez-Rivas, Pirir-Boc, supra. In the instant case, Salvadoran witnesses who testify against gang members is not only a group that is defined by nationality and a shared past experience that is immutable, but also that Salvadoran society views this group as being distinct and having discrete boundaries. Exh. I1; Exhs. K1-K6. Therefore, as discussed in Section III.A.3. supra, the social group of Salvadoran witnesses who testify against gang members possesses social distinction and particularity and constitutes a cognizable social group under Ninth Circuit and Board precedent.

(2) Ms. \*\*\* Faces Persecution On Account Of Her Membership in a Particular Social Group

As discussed supra, to qualify for asylum, the applicant must establish that the protected ground “was or will be at least one central reason for persecuting the applicant.”

8 U.S.C. § 1158(b)(1)(B)(i) (emphasis added). However, the applicant need not demonstrate that

the protected ground will be the dominant central reason. Parussimova, 555 F.3d at 741. To demonstrate a nexus between persecution and a statutorily protected ground, the applicant must provide “direct or circumstantial evidence.” See Sangha, 103 F.3d at 1486-87.

The gangs have demonstrated that they kill witnesses who testify against them. See Exh. I1; Exh. J1 (“Intimidation and killing of ... witnesses created a climate of fear, complicating investigations of violent crimes and other alleged human rights abuses...Some judges denied anonymity to witnesses at trial, and gang intimidation and violence against witnesses contributed to a climate of impunity from criminal prosecution.”); Exh. G1 (“On March 2, the PNC detained two officers for the killing of prisoner Mario Alexander Reyes Chavez, who was being held in a police detention center in Los Planes de Renderos as a protected witness to a drug trafficking case.”); Section III.3., supra; Section III.9, supra; see also Henriquez-Rivas, 707 F.3d at 1092. Moreover, Ms. \*\*\* has already suffered a physical attack and received several threats to her life because she testified against the gang. Exh. A. See Section III.A.3.b., supra. Therefore, one central reason that the gang will target Ms. \*\*\* for harm as opposed to any other person in El Salvador is because she testified against gang members in court.

d. **Ms. \*\*\* Has a Well-Founded Fear of Future Persecution On Account of Her Membership in a Particular Social Group of Ms. \*\*\*’s Nuclear Family**

(1) Ms. \*\*\*’s Nuclear Family Constitutes a Cognizable Social Group

As discussed in Section III.A.4, supra, Ms. \*\*\*’s nuclear family is cognizable social group defined by its kinship ties. Sanchez-Trujillo, supra; Jie Lin v. Ashcroft, supra. DHS has also acknowledged that a nuclear family could be a social group for purposes of asylum, where the evidence establishes that the victim was targeted because of membership in the family. DHS L-R- brief at 16. Furthermore, the social group of Ms. \*\*\*’s nuclear family possesses social

distinction and particularity. The evidence demonstrates that families in El Salvador are perceived as a unit and that members of Ms. \*\*\*'s nuclear family are recognizable by members of Salvadoran society. See Exh. J1; Exh. J9 (Brutal Gang Violence Reigns in El Salvador, David Boeri, WBUR) (“Rival gangs think the same way: When one joins, the whole family joins. And so they are marked, and marked forever, according to gang mentality.”); Exh. J10 (The Deadly, Invisible Borders Inside El Salvador, Oscar Martinez, The New Republic); Exh. A. Therefore, Ms. \*\*\*'s nuclear family is the type of “cohesive, homogeneous group” that the Board and Ninth Circuit have found to be show sufficient particularity and social distinction. See, Perdomo, 611 F.3d at 666.

(2) *Ms. \*\*\* Faces Persecution On Account Of Her Membership in a Particular Social Group*

As discussed in Section III.A.4.b., supra, the evidence in the instant case demonstrates that Ms. \*\*\*'s membership in her nuclear family will be at least one central reason for the harm that she faces if she returns to El Salvador. Ms. \*\*\* family is affiliated with the MS-13 gang in El Salvador. Exh. A. Ms. \*\*\* was repeatedly threatened with death because she went against her family and reported her nephew's rape of her daughter. Id. Moreover, her family had abused Ms. \*\*\* for years demonstrating that they believed they had a right to dominate and control her. Id. Furthermore, country conditions report evidence that gang target family members for harm. Exh. J10; Exh. J9. Elizabeth Kennedy explains,

...the MS13 and M18 exact revenge for defiance and perceived defiance, so if a mother or son acts in a manner contrary to the MS13 or M18 orders or rules, the entire family is presumed to also be against the gang. For this reason, a number of entire families are killed each year.

Exh. I1.

The United States Department of State reports that “the families of gang members often face the same risks of being killed or disappearing as the gang members themselves.” Exh. K16.

e. **Ms. \*\*\* Has a Well-Founded Fear of Future Persecution On Account of Her Membership in a Particular Social Group of Salvadoran Women**

Salvadoran women is a group that is united by gender and nationality. These shared characteristics are immutable, as a person cannot change his or her gender or nationality. Hernandez-Montiel, *supra*. The Ninth Circuit and the Board have recognized similar groups as possessing an immutable characteristic. *See* Perdomo, 611 F.3d at 668 (holding that young women in Guatemala subject to femicide may be a social group and rejecting that a person is ineligible for social group consideration because the “persecuted group may simply represent too large a portion of a population.”); Karouni, 399 F.3d at 1172 (holding that “all alien homosexuals are members of a ‘particular social group’”); Mihalev, 388 F.3d at 726 (holding that Gypsies are an identifiable ethnic group and that being a Gypsy is a protected ground for asylum); Matter of A-R-C-G-, 26 I. & N. Dec. 388 (BIA 2014) (finding “married women in Guatemala who are unable to leave their relationship” constitutes a cognizable social group); In re Fauziya Kasinga, 21 I. & N. Dec. at 366 (holding that women who belong to a particular tribe and who oppose female genital mutilation constitute a cognizable social group).

The Ninth Circuit and Board have held that gender is an immutable characteristic. In Mohammed v. Gonzales, 400 F.3d 785 (9th Cir.2005), the Ninth Circuit held that that gender is an “innate characteristic” that is “fundamental to [one's] identit[y].” *Id.* at 797. Moreover, in the seminal decision of Acosta, the Board expressly held that one’s sex is a prototypical example of an immutable characteristic. Matter of Acosta, 19 I. & N. Dec. at 233-234. *See also* Matter of A-R-C-G-, 26 I. & N. Dec. at 392 (“the group is composed of members who share the common immutable characteristic of gender.”). USCIS guidance also states that gender is an immutable

trait. USCIS AOBTC Female Asylum Applicants and Gender-related Claims, USCIS, RAIO, Asylum Division, March 12, 2009, at 30.

Country condition reports demonstrate that Salvadoran women are generally recognizable by others in the society. See Exh. I1; Exh. I3; Exh. J1; Exh. J11; Exhs. L1-L6. Moreover, the evidence in the instant case demonstrates that Salvadoran women are much more likely than other Salvadorans to suffer sexual assault, be kidnapped, and be forced to perform labor. Id. Elizabeth Kennedy explains,

According to US Department of State's 2014 Human Rights Report, "rape and other sexual crimes against women were widespread." Through the first nine months of the year, the Attorney General's office received 1,793 cases of sexual crimes, but only 24 resulted in convictions. ISDEMU reported 1,264 cases of alleged violence against women, including sexual abuse, physical abuse, femicide, rape and psychological abuse.

Exh. I1.

Professor Abrego explains,

Adult women in El Salvador are also often subjected to brutal acts of violence. For example, during the summer of 2013, when I last visited El Salvador, there were two cases in different parts of the country involving women whose male partners had thrown gasoline on them and lit them on fire. In one case, the woman died days later, after suffering burns over 95 percent of her body.

Exh. I3.

Ms. \*\*\* has already suffered domestic violence, sexual abuse, and physical assault in El Salvador. Exh. A. Based on the situation for women in El Salvador, Ms. \*\*\* faces at least a 10 percent chance of suffering harm because she is a Salvadoran woman.

f. **Ms. \*\*\* Has a Well-Founded Fear of Future Persecution On Account of Her Political Opinion**

(1) Ms. \*\*\* has a Political Opinion

As discussed in Section III.A.7, supra, Ms. \*\*\* has a political opinion based in her opposition to the authority of gangs. In reporting the rape of her daughter by her gang-affiliated nephew despite the death threats by her family, Ms. \*\*\* has expressed opposition to the gangs. She cooperated with law enforcement to obtain medical evidence of the rapes. Exh. A. She also reported the death threats from her family and gangs to the police. Id. Such actions are viewed by gangs as being in opposition to their authority. Exh. J4 (“the mere act of speaking to a policeman can arouse suspicions”); Exh. K1; Exh. K2; Exh. I1. Thus Ms. \*\*\* has a political opinion as evidenced through her actions. See, e.g., Sagaydak v. Gonzales, 405 F.3d 1035, 1041-45 (9th Cir. 2005) (retaliation against auditor for exposing corruption is persecution on account of political opinion).

(2) Ms. \*\*\* Faces Persecution On Account Of Her Political Opinion

Ms. \*\*\* faces persecution on account of her opposition to the gangs and her association with law enforcement. As discussed supra, Section III.A.7, Ms. \*\*\* will suffer extreme violence and likely death because of her opposition to the gangs. Ms. \*\*\* cooperated with law enforcement and reported death threats and her daughter’s rape to the police and such actions are seen as an affront to the gang’s authority. Exh. A; Exh. I1. Her cooperation with law enforcement is known by the gang in El Salvador. Exh. A. Country conditions evidence clearly demonstrates that Salvadoran gangs viciously harm and kill those who oppose them. Exh. J1; Exh. J3; Exh. J5; Exh. J6. Elizabeth Kennedy explains, “the MS-13 and M-18 engage in exercising political power at its most basic element: obey the rules and orders of the MS-13 and M-18 or face violent reprisals.” Exh. I1.

Therefore, Ms. \*\*\* faces persecution in El Salvador because of her political opinion.

**g. Ms. \*\*\* Has a Well-Founded Fear of Future Persecution On Account of Her Imputed Political Opinion**

“An imputed political opinion arises when ‘[a] persecutor falsely attributes an opinion to the victim, and then persecutes the victim because of that mistaken belief about the victim’s views.’” Baghdasaryan, 592 F.3d at 1024 n.6, 1024-25 (9th Cir. 2010) (quoting Canas-Segovia, 970 F.2d at 602). See also Garcia-Milian, 755 F.3d at 1031-32. Under the imputed political opinion doctrine, the applicant’s own opinions are irrelevant. See Kumar, 444 F.3d at 1054. An imputed political opinion claim may arise from the applicant’s associations with others, including family, organizational, governmental or personal affiliations, which cause assumptions to be made about him. See Silaya, 524 F.3d at 1070-71.

Ms. \*\*\* testified against \*\*\* in an U.S. court. Exh. A. As discussed supra, such an action would be perceived as being against the authority of a gang. Years later, \*\*\* and other MS-13 gang members tracked down Ms. \*\*\*. Exh. A. They told her that she had to be punished because she testified against \*\*\*. Id. They attacked Ms. \*\*\* and her children. Id. Country conditions reports evidence that rival gang’s opinions are imputed onto their family members and that the family members are targeted for this reason. Exhs. I1; J1-K1. One report discusses how the disappearance of family members of gangs is considered gang activity as “the families of gang members often face the same risks of being killed or disappearing as the gang members themselves.” Exh. K16. Therefore, one central reason that Ms. \*\*\* faces harm in El Salvador is because of her imputed political opinion as well as her actual political opinion. See Section III.A.8, supra.

**h. The Salvadoran Government is Unable or Unwilling to Protect Ms. \*\*\* From the Persecution She Faces in El Salvador**



As discussed supra, the evidence in the instant case demonstrates that the government of El Salvador cannot or will not protect individuals such as Ms. \*\*\* from the gangs. See Section III.A.9, Section III.A.10, supra. Violence by gangs is often done with impunity, and corruption is rampant within the Salvadoran police and military. Exh. I1; Exhs. J1-J11. While El Salvador has recognized that witnesses require special protection, the laws are not effectively enforced. The U.S. Department of State reports, “[i]nadequate training, lack of enforcement of the administrative police career law, arbitrary promotions, insufficient government funding, failure to enforce evidentiary rules effectively, and instances of corruption and criminality limited the PNC’s effectiveness.” Exh. J1; see also Exhs. J3, J4, J11, J1-6. The police and the Salvadoran justice system routinely fail to protect witnesses who testify against gang members in El Salvador and the police often are complicit in or simply ineffective in combatting the violence against those who testify or oppose the authority of gangs. Exhs. I1; J1, J2, J3, J5, J13, K1, K3, K6.

Furthermore, perpetrators of violence against women can act with impunity. Exh. I1; Exh. I3; Exh. J1; Exhs. L1-L6. See also, Sections III.A.3-10, supra.

i. **Ms. \*\*\* Cannot Avoid Persecution By Reasonable Internal Relocation**

An asylum applicant “does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, if under all the circumstances it would be reasonable to expect the applicant to do so.” 8 C.F.R. § 1208.13(b)(2)(ii). In determining whether the possibility of internal relocation is reasonable, “adjudicators should consider, but are not limited to considering, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the

country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties.” 8 C.F.R. § 1208.13(b)(3). The inquiry is an individualized consideration into the specific facts of the case. Id.

In the instant case, evidence demonstrates that violence against witnesses who testify against gang members and oppose their authority is rampant in El Salvador. Exh. I1; Exhs. K1-K6. Gangs have extensive networks and therefore can find and harm those who oppose them. Exh. I1; Exh. K3; Exhs. J1-J11. The gangs have asserted their authority and threatened to kill Ms. \*\*\*. Exh. A. Additionally, the police in El Salvador are often associated with the gangs, as Ms. \*\*\* learned first hand, and so Ms. \*\*\* could easily be found in the country. Exh. J3; Exh. A. Elizabeth Kennedy explains that in regards to gangs in El Salvador,

The MS-13 and M-18 are present in far more places than they are not in El Salvador. Over the past year, numerous press articles in the country have estimated that over 90 percent of the country’s neighborhoods have a gang presence.

Exh. I1.

Moreover, as discussed supra, violence against women is rampant throughout El Salvador and authorities do nothing to protect women, or even perpetuate the violence. Exh. I3; Exh. F1; Exhs. L1-L6.

Therefore, the evidence does not support a conclusion that internal relocation within El Salvador is reasonable or will diminish the likelihood of persecution for Ms. \*\*\* and her children.

B. Ms. \*\*\* is Eligible for Withholding of Removal

To qualify for withholding of removal, an applicant must demonstrate that his or her “life or freedom would be threatened in that country because of the [petitioner's] race, religion,

nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3); INA § 241(b)(3). An applicant may establish eligibility for withholding of removal by establishing an independent showing of a clear probability of future persecution. 8 C.F.R. § 1208.16(b)(2). See also, Tamang v. Holder, 598 F.3d 1083, 1091 (9th Cir. 2010). In addition, the applicant must demonstrate “that it is more likely than not that he would be subject to persecution on one of the specified grounds.” Al-Harbi v. INS, 242 F.3d 882, 888 (9th Cir. 2001) (internal quotation marks omitted). Withholding of removal is not discretionary: “[t]he Attorney General is not permitted to deport an alien to a country where his life or freedom would be threatened on account of one of the [ ] protected grounds.” Id. See also Delgado v. Holder, 648 F.3d 1095, 1101 (9th Cir. 2011). Moreover, an applicant must demonstrate that she could not reasonably relocate within her country of origin to avoid persecution. 8 C.F.R. § 1208.16(b)(2). Ms. \*\*\* meets this standard.

As discussed in Section III.A., supra, Ms. \*\*\* suffered sexual and physical abuse as a child, years of domestic violence, and physical attack and death threats by the MS-13 gang. Exh. A. Ms. \*\*\* fears suffering extreme violence and death if forced to return to El Salvador. Reports indicate that her fears are not unfounded as witnesses, those who oppose gangs, and women are routinely beaten and killed in El Salvador. Exh. J8 (“In Central America, MS13 provides crucial manpower for the foreign organizations, helping gangs like the Zetas and the Sinaloa cartel sell drugs in the local market, intimidate rivals, and carry out executions.”); Exh. I1; Exh. I3; Exh. J5; Exh. J13; Exh. J10-K1; Exhs. L1-L6. Threats of harm, beatings, rape, and death constitute threats to life or freedom, and the evidence clearly indicates that it is more likely than not that Ms. \*\*\* will suffer such harm. Kovac, supra; Navas, supra; Smolniakova, supra; see also Section III.A.2-A10, supra.

Furthermore, Ms. \*\*\* faces harm on account of her particular social groups, political opinion, and imputed political opinion. As discussed in Section III.A.3, supra, Ms. \*\*\*'s social group of Salvadoran witnesses who testify against gang members is a cognizable social group. This group possesses immutable characteristics and is socially distinct and particular. See Section III.A.3, supra. Moreover, the harm Ms. \*\*\* faces will be on account of her membership in that particular social group. See Section III.A.3.b. In addition, as discussed in Section III.A.4, supra, Ms. \*\*\* faces serious harm and death on account of her particular social group of Ms. \*\*\*'s nuclear family. Ms. \*\*\*'s gang affiliated family has threatened to kill Ms. \*\*\* because she went against the family and reported the rape of her daughter to the police. Exh. A. Furthermore, as discussed in Section III.A.12.e, supra, Ms. \*\*\* faces serious harm and death on account of her particular social group of Salvadoran women. Ms. \*\*\* suffered years of abuse because she was a woman, and country conditions clearly evidence that women are routinely targeted for harm in El Salvador for their position in society and gender. Exh. I3; Exh. F1; Exhs. L1-L6. Lastly, Ms. \*\*\* has an anti-gang political opinion and will more likely than not be harmed on account of these opinion. See Sections III.A.7, A.8, A.12.f, A.12g., supra.

Furthermore, the evidence clearly demonstrates that the actors of the violence Ms. \*\*\* faces can act with impunity and that gang violence and violence against women is widespread in El Salvador making relocation impossible. Exh. I1; Exh. I3 Exh. J1; Exh. K3; Exh. K16; Exhs. L1-L6.

C. Ms. \*\*\* is Eligible for Protection Under Article Three of the Convention Against Torture

To qualify for relief under CAT, an applicant must establish that she is more likely than not that she would be tortured if removed to her country of origin. 8 C.F.R. § 1208.16(c)(2); see Khup v. Ashcroft, 376 F.3d 898, 906 (9th Cir. 2004). Under CAT, “torture” is defined as “any

act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for . . . any reason based on discrimination of any kind . . . .” 8 C.F.R. § 1208.18(a)(1) (2000). Moreover, the torture must be “at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” 8 C.F.R. § 1208.18(a)(1). The Ninth Circuit explained, “relief under the Convention Against Torture requires a two part analysis—first, is it more likely than not that the alien will be tortured upon return to his homeland; and second, is there sufficient state action involved in that torture.” Garcia-Milian v. Holder, 755 F.3d 1026 (9th Cir. 2013) (quoting Tamara-Gomez v. Gonzales, 447 F.3d 343, 351 (5th Cir. 2006)). If Ms. \*\*\* establishes that it is more likely than not that she will be tortured in El Salvador, relief under CAT is mandatory. 8 C.F.R. § 1208.16(c).

The Ninth Circuit has routinely held that the types of violence Ms. \*\*\* faces – rapes, beatings and death – constitute torture. See, i.e. Bromfield v. Mukasey, 543 F.3d 1071, 1079 (9th Cir. 2008) (“Acts constituting torture are varied, and include beatings and killings”); Al-Saher v. I.N.S., 268 F.3d 1143 (9th Cir. 2001) (applicant’s subjection to repeated beating and cigarette burns was considered torture); Lopez-Galarza v. I.N.S., 99 F.3d 954, 962 (9th Cir. 1996)(“Rape at the hands of government authorities while imprisoned on account of one's political views can be an atrocious form of punishment indeed.”); Xiao v. Ashcroft, 98 F. App'x 632, 634 (9th Cir. 2004)(“multiple beatings and electric shock constitute past torture”).

As discussed supra, Ms. \*\*\* is more likely than not to suffer severe physical harm or death in El Salvador. See Section III.A.12, supra Section III.B., supra. Factors that an adjudicator must consider in a claim for relief under CAT include: “Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and . . . [o]ther relevant information regarding conditions in the country of removal.” Konou v. Holder, 750 F.3d

1120 (9th Cir. May 9, 2014). Furthermore, the Ninth Circuit explained, “[i]t is well-accepted that country conditions alone can play a decisive role in granting relief under [CAT].” Id. (citing Nuru v. Gonzalez, 404 F.3d 1207, 1219 (9th Cir. 2005)). Ms. \*\*\* provides extensive evidence detailing the mass violations of human rights and torture involving gangs in El Salvador. Exh. I1; Exh. I3; Exhs. J1-J13; Exhs. K1-K16. Violence against witnesses and those who oppose gangs is rampant and the government and laws meant to protect those people are impotent. Exh. I1; Exhs. K1-K6. Moreover, violence against women is rampant and perpetrators can act with impunity. Exh. I3; Exh. F1; Exhs. L1-L6. Ms. \*\*\*’s own experiences evidence the widespread impunity that exists for gangs and perpetrators of violence against women. Exh. A. Therefore, it is more likely than not that Ms. \*\*\* will suffer torture if she is forced to return to El Salvador.

Lastly, the torture that Ms. \*\*\* is more likely than not to suffer will be by government officials or with the acquiescence of government officials. The Ninth Circuit has held that to constitute torture at the hands of government actors, the harm caused had to have been “specifically intended by officials to inflict severe physical pain.” Al-Saher v. I.N.S., 268 F.3d 1143, 1147 (9th Cir. 2001) (being subjected to repeated beatings and cigarette burns while in government custody was found to be torture).

Acquiescence of public officials must include an awareness of the persecution and a failure to intervene and prevent the activity that breaches a legal responsibility to do so. 8 C.F.R. § 1208.18(a)(7). According to the Ninth Circuit:

Public officials acquiesce in torture if, “prior to the activity constituting torture,” the officials: (1) have awareness of the activity (or consciously close their eyes to the fact it is going on); and (2) breach their legal responsibility to intervene to prevent the activity because they are unable or unwilling to oppose it.

Garcia-Milian v. Holder, 755 F.3d 1026 (9th Cir. 2013). See also, Ornelas-Chavez v. Gonzales, 458 F.3d 1052, 1059 (9th Cir.2006); Afriyie v. Holder, 613 F.3d 924 (9th Cir. 2010) (“reversed

denial of CAT and remanded where there was substantial evidence that the police were unable or unwilling to protect Baptist preacher in Muslim area in Ghana who could suffer torture”); Bromfield v. Mukasey, 543 F.3d 1071, 1078 (9th Cir. 2008) (IJ was mistaken in requiring a homosexual individual to show that government actors would inflict torture and not just acquiesce to persecution). “Importantly, an applicant for CAT relief need not show that the entire foreign government would consent to or acquiesce in his torture. He need show only that ‘a public official’ would so acquiesce.” Madrigal v. Holder, 716 F.3d 499, 509–10 (9th Cir. 2013) (“If public officials at the state and local level in Mexico would acquiesce in any torture [applicant] is likely to suffer, this satisfies CAT's requirement that a public official acquiesce in the torture, even if the federal government in Mexico would not similarly acquiescence”). Furthermore, the preventative measure by some government actors, do not exclude the possibility of acquiescence. De La Rosa v. Holder, 598 F.3d 103 (2d Cir. 2010).

Country conditions show that government actors are aware of and allow the violence against witnesses and those who oppose gangs in El Salvador. This violence is widespread. Exhs. J1, J11; Exhs. K1-K6.; Exh. K16. The government is aware of this violence as laws have been enacted to protect witnesses. Exh. K3. However, despite this awareness and recognition of a problem, the police are ineffective and at times the perpetrators of the violence. Exh. J1; see also Exhs. I1; J3, J4, J11, K1-6. Therefore, since the Salvadoran government is aware of the torture of witnesses and those who take steps to oppose gang authority and routinely breach their legal responsibility to prevent the torture, even at times acting in concert with the gangs, the Salvadoran government will perpetrate or acquiesce to the torture that Ms. \*\*\* is more likely than not to face if returned to El Salvador. See Garcia-Milian v. Holder, supra.

Country conditions also show that government actors are aware of and allow the violence against women in El Salvador. This violence is widespread. Exhs. J1, I3; Exhs. L1-L6. The government is aware of this violence as laws have been enacted to protect women. Id. However, despite this awareness and recognition of a problem, the police are ineffective and at times the perpetrators of the violence. Exh. I1; Exh. I3; see also Exh. F1; Exh.s L1-L6. Therefore, since the Salvadoran government is aware of the torture of women and routinely breach their legal responsibility to prevent the torture, even at times acting in concert with the perpetrators, the Salvadoran government will perpetrate or acquiesce to the torture that Ms. \*\*\* is more likely than not to face if returned to El Salvador. See Garcia-Milian v. Holder, supra.

#### IV. CONCLUSION

Thus, based on all of the above-referenced evidence and arguments, this Court should find that Ms. \*\*\* warrants a grant of asylum because of the persecution she suffered on account of her membership in a particular social group, political opinion, and imputed political opinion and the persecution on account of her membership in the particular social group, political opinion, and imputed political opinion as well as the other serious harm that she and her children will likely suffer if returned to El Salvador.

Date submitted: September 29, 2015

Respectfully submitted,

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