Kaitlin Kalna Darwal, CA 260273 Community Legal Services in East Palo Alto 2117-B University Avenue East Palo Alto, CA 94303

Telephone: (650) 326-6440 Facsimile: 866-688-5204

Attorney for Respondent

**Exhibit** 

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

In the Matter of:	
***	File Number: A***
Respondent,	Hearing Date: **, 2015 Hearing Time: 8:30 a.m.
	Before Hon. Laura L. Ramirez

## SUPPLEMENTAL EXHIBITS IN SUPPORT OF RESPONDENT'S FORM I-589, APPLICATION FOR ASYLUM, WITHHOLDING OF REMOVAL, AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE

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G.	Expert Statements on Violence Against Women in Guatemala	
	1. Expert Affidavit of Professor **	35
	Guatemala currently struggles with problems of impunity and difficulties with the rule of law, as evidenced by the International Commission against Impunity in Guatemala's recent indictments of top elected officials and the resignation of the Vice President in May 2015.	

The police will not protect Ms. \*\*\*. Unfortunately, Guatemala's National Police force is understaffed (according to United Nations standards on the ratio of police to civilians) and can rarely provide timely protection for citizens suffering ongoing death threats. The Guatemalan military is understood to be the strongest institutional power in the nation, but the military also has a recent history rife with gender-based violence in the context of human rights violations committed against citizens during the civil war (1960-1996).

The Guatemalan government is unable or unwilling to offer protection from violence. The justice and security sectors in Guatemala are weak, overwhelmed, neglected, and corrupt.

The Guatemalan justice system recognizes that gender-based violence is an urgent social problem. The president created a special Commissioner against Femicide in Guatemala position in response to a massive political outcry against feminicidio, the torture, rape and killing of women together with the public spectacle of their bodies. In this regard, Guatemala has very strong laws prohibiting gender-based violence, whether from strangers or family members. Unfortunately, these laws are very unevenly enforced. A key signal of this difficulty is that the first Commissioner against Femicide, Alba Trejo, resigned effective March 1, 2013 for safety reasons – she received credible death threats and did not believe she can protect herself and her family. [internal citations omitted]

For these reasons, it is my expert opinion that Ms. \*\*\* is at high risk for suffering repeated violence at the hands of her husband, with little recourse to state justice, if forced to return to Guatemala. The extent to which she was able to press charges against her husband in one incident is somewhat unusual and reflects a relatively high level of state responsiveness. Even in this best case scenario, it is common for criminals to pay fines in lieu of serving jail time.

- 3. Declaration of Elisa Portillo Nájera (expert on gender discrimination in Guatemala and resulting patterns of violence), 3 February 2012 .......48

Through my extensive research and work for Guatemalan governmental and nongovernmental organizations, I have observed how the patriarchal culture in Guatemala normalizes violence against women and how, as a result, women who seek to flee violence often have no legal protection and nowhere to turn for safety. Through my training of law enforcement and judicial officials, my work on criminal cases seeking the prosecution of perpetrators of violence against women, and my experience as a Guatemalan woman, I have witnessed how deeply gender bias is entrenched in the legal system, which explains why officials fail to provide survivors of gender-based violence the protection they need to be safe.

\*\*\* A\*\*\*

The Guatemalan legal system is supposed to provide protection and resources to female survivors of violence, using primarily the Law Against Femicide and Other Forms of Violence Against Women (Ley contra el femicidio y otras formas de violencia contra la mujer, or "2008 Law"). This law provides protective measures for women facing violence, as well as criminal sanctions to punish the perpetrators of violence. As described below, neither this principal law nor any other law in the Guatemalan legal system has reduced violence against women or the impunity that perpetrators enjoy when they commit this violence.

In Guatemalan culture, it is widely accepted that a man has the right to abuse his partner. Women are expected to endure such violence, because it is viewed as 'normal.' The abuse stems from a culture that places a man at the top of a hierarchy granting him control over all aspects of a woman's life, from her economic situation, to her politics, to her sexuality. Women are commonly viewed as the 'daughters' of their husbands, and as such, women must obey their partners. This idea furthers women's dependence on their violent partners.

Moreover, because of widespread discrimination against women in Guatemala, women are often completely dependent on their abusers, financially, socially, and psychologically. Within this context, it is difficult for women to flee from violence.

Because the police, prosecutors, and judges believe that men have the right to use violence against their partners to control them, they do not take cases of violence against women seriously. Furthermore, these officials are often indifferent to or ignorant about the cycle of domestic violence, whereby women are abused over and over or even killed by their partners.

A relatively recent epidemic of killings of women in Guatemala, which are called 'femicides,' stems from deeply entrenched gender bias, the misogynistic attitudes of society, the objectification of women, and the resulting impunity for perpetrators of violence against women. The legal system and culture that disrespect women signal to men that they will not be punished for committing violence against women. ... As a result, 98% of femicide cases are left unsolved. Such impunity gives the green light to perpetrators, who can kill women and know they will get away with it.

"[T] hrough the abuse of 'judicial independence' mentioned above, judges will often not issue arrest warrants for preventive detention, notwithstanding evidence of extreme physical violence. Even if an aggressor is arrested, he will usually be released within a week or two. The release may be conditioned upon the payment of a bond. The judge may also order that the aggressor not approach the victim; however, such orders are ineffective as they are generally violated.

If a woman does manage to obtain a protective order the police are unlikely to enforce it. Like judicial officials, most law enforcement personnel share the cultural biases against women and do not take seriously their obligation to

enforce protective measures. Even if the police do attempt to enforce a protective order, their efforts will likely be ineffective because emergency response and police departments are not sufficiently staffed to respond to calls for help in a timely manner, if at all. In some cases, murdered women have been found with copies of protective orders in their possession, and other times the abusers have torn apart the protective orders in front of the police.

There are various reasons why a woman cannot relocate to another part of Guatemala to escape an abusive relationship. First, a woman's family is often not supportive of her decision to leave an abusive relationship. If a woman does leave, her family often attempts to reunite the woman with her abusive partner, which puts her in even more danger than before because she dared to challenge gender norms by trying to escape. Moving within the country does not solve the problem, however, because ties to the community allow an aggressor to find a woman anyway. Strong family and community bonds, and the need for family support in order to survive, ensure that a woman maintains contact with her family and that they know her whereabouts.

Both indigenous and ladino communities to which these men returned were forced to absorb new levels of PTSD, alcoholism, aggression, and domestic violence. It was, of course, the women in each who were the most injured in the process. Women are viewed as inferior in general in Guatemala. It was not until 1998 that women gained legal status on par with their husbands.

Violence against women, that is femicide -the killing of females by males because they are female -has reached epidemic proportions in Guatemala over the past decade where on average 700 women have been murdered every year for the past ten years, many dismembered or mutilated. In 2008 Guatemala passed the Law Against Femicide and Other Forms of Violence, an important first step, yet violence against women has continued unabated. Domestic violence is also rampant, where some rural communities 90% of women and children are abused. In 2009, of the 30,000 reported incidences of violence against women only 0.7% of the cases led to prosecution and 0.2% received criminal sentences. Despite changes in the laws an ingrained patriarchy circumscribes the social fabric and where machismo construes women to be the property of and worth much less than men.

- H. Identity Documents of Ms. \*\*\*\*'s Guatemalan Children
  - 1. Copy of Birth Certificate of \*\*\*\*, with certified English translation.......77
  - 2. Copy of Birth Certificate of \*\*\*\*, with certified English translation.....80

- I. Country Conditions Evidencing Violence Against Women in Guatemala and the Lack of State Protection for Women in Guatemala

Principal human rights abuses included widespread institutional corruption, particularly in the police and judicial sectors; police and military involvement in serious crimes such as kidnapping, drug trafficking, and extortion; and societal violence, including often lethal violence, against women.

Considerable violence was attributed to gangs, organized crime, and narcotics-trafficking organizations; however, corruption and inadequate investigation and prosecution of such crimes made factual attribution for crimes difficult.

The law criminalizes rape, including spousal rape, and sets penalties between five and 50 years in prison. Police, however, had minimal training or capacity to investigate sexual crimes or assist victims of such crimes, and the government did not enforce the law effectively; full investigation and prosecution of domestic violence and rape cases took an average of one year. Impunity for perpetrators remained at very high levels. Rape victims frequently did not report crimes due to lack of confidence in the justice system, social stigma, and/or fear of reprisal.

Violence against women, including domestic violence, remained a serious problem. The law prohibits domestic abuse, allows for the issuance of restraining orders against alleged aggressors and police protection for victims, and requires the PNC to intervene in violent situations in the home. The PNC often failed to respond to requests for assistance related to domestic violence, and women's rights advocates reported few officers received training to deal with domestic violence or assist victims.

Femicide affected both women and girls and remained a major problem. In most killings, sexual assault, torture, and mutilation were evident. The Public Ministry reported 419 killings of women as of the end of September. The conviction rate was only 1 to 2 percent for femicide. NGOs noted that the severity of sentences was not always appropriate to the crime.

Police impunity for criminal activities continued to be a serious problem. There were credible reports that individual PNC officers and some police units or persons disguised as police officers stopped cars and buses to demand bribes or steal private property and in some cases kidnapped, assaulted, and raped victims.

 Powerful criminal organizations engage in widespread acts of violence and extortion. The intimidation and corruption of justice system officials, as well as the absence of an effective witness protection program, contribute to high levels of impunity.

The Secretariat against Sexual Violence, Exploitation and Human Trafficking (SVET) strengthened inter-institutional coordination for the implementation of the Law against Sexual Violence, Exploitation and Human Trafficking. However, the lack of statistical information and the high degree of impunity in these crimes (93 per cent) is of concern.

While threats against judicial personnel continued, there was little progress in investigating and prosecuting these cases, confirming the need to strengthen the Judicial Operators Unit of the Attorney General's Office. Judges, prosecutors, victims and witnesses were subject to threats...

4. Freedom House, Guatemala: Freedom in the World 2014, *available at* <a href="https://freedomhouse.org/report/freedom-world/2014/guatemala#.VPs-vuHlwfA141">https://freedomhouse.org/report/freedom-world/2014/guatemala#.VPs-vuHlwfA141</a>

Physical and sexual violence against women and children, including domestic violence, remain widespread, with perpetrators rarely prosecuted.

Despite efforts to combat corruption, serious problems remain. Peréz ordered the closing of the National Fund for Peace (Fonapaz), was a governmental organization created by the 1996 peace accords in order to support municipal development projects, in January 2013 because the institution had become so corrupt that it was beyond saving. However, the Social Development Fund, which replaced it, is reportedly similarly plagued by corruption.

The judiciary is troubled by corruption, inefficiency, capacity shortages, and the intimidation of judges and prosecutors. Witnesses and judicial-sector workers continue to be threatened and, in some cases, murdered.

Police continue to be accused of torture, extortion, kidnapping, extrajudicial killings, and drug-related crimes, although there were several notable prosecutions in 2013.

 748 women suffered violent deaths in 2013, an average of 2 every day, which is a 10% increase from 2012. The impunity rate for these cases is 98%.

The Guatemalan government is often unable to offer its citizens protection from violence — especially those most vulnerable, such as children. Moreover, there are credible allegations of collaboration between organized criminal groups and members of the Guatemalan military and police, as well as police and military involvement in serious crimes, exacerbating impunity and denying victims the right to security and justice. Such abuses are often not investigated or prosecuted.

Violence against women is an extremely serious problem. These crimes are seldom solved or punished, creating further fear and vulnerability among women.

Violence against women [in Guatemala], including domestic violence, is a serious problem, not least because convicted domestic abusers are not liable to custodial sentences. There are also strict requirements in terms of visible and lasting injuries, restricting the cases when a charge of fault can be laid. There is also a discrepancy between the provisions in the law dictating when the police should intervene and protect the victims of domestic violence and actual practice. The latter reveals the police are generally very reluctant to intervene. Furthermore, even if they were willing to intervene there is a dearth of trained officers to deal with domestic violence.

The number of Guatemalan women and girls murdered each year is high. Amnesty International reports that over 2,500 women and girls were murdered in Guatemala between 2001 and 2006, often quite savagely in that many of their bodies showed signs of rape, torture, mutilation or dismemberment. Furthermore, the response of the authorities to these atrocities is frequently one of indifference. Instead of seeking justice for the victims' relatives, the police tend to blame the victims' conduct or background. In July 2006, Guatemala's Human Rights Ombudsman reported that 70 per cent of the murders of women were not even investigated and that 97 per cent of the time no one was ever arrested. Finally, in the 3 per cent of the cases that involved an investigation and an arrest, few were convicted because of the ineptly gathered or improperly preserved forensic evidence, the failure to protect witnesses and the general lack of resource needed to prosecute criminal defendants.

 A decade since Cifuentes fled, Guatemalan girls and women continue to face some of the worst gender violence in the Western hemisphere. Their abusers can count on near total impunity.

8. Julie Guinan, CNN, Nearly 20 years after peace pact, Guatemala's women relive violence, 7 April 2015, *available at* <a href="http://www.cnn.com/2015/04/02/world/iyw-guatemala-gender-violence/">http://www.cnn.com/2015/04/02/world/iyw-guatemala-gender-violence/</a>

There are many reasons why, beginning with the legacy of violence left in place after the country's 36-year-old civil war. During the conflict, atrocities were committed against women, who were used as a weapon of war. In 1996, a ceasefire agreement was reached between insurgents and the government. But what followed and what remains is a climate of terror, due to a deeply entrenched culture of impunity and discrimination. Military and paramilitary groups that committed barbaric acts during the war were integrated back into society without any repercussions. Many remain in power, and they have not changed the way they view women.

Women are particularly vulnerable because of a deep-rooted gender bias and culture of misogyny. In many cases, femicide -- the killing of a woman simply because of her gender -- is carried out with shocking brutality with some of the same strategies used during the war, including rape, torture and mutilation...

Perhaps one of the biggest challenges facing women in Guatemala is the country's deeply rooted patriarchal society.

9. Nicole Thompson, The War on Guatemalan Women: Gangs Murder with Impunity, 9 July 2014, *available at*<a href="http://www.latinpost.com/articles/16751/20140709/war-guatemalan-women-gangs-murder-impunity.htm">http://www.latinpost.com/articles/16751/20140709/war-guatemalan-women-gangs-murder-impunity.htm</a>
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Guatemala and other Latin American countries are the most dangerous countries in the world for women, where poisonous levels of machismo have given way to 'femicide,' the killing of women because they are female. Perpetrators are murdering with impunity, their victims receiving no justice and the relatives of their victims receiving no answers.

Last year, 759 women were murdered in Guatemala, an increase of 7 percent from the year prior. There were 522 deaths from firearms, 70 from stabbings, 156 from asphyxiation, and 11 from decapitation or dismemberment, as revealed in a new report. And, those deaths routinely occur after women are sexually violated one or more times by murderers.

Karen Musalo and Blaine Bookey, <u>Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala</u>, Hastings Research Paper No. 47, Summer 2013, available at

Guatemala has one of the highest rates of femicide, or gendermotivated killing of women, in the world. It is estimated that more than 6,500 women have been the victims of violent killings since 2000, and thousands more raped and battered.

The situation is grim in Guatemala. Women are subjected to many forms of grave gender-motivated harm from sexual violence, to trafficking, to femicide. The violence, documented by numerous studies, is particularly brutal and occurs at some of the highest rates in the world. Moreover, studies highlight the correlation between domestic violence and femicide in the country, demonstrating the dire consequences of the State's unsuccessful interventions.

There is wide consensus that violence against women is a serious problem in Guatemala and that the government has yet to develop an effective response. This view is shared by international human rights bodies, foreign governments (the United States included), and NGOs that have investigated and considered the issue of violence against women in Guatemala.

Even where adequate protective measures are put in place, police enforcement is limited by lack of political will and resources.80 The problems that plague the issuance and enforcement of protective orders also adversely impact prosecutions for violent acts; when women do not feel safe or have economic independence, they are not willing to pursue their cases.

Finally, even in cases here the courts successfully prosecute and convict perpetrators of domestic violence, commutable sentences render the protection afforded by the law illusory. If an aggressor is sentenced to the minimum sentence of five years, as many are, the law allows convicted defendants to pay a fine for their crimes to avoid incarceration. The fine is a relatively small amount ranging from 5–100 Quetzales per day (or approximately USD\$0.60-\$13 per day). In 2009, thirty-six of the forty-five convictions for the 13,650 registered cases of violence against women resulted in commutable sentences. Many sources in Guatemala believe that judges purposely sentence male aggressors to the five-year minimum so they will not have to serve any time in jail....

"more than half of adults raise a moral objection to divorce in Guatemala (69%)..."

J. Country Conditions Evidencing Violence Against Girls in Guatemala and the Lack of State Protection for Girls in Guatemala

## See Exh. I1

There were also killings of journalists and trade unionists; sexual harassment and discrimination against women; child abuse, including commercial sexual exploitation of children; discrimination and abuse of persons with disabilities; and trafficking in persons.

Child abuse remained a serious problem.... The Public Ministry reported 2,639 complaints of sexual assault or rape against minors as of September, with 111 convictions....

Child labor was a widespread problem. The NGO Conrad Project Association of the Cross estimated that the workforce included approximately one million children between the ages of five and 17....Some child laborers worked an average of 45 hours per week. An estimated 39,000 children, primarily indigenous girls, worked as domestic servants and were often vulnerable to physical and sexual abuse.

## See Exh. I6

A large percentage of Guatemalan children are physically or sexually abused. It is estimated that 15,000 Guatemalan children and adolescents are victims of sexual exploitation each year. In 2007, the Guatemalan Congress finally began considering criminalizing a range of abuses of children including commercial child sexual exploitation, child pornography, sexual abuse, and physical and psychological domestic violence.

Thousands of children living in Guatemala's streets have faced routine beatings, thefts and sexual assaults at the hands of the National Police and private security guards. Passersby or other police officers witness many of the assaults but nothing is done to stop them. When care alternatives for abused children are provided they are often not much better. Human Rights Watch, for example, investigated state financed rehabilitation centres run by a Spanish evangelical Christian organization called REMAR...and found that the centers operated with virtually no governmental oversight, monitoring, or control. Some of the children reported they had been beaten with aluminum baseball bats. And children in prison are housed with adults who frequently abuse and rape them.

Children are all too often subjected to abuse and exploitation. The Secretariat of Social Welfare received 504 child protection cases in 2008, but the public welfare system of the country does not receive adequate funding to meet the needs of

disadvantaged children. According to the U.S. State Department, 3,000 children are living on the streets of Guatemala City, many vulnerable to gang recruitment.

Sexual exploitation and trafficking are also serious problems. Children between the ages of 8 and 14 are usually sold for approximately 750 to 1,500 quetzales, or 97 to 194 U.S. dollars. The children are used for labor or sexual exploitation. The Public Ministry's Special Unit Against Trafficking received 136 cases in 2008, but their work resulted in the sentencing of only one person. The unit cannot adequately combat human trafficking because it does not have enough staff, and it is underfunded.

2. Michael Sheen (UNICEF UK Ambassador), Why Guatemala is One of the Worst Places in the World to Be a Child, 9 March 2015, available at <a href="http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/guatemala/11457584/Why-Guatemala-is-one-of-the-worst-places-in-the-world-to-be-a-child.html">http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/guatemala/11457584/Why-Guatemala-is-one-of-the-worst-places-in-the-world-to-be-a-child.html</a>

In the first two months of 2015, 848 children alone have gone missing. But nothing could have prepared me for the stories I heard – acts of violence against children that are so grotesque that it pains you to hear them.

Norma and Claudia show me around an exhibition which tells the stories of children who have been murdered. Large crosses display photographs and clothes of little boys and girls who have been the victims of atrocious crimes. Jenniffer was killed by her mother when she was three years old for eating some food she wasn't supposed to – she had over 50 wounds on her tiny body. Luisa was raped by several men and subsequently died as a result of the injuries she had received. Her body was later set on fire; she was three years old. Three sisters Wendy (11), Heidy (9) and Diana (8) were murdered on their way to school, their bodies left, unrecognisable, in a ditch. The stories go on and on.

Violence here permeates all aspects of society and it seems there are few places where it is safe to be a child. Each day, 22 cases of sexual abuse are reported.

Thirty-eight percent of the 100 children interviewed from Guatemala raised international protection concerns. The three dominant themes that emerged from their responses were deprivation, at 29%; abuse in the home, at 23%; and

violence in society, at 20%. Five percent of the children reported that they had been victims of more than one of these harms.

Twenty-one percent of the Guatemalan children mentioned abuse in the home by a family member or other caregiver. One young girl confided that her stepmother beat her several times a week and forced her to quit her studies so she could begin working. Another girl talked about a cycle of violence within her family: 'I had problems with my grandmother. She always beat me from the time I was little. That's why I went to live with my boyfriend — and because I was lonely and sad. But after we had been living together for about a month, my boyfriend also beat me. He beat me almost every day. I stayed with him for four months. I left because he tried to kill me by strangling me. I left that same day.

4. Guatemalan Human Rights Commission, Child Migration from Guatemala (2014), available at http://www.ghrc-usa.org/our-work/themes/child-migrants/.......392

Children are the most vulnerable of all. Every 17 hours a child or teen dies from gun violence. And every two hours a child younger than five years of age dies of preventable causes. Children suffer widespread abuse, sexual exploitation, prostitution, and forced marriage.

The Guatemalan government is often unable to offer its citizens protection from violence. Impunity for all crimes is one of the highest in the western hemisphere, and impunity for crimes committed against women, children and other vulnerable populations can reach 98%. The police are undertrained, understaffed, underpaid, and often corrupt.

5. Holly Burkhalter, Curb the Child Migration Crisis Begins with Combating Sexual Abuse, 27 June 2014, available at <a href="http://www.washingtonpost.com/opinions/holly-burkhalter-curb-the-child-migration-crisis-begins-with-combating-sexual-abuse/2014/06/27/00fd58d8-fd5c-11e3-b1f4-8e77c632c07b\_story.html">http://www.washingtonpost.com/opinions/holly-burkhalter-curb-the-child-migration-crisis-begins-with-combating-sexual-abuse/2014/06/27/00fd58d8-fd5c-11e3-b1f4-8e77c632c07b\_story.html</a>

Large numbers of children are preyed upon by adults, usually someone in the home or otherwise known to the victim. A study by Doctors Without Borders found that, among 14-to-18-year-old girls in high-crime zones, 1 in 3 had suffered sexual assault in the previous 12 months. Child victims of sexual violence are highly vulnerable to homelessness, sex trafficking, gangs or addiction.

The Guatemalan government has responded to this epidemic by adopting new child protection standards in its protocols for prosecutors and designating a special police sexual assault unit in the capital. But police, prosecutors and courts remain dramatically under-resourced and undertrained; tens of thousands of cases are backlogged and going nowhere.