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NON-DETAINED

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[REDACTED]

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

In the Matters of:

[REDACTED]

Respondents,

In Removal Proceedings.

A Numbers: [REDACTED]

Hearing Date: August 24, 2016
Hearing Time: 9:00 a.m.
Before Hon. Dana L. Marks

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

I. INTRODUCTION

Lead Respondent, [REDACTED] (“[REDACTED]”) 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 she suffered as a child and as a young woman and the persecution that she will face in Guatemala on account of her membership in a particular social group and political opinion.

First, [REDACTED] suffered past persecution on account of her membership in the particular social groups of Guatemalan girls and women viewed as property, Guatemalan women unable to leave a domestic relationship, and on account of her political opinion. She was made to take care of household duties and work while still a child, therefore never achieving more than a sixth grade education. While still a child, her father forced her into a domestic partnership with a man by whom she had become pregnant. Her domestic partner subjected her to physical abuse, threats, and rape. Standing up to her domestic partner only lead to further abuse.

Second, as [REDACTED] has suffered past persecution, she has a presumption of well-founded fear. Her abusers are still in Guatemala. Furthermore, [REDACTED] and her young daughter cannot reasonably and safely relocate in Guatemala given the high risk that her abuser will be able to find them and the fact that violence against women is rampant throughout Guatemala and is committed with impunity.

Third, the harm [REDACTED] suffered rises to the level of severe and atrocious persecution and she faces other serious harm if she is forced to return to Guatemala. Therefore, this Court should find [REDACTED] eligible for asylum even if the Department of Homeland Security (“DHS”) can rebut the presumption of well-founded fear.

Fourth, [REDACTED] has an independent well-founded fear of persecution on account of her membership in particular social groups and her political opinion. As demonstrated

below, [REDACTED] faces beatings, rape, and even death on account of her political opinion and the fact that she is a Guatemalan woman viewed as property and also a Guatemalan unable to leave a domestic relationship. [REDACTED] is terrified of returning to Guatemala.

As shown by the evidence and the Ninth Circuit and Board of Immigration Appeals' ("BIA" or "the Board") case law, [REDACTED] has suffered past persecution on account of her membership in a particular social group and thus has a presumption of a well-founded fear of future persecution. Country conditions establish that Guatemalan women who are viewed as property and Guatemalan women who are unable to leave a domestic relationship currently face extreme violence in all parts of Guatemala. In addition, [REDACTED] has an independent well-founded fear of future persecution based on protected grounds.

Moreover, as shown by the evidence and the Ninth Circuit Court of Appeals and BIA case law, it is more likely than not that [REDACTED] life or freedom will be threatened in Guatemala on account of protected grounds. She will also demonstrate that she warrants protection under CAT.

Thus, this Court should find that [REDACTED] has adequately shown that she warrants protection and relief from removal.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

[REDACTED] was born on January 17, 1994 in Ocos, San Marcos, Guatemala. She is one of six siblings. When she was two years old, her mother came to the United States to work and send money home to the family. [REDACTED] eldest sister, though she was

¹ The facts in this section are drawn from Exhibit A, [REDACTED] Declaration In Support of Application for Asylum and the Notice to Appear dated November 18, 2014.

only 11 years old, dropped out of school and took over the household duties. When [REDACTED] [REDACTED] was around the age of 15, her elder sister got married and left the home, so [REDACTED] [REDACTED] had to take over these household duties and drop out of school. As a result she never was able to achieve an education beyond the sixth grade. At the age of 17, she had to start working in a plantation in order to cover the household expenses.

When [REDACTED] was only 14 years old, she met and started dating [REDACTED] [REDACTED] (" [REDACTED] who was around 18 years old at the time. [REDACTED] [REDACTED] was jealous and possessive of [REDACTED] He refused to allow her to talk to other boys and men and he forcibly took her phone from her. When [REDACTED] was 17 years old, [REDACTED] forced her to have sexual intercourse against her will. [REDACTED] [REDACTED] became pregnant and her pregnancy was discovered by her father. Due to the shame of the pregnancy and in spite of [REDACTED] objections, [REDACTED] father and [REDACTED] family forced [REDACTED] to become [REDACTED] [REDACTED] domestic partner and move in with him and his family.

As [REDACTED] domestic partner, [REDACTED] was subjected to emotional and physical abuse. [REDACTED] family did nothing to intervene. [REDACTED] [REDACTED] would not allow [REDACTED] to leave the home without being escorted by him. He refused to allow her to work outside the home, accusing her of wanting to be with other men. He was prone to fits of jealousy and broke her phone, falsely accusing her of giving her number to other men.

When [REDACTED] was 7 months pregnant, she tried to leave [REDACTED] [REDACTED] When she told him she was leaving him, he forbade her from doing so, physically assaulted her, and locked her in their room. Their daughter, [REDACTED], was born on

November 27, 2011.

When [REDACTED] confronted [REDACTED] for failing to help with the baby or for seeing other women, [REDACTED] would be provoked to violence. He would say things like, 'You are my woman. You have to do what I say.' When [REDACTED] told [REDACTED] that she would leave him if he did not change, he threatened to take her daughter from her if she ever dared to leave him. On another occasion when she threatened to leave, he told her he would kill her if she did. [REDACTED] sought help from her mother-in-law, who told [REDACTED] that she could not leave [REDACTED], as [REDACTED] was 'his woman'.

When their daughter [REDACTED] was around 2 years old, [REDACTED] raped [REDACTED]. He came home late at night and [REDACTED] was asleep in bed with [REDACTED]. [REDACTED] demanded to have sex with [REDACTED] who told him no. When she refused to have sex with him, he became enraged and said, 'you are my woman, you have to do what I want'. He proceeded to force himself on top of [REDACTED] as she struggled. He forced his penis into her vagina and raped her. Several weeks later, he again attempted to rape [REDACTED] who on that occasion was able to break free of him and run to another part of the house for temporary safety.

Shortly after that, [REDACTED] again tried to leave [REDACTED]. As she left the house, he followed her with a knife, but his sisters were present and so he could not attack [REDACTED]. He instead threatened to kill himself. [REDACTED] ran down the street and took refuge in her father's house. Days later, [REDACTED] came to her house and insisted she return to him, which she did. The abuse continued, and so [REDACTED] again attempted to leave. She returned to her father's house. [REDACTED]

came to the house almost daily to threaten to take her child and to kill himself if she did not return.

learned that had gone to the municipal mayor so that the authorities would take away from . She was terrified for her daughter's safety when she heard this news. She went to the local assistant mayor for help. He encouraged her to call the police, but she was too afraid to do so, as she knew of other women who had called the police and whose abusers had been immediately released and then exacted revenge. He was not able to help her in any other way other than to provide her with a letter. See Exhibit B1.

knew she had no choice but to flee Guatemala. She travelled with through Mexico, and they did not receive any lawful status there. She presented herself at the San Ysidro Port of Entry on or about November 16, 2014 to request protection for her and her daughter. The Department of Homeland Security ("DHS") issued and her daughter a Notice to Appear ("NTA") on November 18, 2014, charging them as removable pursuant to INA section 212(a)(7)(A)(i). On October 22, 2015, with the assistance of undersigned counsel, filed her application for asylum, withholding of removal, and protection under CAT with the Immigration Court. Her case was set for an individual calendar hearing on August 24, 2016, at 9:00 am.

is terrified to return to Guatemala. She fears will find her, take her daughter from her, and harm or kill her. She knows the police in Guatemala will not protect her. suffers from posttraumatic stress disorder and symptoms of depression. See Exhibit B2.

III. ARGUMENT

A. [REDACTED] is Eligible for Asylum

[REDACTED] will be able to demonstrate that she warrants asylum on account of the severe and atrocious past persecution that she suffered on account of her membership in a particular social group, specifically the social group of Guatemalan women viewed as property, Guatemalan women who are unable to leave a domestic relationship, the social group of Guatemala girls viewed as property, and the social group of Guatemalan women as well as on account of her political opinion. In addition, [REDACTED] warrants asylum based on her well-founded fear of future persecution on account of her membership in a particular social group, women in Guatemala who are viewed as property, Guatemalan women who are unable to leave a domestic relationship, and Guatemala women.

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). [REDACTED] [REDACTED] meets this standard.

1. The Harm [REDACTED] 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* Gormley 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.”); Smolniakova v. Gonzales, 422 F.3d 1037, 1048-49 (9th Cir. 2005) (physical attacks and death threats are sufficient to establish past 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); Kovac v. INS, 407 F.2d 102, 106-107 (9th Cir. 1969) (in amending section 243(h), 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”).

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/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...” 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, as well as USCIS Asylum division and UNHCR guidance, the forced labor, physical abuse, death threat, sexual assaults, and rape to

which [REDACTED] was subjected clearly constitutes persecution.

The nature of the persecution suffered by [REDACTED] is extremely egregious considering her young age when the harm occurred, the length of time that she was subjected to the harm and the cumulative effect of all the abuse she suffered. In addition to the physical persecution that she suffered, the emotional and psychological harm suffered by [REDACTED] rises to the level of persecution. Kovac, 407 F.2d at 106-07 (persecution encompasses both physical and mental suffering). See also Exh. B2 (“[REDACTED] symptoms represent a severe disturbance to her mental/emotional equilibrium... In our professional opinion [REDACTED] is suffering from PTSD”).

Therefore, [REDACTED] clearly suffered past persecution.

2. [REDACTED] Suffered Past Persecution On Account of Her Membership in a Particular Social Group of Guatemalan Women Who Are Viewed As Property and/or Guatemalan Women Who are Unable to Leave a Domestic Relationship Defined by Her Gender, Nationality, and Her Status Within Guatemalan Society

a. **Guatemalan Women Who Are Viewed As Property and Guatemalan Women Who Are Unable to Leave a Domestic Relationship are Cognizable Social Groups**

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, [REDACTED] belongs to the particular social group of Guatemalan women who are viewed as property.

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. In the unpublished decision of Matter of D-M-R-, (BIA June 9, 2015), the Board applied its holding in Matter of A-R-C-G- and found that El Salvadoran women in domestic relationships who are unable to leave is a cognizable social group. *Id.* at 5. See also *Id.* at 4 (“First, we note that our decision in *Matter of A-R-C-G-*, *supra*, does not necessarily require that an applicant seeking asylum or withholding of removal based on domestic violence have been married to his or her abuser. Rather, we look to the characteristics of the relationship to determine its nature.”).

Professor Cecilia Menjivar explains that in Guatemala,

Violence is regularly perpetrated by men against women in the context of marriage and domestic partnerships. This violence is not limited to formal marriages. In Guatemala long-term, consensual unions are recognized socially as marriages. In my book, for instance, I make it a point not to differentiate between formally married women and those living in consensual unions because socioculturally this differentiation is largely irrelevant. Thus, women in long-term consensual unions have the same experiences as those formally married, including living under the idea that women belong to the men and the same form of abuses. In this regard, there is no difference in women’s experiences of abuse and mistreatment.

Exh. A1

- (1) *Guatemalan Women Who Are Viewed As Property and Guatemalan Women who are Unable to Leave a Domestic Relationship Share Immutable Characteristics*

Guatemalan women who are viewed as property and Guatemalan women who are unable to leave a domestic relationship are groups that are 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, both DHS and the Board have recognized such groups as possessing immutable characteristics. Matter of A-R-C-G-, 26 I. & N. Dec. 388 (BIA 2014); DHS L-R- Brief.

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 “viewed as property” and “unable to leave a relationship” are immutable traits. 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 a relationship 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" and "whether dissolution of a marriage could be contrary to religious or other deeply held moral beliefs or if the dissolution is possible when viewed in light of religious, cultural, or legal constraints." *Id.* at 393. In the instant case, country conditions reports regarding Guatemala are replete with violence against women generally and domestic violence specifically, demonstrating that women are viewed as property of men in Guatemalan society and that they are unable to leave domestic relationships. Exh. A1 (Expert Affidavit of Professor Cecilia Mejivar) ("Societal expectations are that a woman will remain in a relationship even after it has become abusive... As a result, women become trapped in domestic relationships. Since women are viewed as property of the husband, leaving is the equivalent of stealing because without the woman's labor, life becomes harder."); Exh. A3 (Declaration of Elisa Portillo Nájera) ("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.'"); Exh. A4 (Declaration of Professor Linda B. Green) ("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."); Exh. C1 (U.S. Department of State, Guatemala 2015 Human Rights Report)("Principal human rights abuses included... societal violence, including often lethal violence against women.") Exh. C5 (*Freedom House, Guatemala: Freedom in the World 2014*)(*"Physical and sexual violence against women and children, including domestic violence,*

remain widespread, with perpetrators rarely prosecuted.”); Exh. C9 (Julie Guinan, CNN, Nearly 20 years after peace pact, Guatemala's women relive violence)(“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...”). [CUT?]

Moreover, [REDACTED] own experiences evidence the immutability of these statuses. [REDACTED] treated [REDACTED] with a jealousy and possessiveness that was indicative of his view that she was his property. See Declaration of [REDACTED] [REDACTED] in Support of Her Application for Asylum, Withholding of Removal and Protection under CAT (hereafter “Declaration”). Her attempts to reason with him and stand up for herself only resulted in violence. Id. [REDACTED] tried on multiple occasions to leave the domestic relationship, and was always prevented by [REDACTED] and also by family members. Id. Thus, there was nothing that [REDACTED] could have done to change her status of being “viewed as property” or her status as “unable to leave the domestic relationship.”

(2) *The Social Groups of Guatemalan Women Who Are Viewed As Property and/or Guatemalan Women Who are Unable to Leave a Domestic Relationship 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 determination². See Matter of M-E-V-G-, 26 I. & N. Dec. 227 (BIA 2014); Matter of W-G-R-, 26 I. & N. Dec. 208

² While [REDACTED] 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. [REDACTED] asserts that the Board’s interpretation is not reasonable and thus is not owed deference.

(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 fundamental characteristics, Guatemalan women who are viewed as property and Guatemalan women who are unable to leave a domestic relationship 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).³ 750 F.3d 1077, 1083 (9th 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 1084. In Henriquez-Rivas, 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.

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

³ 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.

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 not 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 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- and Matter of L-R-, country condition reports in the instant case demonstrate that Guatemalan women who are viewed as property are generally recognizable by others in the society. See Exh. A1; A3; A4; C1-C12. While Guatemalan society has identified domestic abuse as a problem and enacted laws to protect victims of domestic abuse, the laws are not effectively enforced. Exh. A1 (Expert Affidavit of Professor Cecilia Menjivar) (“The 2008 legislation [Law Against Femicide and Other Forms of Violence Against Women] has had no impact on the reality of violence experienced by women in domestic relationships in Guatemala because the Guatemalan government has not implemented the national legislation in a meaningful manner.”); Exh. C11 (“Finally, even in cases where the courts successfully prosecute and convict perpetrators of domestic violence, commutable sentences render the protection afforded by the law illusory.”). The U.S. Department of State reports,

The law criminalizes rape, including spousal rape, and sets penalties between five and 50 years in prison. Police had minimal training or capacity to investigate sexual crimes or assist survivors 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 very high. Rape survivors frequently did not report crimes due to lack of confidence in the justice system, social stigma, and fear of reprisal.

Exh. C1.

Moreover, [REDACTED] own experience shows that she was viewed by [REDACTED] [REDACTED] and her society as property. See Declaration. Thus, [REDACTED] case is akin to Matter of A-R-C-G- and Matter of L-R- 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 Guatemalan women viewed as property and Guatemalan women who are unable to leave a domestic relationship are the type of “cohesive, homogeneous group” that the Board and

Ninth Circuit have found to show sufficient social distinction. See, Perdomo, 611 F.3d at 666; Matter of A-R-C-G-, 26 I. & N. Dec. 388 (BIA 2014); 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, no one intervened to stop the abuse against [REDACTED] [REDACTED] See Declaration. In fact, when she sought assistance from her mother-in-law, she was instead told that she must stay with [REDACTED] Id. Moreover, country conditions clearly demonstrate that the pervasive nature of domestic violence in Guatemalan culture has created an entrenched notion that Guatemalan women cannot leave their relationship. Exh. C2 (“The PNC often failed to respond to requests for assistance related to domestic violence...”); Exh. A1 (Expert Affidavit of Professor Cecilia Menjivar)(“ Family members, neighbors and others often fail to provide assistance to a woman experiencing violence in a relationship and may even encourage the woman to remain in the relationship.”); Exh. A3 (“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.”). This evidence reflects a societal view that the status of women in Guatemala are “a segment of society that will not be accorded protection from harm inflicted” in a domestic relationship and considered to be property. DHS L-R- Brief, at 18.

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 BIA 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 Matter of A-R-C-G-, the Board addressed the issue of particularity in the context of domestic violence. The Board found that the facts of the case and the respondent’s experience with the police refusing to protect her from her husband demonstrate that the terms “married”,

“women”, and “unable to leave the relationship” have commonly accepted definitions within Guatemalan society. Matter of A-R-C-G-, 26 I. & N. Dec. at 393. The Board held that an inability to leave a relationship “may be informed by society expectations about gender and subordination, as well as legal constraints regarding divorce and separation.” Id.

The evidence in the instant case confirms, that just as in Matter of A-R-C-G-, Guatemalan women who are viewed as property and Guatemalan women who are unable to leave a domestic relationship have the requisite particularity. The evidence demonstrates that and “women” and “viewed a property” and “unable to leave” have commonly accepted definitions in Guatemalan society. Exh. A3 (“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.”); Exh. A1 (“This normalization of violence transfers as children become adults. Boys learn how to dominate the family structure and to assert themselves through violence.”). Given the perceived roles of women in society, particularly within the home, and the fact that perpetrators of crimes against women can harm or kill with impunity, it is evident that women are viewed as property. See, i.e., Exh. A3 (“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.”); Exh. C11 (Karen Musalo and Blaine Bookey, Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala)(“The situation is grim in Guatemala. Women are subjected to many forms of grave gender-motivated harm from sexual violence, to trafficking, to femicide.”); Exh. C8 (Giovanna Dell’Orto, Ruling Changes Little: Guatemalan Women Still Victims)(“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.”); Exh. C7 (Beatriz Manz (UC Berkeley; commissioned by the UNHCR), Central America (Guatemala, El Salvador, Honduras, Nicaragua): Patterns of Human Rights Violations)(“Violence against women [in Guatemala], including domestic violence, is a serious problem, not least because convicted domestic abusers are not liable to custodial sentences”). Like the respondent’s social group in Matter of A-R-C-G- and Matter of L-R-, the evidence in the instant case clearly demonstrates that [REDACTED] [REDACTED] social group is informed by societal expectations about gender and subordination as well as legal constraints regarding women in a domestic setting. See Exhs. A1; A3; A4; C1-C12.

Therefore, [REDACTED] 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. [REDACTED] **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).

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. DHS found that this nexus can be

demonstrated by actions of the abuser and by general country conditions regarding the status of women in domestic relationships. Id. DHS stated that these “factors would work in concert to create the trait which accounts for [the abuser’s] inclination to target her for abuse, whether that trait is interpreted as relating to her being perceived as property by virtue of her status in the domestic relationship, or as relating to her presence in a domestic relationship that she is unable to leave.” Id. at 15-16. In Matter of A-R-C-G-, DHS conceded that one central reason the respondent was subjected to beatings, rapes, and death threats was on account of her membership in the particular social group of “married women in Guatemala who are unable to leave their relationship.” 26 I. & N. Dec. at 395.

In the instant case, the evidence clearly demonstrates that “one central reason” [REDACTED] [REDACTED] targeted [REDACTED] was that he viewed her as property. Right from the beginning of the relationship he behaved in a possessive manner, restricting her freedom by prohibiting her from talking to other people and taking her phone from her. See Declaration. When she was forced to move in with him, he would not let her leave the house unescorted and broke her phone. Id. He repeatedly told her she was ‘his woman’ and used this as a justification for physical and emotional abuse. He used the same justification the night that he raped her. Id. Additionally, it can be seen from the facts at hand that being a woman unable to leave a domestic relationship was also one central reason for the abuse. [REDACTED] tried on multiple occasions to leave [REDACTED] and was always prevented. Id. On the first occasion, he physically attacked her and locked her in when she tried to leave. Id. On other occasions, he threatened to kidnap her daughter, kill her, or kill himself if she left him. Id. Mr. Perez Maldonado’s mother also told [REDACTED] that she could not leave the relationship. Id.

Moreover, country conditions overwhelmingly show that men in Guatemala target

women for harm because of their gender and status in society and in the relationship. Exh. A1; Exh. A3; Exh. A4; Exh. C1-C12. Therefore, [REDACTED] membership in particular social groups is one central reason she suffered harm.

3. [REDACTED] Suffered Past Persecution On Account of Her Membership in a Particular Social Group of Guatemalan Girls Viewed as Property Defined by Her Gender, Age, Nationality, and Her Status Within Guatemalan Society

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

In the instant case, [REDACTED] belongs to the particular social group of Guatemalan girls of viewed as property. Guatemalan 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 Guatemala are replete with violence against children, forced labor of children, and sexual abuse of children, demonstrating that children are viewed as property in Guatemalan society. Exh. C1 (“Child abuse remained a serious problem.”); Exh. C7 (“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.”); Exh. D1 (The Carter Center, Country Profile: Guatemala, 2009)(“Children are all too often subjected to abuse and exploitation.”); Exh. D2 (Michael Sheen (UNICEF UK Ambassador), Why Guatemala is One of the Worst Places in the World to Be a

Child)(“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.”); Exh. D4 (Guatemalan Human Rights Commission, Child Migration from Guatemala (2014))(“Children suffer widespread abuse, sexual exploitation, prostitution, and forced marriage.”). 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). Thus, there was nothing that [REDACTED] could have done to change her status of being viewed as property.

In addition to possessing the requisite immutable and fundamental characteristics, Guatemalan girls viewed as property display social distinction and particularity. Country condition reports demonstrate that Guatemalan girls are generally recognizable by others in the society. See Exh. C1; C7; Exhs. D1-D4. Moreover, the evidence in the instant case demonstrates that Guatemalan girls are much more likely than other persons in Guatemalan society to suffer sexual assault, be kidnapped, and be forced to perform labor. Id. Furthermore, Guatemala has enacted laws recognizing the harm against women and girls in Guatemalan society and these laws seek to provide protection for women and girls. Exhs. A1; A3; C1; C7. Thus, [REDACTED] 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 Guatemalan 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 [REDACTED] life knew about the abuse she suffered and did nothing about it. Though [REDACTED] was only 17 years old, her own father forced her into living with her abuser against her will, because he was ashamed she was pregnant. See Declaration. When she went to her mother-in-law for help to intervene in the violence, her mother-in-law told her she could not leave the relationship. Id. The local assistant mayor told [REDACTED] he could do nothing but provide a letter. Id. See also Exh. B1. According to Professor Cecilia Menjivar, gender-based violence is so ingrained in Guatemala that it is more common for family members and neighbors to support the abuser than to intervene to protect the victim. Exh. A1.

Moreover, country conditions clearly demonstrate that Guatemalan society perceives girls as property. Exhs. D1-D4; Exh. A1; Exh. A3. This evidence reflects a societal view that Guatemalan 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 Guatemalan 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 Guatemala society. Exh. D1-D4. 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

as the property of their families, spouses, or their employer. See, i.e., Exh. A1; Exh. A3; Exh. C1; Exh. C4; Exh. C5 (“Physical and sexual violence against women and children, including domestic violence, remain widespread, with perpetrators rarely prosecuted.”); Exh. C6 (“The Guatemalan government is often unable to offer its citizens protection from violence – especially those most vulnerable, such as children.”); Exh. C8 (“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.”). Like the respondent’s social group in Matter of A-R-C-G-, Guatemalan girls being viewed as property is informed by societal expectations about gender and subordination as well as legal constraints. Id.

Therefore, [REDACTED] 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. [REDACTED] **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 Guatemala, men target girls for abuse as they know they can act with impunity. Exh. A1; Exh. A3; Exh. C1; Exh. C4; Exh. C5; Exh. C6; Exh. C8; Exhs. D1-D4.

In the instant case, the evidence demonstrates that the fact that [REDACTED] was a Guatemalan girl viewed as property was at least one central reason for the harm that she suffered. As a young girl, [REDACTED] had to drop out of school to be able to take care of the household tasks. See Declaration. As a result, she only ever completed a sixth grade education. Id. The same had also happened to [REDACTED] sister. Id. Ms. Aguilar also had to work in a banana plantation to cover her household expenses. Id. When she became

pregnant, her father forced her to enter into a domestic partnership with the father of the child, even though it was against [REDACTED] wishes. Id. She was only 14 when she entered the relationship with [REDACTED] Id. Throughout this relationship he treated her like property by restricting her freedom to an extreme extent and justifying violence against her because he believed she was ‘his woman’. Id.

[REDACTED] abusers knew they could harm her with impunity because she was a Guatemalan girl viewed as property. Country condition evidence supports that Guatemalan girls are viewed as property and harmed with impunity. Exhs. A1; A3-A4; D1-D4.

4. [REDACTED] Suffered Past Persecution On Account of Her Membership in a Particular Social Group of Guatemalan Women

a. **Guatemalan Women Constitutes a Cognizable Social Group**

Guatemalan 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. In addition to possessing the requisite immutable and fundamental characteristics, Guatemalan women display social distinction and particularity. Country condition reports demonstrate that Guatemalan women are generally recognizable by others in the society. See Exh. A1; C1; C7; Exhs. D1-D4. Moreover, the evidence in the instant case demonstrates that Guatemalan women are much more likely than other persons in Guatemalan society to suffer sexual assault, rape, and domestic violence. Id. Furthermore, Guatemala has enacted laws recognizing the harm against women in Guatemalan society and these laws seek to provide protection for women. Exhs. A1; A3; C1-C12. Thus, [REDACTED] 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 Guatemalan women is the type of “cohesive,

homogeneous group” that the Board and Ninth Circuit has found to be show sufficient social distinction and particularity. 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).

b. **██████████ Suffered Persecution 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. Similarly, in patriarchal societies, like Guatemala, men target women for abuse because of the perception of their subordinate status that they occupy within society. Exh. A1; A3; A4; Exhs. C1-C12.

In the instant case, the evidence demonstrates that the fact that ██████████ was a Guatemalan woman was at least one central reason for the harm that she suffered. ██████████ ██████████ believed he was superior to ██████████ and knew he could harm her with impunity because she was a Guatemalan woman. He frequently justified his abuse by saying things like, “I can do what I want, but you are a woman.” See Declaration. Moreover, country condition evidence supports that Guatemalan women are routinely targeted harm because of the gender. Exhs. A1; A3; A4; C1-C12. In fact, the term “femicide” evolved due to the rampant and targeted lethal violence against women because they are women. Exh. C1; Exh. A3; Exh. A4; Exh. C1.

5. **██████████ 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). [REDACTED] opinion that she did not agree with subjecting to her domestic partner’s demands on her as ‘his woman,’ meets the definition of “political opinion” within the meaning of the Refugee Act.

On central reason [REDACTED] suffered rape, physical abuse, and emotional abuse is because of her political opinion. When [REDACTED] requested that [REDACTED] contribute to the domestic duties by helping with the care of their child, this would provoke him to violence. See Declaration. When she tried to assert her sexual autonomy by refusing his advances, he raped her. Id.

6. The Guatemalan Government is Unwilling or Unable to Control [REDACTED] 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 evidence in the instant case demonstrates that Guatemalan's laws and customs effectively deprive persons such as [REDACTED] of any meaningful governmental protection. Elisa Portillo Nájera explains,

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.

Exh. A3.

This assertion of lack of protection for women as well as girls is routinely supported by reports on the situation in Guatemala. Exh. A1 (“The Guatemalan government’s response to domestic violence is quantitatively and qualitatively ineffective in providing Guatemalan women and children protection or safety from their abusers.”); Exh. C5 (“Physical and sexual violence against women and children, including domestic violence, remain widespread, with perpetrators rarely prosecuted.”); Exh. C11 (“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.”). The U.S. State Department reports,

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.

Exh. C3.

A report by the United Nations High Commissioner for Refugees ("UNHCR") found similar results.

Women interviewed for this report described prolonged instances of physical, sexual, and psychological domestic violence, for which authorities provided no meaningful help. Unable to secure state protection, many women cited domestic violence as a reason for flight, fearing severe harm or death if they stayed.

Exh. C2.

The local authorities did not protect [REDACTED] when she reported the abuse by [REDACTED]. See Declaration. See also Exh. B1. [REDACTED] was too afraid to contact the Guatemalan police, as she knew of other women who had done so and whose abusers had been immediately released and had then brutally attacked the women as revenge for them having contacted the police. See Declaration. Country conditions affirm that reporting the abuse by [REDACTED] would have been futile. Exh. A1; Exh. A3; Exhs. C1-C12; Exhs. D1-D4.

7. Because [REDACTED] Has Established That She Suffered Past Persecution On Account Of Her Membership in Particular Social Groups and Political Opinion, She Is Entitled to a Presumption of a Well-Founded Fear of Future Persecution

[REDACTED] 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 Guatemalan females is rampant and pervasive throughout Guatemala and that the government cannot or will not protect women from the perpetrators of such violence, and in particular will not protect them from their abusers. Exh. A1; Exh. A3; Exh. A4; Exhs. C1-C12; Exhs. D1-D4. The 2015 U.S. Department of State Human Rights Report on Guatemala states lethal violence against women is widespread and that impunity for such violence "continued to be widespread." Exh. C1. Guatemala women and girls are described as facing "some of the worst gender violence in the Western hemisphere" and that perpetrators of the violence "can count on near total impunity". Exh. C8. Therefore, it cannot be established that conditions have changed in Guatemala so that [REDACTED] no longer has a fear of harm or that she can avoid future harm through internal relocation.

8. [REDACTED] Suffered Severe and Atrocious Past Persecution and Faces "Other Serious Harm" and Is Entitled to Asylum

[REDACTED] is entitled to a grant of asylum even in the absence of a well-founded fear of persecution because her past persecution was severe and atrocious, leaving her with lasting psychological trauma, and because she faces "other serious harm" should she return to Guatemala. See Declaration; Exh. B2; Exh. A1; Exh; A3; Exh. A4; Exhs. C1-C12; 8 C.F.R. § 1208.13(b)(1)(iii)(A); Matter of Chen, 20 I. & N. Dec.16, 21 (BIA 1989).

The jurisprudence is clear that the harm that [REDACTED] suffered meets the definition of "severe and atrocious." See, e.g., Lopez-Galarza v. INS, 99 F.3d 954, 962-63 (9th Cir. 1996) (where applicant had been subjected to violent rapes and beatings, the court held that

the past persecution was atrocious and severe enough for asylum eligibility even in the absence of a well-founded fear); Matter of S-A-K- and H-A-H-, 24 I. & N. Dec. 464 (BIA 2008) (holding that humanitarian asylum was warranted to a mother and daughter who suffered FGM and continue to suffer side effects). The court in Lopez-Galarza referred to numerous studies discussing how rape is a severe form of persecution akin to torture and that it has long-lasting psychological effects such as chronic anxiety, depression, and mistrust of others. Lopez-Galarza v. INS, 99 F.3d 954 (9th Cir. 1996). [REDACTED] was subjected to physical abuse and rape by [REDACTED] See Declaration. She has been diagnosed with PTSD and depressive symptoms. Exh. B2. Moreover, as discussed supra, the fact that [REDACTED] [REDACTED] suffered this abuse while still a minor exacerbates the severity of the harm and effect it had on her. See, e.g., Hernandez-Ortiz v. Gonzales, 496 F.3d at 1046. See also, Exh. A; Exh. M5.

[REDACTED] also faces “other serious harm” if she returns to Guatemala. 8 C.F.R. § 1208.13(b)(1)(iii)(B); 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). [REDACTED] has been examined by a therapist. Her therapist confirms that she is suffering from PTSD with depressive symptoms, and that, “[REDACTED] symptoms represent a severe disturbance to her mental/emotional equilibrium.” Exh. B2. The therapist warns that, “returning to the site of her previous traumas would be re-traumatizing.”Id. If [REDACTED] is forced to return to Guatemala, she will not only be forced to return to the place where she suffered rape and physical abuse as a child and young adult, but she will also be subject to danger by [REDACTED] who has threatened to kill her and take her child and who will be able to carry out his threats with impunity. See Declaration; Exh. A1; Exhs. C1-

C12. In addition, it is unlikely that [REDACTED] will be able to receive the mental health treatment she needs and she will likely suffer severe economical and societal discrimination.

Exh. A1; Exh. C1-C12.

9. [REDACTED] Has an Independent Well-Founded Fear of Persecution On Account of Her Membership In A Particular Social Group

a. [REDACTED] **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, [REDACTED] fear of returning to Guatemala is subjectively genuine. In support of her case, [REDACTED] submits a declaration stating that she continues to fear returning to Guatemala. See Declaration. She suffered repeated physical and sexual violence as a child and young adult in Guatemala at the hand of her domestic partner, who is still there and who has threatened to harm her. Id.

[REDACTED] fear is objectively reasonable. As demonstrated by the evidence in this case and discussed in detail supra, women in Guatemala are frequently targeted for

violence and are not provided protection from their abusers. Exhs. A1; Exh. A3; Exh. A4; Exhs. C1-C12. In fact, the risk can increase after a woman has fled, as explained by Professor Cecilia Menjivar:

Even after having been away for some time, a woman is understood socially as never having extinguished her abusive partner's right to exercise dominance over her. The level of abuse will likely be worse than before. Abusive men are almost always furious at women who try to escape them, particularly by leaving the country. If the woman returns, she is made to "pay back" what she took from him, in order to restore his manhood. It is not uncommon for men to kill women who fled but returned. A woman who received past death threats from her partner will almost certainly be murdered upon returning to Guatemala. Severe beatings that can be fatal are often viewed socioculturally as justified. Since women are viewed as property of the husband, leaving is the equivalent of stealing because without the woman's labor, life becomes harder. Women who return after leaving their partner must be punished for their disobedience in order to deter other women from the community from deserting their role and connected duties within the family structure.

Exh. A1.

Therefore, [REDACTED] has established that she has "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 the 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 [REDACTED] 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 v., 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.

The evidence in the instant case clearly demonstrates that Guatemalan women in general and in women viewed as property in Guatemala suffer rampant physical and sexual violence in Guatemala. See Exh. A1; Exh. A3; Exh. A4; Exhs. C1-C12. Therefore, the harm [REDACTED] [REDACTED] fears rises to the level of persecution.

c. [REDACTED] **Has a Well-Founded Fear of Future Persecution On Account of Her Membership in a Particular Social Group Defined By Gender, Nationality, and Status within Guatemalan Society**

(1) *Guatemalan Women Viewed as Property and Guatemalan Women who are Unable to Leave a Domestic Relationship Constitute Cognizable Social Groups*

As discussed in Section III.A.2.a., supra, Guatemalan women viewed as property and Guatemalan women who are unable to leave a domestic relationship can constitute cognizable particular social groups. See, i.e., Matter of A-R-C-G-, supra. In the instant case, Guatemalan women viewed as property and Guatemalan women who are unable to leave a domestic relationship are groups that are defined by gender, nationality, and societal status. Gender and nationality are immutable characteristics, and country condition reports and [REDACTED] [REDACTED] own experiences evidence that there is nothing she could do to change her status of “viewed as property” or as “unable to leave the domestic relationship”. Furthermore, as discussed in Section III.A.2.a.2, supra, the social groups of Guatemalan women viewed as property and Guatemalan women who are unable to leave a domestic relationship possess social distinction and particularity. Exhs. A1; Exh. A3; Exh. A4; Exhs. C1-C12.

(2) [REDACTED] *Faces Persecution On Account Of Her Membership in a Particular Social Group*

As discussed supra, to qualify for asylum, the applicant must establish 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.

██████████ through words and actions demonstrated that he believed he could do what he wanted to ██████████ because of her gender, her relationship to him, and her status in society. See Declaration. See, Section III.A.2.b, supra. Furthermore, country conditions evidence shows that his beliefs are widely shared in Guatemalan society and that he can act with impunity. Id. Therefore, one central reason that ██████████ will target ██████████ for harm, as opposed to any other person in Guatemala, is because of her gender, her relationship to him, and her status in society.

d. ██████████ **Has a Well-Founded Fear of Future Persecution On Account of Her Membership in a Particular Social Group Defined By Gender and Nationality.**

(1) *Guatemalan Women Constitutes a Cognizable Social Group.*

In the instant case, ██████████ belongs to the particular social group of Guatemalan women. As discussed supra, gender and nationality are immutable traits. See Mohammed, supra; Mihaley, supra. Moreover, the Ninth Circuit has held that “recognition that girls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group is simply a logical application of our law”. Mohammed, 400 F.3d at 797. See also, Perdomo, 611 F.3d at 667.

Furthermore, the social group of Guatemalan women possesses social distinction and particularity. The evidence in the record demonstrates that Guatemalan women are generally

recognizable by others in the society. See, i.e., Exh. A3 (“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.”). In addition, country conditions evidence displays how Guatemalan women are much more likely than other Guatemalans to suffer beatings and sexual violence, such that special laws have been enacted to protect them. See, i.e., Exh. A1; Exh. A3. Therefore, Guatemalan women are the type of “cohesive, homogeneous group” that the Board and Ninth Circuit has found to be show sufficient particularity and social distinct. See, Perdomo, 611 F.3d at 666. See also, Section III.A.5, supra.

(2) [REDACTED] *Faces Persecution On Account Of Her Membership in a Particular Social Group*

As discussed supra, 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, 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.

Country condition evidence demonstrates that Guatemalan woman are targeted for violence. Exh. A1; Exh. A3; Exh. A4; Exhs. C1-C12. This evidence clearly demonstrates that a person such as [REDACTED] faces at least a 10 percent chance of persecution “on account of” her gender and nationality. See also Section III.A.2, supra; Section III.A.5, supra. Moreover, [REDACTED] own experience evidences that she faces harm for being a Guatemalan woman as she has been repeatedly targeted in the past because she is a Guatemalan female. See Declaration.

e. **The Guatemalan Government is Unable or Unwilling to Protect [REDACTED] From the Persecution She Faces in Guatemala**

The evidence in the instant case demonstrates that the government of Guatemala cannot or will not protect individuals such as [REDACTED] from their domestic partners and others who commit violent acts against women. See, Section III.A.7, supra. The local assistant mayor's office failed to protect [REDACTED] when she disclosed the domestic violence. See Declaration. See Exh. B1. The evidence also demonstrates that Guatemalan's laws and customs effectively deprive women such as [REDACTED] of any meaningful governmental protection in Guatemala. Exh. A1; Exh. A3; Exh. A4; Exhs. C1-C12. See also Sections III.A.1-8, supra.

f. **[REDACTED] 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 women and violence by domestic abusers is pervasive throughout Guatemala. Exh. A1; Exh. A3; Exh. A4; Exhs. C1-C12. Therefore, the evidence does not support a conclusion that internal relocation within Guatemala will diminish the likelihood of persecution for [REDACTED]

Moreover, [REDACTED] has been diagnosed with PTSD. Exh. B2. She has only a sixth grade education, and her only family ties are in the town where her abuser lives. See Declaration. In the opinion of expert Professor Cecilia Menjivar, who has reviewed the facts of [REDACTED] case, “there is nowhere in Guatemala where [REDACTED] and [REDACTED] would be safe from [REDACTED]” Exh A1. Professor Menjivar explains,

It would also be almost impossible for [REDACTED] to find work, rent a dwelling, and establish herself in another city independently of her family because the country’s economy is unstable, weak, and does not generate jobs that permit people to support themselves easily without the support of family. This situation is far worse for women because of the profound gender inequalities in the country...

Based on my knowledge of relevant country conditions, it is my opinion that if a domestic violence survivor returns to Guatemala, it is likely that her abuser will find her. As described above, Guatemala is a very small country, and word quickly spreads when a family member or friend returns to the country. An abuser can easily locate his ex-partner, even if she were to return to another city or region of the country.

Exh. A1

Given her personal situation and the conditions in Guatemala for women, it is not reasonable the [REDACTED] could live safely in another part of Guatemala.

B. [REDACTED] 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 his country of origin to avoid persecution. 8 C.F.R. § 1208.16(b)(2). [REDACTED] meets this standard.

As discussed in Section II, supra, [REDACTED] suffered years of physical and sexual abuse in Guatemala. Furthermore, [REDACTED] fears suffering extreme violence and even death if forced to return and reports clearly indicate that her fears are not unfounded as women are routinely harmed or murdered by their domestic abusers. Exh A1; Exh. A3; A4; Exhs. C1-C12. Rape, physical beatings, and murder clearly constitute a threat to life or freedom, and the evidence clearly demonstrates that it is more likely than not that [REDACTED] will suffer such harm. In fact, Professor Cecilia Menjivar states that a woman who received past death threats from a violent domestic abuser ‘almost certainly’ will face murder if she dares to flee Guatemala and is subsequently forcibly returned. Exh A1. See discussion at Section III.A.9.a supra.

Furthermore, as discussed in Section III.A.2., supra and Section III.A.5., supra, [REDACTED] [REDACTED] social groups of Guatemalan women who are viewed as property, Guatemalan

women who are unable to leave a domestic relationship, and Guatemalan women are cognizable social groups. These groups possess immutable characteristics and are socially distinct and particular. See Section III.A.2.a, supra; Section III.A.5.a., supra.. Moreover, the harm [REDACTED] [REDACTED] faces will be on account of her membership in her particular social group. See Section III.A.2.b, supra; Section III.A.5.b., supra.

Lastly, the evidence clearly demonstrates that [REDACTED] persecutor can act with impunity and that such violence is widespread in Guatemala making relocation impossible. See Section III.A.8, supra.

C. **[REDACTED] is Eligible for Protection Under Article Three of the Convention Against Torture**

To qualify for relief under CAT, an applicant must establish that it 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 [REDACTED] establishes that it is more likely than not that she will be tortured in Guatemala, relief under CAT is mandatory. 8 C.F.R. § 1208.16(c).

The Ninth Circuit has routinely held that they types of violence [REDACTED] faces – rape, 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-Safer 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, [REDACTED] is more likely than not to suffer rapes, beatings, and even death as a woman in Guatemala. See Section III.A.5; Section III.B. 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, 09-71454, 2014 WL 1855660 (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. Gonzales, 404 F.3d 1207, 1219 (9th Cir. 2005)). [REDACTED] provides extensive evidence detailing the gross, flagrant, and mass violations of the human rights of women in Guatemala, women in Guatemala viewed as property, and women in Guatemala who are unable to leave a domestic relationship. Exh. A1; Exh. A3; Exh. A4; Exhs. C1-C12. Violence against women generally as well as violence by domestic abusers is rampant, and the laws enacted to protect women like [REDACTED] are ineffective. Id. Moreover, [REDACTED] own experiences as a child and a woman in Guatemala evidence the widespread nature of violence against women and the culture of impunity that exists for the

perpetrators. Exh. A. Therefore, it is more likely than not that [REDACTED] will suffer torture if she is forced to return to Guatemala.

Lastly, the torture [REDACTED] 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 acquiesce”).

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 women in Guatemala. Violence against women and domestic violence is widespread. Exhs. A1; A3; A4; Exhs. C1-C12. The government is aware of this epidemic level of violence against women as laws and commissions have been enacted to prevent the violence. Id. However, despite this awareness and recognition of the violence, “police, prosecutors, and judges believe that men have the right to use violence against their partners to control them.” Exh. A3. Furthermore, law enforcement is frequently acting in concert with gangs (Exh. C1), and have been implicated in acts of violence against women. Exh. A1 (“Indeed, law enforcement agents charged with implementing the new law can themselves be perpetrators of gendered violence.”) Therefore, since the Guatemalan government is aware of the torture of women and the torture carried out by gangs and routinely breach their legal responsibility to prevent the torture, the Guatemalan government acquiesces to the torture that [REDACTED] is more likely than not to face if returned to Guatemala. See Garcia-Milian v. Holder supra.

IV. CONCLUSION

Thus, based on all of the above-referenced evidence and arguments, this Court should find that [REDACTED] warrants a grant of asylum because of the severe and atrocious persecution she suffered in Guatemala on account of her membership in particular social groups and political opinion and the persecution on account of her membership in particular social groups and other serious harm that she will likely suffer if returned to Guatemala.

Date submitted: August 9, 2016

Respectfully submitted,

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