

[Redacted], Attorney of Record
[Redacted]
[Redacted]
[Redacted]

NON-DETAINED

Telephone: [Redacted]
Fax: ([Redacted]) [Redacted]
Email: [Redacted]
EOIR ID No. [Redacted]

[Redacted] Law Student Intern
[Redacted], Law Student Intern
[Redacted], Law Student Intern

Pro Bono Counsel for Respondents

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT**

[Redacted]

_____)
In the Matter of:)
[Redacted])
[Redacted])
Respondents)
_____)

**RESPONDENTS' MOTION TO RESCIND *IN ABSENTIA* REMOVAL ORDER
AND REOPEN PROCEEDINGS**

**NO FEE REQUIRED PER 8 C.F.R. § 1003.24(b)(1)-(2)
AS MOTION BASED ON ASYLUM**

AUTOMATIC STAY OF REMOVAL PER INA § 240(b)(5)(C)

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I. INTRODUCTION

Respondents [RESPONDENT] (“Ms. [RESPONDENT]”) and her 14-year-old son, [Respondent 2] (“[Respondent 2]”), respectfully request that this Court rescind its [REDACTED] 2016 order of removal and reopen their proceedings pursuant to INA § 240(b)(5)(C)(i) or under its *sua sponte* authority. Ms. [RESPONDENT] submits this motion to rescind and reopen, along with her asylum application. Exh. BB, Form I-589 of Ms. [RESPONDENT] and Supporting Documents. Ms. [RESPONDENT] concurrently submits a Motion to Change Venue to the [REDACTED] Immigration Court.

Ms. [RESPONDENT] and [Respondent 2] fled from El Salvador to the United States on [REDACTED] 2015, fearing persecution by the MS-13 gang. In El Salvador, they were targeted by MS-13 because of Ms. [Respondent]'s ex-husband's (Respondent2's father) affiliation with 18th Street, a rival gang. On several occasions, gang members threatened Ms. [RESPONDENT] and her son at gunpoint. Ms. [RESPONDENT] and [Respondent 2], seeking safety, entered the United [REDACTED] States during 2015, and were apprehended by the Department of Homeland Security (“DHS”). She and her son were ultimately released from custody, but without being given any information about how to appear in immigration court or the asylum one-year filing deadline. The only paperwork they received was lost during the sleepless three-day journey from Texas to [CITY], California. Despite making diligent efforts to retrieve the paperwork, they were unable to do so. Once in [CITY], Ms. [RESPONDENT] sought information from the [CITY] Immigration Court about the status of her case but was told to simply await the hearing notice in the mail. Meanwhile, at her residence in [CITY], Ms. [RESPONDENT] faced housing insecurity and sexual assault by her sister's husband, which forced her to move across the country to Maryland on an emergency basis. Ms. [RESPONDENT] was unaware of her need to update her

address at the time, as she had not received that information in detention or from the [CITY] Immigration Court. Ms. [RESPONDENT] was then unable to return from Maryland to [CITY] for her hearing due to extremely limited financial resources and fear of continued sexual assault by her brother-in-law if she stayed with her sister again. Ms. [RESPONDENT] tried to seek assistance from the [REDACTED] Immigration Court but was instead told she needed to get an attorney because they could not help her.

Ms. [RESPONDENT] was unable to secure legal assistance after she moved to Maryland, despite her diligent efforts. In [REDACTED] 2015, Ms. [RESPONDENT] sought help from [REDACTED] [REDACTED] Maryland, but the accredited representative did not offer representation and failed to explain the requirement of changing her address and how to transfer her case to the [REDACTED] Immigration Court from the [CITY] Immigration Court. When she then learned from her sister that she had received a hearing notice, Ms. [RESPONDENT] continued to search for legal assistance, reaching out to [REDACTED], a Facebook profile run by [REDACTED] [REDACTED] and the [REDACTED] [REDACTED]. Then, after she learned she had a removal order, she continued to seek legal assistance, despite struggling with depression, hypertension, and a high-risk pregnancy. Ms. [RESPONDENT] sought help from [REDACTED], and they referred her to an “asylum expert” who informed her that he could not help. Her case was finally referred to undersigned counsel as part of a law school asylum clinic, and in [REDACTED] 2018 students began working on the case. In [REDACTED] 2018, through in-depth interviews, the students learned of the circumstances that led to Ms. [Respondent]'s failure to attend her hearing and to submit a timely motion to reopen. Since retaining counsel, Ms. [RESPONDENT] has diligently prepared her case.

Given the exceptional circumstances that prevented her attendance at her hearing and the strength of her underlying asylum case, Ms. [RESPONDENT] files this Motion to Reopen. Although she files this motion approximately two years after the Court entered a removal order against her, she files the motion within 180 days of becoming aware of the exceptional circumstances that warrant reopening of her case. Ms. [RESPONDENT] therefore requests that the Court equitably toll the 180-day motion to reopen deadline due to the extraordinary circumstances that prevented her from filing a timely motion to reopen and her due diligence. Ms. [Respondent]'s case also merits reopening to allow her to apply for asylum based on her *v. JohnsMendez-Rojas* on class membership. In the alternative, she asks the Court to exercise its *sua sponte* authority to reopen the case under 8 C.F.R. § 1003.23(b)(1).¹

II. FACTUAL AND PROCEDURAL HISTORY

A. Ms. [RESPONDENT] and [Respondent 2] fled El Salvador after repeated threats from MS-13

Ms. [RESPONDENT] fled to the United States from El Salvador with her son, [Respondent 2], on [REDACTED] 2015, after MS-13 gang members threatened to kill them. Exh. A, Declaration of Ms. [RESPONDENT] ([REDACTED] Decl.) at 1-3, ¶¶ 3-21.

The MS-13 gang targeted [Respondent 2] because of his father's affiliation with the rival 18th Street gang in El Salvador. Exh. B, Declaration of [Respondent 2] ("Resp. 2 Decl.") at 1, ¶ 7. Ms. [RESPONDENT] and Respondent2's father had separated when [Respondent 2] was one year old. Exh. A, Resp. Decl. at 1, ¶ 5. Following their separation, Ms. [RESPONDENT] and [Respondent 2] lived in an MS-13-controlled area; Respondent2's father lived in a community controlled by the 18th Street gang. *Id.* at ¶¶ 4, 6. Because Respondent2's father sometimes performed favors for the 18th Street gang, MS-13

A request for equitable tolling is separate from a request for *sua sponte* reopening. *Mata v. Lynch*, 135 S. Ct. 2150 (2015).

gang members considered [Respondent 2] to be loyal to the 18th Street gang despite the fact that [Respondent 2] had never had contact with 18th Street gang members. Exh. B, Resp2. Decl. at 1, ¶¶ 4, 7. Ms. [Respondent] anticipated that her ex-husband's favors for the 18th Street gang could create problems with the MS-13 gang because the MS-13 gang "keeps track of everybody who is associated with the rival 18 gang"; she pleaded with her husband to cease performing favors for the 18th Street gang to no avail. Exh. A, Resp. Decl. at 1, ¶ 7.

In ██████████ 2015, MS-13 gang members began harassing [Respondent 2], then 11 years old, on his way to school, pressuring him to join their gang. Exh. B, Resp2. Decl. at 1, ¶ 6. The gang members told [Respondent 2] that he was now old enough to pay off the debt he owed to the MS-13 gang for being loyal to the rival 18th Street gang. *Id.* at ¶ 7. [Respondent 2] refused the MS-13 gang's recruitment efforts, emphasizing that his mother would never let him join. *Id.* at ¶ 8. MS-13 gang members visited Ms. [Respondent]'s home on four separate occasions in the spring of 2015. In ██████████ 2015, MS-13 gang members confronted Ms. [RESPONDENT] in her home to pressure her into giving [Respondent 2] permission to join their gang. Exh. A, Resp. Decl. at 2, ¶¶ 9-10; Exh. B, [Resp2. Decl.], at 1, ¶ 9. The gang members demanded that she let her son join because her family "owed them" due to their affiliation with the rival 18th Street gang. Exh. A, Resp. Decl. at 2, ¶¶ 9-10; Exh. B, Resp2. Decl. at 1, ¶ 9. Ms. [RESPONDENT] didn't attempt to correct the MS-13 gang members when they accused her of being affiliated with the 18th Street gang because "there is nothing you can say to change their minds." Exh. A, Resp. Decl. at 2, ¶ 10. Ms. [RESPONDENT] firmly refused to comply with the gang's demands to let her son join because she was morally opposed to the gang's corrupt and immoral lifestyle. Although MS-13 gang members were visibly angry due to Ms. [Respondent]'s refusal to give her son permission to join their gang, they eventually left her home. *Id.* at ¶ 10.

A few weeks later, in late [REDACTED] or [REDACTED] of 2015, two MS-13 gang members returned to her house for the second time. *Id.* at ¶ 11. Both men were armed with guns and were “much more aggressive than they had been during their first visit.” *Id.* They pointed their guns directly at Ms. [RESPONDENT] and screamed that she “no longer had a choice” in whether her son would join their gang. *Id.* Although Ms. [RESPONDENT] was very scared, she reiterated that “under no circumstances” would she let [Respondent 2] join the MS-13 gang. *Id.* The two MS-13 gang members became “very angry” and proceeded to hold their guns to Respondent2's head. *Id.* at ¶ 12. They then gave Ms. [RESPONDENT] and [Respondent 2] two options: either [Respondent 2] would have to work for the MS-13 gang or they would both have to leave. *Id.* Both [Respondent 2] and Ms. [RESPONDENT] knew that if they did not choose one of the two options, they would be murdered by the MS-13 gang. *Id.*; Exh. B, Resp2. Decl. at 2, ¶ 12. Going to the police was not an option because the gangs are so powerful that they know when someone files a police report and then seek retribution by murdering the person’s entire family. Exh. A, Resp. Decl. at 2, ¶ 15. Fearful that she would not be able to come to an arrangement with a coyote to leave El Salvador, Ms. [RESPONDENT] tried unsuccessfully to kill herself with pills. Exh. C, Psychosocial Evaluation Conducted by Dr. [Psych. Evaluator] (“Psych. Eval”) at 4.

MS-13 gang members returned to Ms. [Respondent]'s house three days later. They were armed with guns once again and entered her house while pointing their guns at both Ms. [RESPONDENT] and [Respondent 2]. Exh. A, Resp. Decl. at 2, ¶ 16. Ms. [RESPONDENT] pleaded with the gang members to spare their lives, explaining that she needed a couple more days to finish selling their belongings so they could afford to hire a coyote; the gang members said that they would be back in three days, but warned that this was the last chance they were giving them. *Id.* After the MS-13 gang members left Ms. [Respondent]'s house that day, she immediately called

the coyote and arranged for her and her son to leave the country in three days, on [REDACTED] 2015. *Id.* at 3, ¶ 17. On [REDACTED] 2015, MS-13 gang members arrived at Ms. [Respondent]'s house “to make sure” that she and her son were “actually planning to leave and not thinking of backing out.” *Id.* at ¶ 18. Ms. [RESPONDENT] explained that the coyote had called and rescheduled for the following day, to which the gang members responded that they already knew of this delay because they “kept tabs” on her. *Id.* The next day, [REDACTED] 2015, the coyote met Ms. [RESPONDENT] and [Respondent 2] right outside the community border. *Id.* at ¶ 19. Ms. [RESPONDENT] was very scared as she was leaving because she could see that a number of MS-13 gang members were watching her and her son from one of the houses that the MS-13 gang owned. *Id.* As they were leaving, one of the MS-13 gang members opened the window and yelled “you better not come back. *Id.*

B. Respondent and [Respondent 2] received little to no information about the requirements for seeking asylum in the United States while at [REDACTED]

Ms. [RESPONDENT] and her son entered the United States in [REDACTED] and were detained upon arrival by DHS. Exh. A, Resp. Decl. at 3, ¶ 22; Exh. B, [REDACTED] Decl., at 2, ¶ 19. Ms. [Respondent] and [Respondent 2] were taken to a short-term holding cell known as the “hielera,” where they were held a few days in separate rooms. Exh. A, [REDACTED] Decl., at 3, ¶¶ 23-24. [Respondent 2], then approximately 12 years old, began to cry when he was separated from Ms. [RESPONDENT], which prompted an immigration official to drag [Respondent 2] by the ear to the room in which Ms. [RESPONDENT] was being held so that he would stop crying. *Id.* at ¶ 24. After [Respondent 2] stopped crying, the guard separated them again. *Id.* [Respondent 2] experienced serious ear pain after the incident. Exh. B, Resp2. Decl. at 2, ¶ 19. Despite telling DHS that she feared returning to El Salvador, Ms. [RESPONDENT] was pressured into signing forms several times while she was at the short-term holding cell, but refused to do so because the forms were in English and she did not understand

what they said. Exh. A, Resp. Decl. at 3, ¶ 25; Exh. D, Notices to Appear for Ms. [RESPONDENT] and [Respondent 2] (“NTA”s). Ms. [RESPONDENT] and [Respondent 2] were subsequently transferred to another short term holding cell for an additional few days. *Id.* at ¶ 23. There, Ms. [RESPONDENT] was informed that her son’s ear was internally bleeding. *Id.* at 4, ¶ 26. Ms. [RESPONDENT] and [Respondent 2] were subsequently transferred to the [REDACTED] in [REDACTED] Texas. *Id.* at ¶ 27. At [REDACTED], Ms. [RESPONDENT] was assigned a lawyer from the [Immigration Project]; the lawyer met with Ms. [RESPONDENT] four times and represented Ms. [RESPONDENT] at her bond hearing. *Id.* at ¶¶ 28-30. Since the conversations between the immigration judge and the lawyer were not translated into Spanish, Ms. [RESPONDENT] assumes that her lawyer told the judge about her fear of returning to El Salvador and that this was part of the reason she was released. *Id.* at ¶ 30. After her bond hearing, Ms. [RESPONDENT] was informed that the judge had granted her release and that she would be able to leave once her sister sent money necessary to buy the bus tickets. *Id.* Ms. [RESPONDENT] and [Respondent 2] left [REDACTED] the following day. *Id.* at ¶ 31.

When Ms. [RESPONDENT] and her son were released from the [REDACTED], they were both very confused as to the next steps in the asylum process. *Id.* at 5, ¶¶ 32-34; Exh. B, Resp2. Decl. at 3, ¶ 22. Ms. [Respondent]’s [Immigration Project] lawyer did not explain “anything to [her] about the court process upon leaving the detention center.” Exh. A, Resp. Decl. at 5, ¶ 32. In fact, volunteer attorneys for the [Immigration Project] have documented serious access to counsel issues at the [REDACTED] in [REDACTED] 2015. Exh. E, Declarations submitted in support of *Flores v. Lynch*, Case 2:85-cv-04544-DMG-AGR, Document 187-6 (“Flores declarations”). When an immigration official provided Ms. [RESPONDENT] with the folder of immigration documents before she left the [REDACTED]

[REDACTED], she inquired about the contents of the documents, which she couldn't understand because they were in English. Exh. A, Resp. Decl. at 5, ¶ 33. The immigration official told her the folder “had all of [her] information,” but declined to provide any more information. *Id.*; see also Exh. E, Flores declarations at 3- 6 (documenting coercive and misleading practices by ICE in July 2015). Ms. [RESPONDENT] therefore left the [REDACTED] [REDACTED] with no understanding of the court process or her legal responsibilities. She only understood she would “eventually have to go to court because [her] sister had told [her] that everyone does.” Exh. A, Resp. Decl. at 5, ¶ 33.

Moreover, Ms. [RESPONDENT] was flustered as she left the [REDACTED] [REDACTED] due to contradictory information she had received from her [REDACTED] lawyer and DHS at the [REDACTED] regarding whether she would have to wear an ankle monitor. *Id.* at ¶¶ 34-35. The [Immigration Project] lawyer had told Ms. [RESPONDENT] prior to her release that she would have to wear an ankle monitor as soon as she left, but DHS at the [REDACTED] sed her without an ankle monitor. *Id.* at ¶ 34. Ms. [RESPONDENT] worried that DHS had made a mistake.

C. [Respondent]'s son misplaced the documents she received upon their release from [REDACTED] at a rest stop due to extreme fatigue

After their release from custody, Ms. [Respondent] and [Respondent 2] boarded a bus [REDACTED] [REDACTED] 2015 to go to Ms. [Respondent]'s sister's home. *Id.* at ¶ 38. During their three-day long bus trip to [CITY], Ms. [RESPONDENT] slept only a few hours, as she had been informed that she and her son would be stranded if they slept through any of their bus transfers. *Id.* at ¶ 39. [Respondent 2] also slept very little on the bus ride due to fear and anxiety. Exh. B, Resp2. Decl. at 3, ¶ 23.

When the bus stopped in New Mexico, Ms. [RESPONDENT] and her son got off to eat at a [REDACTED]'s. Exh. A, Resp. Decl. at 6, ¶ 40. Concerned that someone would steal the folder he and his mother had received at the [REDACTED] if they left it on the bus, [Respondent 2] inserted the folder into the band of his pants for safekeeping and brought it with him into the restaurant. *Id.*; Exh. B, Resp2. Decl. at 3, ¶ 24. When they sat down to eat, [Respondent 2] removed the folder from his pants band and placed it on the tray. Exh. A, [REDACTED] minutes after the bus left the rest stop, [Respondent 2] realized that he had left the folder on his tray at the restaurant. *Id.*; Exh. B, Resp2. Decl. at 3, ¶ 25. Ms. [RESPONDENT] immediately approached a Spanish-speaking passenger and asked him to tell the bus driver that they had left very important documents at the [REDACTED]'s. Exh. A, Resp. Decl. at 6, ¶ 41. The bus driver called a second bus driver scheduled to stop at the same [REDACTED]'s shortly after; he assured Ms. [RESPONDENT] that the following bus driver would pick up the folder and bring it to her in [CITY]. *Id.* at ¶¶ 41-42. Ms. [RESPONDENT] waited for five hours at the [CITY] bus terminal and spoke to two bus drivers who informed her they had not seen the folder. *Id.* at ¶ 42; Exh. B, Resp2. Decl. at 3, ¶ 25.

D. Ms. [RESPONDENT] experienced overcrowding, unwelcome sexual advances, and hunger at her sister's [CITY] apartment in [REDACTED] 2015

In [CITY], Ms. [RESPONDENT] and [Respondent 2] lived in a crowded, bug-infested, two-bedroom apartment with her sister, brother-in-law, and approximately six other people. Exh. A, Resp. Decl. at 6, ¶ 44.

Ms. [RESPONDENT] and [Respondent 2] slept on the floor of her sister's bedroom the first few nights they were at the apartment *Id.* at ¶ 45. Ms. [Respondent]'s brother-in-law "kept insisting [she] sleep with him and [her] sister in their bed," a request which made Ms. [RESPONDENT] so uncomfortable that she slept outside in the living room. *Id.* He also "tried to touch [her]

inappropriately” without her consent and asked her out on dates when his wife was not at the apartment. *Id.* at ¶ 46. He continuously implied that she “owed him” in return for staying in their apartment. *Id.*

Ms. [RESPONDENT] and her son rarely ate while staying with her sister at the [CITY] apartment because Ms. [RESPONDENT] arrived in [CITY] without money and, despite her active daily efforts, was unable to find work that would have allowed her to buy food. *4Id.* 8.atHer ¶¶ 47-sister and others residing in the apartment constantly told her that she needed to leave the house because it was too crowded. *Id.* at ¶ 47; Exh. F, Declaration of Ms. [Resp. Sister] (“Resp. Sister Decl.”) at 1, ¶ 6.

E. Shortly upon arriving in[CITY]s, Ms. [RESPONDENT] traveled to the [CITY] Immigration Court to inquire about her case

In [REDACTED] 2015, approximately one week after she and her son arrived in [CITY], Ms. [RESPONDENT] visited the [CITY] Immigration Court to inform the court that she had lost her documents and to request information about her asylum case. Exh. A, Resp. Decl. at 7, ¶¶ 49-51; Exh. G, Text Message from Ms. [RESPONDENT] (“[REDACTED] Text”). When she arrived at the court, she explained to the employee at the window desk that she had lost her folder and asked if she could get replacement documents. Exh. A, Resp. Decl. at 7, ¶ 50. The employee told her that there was no way to verify her identity without papers and asked her to wait. *Id.*

Approximately 30 minutes later, a man stationed behind the window called her up. *Id.* at ¶ 51. The man didn’t speak Spanish, so he and Ms. [RESPONDENT] communicated via translator on the phone. *Id.* During the approximately 10 to 15-minute call, Ms. [RESPONDENT] explained that she had lost the folder containing the documents she was given upon her release from the [REDACTED] and was there to get new copies. *Id.* The employee

informed Ms. [RESPONDENT] that her that he could not help her because “[she] had lost all of [her] papers” and stated that she should not take any action until she received a hearing notice in the mail in “a few days.” *Id.* Neither employee provided her with any of her case documents, not even the NTA.² *Id.* Neither court employee mentioned the need for Ms. [RESPONDENT] to maintain an updated address on file with the court. *Id.*

F. Ms. [RESPONDENT] left her initial U.S. address due to unstable living conditions and unwanted sexual advances

Ms. [RESPONDENT] and [Respondent 2] were eventually forced to leave [CITY] because of the unstable and unhealthy living situation at her sister’s home. Ms. [RESPONDENT] had not been able to find a job and her brother-in-law continued to make unwanted sexual advances. Exh. A, Resp. Decl. at 8, ¶ 54. In ██████████ 2015, Ms. [Respondent]’s niece informed Ms. [RESPONDENT] that she and a friend were traveling from [CITY] to Maryland to visit her boyfriend and offered to take Ms. [RESPONDENT] and [Respondent 2] with her for \$800, an amount they would allow Ms. [RESPONDENT] to repay in monthly installments. *Id.* at ¶ 53. Although Ms. [RESPONDENT] knew no one in Maryland, she accepted because of the “unbearable” living conditions at her sister’s apartment. *Id.* at ¶ 54.

Ms. [RESPONDENT] did not know who to inform that she was moving, and felt uncomfortable returning to the [CITY] Immigration Court because the employee there had told her not to come back until she received her hearing notice in the mail. *Id.* at 8, ¶ 55. The notice had not arrived within a few days as the employee had said, and Ms. [RESPONDENT] therefore “feared something was wrong with [her] case.” *Id.*

² Given the short time between Ms. [Respondent]’s release from the ██████████ and her visit to the [CITY] Immigration Court, it is likely that her Alien file had not yet arrived at the [CITY] Immigration Court.

G. Ms. [RESPONDENT] attended a [REDACTED] information session in mid-[REDACTED] 2015 and met with an accredited representative who failed to inform her of possible steps to advance her case

On [REDACTED] 2015, Ms. [RESPONDENT] and her son arrived in Maryland, where she rented floor space from a woman named [REDACTED]. *Id.* at ¶ 56. Ms. [RESPONDENT] then found a job at a local Salvadorian restaurant called [REDACTED].” *Id.*

Shortly after arriving, Ms. [RESPONDENT] asked [REDACTED] for help getting information about her immigration case. *Id.* at ¶ 57. [REDACTED] recommended she visit [REDACTED], an organization located in [REDACTED] Maryland, that provides affordable legal advice to asylum seekers. *Id.*

In [REDACTED] 2015, Ms. [RESPONDENT] paid \$40 to attend a [REDACTED] class led by an accredited representative, Ms. [REDACTED], that covered basic information about the asylum process. *Id.* at ¶ 58. Ms. [RESPONDENT] approached Ms. [REDACTED] for an individual consultation after the class and Ms. [REDACTED] agreed. *Id.* During the meeting, Ms. [RESPONDENT] explained the details of her case; she informed Ms. [REDACTED] that she had lost her documents and that she had recently moved to Maryland from [CITY]. *Id.* Ms. [REDACTED] failed to explain how to get new documents or to inform Ms. [RESPONDENT] that she had to notify the [CITY] Immigration Court that she had moved to Maryland. *Id.* at ¶ 59. Ms. [REDACTED] also did not provide any referrals to other lawyers; instead, she told Ms. [RESPONDENT] that “with no documents, there was no way [she] could present or win [her] case.” *Id.* at ¶ 58.

H. Ms. [RESPONDENT] attempted to contact the [REDACTED] Immigration Court to inform them she had moved after learning about her hearing date

On [REDACTED] 2015, the Court mailed a hearing notice to Ms. [RESPONDENT] at [REDACTED] California, the address of Ms. [Respondent]'s sister. Exh. H, Notice of Hearing in Immigration Court; Exh. F, Resp. Sister Decl. at 1, ¶ 8. [REDACTED]

■■■■ sister received the notice when it arrived but neglected to tell her sister about the hearing until late ■■■■ 2015. Exh. G, Resp. Sister Decl. at 1, ¶ 8; Exh. A, Resp. Decl. at 9,

¶0. After Ms. [RESPONDENT] received the call from her sister about her hearing notice, she and an English-speaking friend tried to call the ■■■■ Immigration Court to inform the court that she moved. Exh. A, Resp. Decl. at 9, ¶ 61. They called together several times, spending at least an hour listening to the different menu options and having their call transferred before they reached someone. *Id.* When they finally reached a live person, the individual informed them that they could not help and that only a lawyer could change Ms. [Respondent]'s court location. *Id.* Ms. [RESPONDENT] could not afford to hire a lawyer. *Id.*

I. Limited financial resources and fear about seeing her sister's ex-husband precluded Ms. [RESPONDENT] from traveling across the country to attend her hearing

Ms. [RESPONDENT] was unable to travel from ■■■■ Maryland (where she was living at the time she received her hearing notice) to [CITY] to attend her hearing due to a lack of financial resources. *Id.* at 9, ¶ 62. Two roundtrip bus tickets to [CITY] would have cost Ms. [RESPONDENT] around \$1,000, almost twice what she made in a month. *Id.* At the time, Ms. [Respondent] was earning around \$600 a month at her job at the Salvadorian Restaurant and had to pay \$350 for rent and \$150 for food. *Id.* Her remaining income would go towards paying for her son's school supplies, and the installments she owed her niece for the trip from ■■■■ to Maryland. *Id.* Moreover, Ms. [RESPONDENT] feared she would lose her job if she went away, a risk she could not take as a single mother. *Id.* In addition to these financial hardships, Ms. [RESPONDENT] was "very scared" to return to [CITY] because she would have to see her sister's husband, who had made frequent, unwanted sexual advance towards her. *Id.* at ¶ 63.

J. Ms. [RESPONDENT] contacted [Facebook Page] A repeatedly via Facebook between [REDACTED] 2016 and [REDACTED] 2016

After Ms. [RESPONDENT] learned about her hearing notice, she sought pro-bono help to acquire information about her case and options still available to her.

In [REDACTED] 2016, a friend whom Ms. [RESPONDENT] had met at the [REDACTED] [REDACTED] informed her about the [Facebook Page] Facebook profile, Exh. A, Resp. Decl. at 9, ¶ 64, and [REDACTED] group [REDACTED] provides information to asylum-seeking mothers, Exh. I, Declaration of [Attorney NAME] (“ [REDACTED] Decl.”) at 1, ¶¶ 2-4. Ms. [RESPONDENT] sent a message to the [Facebook Page] profile via Facebook messenger the same month, including details about her case. Exh. A, Resp. Decl. at 9, ¶ 64. She explained that she was an asylum seeker living in Maryland who did not have money to return to [CITY] for her hearing date. *Id.* Ms. [RESPONDENT] sent approximately four messages to [Facebook Page] through the Facebook profile during this period. *Id.* at ¶ 65. Ms. [RESPONDENT] did not receive a response to her messages until [REDACTED] 2016 [REDACTED] her 2016 hearing [REDACTED] [REDACTED]

K. Ms. Respondent was diagnosed with high blood pressure and depression in x 2016

When Ms. [RESPONDENT] arrived in Maryland, she sought medical care from [REDACTED] [REDACTED] Maryland. Exh. J, Patient Confirmation Letter from [REDACTED] [REDACTED] (“Patient Letter”). There, Ms. [RESPONDENT] was diagnosed with hypertension. Exh. J, Patient Letter; Exh. C, Psych Eval. at 4. Ms. [Respondent]’s doctor explained that her high blood pressure was induced by the stress of fleeing El Salvador, and prescribed medication to treat both her hypertension and depression. Exh. A, Resp. Decl. at 10, ¶ 66; Exh. J, Patient Letter.

L. In [REDACTED] 2016, Ms. [RESPONDENT] was informed by her sister that she had received an *in absentia* removal order

In [REDACTED] 2016, a removal order arrived at the [CITY] residence where Ms. [RESPONDENT] had resided with her sister. Exh. F, Resp. Sister Decl. at 1, ¶ 9; Exh. K, Order of the Immigration Judge. However, her sister did not receive the order until later that month because she had since left the apartment. Exh. F, Resp. Sister Decl. at 1, ¶ 9. She called to inform Ms. [RESPONDENT] about the removal order in [REDACTED] 2016. Exh. A, Resp. Decl. at 10, ¶

67. **M. [REDACTED] replied to Ms. [RESPONDENT] in late [REDACTED] 2016, referring herto and asylum expert who explained he could not help her**

In [REDACTED] 2016, [Facebook Page] finally accepted Ms. [Respondent]'s message requests and sent her the contact information for a [REDACTED] based organization, [REDACTED]. *Id.* at 9, ¶ 65; Exh. I, Atty. Decl. at 1, ¶ 5. Ms. [RESPONDENT] contacted [REDACTED] immediately, leaving at least five voice messages with the organization before they ultimately responded in late [REDACTED] 2016 with the contact information for an asylum expert. Exh. A, Resp. Decl. at 10, ¶¶ 67-68.

Ms. [RESPONDENT] contacted the expert. *Id.* at ¶ 68. Their call lasted approximately two hours during which she explained key details about her case, including her hearing notice, her inability to travel back to [CITY], and her recently-issued removal order. *Id.* The expert explained her “case would be very hard to win because [she] had no proof of what [they] had suffered in El Salvador and [she] had already been in the United States for a long time.” *Id.* The expert also scolded Ms. [RESPONDENT] for not contacting a lawyer before she had been issued a deportation notice and explained that he could not help because she already had a deportation order. *Id.* He hung up without offering further advice or directing her to other resources. *Id.* The

expert never informed Ms. [RESPONDENT] that she should consult with a lawyer about possible available ways to reopen her case or that there was a deadline for filing a motion to reopen. N. Ms. [RESPONDENT] continued to seek legal advice after the expert whom [REDACTED] referred her to refused to help her

Following the phone call with the expert that [REDACTED] referred her to, Ms. [RESPONDENT] continued to look for legal assistance. *Id.* at ¶ 69. She researched online, looked through different phonebooks, and asked at her church, but did not find legal counsel. *Id.*

O. Ms. [Respondent]'s high-risk pregnancy impaired her ability to actively pursue her asylum case

In [REDACTED] 2016, Ms. [RESPONDENT] was diagnosed with a high-risk pregnancy. *Id.* at ¶ 70; Exh. J, Patient Letter. For the duration of her pregnancy, Ms. [RESPONDENT] was almost completely bedridden, experienced dangerous hand and foot swelling, and suffered “a lot of pain” because she was not allowed to take “strong doses of medication for [her] depression or blood pressure.” Exh. A, Resp. Decl. at 10, ¶ 70.

Despite her high-risk pregnancy, Ms. [RESPONDENT] continued to look for legal assistance online. *Id.* at ¶ 71. Unable to identify other organizations that could provide pro-bono legal assistance, Ms. [RESPONDENT] messaged the [Facebook Page] Facebook profile again in [REDACTED] 2016 requesting help with her case. *Id.* When the managers of the Facebook profile responded in [REDACTED] 2017, they again referred her to [REDACTED], *id.*, not knowing that Ms. [RESPONDENT] had already contacted [REDACTED] to no avail, Exh. I, [REDACTED] Dec. at 1, ¶ 5.

In [REDACTED] 2017, unsatisfied with the response, Ms. [RESPONDENT] directly messaged a woman named [REDACTED] who posted useful information regarding asylum on the [Facebook Page] profile. Exh. A, *Resp. Decl.* at 11, ¶ 72. Ms. [RESPONDENT] subsequently

became a

member of [REDACTED] the “secret” Facebook group associated with [Facebook Page]. Exh. I, Atty. Decl. at 1, ¶ 5. Ms. [RESPONDENT] also began to communicate with Ms. [REDACTED] via text and Facebook messenger. Exh. A, Resp. Decl. at 11, ¶ 72. Ms. [REDACTED] explained to Ms. [RESPONDENT] that she worked for a small organization called [REDACTED] and that the organization did not have enough people to take on Ms. [Respondent]'s case. *Id.* at ¶ 73. However, she informed Ms. [RESPONDENT] that she was attempting to identify other lawyers who could assist her. *Id.*

As her due date neared and her symptoms worsened, Ms. [RESPONDENT] was unable to communicate regularly with Ms. [REDACTED] about her case because she had “trouble recalling” details of her case, impairing her ability to provide necessary information to Ms. [REDACTED]. *Id.* at ¶ 74. During her difficult pregnancy, it was “hard to think straight.” *Id.*

P. Ms. [RESPONDENT] secured new counsel in [REDACTED] 2018 and promptly filed this Motion to Reopen

Ms. [RESPONDENT] delivered her baby on [REDACTED] 2017. *Id.* at ¶ 75. She experienced serious post-birth complications, including a vaginal hemorrhage, heart complications, and high blood pressure, which she did not recover from until late [REDACTED] 2017. *Id.* Following her recovery, she reached back out to Ms. [REDACTED] and the [REDACTED] team. *Id.* While still unable to take on her case due to limited resources, the [REDACTED] team connected Ms. [RESPONDENT] with [Psych. Evaluator], PhD and professor of Psychopathology at [REDACTED] University, who performed a psychosocial evaluation on Ms. [RESPONDENT] in [REDACTED] 2017. *Id.*; Exh. C. Psych. Eval; Exh. I, Atty. Decl. at 1-2, ¶ 7.

On or about [REDACTED] 2017, the [REDACTED] team proposed that the [REDACTED]-affiliated [REDACTED] Law School asylum advocacy clinic take on Ms. [Respondent]'s case, as Ms. [RESPONDENT] had been unable to locate counsel. Exh. I, Atty. Decl. at 1-2, ¶ 7. [REDACTED] subsequently informed Ms.

[RESPONDENT] that she had found a way to give her case the full attention it needed. Exh. A, Resp. Decl. at 11, ¶ 76.

The [REDACTED] Law School clinic first met on [REDACTED] 2018, and the students assigned to Ms. [Respondent]'s case had their first call with Ms. [RESPONDENT] on [REDACTED] 2018. Exh. I, Atty. Decl. at 2, ¶ 8. It was not until [REDACTED] 2018 that students working on the case learned of all the circumstances that led to Ms. [Respondent]'s failure to attend her hearing and advised Ms. [RESPONDENT] for the first time that there was a basis on which she could file a motion to reopen. *Id.*; Exh. A, Resp. Decl. at 11, ¶ 77. This motion follows.

III. ARGUMENT

A. Ms. [RESPONDENT] presents exceptional circumstances for missing her master calendar hearing that warrant rescission of the *in absentia* removal order and reopening of her case

An *in absentia* removal order may be rescinded “upon a motion to reopen filed within 180 days after the date of the order of removal or deportation if the alien demonstrates that the failure to appear was because of exceptional circumstances.” INA § 240(b)(5)(C)(i). The INA defines “exceptional circumstances” to include compelling circumstances “beyond the control of the alien.” INA § 240(e)(1).

A “totality of the circumstances” test applies to the exceptional circumstances for not attending a hearing analysis. *Matter of W-F-*, 21 I&N Dec. 503, 509 (BIA 1996). The Ninth Circuit has elaborated further, establishing that attention must be given to the “particularized facts presented in each case” in determining whether the petitioner has established exceptional circumstances. *Singh v. INS*, 295 F.3d 1037, 1040 (9th Cir. 2002) (citation and quotation marks omitted). The particularized facts in the present case – Ms. [Respondent]'s need to leave her sister’s apartment in [CITY] due to overcrowding and sexual assault, her inability to travel to

[CITY] due to financial hardship, misleading advice provided by employees at the [CITY] Immigration Court and the [REDACTED] Immigration Court, incomplete information provided by [REDACTED], and her mental health issues amount to a “totality of circumstances,” *Matter of W-F-*, 21 I&N Dec. at 509, that contributed to her failure to appear.

i. Ms. [Respondent]'s inability to travel to [CITY] and find safe accommodations after she was sexually assaulted constitutes exceptional circumstances

Ms. [Respondent]'s financial hardships and fear of further sexual assault if she again stayed with her sister resulted in an inability to travel to her master calendar hearing, which constitute an exceptional circumstance. In her declaration, Ms. [RESPONDENT] establishes that she had only approximately \$100 in disposable income per month after paying for rent and food, and still owed outstanding installment payments for the earlier trip from [CITY] to Maryland; she was therefore unable to afford bus or plane tickets at the time of her scheduled hearing in 2016. Exh. A, Resp. Decl. at 9, ¶ 62.

The Board of Immigration Appeals (“BIA”) has found that inability to secure transportation to an out-of-state hearing can, in combination with other factors, constitute exceptional circumstances. *See, e.g.* Exh. L, [REDACTED], [REDACTED] (BIA April 5, 2016) (rescinding an *in absentia* order under the totality of the circumstances where the respondent was homeless and “lacked financial means” to travel from Florida to Texas); Exh. M, [REDACTED], [REDACTED] (BIA Dec. 22, 2015) (finding exceptional circumstances where the respondent relocated from Texas to Illinois via Oklahoma and was unable to secure transportation to travel to his Texas hearing); Exh. N, [REDACTED], [REDACTED] (BIA Aug. 19, 2015) (rescinding an *in absentia* removal order where the respondent was unable to travel from Texas to Seattle to attend her hearing because she lacked identification documents

and was unable to make safe arrangements for travel by car).

Notably, Ms. [RESPONDENT] faced circumstances even more extreme than those faced by the respondents in *Howard Alexander Wilson*, *Jose Manuel Olivia-Ramirez* and *Simran Dholasania*. Her need to relocate was the result of an unstable and unsafe living situation, she lacked immigration documents issued by DHS that proved her immigration standing in the United States, and the distance to be traveled to attend her hearing was considerably longer. In addition, Ms. [RESPONDENT] feared returning to [CITY] because she was scared to see her sister's ex-husband, who had made sexual advances on her when she was living in [CITY]. *See supra* Section II.I.

ii. Ms. [Respondent]'s confusion after receiving misleading information from Immigration Court staff and a legal advocate amounted to exceptional circumstances

Suffering from lack of sleep, after a traumatic experience in immigration custody, Ms. [Respondent]'s son left the immigration papers he and his mother had been provided with at the detention center at a rest stop during the three-day long bus ride from Texas to [CITY]. *See supra* Section II.C. Ms. [RESPONDENT] does not recall anyone explaining her obligations in the removal process, and the NTAs obtained by undersigned counsel confirm that she refused to sign a statement that she was provided oral notice in Spanish. *See supra* Section II.B; Exh. D, NTAs. Nevertheless, she diligently attempted to replace the papers and seek information about the status of her case shortly after her arrival in [CITY] and prior to receiving a hearing notice by visiting the [CITY] Immigration Court in person. *See supra* Section II.E. Without a hard copy of the NTA, and without being able to obtain another copy of the document, she was unable to refer to the document or have someone read her the document in Spanish (since she had not understood the contents in English). She was thus unaware of the advisals contained therein,

including information about the need to update her change her address, how to do so, or the consequences of failing to appear.

Neither Immigration Court employee Ms. [RESPONDENT] spoke with in [CITY] provided her with a copy of her NTA or mentioned the need to maintain an updated address on file with the court. Exh. A, Resp. Decl. at 7, ¶ 51-52. The second employee's assertion that the papers would arrive at Ms. [Respondent]'s house "in a few days" was particularly misleading, as Ms. [RESPONDENT] visited the Immigration Court in [REDACTED] and her hearing notice did not arrive at Ms. [Respondent]'s sister's [CITY] address until [REDACTED] 2015. *Id.* at ¶ 52; Exh. F, Resp. Sister Decl. at 1, ¶ 8; Exh. H, Notice of Hearing in Immigration Court. Because Ms. [RESPONDENT] received an inaccurate timeline from the [CITY] Immigration Court employee and was told not to return until she had a hearing notice, she did not return to the Immigration Court to inform them of her intended move to Maryland. Exh. A, Resp. Decl. at 8, ¶ 55.

Ms. [RESPONDENT] received further misleading advice from an accredited representative at [REDACTED], Ms. [REDACTED] in [REDACTED] 2015, which also contributed to her failure to appear. Ms. [REDACTED] failed to explain to Ms. [RESPONDENT] several crucial steps that she could have taken to pursue her case despite being informed that Ms. [Respondent] had lost her documents and had recently moved. Although Ms. [Respondent] informed Ms. [REDACTED] about the fact that she had moved from [CITY], Ms. [REDACTED] did not explain to Ms. [Respondent] the requirement to update her address with the immigration court, or the consequences of not updating her address. Exh. A, Resp. Decl. at 8, ¶ 58, 9, ¶ 59. Nor did Ms. [REDACTED] apprise Ms. [Respondent] of positive and readily-apparent steps she should have pursued, including submitting a change of address form and filing a motion to change venue. *See supra* Section II.G.

Finally, after receiving her hearing notice, Ms. [Respondent] attempted to contact ██████ Immigration Court to inform them of her move. Exh. A, Resp. Decl. at 9, ¶ 61. But after an hour on the phone, the staff member told her she could not help. *Id.*

As described previously, Ms. [Respondent] left detention with little to no information about the requirements for seeking asylum in the United States. *See supra* Section II.B. With no other reliable source of information about the asylum process, Ms. [Respondent] was exceptionally vulnerable to misinformation and reliant on the Immigration Court employees' guidance and the advice of the Catholic Charities accredited representative.

The BIA has recognized that misinformation provided by DHS can qualify as an exceptional circumstance. *See* Exh. O, ██████, ██████ (BIA July 12, 2016) (rescinding an *in absentia* order where respondent claimed to have been told by an immigration officer upon release from custody that his hearing would be rescheduled). Here, Ms. [Respondent] received misleading information from employees of the court and a legal advocate, both of whom were in a position to provide accurate information. Ms. [Respondent] had every reason to trust their advice, just as she could have been expected to trust the information provided by a DHS official. As a result, this court should consider their misleading advice, and Ms. [Respondent]'s resulting confusion, as part of the exceptional circumstances that led her to miss her hearing date.

Because Ms. [Respondent] was diligently seeking information about her case, there is little reason to believe that, had Ms. [Respondent] been properly and fully informed of her options, she would not have changed her address and filed a motion to change venue so that she could appear in court and present her strong asylum claim.

iii. *Housing insecurity and limited financial resources contributed to Ms. [REDACTED] failure to appear*

The BIA has recognized that financial difficulties, in concert with other factors under a totality of circumstances analysis, can qualify as an exceptional circumstance leading to failure to appear. *See* Exh. P, [REDACTED], [REDACTED] (BIA Sept. 26, 2016) (rescinding an *in absentia* order where respondent failed to appear because he had lost his job, his home was in foreclosure, and his wife was experiencing health problems). The BIA has also recognized that housing insecurity can qualify as an exceptional circumstance. *See* Exh. Q, [REDACTED], [REDACTED] (BIA Nov. 2, 2017) (finding exceptional circumstances where the respondent became homeless and was unable to maintain contact with her attorney).

Ms. [Respondent] was forced to leave her [CITY] residence to secure safe and stable housing for herself and her son, which also contributed to her failure to appear. Because she was unable to find work in [CITY], Ms. [Respondent] and her son could not afford to pay for food while living at her sister's apartment or find alternative housing in [CITY]. *See supra* Section II.D. Sexually predatory behavior also prevented Ms. [Respondent] from remaining in [CITY]; while residing at her sister's apartment, she experienced repeated unwelcome sexual advances by her brother-in-law. *See supra* Sections II.D and II.F. The only solution at the time for stable and safe housing was to move to Maryland.

iv. *Ms. [Respondent] suffers from mental health issues that contributed to her failure to navigate the immigration court process*

The Ninth Circuit recognizes that mental health issues can qualify as an exceptional circumstance causing a respondent's failure to appear. *See Chaires v. Ashcroft*, 72 F. App'x 558, 559 (9th Cir. 2003) (holding that a respondent's depression warranted reopening of removal proceedings where he failed to appear at his asylum hearing, even though he was able to go to work despite his depression).

Since arriving in the United States, Ms. [Respondent] has battled symptoms of depression and trauma, as reaffirmed in an [REDACTED] 2017 psychological evaluation. Exh. C, Psych Eval. at 4-5. Right before leaving El Salvador, [REDACTED] had attempted to kill herself with pills when she feared that she would not find enough money to flee the country. *Id.* at 4. Ms. [Respondent] faces ongoing symptoms. *Id.* [Psych. Evaluator], PhD, who completed the psychosocial evaluation of Ms. [Respondent], found that she is “experiencing marked distress.” *Id.* The evaluation also establishes that “trauma coupled with depression may have impeded [Ms. [REDACTED]] thinking.” *Id.* at 5. The evaluation suggests, for example, that her mental condition played a role in her allowing her son to hold her important immigration documents on the bus ride from Texas to [CITY]. *Id.* In addition, Ms. [Respondent]'s depression and trauma likely led her to “not consider the possibility of missing [her] court date because of her relocation.” *Id.* As the evaluation notes, “[c]ognitive impairment in major depression can include decreased ability to concentrate, to learn, and to make decisions; the executive function of the brain – which when functioning well abets wise decision-making – has been found in multiple studies to be adversely affected by depression.” *Id.* Ms. [Respondent]'s mental health condition thus likely affected her ability to understand and navigate the immigration system.

Therefore, the totality of the particularized facts presented in this case constitute exceptional circumstances that prevented Ms. [Respondent]'s from attending her master calendar hearing. *See Singh*, 295 F.3d at 1039-40.

B. This Court should equitably toll the motion to reopen deadline and reopen these removal proceedings

The Court should toll the motion to reopen deadline in Ms. [Respondent]'s case because (1) she missed the deadline as a result of extraordinary circumstances, including receipt

of misleading information from government officials and non-profit organizations from whom she sought assistance, and a high-risk pregnancy and (2) she has exercised due diligence in pursuing her case. Equitable tolling is a well-established doctrine applicable “when a litigant has pursued [her] rights diligently but some extraordinary circumstance prevents [her] from bringing a timely action.” *Lozano v. Montoya Alvarez*, 134 S. Ct. 1224, 1231- 32 (2014). The Ninth Circuit has held that equitable tolling can apply to motions to reopen filed after the 180-day deadline. *Lopez v. INS*, 184 F.3d 1097 (9th Cir. 1999).

i. The misleading information Ms. [Respondent] received after her removal order amounts to an extraordinary circumstance that prevented timely filing of this MTR

Equitable tolling is available in cases where “despite all due diligence, the party invoking equitable tolling is unable to obtain vital information bearing on the existence of the claim.” *Socop–Gonzalez v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2001) (en banc) (citation, quotation marks, and alterations omitted). Application of the doctrine of equitable tolling is not limited to situations involving fraud by a third party or ineffective assistance of counsel; rather, “the party invoking tolling need only show that his or her ignorance of the limitations period was caused by circumstances beyond the party’s control.” *Id.* In the present case, Ms. [Respondent] sought assistance from a non-profit legal services organization after she received the removal order, but she was not provided with essential information about how to reopen her case and was therefore unaware of the 180-day deadline despite her due diligence.

Ms. [Respondent] received inaccurate information from a human rights organization about opportunities to pursue her asylum claim after she was informed by her sister about her removal order in [REDACTED] 2016. The [REDACTED] expert who Ms. [Respondent] spoke with in late [REDACTED] 2016 did not provide her with critical information regarding pursuing a motion to reopen

in a timely fashion, nor did he explain that she could attempt to transfer her case to Maryland. *See supra* Section II.M. Instead, the asylum expert informed Ms. [Respondent] that “[her] case would be very hard to win because [she] had no proof of what [they] had suffered and [she] had already been in the United States for a long time.” Exh. A, Resp. Decl. at 10, ¶ 68. The asylum expert did not tell her that there was a motion to reopen option, that there was a deadline for filing this motion, or that this deadline could be tolled. *Id.* This misinformation was particularly prejudicial to Ms. [Respondent], as she was at that point within the 180-day period during which she could have submitted a timely motion to reopen and motion to change venue. The expert also scolded Ms. [Respondent] for not contacting a lawyer prior to receiving the removal order, without telling her that she could search for an attorney to help her reopen her case. *Id.*

As the Ninth Circuit has recognized, “[t]he proliferation of immigration laws and regulations has aptly been called a labyrinth that only a lawyer could navigate.” *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005). Immigrants are uniquely reliant on lawyers when navigating the asylum process. *See Monjaraz-Munoz v. I.N.S.*, 327 F.3d 892, 897 (9th Cir.), *opinion amended on denial of reh'g*, 339 F.3d 1012 (9th Cir. 2003) (“The role of an attorney in the deportation process is especially important. For the alien unfamiliar with the laws of our country, an attorney serves a special role in helping the alien through a complex and completely foreign process.”). Because Ms. [Respondent] could not afford an attorney, she sought assistance from a non-profit legal services organization, who referred her to an “asylum expert” from [REDACTED]. None of the organizations she contacted, nor the expert, ever informed her that it was even possible to reopen her case, nor that there was a time limit for seeking such reopening. Exh. A, Resp. Decl. at 11, ¶ 77. Ms. [Respondent] did not learn that she could file a motion to reopen until [REDACTED] 2018, shortly after she began working with undersigned counsel

and the students. *Id.*; Exh. I, Atty. Decl. at 2, ¶ 8. Thus, she was unaware of the 180-day deadline because none of these organizations or the expert ever informed her of did not inform her of the 180-day deadline. As the BIA has noted, “misunderstanding of [one’s] rights” can constitute an exceptional circumstance. Exh. R, *J-B-M-*, [REDACTED] (BIA April 19, 2018).

ii. Ms. [Respondent]'s high-risk pregnancy within the 180-day MTR filing period constitutes an extraordinary circumstance that prevented timely filing of an MTR

In [REDACTED] 2016, within the 180-day filing deadline, Ms. [Respondent] learned that she had a high-risk pregnancy that kept her “almost completely bed-ridden” and in severe pain, impairing her ability to fully devote herself to her asylum case. *See supra* Section II.O. During this period, Ms. [Respondent] had “trouble recalling a lot of [her] case because it was hard to think straight during [her] difficult pregnancy.” Exh. A, Resp. Decl. at 11, ¶ 74.

The BIA has recognized pregnancy-related complications as an exceptional circumstance, and it should similarly be considered an extraordinary circumstance to toll the 180-day filing deadline. *See, e.g.*, Exh. S, [REDACTED], [REDACTED] 2004 WL 2375031 (BIA Sept. 20, 2004) (reopening proceedings where the respondent was advised prior to the hearing not to travel due to her high-risk pregnancy, even where the doctor’s note instructing her not to travel was written three weeks after she received an *in absentia* removal order); Exh. T, [REDACTED], [REDACTED], 2004 WL 2374450 (BIA July 27, 2004) (reopening proceedings where the respondent was advised not to travel to hearing because “she was suffering a difficult pregnancy.”); Exh. U, [REDACTED], [REDACTED], 2004 WL 1738980, (BIA June 2, 2004) (observing that “the respondent’s illness, which came during a difficult pregnancy, constituted an exceptional circumstance that prevented her from attending her hearing.”). In the present case, Ms. [Respondent]'s high-risk pregnancy was not only physically debilitating, but also led to mental

impairments that left her unable to recall details essential to reopening her case. *See supra* Section II.O. Ms. [Respondent]'s high-risk pregnancy was therefore an extraordinary circumstance that prevented her from filing this motion within the 180-day deadline.

iii. Ms. [Respondent] has demonstrated due diligence

A respondent seeking equitable tolling must have exercised due diligence in pursuing her immigration case. *See Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003); *Mejia-Hernandez v. Holder*, 633 F.3d 818, 824 (9th Cir. 2011) (“Equitable tolling is applied in situations where, despite all due diligence, the party requesting equitable tolling is unable to obtain vital information bearing on the existence of the claim.”) (citation and quotation marks omitted). Ms. [Respondent] continually practiced due diligence by [REDACTED] and [REDACTED] Immigration Courts and seeking legal assistance and information through non-profit organizations such as [REDACTED]. Ms. [Respondent] need only demonstrate that she was *reasonably* diligent in pursuing her case. *See Holland v. Florida*, 560 U.S. 631, 653 (2010) (requiring pursuit of claims with “reasonable diligence,” but not “maximum feasible diligence”) (citations and quotation marks omitted); *Pervaiz v. Gonzales*, 405 F.3d 488, 490 (7th Cir. 2005) (requiring analysis of “whether the claimant could reasonably have been expected to have filed earlier,” rather than “the length of the delay in filing”). The Ninth Circuit similarly adopts a “reasonable person” standard in its three-part test to assess due diligence in the ineffective-assistance-of-counsel context:

First, we determine if (and when) a reasonable person in petitioner's position would suspect the specific fraud or error underlying her motion to reopen. Second, we ascertain whether petitioner took reasonable steps to investigate the suspected fraud or error, or, if petitioner is ignorant of counsel's shortcomings, whether petitioner made reasonable efforts to pursue relief. Typically, an alien is diligent if he continues to pursue relief and relies on the advice of counsel as to the means of obtaining that relief. Third, we assess when the tolling period should end; that is, when petitioner definitively learns of the harm resulting from counsel's deficiency,

or obtains vital information bearing on the existence of his claim. In many cases, this occurs when the alien obtains a complete record of his immigration proceedings and is able to review that information with competent counsel.

Avagyan v. Holder, 646 F.3d 672, 679 (9th Cir. 2011) (citations and quotation marks omitted). A review of a petitioner's diligence "must be fact-intensive and case-specific, assessing the reasonableness of petitioner's actions in the context of his or her particular circumstances." *Id.*

In light of the above test, efforts pursued by Ms. [Respondent] should be evaluated based on efforts that a reasonable person in her position would pursue in light of the circumstances specific to her case. Ms. [Respondent] does not speak English, lacks familiarity with U.S. immigration law and the U.S. immigration system, received conflicting and incomplete information when she did seek information about her case and options, experienced a high-risk pregnancy in the [REDACTED] 2016, and has been diagnosed with Major Depressive Disorder. Immigrant respondents are already in "an extremely vulnerable position as the subjects of pending deportation proceedings." *Rodriguez-Lariz v. INS*, 282 F.3d 1218, 1225 (9th Cir. 2002). Indeed, the Fifth Circuit has instructed the BIA to "give due consideration to the reality that many departed aliens are poor, uneducated, unskilled in the English language, and effectively unable to follow developments in the American legal system—much less read and digest complicated legal decisions" and to "also take care not to apply the equitable tolling standard 'too harshly.'" *Lugo-Resendez v. Lynch* 831 F.3d 337, 345 (5th Cir. 2016) (citation omitted).

Despite these considerable obstacles, Ms. [Respondent]'s declaration establishes her diligent efforts to pursue her immigration case. She visited the [CITY] Immigration Court shortly after arriving in [CITY] to inquire about her case's status. *See supra* Section II.E. Ms. [Respondent] then continued to seek advice regarding her case by attending a [REDACTED] workshop in [REDACTED] Maryland. *See supra* Section II.G. However, the [REDACTED]

██████████ accredited representative, ██████████, told Ms. [Respondent] that she could not win her case without any legal documents, Exh. A, Resp. Decl. at 8, ¶ 58, and Ms. ██████████ did not apprise Ms. [Respondent] of the need to change address and file a motion to change venue, despite knowing she had recently relocated from California to Maryland. *Id.* at 8-9, ¶¶ 58-59. Moreover, there is no reason to assume that Ms. [Respondent] would have questioned the soundness of Ms. ██████████' advice. *See Salazar-Gonzalez v. Lynch*, 798 F.3d 917, 922 (9th Cir. 2015) (“[I]n an area of law that ranks just behind the federal tax code in complexity, it is hardly rational to think that someone with a high school education would have the wherewithal to know that he should ignore and override his lawyer's advice.”)

Even considering the misleading and incomplete advice she received from Ms. ██████████ at no point following her meeting with Ms. ██████████ did Ms. [Respondent] fail to investigate and pursue relief. For example, when Ms. [Respondent] did learn that she had received a hearing notice from her sister, Ms. [Respondent] called the Baltimore Immigration Court to inform them that she had moved. The employee with whom she spoke informed her they could not help her and that only a lawyer could change her court location. *See supra* Section II.H.

Although Ms. [Respondent] could not afford to hire a lawyer, she sought assistance from [Facebook Page] between ██████████y and ██████████ 2016, *see supra* Section II.J, and promptly followed up with ██████████ the organization to which they referred her, *see supra* Section II.M. The ██████████ “asylum expert” informed Ms. [Respondent] that he could not assist Ms. [Respondent] because she had received a removal order, despite the fact that Ms. [Respondent] was within the 180-day period during which she could have filed a timely motion to reopen her case and change venue to present her compelling underlying asylum claim. The Ninth Circuit has held that, “We cannot penalize individuals in such circumstances for

reasonably relying on the advice of counsel, even if that counsel turns out to have been incompetent or predatory.” *Avagyan*, 646 F.3d at 679.

Even following her contact with the “asylum expert,” Ms. [Respondent] continued to search for pro-bono legal assistance, researching online, looking through phonebooks, and asking about legal help at her church, *see supra* Section II.N, as well as reaching back out to [Facebook Page] over Facebook in ██████████ 2016, *see supra* Section II.O. Even though she was bedridden due to a high-risk pregnancy, Ms. [Respondent] contacted Ms. ██████████ (an ██████████ representative who had posted useful information regarding asylum on the [Facebook Page] profile) in ██████████ 2017 and remained in contact with Ms. ██████████ throughout her high-risk pregnancy. *Id.* She also immediately resumed more regular contact with ██████████ following recovery from her post-pregnancy complications. *See supra* Section II.P. Although ██████████ was not able to fully devote time to Ms. [Respondent]'s case due to insufficient resources, *see* Exh. I, Atty. Decl. at 1, ¶ 7, Ms. [Respondent] did receive a psychosocial evaluation per ██████████'s recommendation in ██████████ 2017, Exh. A, Resp. Decl. at 11, ¶ 75.

Finally, in ██████████ 2017, Ms. [Respondent] was told by the ██████████ team that they hoped to place her case pro bono with the ██████████-affiliated ██████████ Law School asylum advocacy clinic supervised by undersigned counsel, which they did in ██████████ 2018. Students contacted Ms. [Respondent] in ██████████ 2018. However, it was not until ██████████ 2018 that the students had learned of all the circumstances that led to Ms. [Respondent]'s failure to attend her hearing, and advised her for the first time that there was a basis on which she could file a motion to reopen. *See supra* Section II.P. Ms. [Respondent] now submits this Motion to Reopen within 180 days since learning about the motion to reopen deadline and the vital information bearing on that deadline. *See also* Exh. R, *J-B-M-*, ██████████ (BIA April 19, 2018) (finding reasonable

diligence where there was a nearly two year gap—[REDACTED] 2015 to [REDACTED] 2017—between when respondent first contacted potential counsel and when counsel filed his motion to reopen).

Despite the aforementioned obstacles and an accumulation of misinformation provided by organizations and individuals from whom she sought advice, it is clear Ms. [Respondent] consistently “made reasonable efforts to pursue relief,” *Avagyan*, 646 F.3d at 679, both before and after learning of her order of removal. Her efforts to retain competent counsel meet the standard for due diligence that the Ninth Circuit has set for purposes of permitting equitable tolling of the motion to reopen deadline.

iv. The deadline should be equitably tolled until Ms. [Respondent] learned of the incompleteness and incorrectness of information she had been provided

The Ninth Circuit recognizes that time and numerical limits are tolled until the petitioner definitively learns of the extraordinary circumstances caused by counsel’s or consultant’s deficiency or obtains “vital information bearing on the existence of his claim.” *Albillo–De Leon*, 410 F.3d 1090, 1100 (9th Cir. 2005) (citation and quotation marks omitted); *see also Fajardo v. I.N.S.*, 300 F.3d 1018, 1022 (9th Cir. 2002). The point at which the petitioner, in the exercise of reasonable diligence, knew or should have learned of the ineffective assistance that prevented timely filing is when the petitioner had the opportunity to review his file with new counsel. *Iturribarria*, 321 F.3d at 899 (the “limitation period... did not begin running until... the day [respondent] met with his new counsel to discuss his file”).

It was not until in-depth conversations with the law students in [REDACTED] 2018 that Ms. [Respondent] became aware that she had a right to submit a motion to reopen her case and definitively learned of the extraordinary circumstances that prevented timely filing of her motion to reopen. Exh. A, Resp. Decl. at 11, ¶ 77. Ms. [Respondent] diligently files this Motion

to Reopen within 180 days of discovering the aforementioned extraordinary circumstances and therefore merits equitable tolling.

C. Ms. [Respondent] and [Respondent 2] have strong underlying asylum claims

Since coming to the United States, Ms. [Respondent] has consistently expressed her fear of returning to El Salvador. Though rescinding and reopening an *in absentia* order based on exceptional circumstances and tolling does not require showing eligibility for relief, here there is compelling evidence that the respondents have a *prima facie* asylum case. As such, Ms. [Respondent] and [Respondent 2] had no incentive to miss the scheduled their immigration court hearing. This is yet another factor that should be considered in the totality of the circumstances. *See Singh*, 295 F.3d at 1040 (“[T]he INS should not deny reopening of an *in absentia* deportation order where the denial leads to the unconscionable result of deporting an individual eligible for relief from deportation.”).

An applicant seeking asylum must show that he or she has suffered past persecution or has a well-founded fear of future persecution on account of a protected ground. INA § 101(a)(42)(A). Ms. [Respondent]'s declaration outlines a pattern of her and her son being targeted in El Salvador by MS-13 several times at gunpoint. *See supra* Section II.A. Ms. [Respondent] feared at the time of her arrival and continues to fear that she and her son would be persecuted if they are removed to El Salvador. Ms. [Respondent] states unequivocally, “I am certain that if I disobey them and return, they will kill me and my son.” Exh. A, Resp. Decl. at 3, ¶ 20. [Respondent 2] similarly describes, “I know that if we [return to El Salvador], MS-13 gang members will kill us.” Exh. B, Resp2. Decl. at 2, ¶ 15.

Based on the nature of the threats Ms. [Respondent] and her son experienced in El Salvador, Ms. [Respondent] can establish past persecution on account of her membership in two separate particular social groups (“PSG”s) and her political opinion.

First, Ms. [Respondent] and her son belong to a family-based PSG based on their relationship to Ms. [Respondent]'s ex-husband, who is her son's father. Ms. [Respondent]'s declaration establishes that the MS-13 gang believed that she and her son “were loyal to the rival 18 gang” because her ex-husband lived in a community controlled by that gang and regularly performed favors for the 18th Street gang. Exh. A, Resp. Decl. at 1, ¶ 6. The BIA, Ninth Circuit, and the Fourth Circuit, where Ms. [Respondent] seeks to transfer her case, recognize family membership as a particular social group. *See, e.g., Sanchez-Trujillo v. INS*, 801 F.2d 1572, 1576 (9th Cir. 1986) (family is a “prototypical example” of a social group), *overruled on other grounds by Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (en banc); *Crespin-Valladares v. Holder*, 632 F.3d 117, 124-26 (4th Cir. 2011); *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006).

Second, Ms. [Respondent] can claim membership in a PSG based on her relationship to her son. In *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015), the Fourth Circuit held that a respondent sufficiently demonstrated that she was persecuted on account of membership in her nuclear family based on her refusal to allow her son to join a gang. The court explained, “Hernandez's relationship to her son is why she, and not another person, was threatened with death if she did not allow him to join Mara 18.” *Id.* at 950. Ms. [Respondent]'s declaration describes how gang members “pointed their guns directly at [her] and screamed that [she] no longer had a choice in whether [her] son would join their gang” when they came to her home in May or early June 2015. Exh. A, Resp. Decl. at 2 ¶ 11.

Third, Ms. [Respondent] and her son [Respondent 2] can claim persecution on account of their political opinion. Political opinion may be “one actually held by the petitioner or one that is imputed to her by persecutors.” *Agbornchong v. Holder*, 383 F. App'x 319, 322 (4th Cir. 2010). Ample evidence in the record supports the view that the MS-13 gang members who threatened Ms. [Respondent] and [Respondent 2] attributed an affiliation with the 18th Street gang to them by virtue of her ex-husband’s perceived gang connections. MS-13 gang members told [Respondent 2] as he was walking to school that he had to become a gang member to “pay off the debt he owed them for being loyal to the 18 gang.” Exh. B, Resp2. Decl. at 1, ¶ 7. Gang members also told Ms. [Respondent] that she and [Respondent 2] “owed” the gangs because of their affiliation with the 18th Street gang. Exh. A, Resp. Decl. at 2, ¶10.

Although neither Ms. [Respondent] nor her son ever supported the 18th Street gang, the accuracy of the attribution does not matter for the purposes of establishing a claim based on imputed political opinion. *See Najjar v. Ashcroft*, 257 F.3d 1262, 1289 (11th Cir. 2001) (“An imputed political opinion, whether correctly or incorrectly attributed, may constitute a ground for a well-founded fear of political persecution within the meaning of the INA.”) (citations, alterations, and quotation marks omitted); *Ashqar v. Holder*, 355 F. App'x 705, 710, n.6 (4th Cir. 2009). As with the PSG claim, additional recruitment motives do not undermine Ms. [Respondent] and her sons’ political opinion claim; “persecution need not be solely, or even predominantly, on account of the imputed political opinion.” *Marroquin-Ochoma v. Holder*, 574 F.3d 574, 577 (8th Cir. 2009).

MS-13 should be viewed as an entity operating within a political framework given the extensive control it exercises in Ms. [Respondent]'s neighborhood. Similarly, 18th Street gang should be viewed as a rival quasi-political entity. The weakness of state apparatuses and

considerable, quasi-political control that gangs exercise over territories in Northern Triangle Countries is well-documented. *See, e.g.,* Exh. V, Guillermo Cantor & Tory Johnson, *Detained, Deceived, and Deported: Experiences of Recently Deported Central American Families*, AMERICAN IMMIGRATION COUNCIL, at 3 (2016) (“[V]ast stretches of territory (and much of the population) in Central America have been abandoned by the state. In the absence of strong and capable states, the rule of law is also nonexistent, and organized crime groups (including transnational criminal organizations) compete for control of the territory.”).

For these reasons, the strength of Ms. [Respondent]'s underlying asylum claim, coupled with the extreme potential harm of removing her and her son, mitigates in favor of reopening this case.

D. Ms. [Respondent]'s case should be reopened to allow her to apply for asylum based on her *Mendez-Rojas v. Johnson* class membership

The court should also reopen Ms. [Respondent]'s proceedings on the basis that she did not receive adequate or sufficient notice from DHS of the time limitations governing her asylum application. *See* Exh. A, Resp. Decl. at 5, ¶ 32. In addition, although Ms. [Respondent] received a folder of immigration documents upon her release from the [REDACTED] in [REDACTED] no one explained the folder's contents to her despite her request. *See supra* Section II.B, It is also unlikely that the folder contained information pertaining to the one-year asylum application filing period, as this has not been common DHS practice.

In *Mendez-Rojas v. Johnson*, No. C16-1024 RSM, 2018 WL 1532715 (W.D. Wash. Mar. 29, 2018), the U.S. District Court granted summary judgment in favor of plaintiff class members who argued that DHS's failure to provide them with notice of the statutory requirement that an asylum seeker apply for asylum within one year of arrival in the United States violated statutory and regulatory requirements and class members' Fifth Amendment due process rights. In *Rojas*,

the defendants expressly acknowledged that “they have no policy requiring uniform provision of such notice,” *id.* at *8, and “they do not provide blanket notice to all asylum seekers at the time they are apprehended, during the credible fear determination, or upon release.” *Id.* at *3. The court ordered defendants “to accept as timely filed any asylum application from a class member that is filed within one year” of the adoption of the notice requirements mandated by the court, *id.* at *9. This order counsels in favor of allowing Ms. [REDACTED] to reopen her case to have an opportunity to present her asylum case.

i. Ms. [Respondent] is a class member under Mendez-Rojas v. Johnson

Ms. [Respondent] is a member of Class B, “Other Entrants Class,” under *Rojas*, which encompasses “[a]ll individuals who have been or will be detained upon entry; express a fear of return to their country of origin; are released or will be released from DHS custody without a credible fear determination; are issued a Notice to Appear (NTA); and did not receive notice from DHS of the one-year deadline to file an asylum application set forth in INA § 208 (a)(2) (B).” *See id.* at *1. Ms. [Respondent] did not receive adequate or sufficient notice from DHS of the time limitations governing her asylum application and is a member of subclass B.II, as an asylum seeker in removal proceedings. . *Id. See supra* Sections II.B and III.C.

ii. Extraordinary circumstances prevented Ms. [Respondent] from submitting her asylum application within the one-year deadline

Beyond Ms. [Respondent]'s *Rojas* class membership, extraordinary circumstances are present warranting an exception to the one-year filing deadline for asylum. The one-year deadline to file an application for asylum is subject to two statutory exceptions, one of which is the presence of “extraordinary circumstances relating to the delay in filing an application.” INA § 208(a)(2)(D). To be excused from the one-year filing deadline, the applicant must show that extraordinary circumstances were “directly related to the alien’s failure to file the application within the one-

year period, and that the delay was reasonable under the circumstances.” *Wakkary v. Holder*, 558 F.3d 1049, 1057 (9th Cir. 2009) (quoting 8 C.F.R. § 208.4(a)(5)). What constitutes a reasonable delay is to “be determined on the basis of all the factual circumstances of the case.” *Husyev v. Mukasey*, 528 F.3d 1172, 1182 (9th Cir. 2008).

The factual circumstances present in the case justify an exception to the one-year filing deadline. Between █████ 2015, the time of Ms. [Respondent]’s arrival in the United States, and █████ 2016, Ms. [Respondent] experienced extraordinary circumstances that prevented her from attending her Master Calendar Hearing and from submitting a timely motion to rescind and reopen, circumstances which also prevented Ms. [Respondent] from filing her asylum application within one year. The extraordinary circumstances that excuse compliance with the one-year filing deadline parallel those that contribute to failure to appear and submit a timely motion to reopen. *See* 8 C.F.R. § 208.4(a)(5) (“Extraordinary circumstances” that excuse compliance with the one-year filing deadline include, but are not limited to, a serious illness, a legal disability, or ineffective assistance of counsel.”).

In the present case, Ms. [Respondent] consistently expressed fear since entering the United States and continuously sought advice pertaining to her asylum case but was not informed of relevant deadlines, including the one-year asylum application filing deadline. *See, e.g., supra* Section III.A.ii (describing Ms. [Respondent]’s attempt to seek information from the [CITY] Immigration Court in █████ 2015 and the failure of █████ to provide relevant information to Ms. [Respondent] in █████ 2015); *supra* Section III.B.i (recounting Ms. [Respondent]’s conversation in █████ 2016 with the “asylum expert” █████ referred her to, who failed to provide her with relevant information and resources). The Ninth Circuit has found that misinformation qualifies as an exceptional circumstance related

to a respondent's failure to file a timely asylum application. *See Cestari-Cuenca v. Holder*, 425 F. App'x 645, 647 (9th Cir. 2011) (holding that counsel's ineffective assistance, in misadvising respondent regarding one-year filing deadline for asylum, constituted an extraordinary circumstance where the respondent intended to apply for asylum and would have done so but for counsel's deficient legal advice). It was not until in-depth conversations with current counsel in [REDACTED] 2018 that Ms. [Respondent] became aware of the deadline and the circumstances that prevented her from filing a timely asylum application. Exh. A, Resp. Decl. at 11, ¶ 77.

Ms. [Respondent] also suffered from mental health issues during the one-year filing period. Around [REDACTED] 2016, Ms. [Respondent] was diagnosed with high blood pressure and depression. Exh. A, [REDACTED], at 10, ¶ 66. The psychosocial evaluation of Ms. [Respondent] conducted in [REDACTED] 2017 reaffirms her depression diagnosis and explains that "trauma coupled with depression may have impeded [Ms. [REDACTED]] thinking," including leading her not to consider the possibility of missing her court date because of her relocation. Exh. C, Psych Eval. at 5.

E. In the alternative, the Court should reopen these proceedings *sua sponte*

Even if this Court is not persuaded that the motion to reopen deadline should be equitably tolled in the present case, the Court should, in the alternative, reopen these proceedings *sua sponte* pursuant to 8 C.F.R. § 1003.23(b)(1). The BIA has held that *sua sponte* authority is "not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations, when enforcing them might result in hardship." *Matter of J- J-*, 21 I&N Dec. 976, 984 (BIA 1997). Rather, it is "an extraordinary remedy reserved for truly exceptional situations," *Matter of G- D-*, 22 I&N Dec. 1132, 1134 (BIA 1999).

Ms. [REDACTED]'s case is precisely the type of case in which *sua sponte* reopening is

appropriate. Ms. [Respondent] has a strong case for asylum, *see supra* Section III.C, and has diligently pursued her case since her arrival in the United States, *see supra* Sections III.A

III.B.iii. The equities of this case counsel in favor of reopening.

i. The Respondent was issued an in absentia removal order and failed to submit a timely motion to reopen due to exceptional circumstances beyond her control

The totality of circumstances reveals that Ms. [Respondent] experienced exceptional circumstances beyond her control that warrant *sua sponte* reopening. From the time MS-13 gang members began threatening her and her son, Ms. [Respondent] suffered from trauma and stress that has impacted not only her ability to pursue her case, but also her day-to-day life. Despite serious medical and mental health issues, Ms. [Respondent] pursued her case to the best of her ability. Numerous factors prejudiced Ms. [Respondent] in her ability to navigate the immigration court process. This prejudice started when Ms. [Respondent]'s [Immigration Project] lawyer did not explain what the immigration court process would be upon leaving the [REDACTED] and when DHS released her with a folder of documents in English that they declined to explain to her, *see supra* Section II.B, and followed her as she was forced to move from [CITY] to Maryland due to unstable living conditions and unwanted sexual advances, *see supra*, Sections II.D and II.F. Ms. [Respondent] was further prejudiced by the misinformation she was provided during her consultation with Ms. [REDACTED] *supra* Section II.G . Despite being scared and under the impression that she had no case without her lost documentation, based on her consultation with Ms. [REDACTED], Ms. [Respondent] took several steps to obtain help with her case including calling the [REDACTED] Immigration Court, *see supra* Section II.H, contacting [REDACTED] through the [Facebook Page] Facebook profile, *see supra* Section II.J, and speaking with a [REDACTED] expert to whom she was referred, *see supra* Section II.M. Despite her diligent efforts, Ms. [Respondent] struggled to secure pro-bono legal assistance

until [REDACTED] 2018, when the [REDACTED] Law School clinic took on her case.

Beyond the prejudicial factors mentioned above, many other factors prevented Ms. [Respondent] from attending her hearing and filing an MTR within 180 days. Ms. [Respondent] has suffered from depression and trauma-induced high blood pressure. *See supra* Section II.K. Ms. [Respondent] has also struggled “to establish herself in the United States,” Exh. C, Psych Eval. at 4, and has struggled financially, *see supra* Section II.I. She also had a high-risk pregnancy and post-birth complications. *See supra* Sections II.O and II.P. Contributing to Ms. [Respondent]'s circumstances and the difficulty she has had is the underlying fact that “[she does] not speak English and [does] not understand the court system.” Exh. A, Resp. Decl. at 11, ¶ 77.

Despite all of these factors, Ms. [Respondent] has worked to make a life for herself and her family in the United States. She has a husband and a job, [Respondent 2] is enjoying school, and she has an 11-month old United States citizen daughter. *Id.* at 11, ¶ 78. Despite her struggles, Ms. [Respondent] continued looking for help until she came into contact with current counsel. When current counsel informed Ms. [Respondent] about the legal channels available to her, about which she had not previously been informed, Ms. [Respondent] worked diligently to file this Motion to Reopen within 180 days. Exh. A, Resp. Decl. at 11, ¶ 77.

The BIA has reopened proceedings *sua sponte* based on similar circumstances. *See e.g.*, Exh. U, [REDACTED], [REDACTED] (BIA June 17, 2016) (reopening proceedings *sua sponte* under the totality of the circumstances for a respondent and her minor son who had been ordered removed *in absentia* after failing to report a change of address because the respondent assumed an immigration officer monitoring her case would do so); Exh. V, *Ajla Vricic*, [REDACTED] (BIA June 22, 2016) (reopening proceedings *sua sponte* where respondent argued

that her absence was due to family members' health issues, a recent move, and the demands of being a working mother); Exh. W, [REDACTED], [REDACTED] (BIA Sept. 29, 2015) (reopening case with *sua sponte* authority for respondent who failed to appear because of family-related stress). Ms. [Respondent]'s circumstances, including housing instability, her physical and mental health issues, and financial difficulties, coupled with the diligence she has exercised, present a compelling case for reopening *sua sponte*.

ii. The Respondent exercised diligence in seeking information about her asylum case despite her mental health issues and a high-risk pregnancy

Ms. [Respondent] has diligently pursued her case despite suffering from mental health problems. Ms. [Respondent] has been diagnosed with Major Depressive Disorder-Moderate, which “substantially limits one or more major life activities,” satisfying the statutory definition of disability. 42 U.S.C. § 12102(1)(A). The evaluation describes that Ms. [Respondent] is “experiencing marked distress” and that “[t]here is evidence that the trauma coupled with depression may have impeded [her] thinking Cognitive impairment in major depression can include decreased ability to concentrate, to learn, and to make decisions; the executive function of the brain – which when functioning well abets wise decision-making – has been found in multiple studies to be adversely affected by depression.” Exh. C, Psych Eval. at 5.

The evaluator also noted that Ms. [Respondent] was experiencing serious and concerning post-trauma symptoms, including “[i]nsomnia, hypervigilance, fear, lack of trust, and feeling that her life could be cut short.” *Id.* at 4. Despite her depression and trauma-related symptoms, Ms. [Respondent] continued to search for counsel in an effort to receive help with her case. In addition to mental health problems, Ms. [Respondent] also suffered from a high-risk pregnancy and post-birth complications. *See supra* Sections II.O and II.P. Ms. [Respondent]'s disability must be accommodated under Section 504 of the Rehabilitation Act of 1973,

which constitutes another factor warranting a favorable exercise of *sua sponte* authority.

iii. The potential harm the Respondent and her son face upon their removal to El Salvador is extreme

The harm that Ms. [Respondent] and her son face if removed to El Salvador is extreme. Ms. [Respondent] and her son believe that if they are forcibly removed to El Salvador that “MS-13 gang members will kill [them].” Exh. B, Resp2. Decl. at 2, ¶ 15. Ms. [Respondent] and her son were threatened at gunpoint multiple times in El Salvador, and a gang member threatened them by yelling “you better not come back” as they were leaving their community in █████ 2015 for the United States. Exh. A, Resp. Decl. at 3, ¶ 19. [Respondent 2] recounts that another family from his neighborhood that was targeted by MS-13 and was denied asylum in the United States was killed within 24 hours of their return to El Salvador. Exh. B, Resp2. Decl. at 2, ¶ 15. Ms. [Respondent] was so distraught over the possibility that she and her son would not be able to flee El Salvador that she attempted suicide. Exh. C, Psych Eval. at 4. Moreover, there is nowhere in El Salvador that Ms. [Respondent] could go should she be forced to return because all of her “family lives in the area controlled by either the MS-13 or 18 gangs.” Exh. A, Resp. Decl. at 2, ¶ 14. Ample evidence supports the finding that individuals deported to the Northern Triangle face incredibly dangerous circumstances and a very real risk of death. *See, e.g.,* Exh. Z, Sarah Stillman *When Deportation is a Death Sentence*, New Yorker, Jan. 15, 2018; Exh. V, Guillermo Cantor & Tory Johnson, *Detained, Deceived, and Deported: Experiences of Recently Deported Central American Families*, AMERICAN IMMIGRATION COUNCIL (2016); Exh. AA, U.S. *Government Deporting Central American Migrants to Their Deaths*, THE GUARDIAN, Oct. 12, 2015.

Furthermore, the immigration courts, and the government in general, have an interest in the lawful disposition of removal proceedings, and in allowing noncitizens to exercise their right

to seek protection from harm in the United States. *See Matter of S-M-J-*, 21 I&N Dec. 722, 727 (BIA 1997) (“[A]s has been said, the government wins when justice is done.”). Counsel for DHS “has an obligation to uphold international refugee law, including the United States’ obligation to extend refuge where such refuge is warranted. That is, immigration enforcement obligations do not consist only of initiating and conducting prompt proceedings that lead to removals at any cost.” *Id.* at 727. *See also Reid v. INS*, 949 F.2d 287, 288 (9th Cir. 1991) (“Counsel for the government has an interest only in the law being observed, not in victory or defeat in any particular litigation.”).

Therefore, Ms. [REDACTED] respectfully asks this Court to consider the continuing danger to her and her son in El Salvador and grant them an opportunity to have a full and fair hearing to present their strong asylum claims.

IV. CONCLUSION

As explained above, Ms. [REDACTED] was unable to attend her hearing due to exceptional circumstances and was the victim of extraordinary circumstances that prevented her from pursuing a timely motion to reopen. This family’s case merits reopening under the doctrine of equitable tolling or the Court’s *sua sponte* authority so that they have an opportunity to present their strong claims for asylum and related relief.

Dated: [REDACTED] 2018

Respectfully submitted:

[REDACTED]

Pro Bono Counsel

— Visiting Clinical Lecturer in Law [REDACTED] Law School

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EXHIBIT

A

Declaration of [Respondent], A#####-###-##1

1. My name is [Respondent]. I am including this declaration in support of my motion to reopen. I am filing this motion because I did not intend to miss my hearing and I want the opportunity to apply for asylum.
2. I was born in El Salvador on [REDACTED] 1983. I have two children, [Respondent 2] [REDACTED], who is fourteen-years old and was born in El Salvador on [REDACTED] 2003, and [REDACTED], who is eleven-months old and was born in the United States on [REDACTED] 2017.

Fleeing from El Salvador

3. My son, [Respondent 2], and I fled from El Salvador in [REDACTED] 2015 because MS-13 gang members threatened us.
4. In El Salvador, I was a single mother living alone with my son in a neighborhood controlled by the MS-13 gang.
5. I had separated from my ex-husband when my son was one-year-old and we did not have a good relationship.
6. My ex-husband lives in another community controlled by the rival 18 gang. The MS-13 gang believed that we were loyal to the rival 18 gang because my ex-husband regularly does favors for 18. He is not an 18 gang member, but frequently does those kinds of favors for them. These favors are not just paying the “tax” to the gangs, which everyone does. He would give them rides to different places that they needed to go. For example, he drove gang members to the beach on New Year’s Eve for a bathing ritual that symbolized “washing away the old year.”
7. When I found out he had been doing favors for 18, I tried to get him to stop because I knew that it would put me and my son in danger. The MS-13 gang keeps track of everybody who is associated with the rival 18 gang and I told him that the MS-13 gang would think we were loyal to 18. He told me that I should not worry because if the MS-13 gang thought that, all we had to do was prove our loyalty by doing favors for them. He did not care if [Respondent 2] had to join the MS-13 gang, but I made it clear to him that I would never allow our son to become involved with any gang.
8. In [REDACTED] 2015, MS-13 gang members began harassing my son on his way to and from his secondary school, named “[REDACTED]”. They told him that he had to become a gang member to pay off the debt he owed “for being part of a family loyal to the 18 gang.” They told him that we were lucky that the gang let us live here despite who my ex-husband is. My son told them he would not join because I told him he should not.

9. In [REDACTED] 2015, MS-13 gang members came to my house for the first time. They tried to persuade me to let my son join the gang, but I firmly told them that I would never let my son become one of them. I do not agree with the gang's lifestyle. It's a corrupt and immoral life.
10. They told me that we owed them because of our "affiliation" with the 18 gang. When they accused me of being part of 18, I did not correct them because there is nothing you can say to change their minds. Once they think you are part of 18, you are an enemy to them. They were visibly angry with my refusal to give my son permission to join them, but they eventually left my home.
11. A few weeks later in late [REDACTED] of 2015, two MS-13 gang members came to my house for the second time. Both men were armed with guns and were much more aggressive than they had been during their first visit. They pointed their guns directly at me and screamed that I no longer had a choice in whether my son would join their gang. Although I was very scared, I could not let my son join their gang. I do not agree with their activities and I did not want a life of crime for my son. I told them that under no circumstances could I let my son join the MS-13 gang.
12. The two men became very angry. They held their pistols to my son's head and gave us two options. They said we could either move away or my son could work for the gang. They gave us three days to disappear. I knew that if we did not move, my son and I would be killed.
13. My son implored me to stay, but I knew we had to leave our home. Another woman in my village had a boyfriend who also lived in a village run by 18, and the boyfriend would sometimes do favors for the gang. When MS-13 came to her house and demanded her son join to show their loyalty, she refused. The gang members threatened her and she tried to escape to her boyfriend's home. The gang found her and dragged her out of the house and shot her in plain daylight. It was horrible.
14. I could not have gone somewhere else in El Salvador because all of my family lives in the area controlled by either the MS-13 or 18 gangs.
15. I could not have gone to the police. I was scared, and going to the police would not have helped at all because the gangs are so powerful. The gangs find out about everything. I had heard the news of what happens to people who go to the police. Their entire family is murdered.
16. MS-13 gang members returned to my house three days later. They were armed with guns once again and entered our house pointing their guns at us and threatening us. I cried and begged that they spare our lives. I explained that we needed a couple of more days to finish selling our things so that we could afford to pay a coyote to guide us to the United States. They said that they would be back in three days, but warned that this was the last chance they were giving us.

17. After the MS-13 gang members left my house that day, I immediately called the coyote and arranged for us to leave the country in three days, on [REDACTED] 2015.
18. MS-13 gang members arrived at my house on [REDACTED] 2015, to make sure that I was actually planning to leave and not thinking of backing out. The coyote had called and rescheduled for the following day. I explained this to the gang members and expected that they would be very angry, but they told me they already knew that the coyote had rescheduled because they kept tabs on me.
19. The following day, the coyote met me and my son right outside the community border, at a corner called the [REDACTED]. It was very scary because I could see about eight MS-13 gang members watching me and my son from one of the houses they owned. As we were leaving, one of them opened the window and yelled "you better not come back." My father tells me that the MS-13 gang took possession of my house after I left.
20. I am certain that if I disobey them and return, they will kill me and my son. My son constantly worries that someone will send the gangs to kill us. He is always scared something is going to happen.
21. My son and I left El Salvador on [REDACTED] 2015.

Arriving in the United States

22. We arrived at the U.S. border in [REDACTED] and crossed through the river. The trip to the United States was very long and tiring. My son and I traveled in big trucks with our eyes blindfolded. Sometimes, we would go days without eating or drinking anything. My son would cry because his lips hurt from dehydration. It was a very scary journey and I did not always know if we would make it to the United States alive.
23. Shortly after we arrived to the United States, immigration officials apprehended us. They took us to the "*hielera*", which is a short-term holding cell for a few days and then to another short-term holding cell called the "*perrera*" for some days.
24. At the "*hielera*", the immigration guard separated me and my son in to separate rooms. My son began to cry when we were separated and one of the guards was so upset that he took my son by the ear and dragged him to where I was being held. The guard pulled his ear so hard that it turned purple. He told me to calm my son down and mocked him for crying because he should be old enough to be separated from his mother. I tried to explain to the guard that my son was traumatized and hungry. He said he did not care. The guard soon after separated me and my son again.
25. I was very uncomfortable at the "*hielera*". The guards kept on trying to get me to sign some forms, but I did not understand them because they were in English. I told the guards I would not sign anything I did not understand. The guard tried to intimidate me by saying "here I am the law, you will sign what I tell you to sign." Still, I refused to sign anything I could not understand. He said I was a criminal and I told him that I was no

criminal and that it was because I did not want to be a criminal that I was in the United States. I tried telling him that I was scared to return to El Salvador, but he kept interrupting me saying that he had not asked that question.

26. At the “*perrera*”, the guards treated us better. They gave us mattresses to sleep on and they also gave my son medical attention for his ear that the guard at the “*hielera*” had hurt. They told me that his ear had popped and was internally bleeding, but that I should not tell anyone because it could hurt my case or delay it. No one at the “*perrera*” asked me if I was scared to return to El Salvador.
27. The next place the immigration officials took us was the detention center in [REDACTED] Texas. At the detention center, they gave us clothes, a bed, and food. The conditions were better than they were at the “*hielera*” or “*perrera*”.
28. A few days after I arrived at [REDACTED], one of the guards handed me a slip and told me that I had a meeting with someone the following day. When I arrived at the office indicated on the slip, there was a group of about seven other women sitting in a circle and I sat down with them. In the center of the circle, there was a woman in a suit that gave a short presentation that lasted about half an hour. She explained that she was a lawyer who was not an employee of the detention center and was there to help us win our case. She told us that she would represent us at bond hearing in front of the judge. She also asked us a lot of question about whether we had been mistreated by immigration officials. I was afraid that if I told her about my son’s ear that would delay our release so I did not say anything.
29. I met with this lawyer two more times after that initial group meeting. The second time that I saw her was a couple of days later, when I received another slip. This time, I had an individual meeting with the lawyer. She explained that in order to help me, I would have to tell her my story. She asked me all types of questions about why I fled El Salvador and my encounters with the MS-13 and 18 gangs. She called me back for a third time one or two days after that to continue asking me about my case. She said she wanted to make sure that she knew all the details of my story.
30. The fourth and final time I saw her was the day of my hearing with the male judge. The entire hearing was in English and the lawyer spoke for me the entire time. There was a total of 6 people at the hearing: The judge [via a television screen], the interpreter, the government’s lawyer (a female), my lawyer, my son, and I. After the interview ended, my lawyer told me that the judge had granted my release and that I should go get my stuff ready. She told me that once my sister sent the money necessary to buy the tickets, I would be able to leave. She emphasized that the judge was letting me go without having to pay money, but that I would need to wear an ankle monitor. I assume that the attorney told the judge about what had happened to us in El Salvador. The interpreter did not translate what the judge and my lawyer discussed. The interpreter translated what the judge told or asked me.
31. I left [REDACTED] the day after my hearing with the judge.

32. Although I was thankful that the lawyer at the detention center had helped me obtain my release from the detention center, she did not explain a lot of things clearly. Neither my lawyer nor anyone else at the detention center explained anything to me about the court process upon leaving the detention center. They did not tell me anything about reporting, changing my address with the court, or anything like that. No one told me that there was a deadline to apply for asylum.
33. As I was about to leave the detention center, an immigration official spoke Spanish and asked me to sign a paper as part of the release process. I did not want to sign since I did not know what the paper said, but he assured me it was required for my release. He handed me a folder with some papers. He told me the folder had all of my information. I opened the folder, but the papers inside were in English, so I could not understand them. I asked him to explain what they said, but he did not give me more information or read anything to me in Spanish. However, I assumed I would eventually have to go to court because my sister had told me that everyone does. We were then taken to the bus station.
34. As I was leaving, I was very confused because the detention center lawyer had told me that I would have to wear an ankle monitor when I was released. But right before I was released, immigration officials told me I would not have to wear one. I was very nervous and kept asking if they had made a mistake.
35. When I got on the bus from the detention center to the bus terminal where we would get our bus to [CITY], the other women on the bus were talking about how I should have received an ankle monitor. I was flustered and worried they had made a mistake.
36. At the bus terminal, there were people at the terminal who told us they were lawyers that were doing research and asked us if we had been mistreated in [REDACTED] or at the “*hielera*” or at the “*perrera*.” However, I did not tell them anything because I was scared that immigration officials would find out and I would get in trouble. These lawyers were very nice and gave us a blue bag with gelatin and bottles of water for the trip.
37. One of these lawyers handed me my bus ticket and told me that I would have to transfer three times before arriving at [CITY] and that it was very important that I did not miss my transfers.
38. My son and I boarded the bus for [CITY] to go to my sister’s house on [REDACTED] 2015.

Losing Our Immigration Papers

39. On our way to [CITY], I tried to sleep as little as possible because the lawyer at the bus terminal had warned me to be very aware of when the bus stopped because we had to transfer three times before we arrived to [CITY]. She explained that if I slept through one of the transfers, we would be stranded and I would not be able to make it to [CITY]. Over the course of the three-day bus ride, I only slept a few hours. My son slept a little bit more, but he was also exhausted.

40. When the bus stopped in New Mexico, my son and I went to eat at the [REDACTED]'s. I was very tired and was not thinking clearly. My son took the folder from me to make sure it was protected, and inserted it in the band of his pants for safekeeping. He did not want us to leave the folder on the bus because he was afraid someone would steal it. However, when we sat down to eat, he removed the folder from his pants and placed it on the tray. He did not remember he had left the papers on the tray until we had been on the bus for about ten minutes.
41. When my son informed me that he had forgotten the folder at the [REDACTED]s, I immediately approached a passenger on the bus who spoke Spanish and asked him to tell the bus driver that we had forgotten very important documents at the [REDACTED]s. The bus driver (a male of approximately 40 years old) called a second bus driver that was scheduled to stop at the same [REDACTED]s shortly after and informed him about the lost folder.
42. I was told not to worry because that second bus driver would pick up the documents and bring them to me when they arrived in [CITY] an hour after me. However, when I arrived at the bus terminal in [CITY], I waited for five hours and talked to two separate mae bus drivers, but both of them told me they had not seen my folder at the [REDACTED]. We eventually lost hope and went home with my sister. I was worried because I did not know how I would prepare for court.

Overcrowding, Sexual Assault, and Hunger at My Sister's House

43. My son and I arrived in [CITY] on [REDACTED] 2015.
44. In [CITY], I lived with my sister, where the living situation was very difficult. My sister does not have an apartment to herself. She rents a bedroom within an apartment from her sister-in-law. We were around ten people in the two-bedroom apartment. It was infested with bugs that gave us allergies.
45. My son and I slept on the floor in my sister's bedroom the first few nights we were there. However, my sister's husband kept insisting I sleep with him and my sister in their bed. I felt uncomfortable with that request and I could see my sister was starting to get jealous, so I went to sleep outside in the living room for a couple of nights.
46. My sister's husband thought that I owed him something for allowing me to come and live with them. He would make advances towards me, asking me to go out with him on a date. It was really uncomfortable. He would even come back when my sister was at work and when he was supposed to be working and ask me to take a stroll with him. He also tried to touch me inappropriately, but I would quickly move his hand and sternly say that I was not that type of girl and that I did not owe him anything. But he would just smile and tell me that I was very stuck up. He was very forceful in his wish to have me sleep in the bed with him, but I was not interested in him and did not want problems with him or my sister.

47. I had no money. I arrived with not even a dollar. The people I lived with pressured me to find work. They would tell my sister that there were too many people living in the apartment and that I would be kicked out if I could not find money to help pay the rent. I went out looking for work every day, but I did not know what to do or where to start. My sister was very busy taking care of her children and working so she did not help me. There were also lot of comments about how my son and I should not be there anymore because it was too crowded.
48. My son and I rarely ate. My sister lived off of her husband's wage because she only worked three days a week, yet they knew I did not have money because I had not found a job yet. They did not seem to care. Almost every time my sister cooked, she and her husband would finish everything and leave no leftovers. I relied on the small amount of food the strangers we were living with shared with us to feed my son. I did not ask for any for myself even though I often did not eat all day. My sister resented us being there. I cried when I was alone. I felt uncomfortable, unwanted and like a burden.

Going to the Immigration Court in [CITY] to Ask About My Case

49. Around a week after arriving in [CITY], I tried to find out what my responsibilities with immigration were. I knew I had an appointment with immigration officials but I did not know when or where since information was in the lost folder. My sister knew where the immigration court in [CITY] was so she and her husband took me there to see what we could find out.
50. I gave my name at the front desk and waited in line. When it was my turn, the person behind the glass window spoke Spanish asked me for my identification number. I explained that I did not know what it was because I had lost my folder of immigration papers. I then said that I was there because I had lost my papers and wanted to get copies. I also did not have any personal identification on me since I did not have anything from the United States or El Salvador. She told me that there was no way to verify my identity. She then told me to wait.
51. A man with a suit and tie behind a window called my name about a half an hour later. The man did not speak Spanish, so we communicated via a translator on the phone because the other employee was busy at the front desk. I explained to him that I was there to pick up new documents because I had lost mine in New Mexico. He explained that he could not help because I had lost all of my papers and to just wait until I received a hearing notice from the court. He said the hearing notice would be arriving at my house in a few days and that I should not do anything else until I received my hearing notice. The conversation lasted about approximately 10 to 15 minutes. He did not get me copies of anything and neither of them told me that I needed to keep the court updated on my address.
52. We left immigration court without any information about my case and the only instruction I received was to wait for a hearing notice that would arrive in the mail in a few days, but the hearing notice did not arrive in a few days.

Moving to Maryland

53. A little under a month after arriving in [CITY], my niece told me that she and her friend would be driving from [CITY] to Maryland and offered us a ride for \$800, which I could pay in installments. There were five of us in the van: my niece, her daughter, my niece's boyfriend's friend, and my son and I. I still owe about \$90 for the ride. It has been difficult to make the installment payments, especially lately, as I have expenses for my baby.
54. I did not know anyone in Maryland, but I accepted the ride because the living situation at my sister's house was unbearable because of my sister's husband's sexual harassment and overcrowding and I was desperate because I had not been able to find a job in [CITY] I prayed for a better situation most of all for my son. We left [CITY] for Maryland on [REDACTED] 2015.
55. I did not know which government official to tell that I was leaving [CITY]. I felt uncomfortable going back to the immigration court because the man at the immigration court had told me not to come back until I had my notice for my hearing, but it had not arrived like he said it would. I feared something was wrong with my case.
56. We arrived in Maryland late at night on [REDACTED], 2015. My niece's boyfriend paid for us to stay with a woman he knew, [REDACTED]. She felt bad for us because we had nothing—my son did not even have shoes—and I was crying. She would take me to church with her and one time took me with her to clean someone's home and that woman gave us a blanket to sleep under, gave me a sweater, and gave my son money. Thanks to [REDACTED], I eventually found work in a nearby Salvadorian restaurant called [REDACTED]” and saved a little bit of money each week. I then went to live with my niece and her boyfriend's family for approximately two months. I then lived with a very kind woman, [REDACTED] who rented us a room for eight months. We slept on the floor in our own bedroom.
57. Shortly after arriving in Maryland, I asked [REDACTED] a for help with getting information about my immigration case and she recommended that I visit [REDACTED] in [REDACTED] Maryland. She was Catholic and had heard that [REDACTED] was an organization that provided legal advice to asylum seekers for very affordable prices.
58. [REDACTED] drove me to [REDACTED] in mid [REDACTED] 2015. I paid \$40 for a “charla” led by [REDACTED] who said she was an accredited representative and she went through basic information about the asylum process. However, none of the information specifically applied to my case, so I asked her for individual help after class. She agreed and took me to her office where I told her everything about my case. I explained that I had lost my documents and that I had just arrived from [CITY], and she told me that with no documents, there was no way I could present or win my case.

59. Ms. [REDACTED] did not explain how to get new documents. She never told me that I had to inform the court that I had to move to Maryland or that I could ask the [CITY] court to send my case to the [REDACTED] court. She did not give me any advice on what to do next or make me any referrals to other lawyers. She just told me she could not help me. I left that meeting feeling so scared for me and my son.

Receiving a Hearing Notice in California

60. In late [REDACTED] of 2015, my sister in [CITY] called to tell me I received a letter. It was an immigration court notice stating that I had a court hearing in [CITY] on [REDACTED] 2016.
61. After I received the call from my sister, I again tried to contact the immigration court to inform them that I moved. My niece's sister-in-law who speaks English looked on the internet for the number to an immigration court in [REDACTED] for me. We called together several times. We spent at least an hour listening to different menu options and having our calls transferred until we reached someone we could talk to. The person told me they could not help me and only a lawyer could change my court location. I had no money to pay a lawyer.
62. I had no way to get to [CITY] from Maryland. I could not afford a bus or plane ticket. The tickets at Greyhound were \$500 roundtrip, so a trip for me and my son would cost \$1,000. I was only earning about \$600 a month, and had to pay \$350 for rent and \$150 for food. The little I had left was going to things like my son's school supplies and the payments I still owed for the trip from [CITY] to Maryland. I was afraid I would get fired and I needed the job to provide for my son. I could not even afford to buy a bed or even pay for transportation for work. I was lost.
63. In addition to these financial difficulties, I was very scared to go back to [CITY] because I did not want to see my sister's husband. He had been very forceful in his wish to have me sleep in the bed with him and I was scared of what could happen if I returned. I had nowhere else to stay besides my sister's place.
64. In early [REDACTED] 2016, my friend that I had met in the "*hielera*" shared something on her Facebook regarding [REDACTED]. I messaged her immediately to ask about [REDACTED] and she informed me that [REDACTED] was a pro-bono organization that provided free legal services to asylum seekers such as myself. I reached out to [Facebook Page] via Facebook messenger in [REDACTED] of 2016 and sent them a message containing the details of my case. I told [REDACTED] that I was an asylum seeker who had recently received notice for a hearing in [CITY] but was worried because I had moved to Maryland and had no money to return to [CITY].
65. I sent four messages about my case via Facebook to [Facebook Page] during that month, but they did not accept my message requests and respond to me until early [REDACTED] 2016. They provided me with the contact information of an organization in [REDACTED] [REDACTED] called [REDACTED] which I contacted immediately.

66. Around ██████ 2016, my doctor diagnosed me with high blood pressure and depression and gave me medication to treat both conditions. My doctor explained that I developed high blood pressure because of the stress from having to leave El Salvador. Everything I have been through has caused me to be perpetually stressed and anxious. It is true; I feel like I am never safe.

Receiving an *In Absentia* Removal Order

67. Around ██████ 2016, a deportation order arrived at sister's house for [Respondent 2] and me. My sister called to tell me about the deportation order in ██████ 2016. At this time, I was still trying to contact [Facebook Page] through Facebook. I also began contacting ██████ in early ██████ I told them I had a deportation order in my voice messages. I called the organization at least five times and left voicemails before they replied to me.

68. When ██████ finally got back to me in late ██████, they gave me the contact information of an expert with asylum cases that could help me. I called the phone number and told the man who answered about my case. During this approximately two-hour call, I told this man everything about my case—I told him about my hearing notice, my inability to travel back to [CITY], and the deportation order. He told me that my case would be very hard to win because I had no proof of what we had suffered in El Salvador and I had already been in the United States for a long time. But he did not say that I had one year to apply for asylum. He scolded me for not getting in contact with a lawyer before getting the deportation notice, but I had in fact been trying so hard to find help. He told me he could not help because I had a deportation order and hung up without offering any advice or directing me to any further resources. He never told me I could try to reopen my case or that there was a deadline for filing the motion. It was only when the students started interviewing me that I learned there was a 180 day deadline for me to ask the judge to reopen my case and that I had good arguments for it because I had been through so much and tried so hard. I think that was in March when I found out.

69. After ██████ refused to help me, I continued to look for legal assistance. I researched internet, looked through different phonebooks and asked around at my church, but no one had any information.

70. In ██████ 2016, I found out I had a high-risk pregnancy. Throughout my entire pregnancy, I was almost completely bed-ridden. I would visit the doctor every month and take care of my son as best as I could, but other than that I tried to stay off my feet. I could not even work and tried to spend as little money as I could. My head hurt and I was always tired. My feet and hands were also dangerously swollen. The doctor could not give me strong doses of medication for my depression or blood pressure because it could hurt the baby, so I was in a lot of extra pain.


71. Even though I was almost completely bed-ridden, I continued to look for legal assistance online. After not being able to find other organizations that could provide me with free legal assistance or advice, I decided to message the [Facebook Page] Facebook page again


in ██████████ 2016 asking for help with my case. However, they did not respond until ██████████ 2017; when they responded, they again referred me to the ██████████ organization.

72. Unsatisfied with the response, I went back on the [Facebook Page] Facebook page and saw that a woman named ██████████ constantly posted helpful advice regarding asylum on the page. I decided to message her directly via Facebook messenger. Starting in ██████████ 2017, we would talk about once a month either via Facebook messenger, text message, or on the phone.
73. ██████████ told me that she worked for a small organization called the ██████████ and that they did not have enough people to take my case. However, she told me she was trying to get me into contact with other lawyers who could take my case on.
74. As I got closer to my due date and my symptoms got worse, I told ██████████ that I would not be able to communicate with her very regularly. I had trouble recalling a lot of my case because it was hard to think straight during my difficult pregnancy.
75. On ██████████ 2017, I had my baby, ██████████. However, I had complications post-birth. I had a vaginal hemorrhage. I also had heart complications and high blood pressure, and needed about 40 days to recover. It was only after I had recovered in late ██████████ that I was able to resume regular contact with the ██████████ team. ██████████ connected me with [Psych. Evaluator] in ██████████ 2017, who evaluated me. [Psych. Evaluator] was a mental health professional, from what I understood.
76. A couple of weeks later, an ██████████ staff member said she had found a way to give my case the full attention it needed. She transferred my case to ██████████, who began working on my case with law students' help in ██████████ 2018.
77. Since leaving immigration detention, I have tried as hard as I could to find help, which was difficult because I do not speak English and do not understand the court system. Even after I received my deportation order, I continued to look for help. Luckily, I finally found legal help through ██████████ through [Facebook Page] and the students have been helping me with my case. The students explained to me what no one else had explained, that I had one year to apply for asylum, that I did not need an attorney to have the [CITY] immigration court send my case to ██████████, and that I could have asked the [CITY] court to reopen my case. The students explained that even though I did not ask the court to reopen my case soon after I missed my hearing, I could still ask for this because of everything I have been through and how hard it has been to get information and real help.
78. I have been working hard to make a life for myself and my family in the United States. Even though I still struggle financially, I now have a regular job. I am married to a man I met in the United States, my son [Respondent 2] likes school, and my baby Sofia is 11 months old. I hope I will have a chance to apply for asylum and stay in this country in safety.

Immigration law frequently changes. This sample document is not legal advice or a substitute for independent research, analysis, and investigation into local practices. This document may be jurisdiction-specific or reflect outdated practices or law. CLINIC does not vouch for the accuracy or substance of this document and it is intended rather for illustration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Name: 

Date:  18 _____

CERTIFICATE OF INTERPRETATION

I, [REDACTED] certify that I am fluent in Spanish and English and that I am competent to interpret between these languages. I further certify that, on [REDACTED] 2018, I read the foregoing to [REDACTED] in Spanish before she signed the document. I further declare that I am competent to render this interpretation and that I would testify to the same under penalty of perjury if I were called upon to do so.

[REDACTED]

[REDACTED] 2018

Date

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EXHIBIT

B

Declaration of [Respondent 2], A [REDACTED]

1. My name is [Respondent 2].
2. I was born in El Salvador on [REDACTED] 2003.

Fleeing from El Salvador

3. My mom and I fled from El Salvador in [REDACTED] 2015 because MS-13 gang members threatened us.
4. Throughout my entire childhood, my family's relationship with the MS-13 gang was tense because my dad lives in another neighborhood that's controlled by the rival 18 gang and was sometimes forced to perform special favors for them. The MS-13 gang believed that my father was a member of the 18 gang.
5. MS-13 allowed us to stay in their community as long as my mother paid them a monthly "tax" for running a fruit and vegetable stand on their territory. However, they would constantly remind us that they were being very generous in allowing us to live in their community even though we were a family that was loyal to 18.
6. In [REDACTED] 2015, MS-13 gang members began harassing me on my way to school and pressuring me to join their gang. This was the first time that MS-13 gang members talked to me directly. Before then, they would only address my mother.
7. The MS-13 gang members explained to me that because I was now 11 years old, I was old enough to start paying off the debt I owed them for being loyal to the 18 gang. I had never even spoken to members of the 18 gang, but they thought that I was loyal because of my dad.
8. They told me that I had no other choice but to join, but I told them that my mom would never let me join. She has always told me that as long as she lived, I would never be part of any gang.
9. In [REDACTED] of [REDACTED] 2015, MS-13 gang members came to my house in an attempt to persuade my mother to let me join their gang in order to pay off our family debt. They came to our house four times throughout the course of about a month.
10. The first time they came, they were very stern with my mom and told her that I was required to join regardless of whether she was happy with that requirement. My mom firmly told the gang members that she would not let me join, which made them very angry. However, they eventually left.
11. About two weeks later, MS-13 gang members returned to our house. This time they were armed with guns and were much angrier. They pointed both guns directly at my mother and screamed that they were no longer asking me to join. Rather, they were ordering me

to fulfill my duty. My mom looked very scared, but she firmly denied this order and repeated that she would not let me join under any circumstance.

12. The MS-13 gang members became very angry and pointed their guns at my head this time. They told us to listen carefully to the two choices we had if we wanted to live. They explained that I could either join the gang immediately or that we would have to leave El Salvador for good. Although we didn't like either of these options, we knew that if we didn't choose one, they would kill us. It was a very scary day.
13. The next day, my mom and I started selling off all of our belongings so that we could raise enough money to pay the coyote to take us to the United States.
14. The gang members returned two more times as we prepared to flee our country. They wanted to make sure that we knew they were watching us and waiting for us to leave.
15. I'm really scared that we will be sent back to El Salvador. I know that if we do, MS-13 gang members will kill us. When I was 9, a family in our neighborhood was also targeted by the gang for different reasons. The gang told the family that they had to leave El Salvador, so they fled to the US to seek asylum. However, the U.S. denied them asylum and sent them back to El Salvador. Members of the gang killed the entire family within 24 hours.
16. We fled El Salvador on [REDACTED] 2015.

Arriving in the United States

17. We crossed the United States through the river and arrived at the U.S. border on [REDACTED] 2015.
18. Our trip to the United States was very long and tiring. We traveled blindfolded for most of the time and we barely ate or even drank water. I developed very painful cuts on my lips because of dehydration. It was a scary and uncertain journey.
19. When we arrived in the United States, immigration officials apprehended us. They took us to a cell called the "*hielera*" for three days. When I got to the "*hielera*," they separated me from my mom. I was crying because I was really scared and lonely and was worried that something was going to happen to my mom. So, this big security guard pulled me by my ear and dragged me to see my mom for a couple of minutes, who told me that I needed to stop crying or else we would get in trouble. It was horrible and my ear hurt so much after that. I was very cold and hungry. They only gave me bread with a bit of ham.
20. Next, they took us to another cell called the "*perrera*" for three days. When we got to the "*perrera*," things were better because although I was separated from my mom once again, I could see her through the bars that lined the rooms. A nurse at the "*perrera*" also checked my ear and gave me Band-Aids and medicine, which made me hurt a lot less. We were there about 4 days.

21. On [REDACTED] 2015, we arrived at the detention center in Texas. Conditions were much better there than they were at the “*hielera*” or “*perrera*.” They gave us plenty of food and water and allowed me to see my mom every day.
22. We were released from the detention center on [REDACTED] 2015. The immigration officials gave my mother a yellow folder that contained important documents regarding our asylum case. We didn’t understand what the papers said.

Losing Our Immigration Papers

23. We took a greyhound bus to [CITY]. I was scared and anxious throughout the entire bus ride because I didn’t know where we were going and if the police were going to catch us and send us back. I couldn’t really sleep and we didn’t have much money for food.
24. When we stopped in New Mexico, my mom was going to leave the folder in the bus, but I wanted to protect the folder and make sure it didn’t get lost so I took the folder for safekeeping. The bus driver was not friendly towards us. He looked at us in a very mean way, and I was really scared that he or someone else would steal the folder from. But somehow, I forgot the folder at the [REDACTED]’s. I don’t know why or how I left the folder there. I guess I was just so tired. I really regret it.
25. I didn’t realize that I had forgotten the folder until we were already on the road again. We immediately told the bus driver about the important folder we had forgotten and he told us that we shouldn’t worry because the next bus driver would pick it up for us. However, when we arrived in [CITY], we waited five hours for the next two greyhound buses to arrive and neither bus driver had seen a folder at the [REDACTED]

Overcrowding at My Aunt’s Apartment

26. The living situation in [CITY] was miserable. We were all so crowded in the little apartment and I rarely ate. The people there would look down on us just because we had no money and we had just gotten to the US. I always felt judged.

Moving to Maryland

27. Things got so bad at my aunt’s apartment that my mother decided it was best for us to move somewhere else. We left with my cousin for Maryland on [REDACTED], 2015.
28. Things in the United States have not been easy for me. I’m constantly afraid that immigration officials will catch us and send us back to El Salvador to die. I am always worried.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Name: 

Date:  4/6 _____

CERTIFICATE OF INTERPRETATION

I, [REDACTED], certify that I am fluent in Spanish and English and that I am competent to interpret between these languages. I further certify that, on [REDACTED] 2018, I read the foregoing to [Respondent 2] in Spanish before he signed the document. I further declare that I am competent to render this interpretation and that I would testify to the same under penalty of perjury if I were called upon to do so.

[REDACTED]

[REDACTED], 2018

Date

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EXHIBIT

C

[Psych. Evaluator], PhD
Associate Professor
Department of Social
Work

Presenting Problem: I was asked to conduct a *pro bono* psychosocial assessment of Ms. [REDACTED] by [REDACTED] Ms. [Respondent] is currently exploring the possibility of contesting a deportation order that was issued about a year-and-a-half ago after she missed a hearing in U.S. Immigration Court in [CITY], CA. She is seeking asylum to avoid being returned to El Salvador, where she and her son were threatened at gun-point by gang members. Thus, I first present the court with my qualifications, followed by a discussion of Ms. [Respondent]'s resilience and pro-social qualities/behavior.

Evaluator: I am an Associate Professor of Social Work at [REDACTED] in [REDACTED], where I have taught advanced master's level courses in Psychopathology, Advanced Clinical Practice, Family Therapy and Community Clinical Practice, as well as Immigration Policy. I have been teaching advanced Masters in Social Work courses since 2002. I earned both my MSS and PhD from [REDACTED] College and I have 22 years of clinical practice experience. I have been working with Latino populations in my research since 2004, and I have published my work in multiple disciplines and have been invited to present my work at national conferences. I speak some Spanish though I require the help of an interpreter to understand complex situations and feelings. Therefore, I was assisted by a translator for the psychosocial assessment of Ms. [Respondent] that I conducted on [REDACTED], 2017.

Client History: Ms. [Respondent] worked in a stand that sold fruit in El Salvador, in a neighborhood that she states was dominated by MS-13 gang members, and therefore had become very dangerous. She was separated from her husband, who had moved to a neighborhood dominated by a gang called 18. Ms. [Respondent] lived in a small house with her son. As soon as he reached early adolescence, gang members began approach him about joining, telling him he would have nice clothes, shoes and would be cared for if he became an MS-13 member. They wanted him to help collect "renta (rent)" from bus drivers who operated in the area to prove his loyalty to MS-13. Bus drivers were expected to pay this extortion money in order to do business in the neighborhood. Ms. [Respondent] reported that she has a nephew who is in prison serving an 18-year sentence after he was convicted of collecting "renta," (extortion money) from bus drivers.

In [REDACTED] or [REDACTED] 2015, gang members came to her house for the first time, trying to persuade her to let her son join the gang and telling her that she and her son “owed” them because of their affiliation with 18 through her ex-husband. A few weeks later, armed gang members returned to her house. One of the gang members threatened her at gun point, and told her that her son needed to leave immediately to begin collecting extortion money immediately. She pleaded with them to leave her alone. The two men became very angry and held their guns to her son’s head. Finally, the gang members gave the family a choice: either allow the son to join MS-13, or leave the area and never return. They agreed to give Ms. [Respondent] three days so that she could find a *coyote* who could take the two of them to the United States.

Armed gang members returned several days later to verify that she and her son were leaving. Although Ms. [Respondent] had started selling all of her furniture and belongings to raise money, she hadn’t yet been able to raise enough money at that time to pay the \$7,000 fee the *coyote* wanted for his services. She pleaded with the gang members to give her and her son a few more days to finish selling their things to afford to pay a coyote.

Ms. [Respondent] said she never reported gang threats to the police because she feared retaliation. When gang members used drugs or drank, they would become loud and belligerent, pounding on people’s doors and demanding to be let in so that they could hide from police. She said they were forced to allow gang members to sleep in her house on several occasions. The experience was frightening, she said, because if they were found harboring MS-13 members, they would be subject to arrest and prosecution. She felt the need to comply with the gang’s demands because MS-13 kidnapped the daughter of a family nearby, killed her and left her body almost unrecognizable. One of the gang leaders was later seen in the neighborhood selling the daughter’s necklace. The family fled the area. “The neighborhood was divided,” she said. “You were either with the police or the gangs.” She never reported the gang members to police because she feared they would harm her or her son.

Ms. [Respondent] said she and her son were finally able to leave their home with a coyote on [REDACTED] 2015. Gang members who saw her and her son leaving told her that if they remained in the neighborhood, “You know what will happen to you.” She left behind her aging father, and said she would have liked to remain in her home country but feared that her son would either end up a gang member, and/or in prison like her nephew. She and her son crossed the border into Texas on [REDACTED] 2015. After crossing, they were arrested by the U.S. Border Patrol and detained for several days. She told the Border Patrol that she was fleeing her country because of threats by gang members. Her sister, who was living in [CITY], sent a letter to Immigration and Customs Enforcement stating that Ms. [Respondent] and her son could stay with her and that she would be responsible for them. She was sent to [REDACTED] by ICE on a bus.

She stayed at her sister's house for only around one month because her sister decided she no longer wanted them there. The house was too crowded, and since Ms. [Respondent] had not been able to find work, she was not contributing financially. Her niece had decided to move to Maryland, and Ms. [Respondent] accepted the niece's offer to join her on the drive to Maryland. Ms. [Respondent] said she missed a hearing with U.S. Immigration Court because the notice came to her sister's home in [CITY] after she had relocated to Maryland.

Ms. [Respondent] and her son now live in [REDACTED], Md., with her partner. She has a four-month-old daughter. Ms. [Respondent] works part-time in an El Salvadoran restaurant doing food preparation. She states that she hopes to find full-time employment.

Mental Status Exam

I screened Ms. [Respondent] using two validated instruments, the Post Traumatic Stress Disorder Checklist- Civilian Version, and the Patient Health Questionnaire-9, which screens for major depressive disorder.

The PCL-C, a 17-item validated scale that was developed by the U.S. Department of Veterans Affairs (VA) for detection of trauma symptoms. The scale covers symptoms associated with PTSD such as nightmares, intrusive memories, physical reactions such as sweating/difficulty breathing, insomnia including early morning wakefulness, flashbacks, avoidance of potential triggers, difficulty concentrating, depression and heightened startle reactions. Respondents are asked to endorse intensity of feelings ranging from 1 (no symptoms) to 5 (extreme symptoms) The VA does not have a cut-off point for determining PTSD, but it does recommend population score comparisons with suspected rates via epidemiological studies (VA, n.d.) For example, in the general population, a cut-off score for symptoms would be 30-35. In a VA or civilian specialty mental health clinic, the VA notes a cut-off score of 45-50.

Ms. [Respondent] scored a 43 on the PCL-C. She endorsed a score of 5 (extreme) on 4 items in the 17-item checklist. These included: disturbing memories; feeling disturbed when recalling the trauma; physical reactions such as sweating, shaking; and trying to avoid stimuli that remind her of the trauma. She also endorsed, in the range of 3-4: feeling that the trauma is re-occurring; avoiding activities that remind her of the trauma; feeling that her future is limited/could be cut-off; difficulty remaining sleep; hypervigilance; and feeling frightened. Ms. [Respondent] said she no longer trusts people as she once did. There is adequate indication here to suggest that Ms. [Respondent] would benefit from treatment of post-trauma symptoms, even if she does not meet the diagnostic threshold for PTSD. Under the diagnostic criteria for PTSD in the DSM V (APA, 2013), a trauma survivor must have evidence of symptoms over eight domains – a high threshold. Ms. [Respondent]'s symptoms may not reach this threshold but are nonetheless

concerning. Insomnia, hypervigilance, fear, lack of trust, and feeling that her life could be cut short are serious symptoms.

I also screened Ms. [Respondent] for major depressive disorder using the PHQ-9. She scored a 13, which indicates that she is likely suffering an episode of major depressive disorder-moderate. The cut-off score for warranting intervention for severe depression is 15 (Kroenke, Spitzer & Williams, 2001). The word “moderate” in describing major depression can be somewhat of a misnomer: It indicates that while Ms. [Respondent]'s is not presently suicidal, psychotic or in need of in-patient treatment, she is experiencing marked distress. Untreated major depression also brings the risk of escalation of symptoms.

Ms. [Respondent] was deeply distressed and tearful when discussing the confrontation with gang members that led to her flight from El Salvador with her son. During the depression screening, she endorsed feeling that she would be better off dead more or less every day. I then asked her if she is considering killing herself. She said she is not, but she disclosed that she tried to kill herself with pills when she feared that would not be able to find enough money to hire the *coyote* and leave El Salvador. “I didn’t want to see my son in prison or taking rent,” she said. She reports taking a bottle of analgesics for minor pain such as headaches. The pills made her vomit, and she reports still feeling regret about her action.

She also cried profusely when describing missing her father, and the struggle to establish herself in the United States. “I had to start from zero, from scratch,” she said. “There have been days when I’ve been out walking around in the cold trying to figure things out.” She described going to several [REDACTED] churches, trying to find someone who could help enroll her son in school. “It’s been a struggle.”

Ms. [Respondent] has been receiving medical care for hypertension from [REDACTED] Clinic in [REDACTED] where she has a nurse whom she trusts. She said she developed hypertension only after her arrival in the U.S. She admits to constantly craving sweets and soda, and uses these sugary products to soothe herself and feel better. Though Ms. [Respondent] may not reach the threshold for a DSM-V diagnosis of PTSD or Major Depressive Disorder-Severe, she is clearly in distress and should be seen by a clinician for talk therapy and possibly medication for depression. The American Psychological Association’s guidelines for treatment of a Major Depressive Disorder-Moderate are either talk therapy or medication; the APA stated, however, that patients with severe psychosocial stressors would benefit from both treatments (Armstrong, 2011). I have encouraged her to discuss this concern with the nurse at Holy Cross.

Discussion

It is clear from her presentation and screening results that Ms. [Respondent] is likely suffering through a moderate episode of Major Depressive Disorder. The term, “moderate” should not be interpreted as a condition that is relatively benign. Depression, if left untreated, can lead to suicide and functional impairment. As noted above, she did attempt suicide when she believed that she would not be able to secure a *coyote* to take she and her son to the U.S. She was tearful through much of the interview, especially when describing the threat at gun point. In other words, there was affective consistency with stated material.

Her symptoms have been exacerbated by a trauma in which she believed that they may be murdered by MS-13 gang members. In addition to receiving treatment for major depression, she should be evaluated to determine if she does have PTSD. Under the DSM-V’s diagnostic requirements, a patient must have symptoms that cover 8 constructs including trauma-related arousal, negative thoughts and re-experiencing through nightmares, intrusive thoughts etc (U.S. Department of Veterans Affairs, n.d.). Again, even if Ms. [Respondent] did not meet all 8 criteria, she could still be suffering effects of the trauma; she did endorse severe symptoms on the PCL-C.

There is evidence that the trauma coupled with depression may have impeded this client’s thinking: She reports she allowed her son to hold her important immigration documents on the bus to [CITY] and that he subsequently left these documents at a rest-stop, a costly mistake that left her unsure how to pursue her asylum case. She did not consider the possibility of missing a court date because of her relocation. Recent neuro-imaging studies have focused on hypoactivity of brain functioning during episodes of depression, as well as the correlation between long-term depression and cognitive impairment among the elderly (Denier et al., 2012; Thomas & O’Brien, 2008). Cognitive impairment in major depression can include decreased ability to concentrate, to learn, and to make decisions; the executive function of the brain – which when functioning well abets wise decision-making – has been found in multiple studies to be adversely affected by depression (Lam et al., 2014).

Ms. [Respondent] stated that she had never suffered hypertension prior to her detainment in Border Patrol custody. It is established in research that depression is a culprit in the development of high blood pressure (Rubio-Guerra et al., 2013). A recent meta-analysis of studies on hypertension and depression examined the question of whether depression can actually cause high blood pressure; the researchers determined there is a causal link, and recommend that patients with hypertension be screen for depression (Lin et al., 2012)

Recommendations

The decision to migrate to the United States without authorization was likely born of desperation. Ms. [Respondent] believed she had no options by which she could reasonably

keep her son from compulsory recruitment to the MS-13 gang. She described strong ties to her community - a job, house and her father - prior to fleeing to avoid being killed by the gang. She did not want to leave an elderly father with health concerns. Her situation at this time had proven untenable: she had a choice of escaping and migrating north, or allowing her son to be coerced into gang membership.

Since arriving in the United States, she has sought help from a church to learn how to enroll her son in school. Although the employment she describes does not provide enough hours, she expresses a desire to work full-time. She has since had a baby with a man she met after moving to Maryland. They share a residence together. Ms. [Respondent]'s wish is to remain in the United States with her new partner, son, and her baby to spare them the peril of gang threats in her home country.

Signed by [REDACTED] PhD

[REDACTED] 18

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7

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EXHIBIT

F

Declaration of [REDACTED]

1. My name is [REDACTED]. I am including this declaration in support of my sister [REDACTED] Motion to Reopen her immigration case.
2. [REDACTED] arrived in [CITY] in [REDACTED] 2015 and stayed with me for about one month at the apartment where I was living.
3. It was my sister-in-law's two-bedroom apartment and I was living in one of the bedrooms. The other people living in the apartment besides me were my sister-in-law and her four sons, my brother, my husband, my husband's kid, [REDACTED], and [REDACTED]'s son.
4. It was really bad living together in that apartment. It was too crowded and there was no privacy. There wasn't enough space so people were moving between bedrooms and having to share beds or sleep on the floor.
5. Everyone had to buy their own food, but [REDACTED] wasn't able to pay for things. There wasn't enough food to go around.
6. There was an understanding that [REDACTED] couldn't stay there permanently. I didn't say she had to leave by a fixed date, but we continuously had conversations about the fact that she had to leave. There were enough conversations about this that [REDACTED] felt pressure to leave. Other people in the house also made comments to her that there were too many people there.
7. I remember going with [REDACTED] to the Immigration Court in [CITY] soon after she arrived in [CITY]. The staff at the Immigration Court wouldn't give [REDACTED] any information, though. They told her they couldn't help her because she didn't have any of her documents and that she had to wait until she received some kind of notification in the mail.
8. The first immigration letter I got for [REDACTED] in the mail came in [REDACTED]. When I received the letter, I called [REDACTED] and told her that the letter said she had a court date in [CITY] [REDACTED] was worried. She told me she couldn't come to [CITY] because she couldn't afford the trip. No one else in the family could have helped her out because no one had the money available to pay for her trip.
9. A second immigration letter arrived at that [CITY] apartment in [REDACTED]. I got that letter late because I had since left that apartment. When I learned about the letter, I called [REDACTED] to tell her about it.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Name:

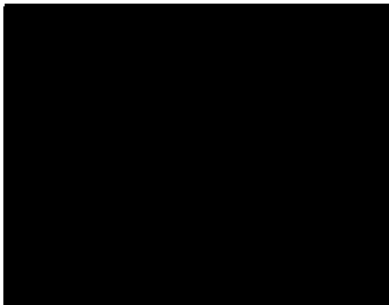
A large black rectangular redaction box covering the name of the declarant.

Date:

A black rectangular redaction box covering the date.
18 _____

CERTIFICATE OF INTERPRETATION

I, [REDACTED] certify that I am fluent in Spanish and English and that I am competent to interpret between these languages. I further certify that, on [REDACTED] 18, I read the foregoing to [REDACTED] in Spanish before she signed the document. I further declare that I am competent to render this interpretation and that I would testify to the same under penalty of perjury if I were called upon to do so.



[REDACTED] 2018
[REDACTED] 2018
Date