

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

IN THE MATTERS OF:

) A (LEAD)
) A
) A
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**BRIEF IN SUPPORT OF RESPONDENTS’ APPLICATIONS FOR
ASYLUM, WITHHOLDING OF REMOVAL AND
RELIEF UNDER THE CONVENTION AGAINST TORTURE**

I. INTRODUCTION AND SUMMARY OF PAST PERSECUTION¹

CE P V is a 45-year-old native and citizen of Guatemala. She was born in Quetzaltenango, Guatemala, on September 28, XXX.

Ms. P has faced extreme discrimination, prejudice, and abuse due to her race as an indigenous Guatemalan, social status, and gender her entire life. As a child, she was forced by her parents to work two to three days a week cutting up wood with a machete on a mountain two hours from her home. She would carry bundled wood back home on her head, often being taunted and shamed for doing the work of a donkey. Because she is indigenous, people would commonly accuse her of stealing the things she was selling, tell her she smelled, and threaten her with violence. If she did not work or if the wood did not sell, her parents would punish her. However, when she did work, she was subject to more than just emotional abuse – she was

¹ The facts included in this section derive from Declaration of CPV, submitted to this court on April 12, 2020, as part of her motion to reopen and rescind the *in absentia* order of removal issued against her, Tab A.

raped for the first time when she was about eleven years old by men known as the “guards of the mountain” where she was forced to go cut and gather wood.

Her parents forced her to marry as a young teenager so they could obtain a small piece of land. She soon became pregnant with her oldest son, J, and her husband disappeared. Her second son, K, was the product of a subsequent relationship with AF that quickly ended as Mr. Fuentes’s family disapproved of his relationship of an indigenous woman.

Ms. P met E S when her son K was very young, and he treated her and her son K well at first. Months into the relationship, Mr. S started becoming abusive. *Id.* He began beating her, threatening her, and raping her. Both of the children born of the relationship (M A P, born on November 17, XXX, and A C P, born on August 22, XXX) were the result of rape.

Ms. P suffered years of abuse at the hands of Mr. S, who was involved in the 18th Street gang. He often harmed her in front of her children. In one instance, Mr. S threw a beer bottle at M’s head because the boy had tried to defend his mother, and the boy was hurt so badly that he needed stitches. *Id.*; *see also* Tab J (M Decl.). Mr. S also regularly beat Ms. P’s children. Tab A; Tab J.

Mr. S regularly used emotional and physical abuse to ensure Ms. P and her children were unable to leave him. He would routinely use their indigenous status as an insult, claiming that they were lesser than him and that Ms. P belonged to him. Tab A (Decl.); *see also* Tab J (M Decl.). He also terrorized Ms. P and her children through his worship of the god of death, sacrificing animals at an alter in the home and forcing Ms. P to pray to the god of death. Tab A (Decl.). If Ms. P, who is an evangelical protestant who regularly attended church in Guatemala, resisted praying to the god of death, Mr. S would get very upset and beat her. *Id.* Ms. P explains:

“Words are not enough to describe how scary [Mr. S] was. He had the heart of a wild beast.” *Id.*

After beating his wife and children, Mr. S would often lock them in the house, often without food, to keep them from leaving and reporting the abuse. Tab A (Decl.). One time when Ms. P tried to report the abuse to the police, she was told “What are you here for? Women are supposed to please their men and do what we say,” and the officer refused to take a report. *Id.* Another time when Ms. P attempted to make a report to the police about her abuse, Mr. S found out, beat her, and mocked her, saying she was stupid to think anyone would help her and told her he controlled everything and had contacts everywhere. *Id.*

Ms. P worked in the fields and washed laundry to try to support her children, but Mr. S usually took away any money that she earned. *Id.* If Ms. P tried to use the money to buy food or clothing for the family, Mr. S would beat her and say she could not use the money without permission. *Id.* Mr. S also forced Ms. P’s sons M and K to work in the bus industry, a dangerous job, and tried to recruit them into his gang. *Id.*; *see also* Tab J (M Decl.).

Mr. S not only regularly raped Ms. P, but he also forcibly sex trafficked her, forced her to undergo abortions, and frequently beat her, even causing her to miscarry. Tab A (Decl.). Around early 2015, Mr. S brought a man to the house and told him “she’s all yours” and proceeded to watch while the man raped Ms. P. *Id.* Mr. S subsequently brought other men to rape her. *Id.* After one of the rapes, she was severely injured, but Mr. S locked her in the house for five days and did not allow her to seek treatment at the hospital. *Id.* She became pregnant on multiple occasions and was forced to either have abortions or was beaten by Mr. S until she miscarried. *Id.* Ms. P came close to committing suicide to escape the abuse. *Id.*

Finally, Ms. P and her children fled the house while Mr. S was not home. Tab A (Decl.). After living in hiding for about a month, they were able to use the title to her father's land to pay a man to help her and her children, K, M, and A, flee Guatemala. *Id.*

Ms. P experienced past persecution on account of her membership in the particular social groups of **1) Guatemalan women; 2) indigenous Guatemalan women; 3) Guatemalan women in domestic relationships who are unable to leave; 4) indigenous Guatemalan women in domestic relationships who are unable to leave; 5) Guatemalan women treated as property; 6) indigenous Guatemalan women treated as property.** She also suffered past persecution on account of her political opinion when she experienced multiple forced abortions. *See* INA §101(a)(42)(A) (describing that a person who has been forced to undergo an abortion has been persecuted on account of a political opinion). Ms. P was also persecuted on account of her race and nationality as well as her religious beliefs and practices. Ms. P fears future persecution on account of these same grounds.

The government of Guatemala is unable or unwilling to protect Ms. P. Ms. P reported the severe domestic violence that she suffered to the police, but the police refused to even take a report. On another occasion when Ms. P tried to report the violence that she endured, Mr. S found out about her efforts. He beat her and mocked her, telling her that he had contacts everywhere. In addition, country conditions reports cited below establish that the government of Guatemala is ineffective in protecting women from intimate partner violence.

Ms. P, by and through her undersigned counsel, respectfully submit this Brief in support of her applications for asylum pursuant to Section 208(a) of the Immigration and Nationality Act ("INA") and withholding of removal pursuant to Section 241(b) of the INA and the Convention Against Torture ("CAT"). As set forth below, the facts and law support a grant of asylum.

II. PROCEDURAL HISTORY

Ms. P and her children, A and M, entered the United States on approximately June 5, 2015, near the border between Ciudad Camargo, Mexico, and Rio Grande City, Texas. Ms. P

and her children were placed in ICE custody and detained for about a month at the Karnes detention center.

Ms. P completed a Credible Fear Interview (“CFI”) on June 29, 2015. Tab P (Form I-870 and CFI Interview Notes). As a result of the interview, an Asylum Officer determined that Ms. P had established a credible fear of persecution. *Id.* Ms. P and her children were then released from ICE custody on approximately July 6, 2015, and she was placed on an ankle monitor. Tab A (Decl.). Before release, Ms. P and her children were given Notices to Appear (“NTA”) at the immigration court in San Antonio at a time and date to be determined. The NTAs charged them with being aliens present in the United States who had not been admitted or paroled. Ms. P filed an I-589, application for asylum and withholding of removal on January 26, 2018.

Due to exceptional circumstances and lack of notice, Ms. P and her children missed their originally scheduled court hearing at the San Antonio immigration court on October 7, 2019. However, Ms. P, through former counsel, filed a motion to reopen and rescind the *in absentia* order of removal issued against her. This motion was granted by the San Antonio immigration court on June 22, 2020. Venue was thereafter changed to the Arlington immigration court and thereafter to the newly opened Hyattsville immigration court. On December 14, 2022, Ms. P and her children filed written pleadings, in which they admitted the factual allegations and conceded the charges of removability. On that same date, Ms. P and her children filed a motion to schedule an individual hearing. The court granted the motion and scheduled Ms. P and her children for an individual hearing on July 21, 2023.

III. LEGAL ARGUMENT FOR ASYLUM ELIGIBILITY FOR MS. P

A. Ms. P is eligible for asylum

In order to apply for asylum, applicants must prove by clear and convincing evidence that they filed their applications for asylum within one year of their arrival in the United States or they must qualify for an exception to the one-year filing deadline.² Ms. P is eligible to apply for asylum pursuant to the *Mendez-Rojas* class settlement because she was 1) detained by DHS and passed a credible fear interview and 2) was never advised that she needed to file for asylum within one year of her entry to the United States. Ms. P filed for asylum on January 26, 2018. Subsequently, Ms. P timely filed a notice of *Mendez-Rojas* class membership in December 2021. Therefore, the one-year filing deadline should not be at issue in this case, as Ms. P is covered by the terms of the settlement agreement.

B. Ms. P is a refugee

To qualify for asylum, a non-citizen must show that she meets the definition of a “refugee.” *See* 8 U.S.C. § 1158(b)(1). A “refugee” is a person who is unable or unwilling to return to her country due to past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.³

1. Ms. P experienced harm serious enough to rise to the level of past persecution.

The harm experienced by Ms. P clearly rises to the level of persecution. The term persecution has been interpreted broadly to include “the infliction of suffering or harm upon those who differ... in a way regarded as offensive [by the persecutor].⁴ Threat of death and injury to a person’s body or freedom clearly constitute persecution.⁵

² INA § 208(a)(2)(B) and (D); 8 C.F.R. § 1208.4(a)(2)(A) and (B).

³ INA § 101 (a)(42)(A).

⁴ *Matter of Acosta*, I&N Dec. 211 (BIA 1985).

⁵ *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005).

Ms. P was persecuted by Mr. S who repeatedly physically abused her over the course of their relationship. He subjected her to constant physical mistreatment, including frequent beatings. He threatened her and said horrible things towards her. He harmed her in front of her children. He raped her on multiple occasions, and trafficked her, forcing her to have sex with other men against her will. During one incident, he lunged at her with a serrated knife. When Ms. P tried to grab his hand, he cut her upper, inner right arm. He would lock them up at home and try to prevent her from telling anyone about the abuse. He also frequently hit the children and on one occasion threw a beer bottle at the head of her son, M, leaving a scar on his forehead. In addition to the abuse that she suffered at the hands of Mr. S, Ms. P also endured a childhood rape when she was eleven years old, frequent mistreatment on account of her indigenous identity, and a forced marriage when she was just a teenager.

The harm suffered by Ms. P rises to the level of persecution. Rape and sexual abuse constitute violent assaults and are harms that are serious enough to rise to the level of persecution. Repeated beatings and threats in the context of a domestic relationship rise to the level of persecution.⁶ Under Fourth Circuit law, death threats on their own are persecution.⁷ When asylum seeker experienced multiple instances of harm over time, one also must consider whether these incidents cumulatively rise to the level of persecution.⁸ In *O-Z- & I-Z-*, the BIA found that three physical assaults, receipt of harassing mail, and property vandalism rose to the level of persecution.⁹ Ms. P clearly experienced more violent incidents than the respondents in *O-Z- & I-*

⁶ See *In re R-A-*, 22 I&N Dec. 906, 914 (BIA XXX), remanded by *Matter of R-A-*, 22 I&N Dec. 692 (A.G. 2008).

⁷ *Alvarez Lagos v. Barr*, 927 F.3d 236 (4th Cir. 2019).

⁸ See e.g., *O-Z- & I-Z-*, 22 I&N Dec. 25-26.

⁹ *Id.*

Z-. Ms. P experienced threats, beatings, and sexual abuse over the course of several years. There is no doubt that these experiences rise to the level of persecution.

Furthermore, the abuse suffered by Ms. P is analogous to the conduct stipulated to constitute past persecution in *Matter of A-R-C-G*. In *A-R-C-G*, the respondent began a domestic relationship with her abuser when she was 17 years old. *Matter of A-R-C-G* 26 I&N Dec. 388, 389. (BIA 2014). The respondent suffered frequent beatings causing her physical harm and was raped. *Id.* She was also burned by her partner. *Id.* The respondent in *A-R-C-G*, appealed to the authorities, but they did not protect her. *Id.* She tried to leave the relationship, but she was convinced to return each time with threats and promises. *Id.*

As a result of the harm that she experienced, Ms. P has been diagnosed with Post-Traumatic Stress Disorder and Major Depressive Disorder. [Submission of June 23, 2023, Tab A.] Because of the serious nature of the harm she experienced and the lasting psychological impact that she continues to experience, it is clear that the mistreatment Ms. P suffered was serious enough to rise to the level of persecution.

2. Ms. P experienced past persecution and has a well-founded fear of future persecution on account of all five protected grounds

a) Ms. P suffered past persecution because she was a member of cognizable particular social groups that are defined in part by race and nationality

A particular social group within the meaning of the Immigration and Nationality Act is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.¹⁰

¹⁰ *Matter of W- G- R-*, 26 I&N Dec. 208, 210 (BIA 2014).

The social groups identified by Ms. P are defined by common, immutable traits including race, nationality, gender and status in a domestic relationship. An immutable characteristic is one that “the members of the group either cannot change or should not be required to change.”¹¹ A group is particular if it has “well-defined boundaries” and is composed of a “discrete class of persons.”¹² Terms used in a group formulation must have commonly accepted definitions.¹³ A group is socially distinct when there is “evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristics to be a group.”¹⁴ The Fourth Circuit Court of Appeals has endorsed the viability of particular social groups based, in part, on gender when the Court remanded *Alvarez Lagos v. Barr*, back to the Board of Immigration Appeals in a published, presidential decision.¹⁵

Ms. P identifies her proposed social groups in the following way: **1) Guatemalan women; 2) indigenous Guatemalan women; 3) Guatemalan women in domestic relationships who are unable to leave; 4) indigenous Guatemalan women in domestic relationships who are unable to leave; 5) Guatemalan women treated as property; 6) indigenous Guatemalan women treated as property.** Ms. P is a member of a particular social group within the meaning of INA § 101(a)(42)(A) because her gender and relationship status are immutable, her status as a woman unable to leave a domestic relationship is sufficiently particular, and the systematic violence against women (particularly indigenous women) in the context of domestic relationships in Guatemala demonstrates their social distinction. *Matter of A-R-C-G* 26 I&N Dec. 388 (BIA 2014) (holding that married women in Guatemala unable to leave their relationship constituted a

¹¹ *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985) overruled on other grounds by *In re Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

¹² *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008).

¹³ *Matter of M-E-V-G-*, 26 I&N Dec. 227, 227 (BIA 2014).

¹⁴ *Matter of W-G-R-*, 26 I&N Dec. at 217.

¹⁵ *Alvarez Lagos*, 927 F.3d 236 (4th Cir. 2019).

particular social group.) In addition, the evidence in the record supports the legal conclusion of nexus between the persecution Ms. P suffered and her membership in a cognizable particular social group.

(1) Immutability

The proposed social groups are defined by the immutable traits of race, nationality, gender, and permanence of the domestic relationship. This group is defined by race, nationality and gender – all of these characteristics are immutable. In *Matter of Acosta*¹⁶, the Board of Immigration Appeals described the requirements for particular social group by stating that a “shared characteristic might be an innate one such as sex, color, or kinship ties. In *Matter of Kasinga*¹⁷, the Board held that a group defined by gender, tribal identity, youth and opposition to a harmful traditional practice was cognizable. Circuit Courts also have recognized the viability of gender and nationality based social groups. For example, in *Hoau v. Gonzalez*¹⁸ the Fourth Circuit Court of Appeals found that “[f]orced female genital mutilation involves the infliction of grave harm constituting persecution on account of membership in a particular social group that can form the basis of a successful asylum claim.”¹⁹ UNHCR guidelines on International Protection²⁰ advises that sex can form part of a particular social group because women are a clear subset defined by innate and immutable characteristics who often experience differential treatment from men.

¹⁶ 19 I&N Dec. at 233

¹⁷ 21 I&N Dec. at 366

¹⁸ 472 F.3d 227, 232 (4th Cir. 2007).

¹⁹ See also *Ngengwe v. Mukasey*, 543 F.3d 1029, 1034 (8th Cir. 2008) (finding Cameroonian widows to be a valid particular social group); *Niang v. Gonzales*, 422 F.3d 1187, 1198-1200 (10th Cir. 2005 (stating that gender plus tribal identity, without more, can constitute a particular social group); *Cece v. Holder*, 733 F.3d 662, 672 (7th Cir. 2013) (discussing single Albanian woman); *Fatin v. INS*, 12 F.3d at 1240 (discussing Iranian woman).

²⁰ GUIDELINES ON INTERNATIONAL PROTECTION: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees ¶30 (May 7, 2002)

In addition, relationship status may be an immutable characteristic where the individual is unable to leave the relationship or the partner imputes relationship status upon the victim by failing to recognize the end of the relationship. *Matter of A-R-C-G* 26 I&N Dec. 388, 393 (BIA 2014). Finding that the respondent's relationship status was immutable, the Board of Immigration Appeals in *Matter of A-R-C-G* stated that religious, moral, cultural, or legal constraints should be used to evaluate the immutability of the relationship. *Id.* This is in line with the brief filed by the Department of Homeland Security (DHS) in *Matter of R-A-*, 22 I&N Dec. 906. In that brief DHS explained that relationship status could be immutable, "if the abuser would not recognize a divorce or separation as ending the abuser's right to abuse the victim." *Department of Homeland Security's Position on Respondent's Eligibility for Relief*, at 28. Ms. P's relationship status is an immutable characteristic because her ex-partner refused to let her end the relationship. He treated her as a slave who belonged to him and had to serve him always. He would lock her up in the house and not let her leave. He would take any money that she earned working in the fields or washing laundry, telling her that she could not use his money without permission. He found out about her attempts to report him to the police and beat her as a result. He trafficked her to other men who raped and abused her. Mr. S' actions demonstrate that he did not recognize Ms. P's attempts to leave the relationship or separate her and her children from him. He believed he had an unquestionable right to subject Ms. P to horrific physical and sexual violence, even in front of her own children. The country conditions evidence confirms that this is true for a staggering number of women attempting to leave abusive relationships in Guatemala. [Submission of June 23, 2023, Tabs F-N.] Thus, Ms. P's relationship status is an immutable characteristic for the purposes of the particular social group analysis.

(2) Particularity

As in *Matter of A-R-C-G*, the words describing Respondent’s social groups establish a clear benchmark for group membership. Like the words in *Matter of A-R-C-G*, “indigenous” “women” and “unable to leave the relationship” have commonly accepted meanings in Guatemalan society. In addition, “domestic relationship” also has an accepted meaning in Guatemalan society evidenced by the fact that some special services exist to assist those suffering from gender-based violence, including issuing restraining orders for their immediate protection. [Submission of June 23, 2023, Tab H.] In addition, like the country conditions analyzed in *Matter of A-R-C-G*, the conditions in Guatemala demonstrate the same serious issues of domestic violence, *Machista* culture, and an unwillingness of police to provide adequate protection to victims of domestic abuse. *Id* (describing that domestic violence remains a widespread and serious problem in Guatemala and that police had minimal training and capacity to investigate sexual crimes or assist survivors of such crimes). Guatemala is characterized by a culture of “machismo,” a system of patriarchal gender biases which subject women to the will of men. Guatemalans are taught from early childhood that women are subordinate to men to whom they own obedience and submission. This culture of machismo disproportionately affects indigenous women, who remain at the bottom of society’s ladder and are the most likely to suffer violence and the least likely to receive protection when they do [Affidavit of Linda Green, Submission of April 12, 2020 at Tab LL.]

(3) Social Distinction

As in *Matter of A-R-C-G*, Guatemalan women in domestic relationships who are unable to leave are socially distinct. Social distinction requires a showing “that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.” *Matter of W-G-R-*, 26 I&N Dec. at 217. Furthermore, a group is socially distinct where society makes meaningful distinctions based on immutable characteristics, such as a married woman in a

domestic relationship she cannot leave. One way these distinctions are shown is if society “recognizes the need to offer protection to victims of domestic violence, including whether the country has criminal laws designed to protect domestic abuse victims, whether those laws are effectively enforced, and other sociopolitical factors.” *Matter of A-R-C-G*, at 394. The Board in *Matter of M-E-V-G-* discussed the evidence that would be relevant to showing of social distinction:

Evidence such as country conditions reports, expert witness testimony, and press accounts of **discriminatory laws and policies, historical animosities, and the like** may establish that a group exists and is perceived as “distinct” or “other” in a particular society.

Matter of M-E-V-G-, 26 I&N Dec at 336 (emphasis added). In addition, the Board recognized the importance of whether a state has a “culture of machismo and family violence,” and other sociopolitical factors as being relevant to the question of social distinction of a group.

Matter of A-R-C-G at 394.

Here the country conditions evidence shows that Guatemalan indigenous women unable to leave their domestic relationships, specifically, and Guatemalan women, broadly, are distinct in their society, because (1) they are the objects of “historical animosities” in the forms of a culture of *machismo* and family violence that dates to the country’s colonial past and an epidemic of gender-motivated crime that continues with impunity, and (2) they suffer from “discriminatory policies,” in the forms of inadequate implementation of laws designed for their protection and near-total impunity for violence committed against them.

Guatemalan women are the objects of a machista culture

Guatemalan women are the objects of “historical animosities,” *see Matter of M-E-V-G-*, 26 I&N Dec at 336, in the form of a “culture of machismo” and a history of racial discrimination against indigenous people dating back to the legacy of Spanish colonialism. Machismo is a system of patriarchal gender biases which subject women to the will of men. This negative cultural attitude towards Guatemalan women pervades all aspects of Guatemalan society, but is especially acute in the case of indigenous women. As the expert declaration from Linda Green notes,

the Mayan woman is still regarded as holding an inferior and defenseless position. As a result of these social conditions rural Mayan women are the most vulnerable population in Guatemala. Because of their lack of education and fluency in Spanish, their socially inferior position relative to men, both ladino and indigenous, Mayan women are at greater risk to manipulation and victimization.

Submission of April 20, 2020, Tab LL. An article from the media source Remezcla confirms that Guatemala is the country in the region with one of the largest numbers of gender-based murders, and notes that there is “an undeniable war against women and girls in Guatemala.” The government does nothing to protect women and girls and will often refer to the feminist movement as the public enemy. (Submission of June 23 2023, Tab M.) Social norms in Guatemalan relegate women to domestic roles such as childrearing, housekeeping and serving the needs of men and Guatemalan women are distinguished in society by these sexist expectations.

Indigenous Guatemalan women, and specifically, those in domestic relationships that are unable to leave, are groups targeted for particular kinds of harm.

Guatemalan women, and particularly those in abusive domestic relationships, are also meaningfully distinguished in Guatemalan society because they live at elevated risk for particular kinds of harm. Evidence that a group is targeted for persecution in a particular society may serve as evidence of the group’s social distinction and viability. *Matter of C- A-*, 23 I. & N. Dec. at 960 (“persecutory action toward a group may be a relevant factor in determining the visibility of a group in a particular society”); *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007). As

noted above, Guatemala has an extremely high rate of femicide, and thousands of women have been murdered in Guatemala in the past several years. [Submission of June 23 2023, Tab M.] The incidents of gender-based murders of Guatemalan woman, specifically those killed by their domestic partners, cannot simply be explained as part of the generalized violence in Guatemala. Rather, as Linda Green notes in her expert affidavit, Mayan women remain at risk by “anyone...who understands that there is total impunity for violence against members of this vulnerable community. This accounts for the ongoing abuse of Mayan women at the hands of men from all sectors of Guatemalan society...” (Submission of April 12, 2020, Tab LL.) More than 90% of Guatemalan women in rural communities have suffered domestic violence or other types of gender-based violence throughout their lives. *Id.* Indigenous Guatemalan women are set apart in society as the targets for these types of gender-motivated harm, the commission of which is rarely punished. *Id.*

Impunity for violence against indigenous Guatemalan women sets them apart as a group that can be harmed without consequence, often by their male domestic partners.

The failure of Guatemalan authorities to effectively implement laws designed for the protection of Guatemalan women broadly, and specifically those in domestic relationships, is just one part of a larger problem of impunity for violence against women in Guatemala, which also distinguishes the group in society. For example, research has shown that Guatemala exhibits a “culture of state-cultivated impunity [which] means that 98% of femicides go unpunished.” (Submission of June 2023, Tab F.) Guatemala’s femicide crisis is fueled by an ingrained culture of virulent machismo, high levels of gang and narco-violence, and a corrupt, unaccountable police force, untrained in the appropriate handling of gender violence cases. The State Department’s Human Rights Report concurs that impunity was common for crimes of domestic violence. [Submission of June 23 2023, Tab H.]

The Guatemalan authorities’ failure to effectively investigate and prosecute femicide, domestic violence, and sexual violence against Guatemalan women confirms society’s *machista* view that violence, and particularly family violence, against Guatemalan women is an acceptable norm.

iv. Nexus

The evidence demonstrates that Ms. P's race, gender and immutable characteristics of her defined social groups represent "at least one central reason" that she suffered persecution in the past and would be reasonably likely to suffer persecution if removed to Guatemala. *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007) (citing INA § 208(b)(1)(B)(i)).

Mr. S' own actions show his motivations for violence by revealing his belief that he had the right to treat Ms. P as his property. Ms. P describes in her declaration that "Mr. S thought he was king...[h]e thought I was his woman and belonged to him. He thought I was his slave who had to serve him always." He took any money that Ms. P managed to earn and would lock her and the children in the house and not let them leave. He forced her to have multiple abortions and would beat her so badly that she would miscarry. These types of harm are intrinsically gender-based and served to inflict a particularized form of terror that can only be felt by a pregnant woman.

Ms. P describes that Mr. S would frequently mention that she and her children were indigenous. He would call them derogatory names for indigenous people like "caites" (a word for a traditional indigenous Guatemalan shoe) and "huarachera," referring to a woman who wears a flip flop sandal. He would also make fun of her when she said certain words with an accent or did not understand words in Spanish.

Moreover, whenever Ms. P attempted to separate herself from him, Mr. S' abuse of her intensified. He found out when she reported him to the police and beat her as a result. Even after Ms. P and her children escaped to the United States, their suffering did not end. Ms. P believes that Mr. S is responsible for the death of her beloved brother who was killed when he was purposely hit by a car in 2016. Since her departure, several of Ms. P's other family members have been targeted as well. Mr. S refused to recognize that Ms. P had the right to live independently of him or refuse his advances. His actions reflect his culture's belief that women are perceived to be the property of men.

In addition, Mr. S attempted to assert his control over Ms. P through repeated acts of rape. "Rape is not about sex; it is about power and control." *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1076 (9th Cir. 2004). Men rape women in order to reinforce patriarchal norms of male control over women's bodies. It is not a "random criminal act." *Id.* at 1077. Here, Mr. S's rapes of Ms. P, together with incidents of extreme violence and threats to kill Ms. P and her family, show that his motive was to exercise power and control over Ms. P, whom he believed that he could take sexually

by force without consequence simply because she is a Guatemalan woman, and the nature of their shared domestic relationship gave him the authority to act with impunity. Not only did he force her to have sex with him against her will, but he also forced her to have sex with other men. Mr. S's actions reveal that he considered Ms. P to be his "property" who he could do as he wished with.

Experts on Guatemala have concluded that violence against Guatemalan women is motivated by gender and a culture of gender-based violence within the family structure, and that indigenous women in particular are at risk of gender-based violence. As Linda Green, Associate Professor of Anthropology at the University of Arizona explains,

Due to their absolute lack of social status or access to state protection, Mayan women remain more vulnerable to harm and have less access to justice for harms committed against them than their ladino [non-indigenous] counterparts. Violence against women, including femicide --the gender-motivated killing of women-- has reached epidemic proportions in Guatemala over the past fifteen years. On average, more than 700 women have been murdered every year for the past decade-plus, many dismembered or mutilated.

[Submission of April 22, 2020, Tab LL, p. 323.]

Many abusive men in Guatemala recognize that they operate in an environment of complete impunity, as no action is taken against abusers of women. As Professor Green explains:

Mayan women are the most vulnerable population in Guatemala. Because of their lack of education and fluency in Spanish, their socially inferior position relative to men, both ladino and indigenous -- Mayan women are at greater risk to manipulation and victimization. This is particularly true for women alone, either abandoned or widowed, who are often the poorest of the poor. They also know that the abusers operate in an environment of impunity, as those who perpetrate rape and domestic violence are rarely punished.

[Submission of April 22, 2020, Tab LL, p. 325.] The rampant abuse of indigenous Guatemalan women shows the nexus between the harm and the protected ground, as abusers feel empowered to persecute women and their intimate partners without any fear of consequences.

d. Ms. P suffered past persecution on account of her political opinion

Ms. P was persecuted by Mr. S on account of her political opinion when he forced her to have multiple abortions against her will. On two occasions, he took her to a medical facility to abort pregnancies. On other occasions, he beat her so badly that she miscarried. The statute at INA §101(a)(42)(A) specifically defines a “refugee” to include a person who has been forced to undergo an abortion and that this persecution is deemed to be on account of a political opinion. Because Ms. P suffered several forced abortions by Mr. S, she has been persecuted on account of her political opinion.

e. Ms. P suffered past persecution on account of her religious beliefs and practices

Ms. P also suffered persecution by Mr. S on account of her religious beliefs and practices. Ms. P is and has been an evangelical Christian. Her faith is very important to her and is what has helped her to survive years of abuse. In Guatemala, she regularly attended the Lily of the Valley Church. In contrast, Ms. P describes that Mr. S, her abuser, believed in the god of death. He maintained an altar in the home for the god of death. On two occasions, she saw him doing sacrificial rituals, killing a chicken and a rooster. Another time he killed a dog and poured its blood all over the altar in the home. On occasions when Ms. P was being beaten, she would tell him that “God is watching you.” He would respond that the only God is the God of death so he was not afraid. He would ask her and her children to pray to his god of Death and would forbid them from mentioning their God in the house. If she ever resisted or stated that there was only one God, he would get upset and make her pray in front of the altar. If she resisted, he would beat her. She has a scar from when he threw her in front of the altar in the house. Ms. P suffered targeted beatings and an inability to practice her religion in her home by Mr. S, making it clear that her religion was at least one central reason for the persecution that she suffered.

3. Ms. P has a well-founded fear of future persecution on account of the protected grounds described above.

Because she experienced past persecution, Ms. P is presumed to have a well-founded fear of future persecution.²¹ The Department of Homeland Security cannot rebut that presumption because gender-based violence (particularly against indigenous women) remain prevalent in all

²¹ See 8 C.F.R. § 1208.13(B)(1).

parts of Guatemala. Ms. P fled Guatemala in 2015, and country conditions have not changed. Specifically, gender-based violence remains prevalent in Guatemala. Even independent of the presumption, Ms. P can establish that she will be persecuted upon return to Guatemala.

The Guatemalan police remain corrupt and ineffective. For example, the US Department of State 2022 Country Report on Human Rights practices discussed that violence against women and girls was infrequently addressed by the authorities and impunity persisted. (Submission of June 23, 2023, Tab H). The submitted country conditions evidence is replete with evidence that police in Guatemala do nothing to assist women who suffer domestic violence. In Ms. P's own case, she made efforts to report the abuse that she suffered but the police refused to accept her report. On one occasion, her former partner discovered what she had done and beat her even more severely. Unfortunately, this is not uncommon in Guatemala, as police have minimal training and capacity to investigate sexual crimes or assist survivors of such crimes, and the government did not enforce the law effectively.

Ms. P's well-founded fear is further bolstered by the fact that her family in Guatemala has continued to suffer serious harm, even since she departed Guatemala. Indeed, her beloved brother was murdered in 2016 in which she believes was a retaliatory event aimed at her.

In addition, internal relocation in a country such as Guatemala is close to impossible, particularly for indigenous women. The expert affidavit of Linda Green describes that internal relocation is impossible for indigenous Guatemalan women in both urban and rural areas. As she writes in her affidavit:

If an indigenous woman did try to relocate, she would become extremely vulnerable to victimization and suspicion. She would be most likely forced to live in an impoverished neighborhood in which she had little or no social support or protection. She would risk being targeted for physical and/or sexual violence, being forced into prostitution, or falling into destitution without hope of government protection or assistance. Social networks are crucial for survival in Guatemala whether in the rural areas or urban centers.

[Submission of April 22, 2020, Tab LL, p. 328.] For all the above reasons, internal relocation is not a viable option for Ms. P. DHS cannot establish either a fundamental change in circumstances or that internal relocation would be reasonable under all the circumstances. As such, the presumption of a well-founded fear of persecution in Guatemala.

In sum, the circumstances of Ms. P's claim demonstrate that a "reasonable possibility" exists that she would be persecuted if she returned to Guatemala. An asylum applicant "need only show that his removal would create a 'reasonable possibility' – as low as ten percent chance – of persecution²²" in order to establish eligibility based on well-founded fear. Ms. P recent history of past persecution and country conditions evidence establish that she has a subjective and objective well-founded fear of future persecution.

4. Ms. P would merit a grant of humanitarian asylum even in the absence of well-founded fear.

If this court finds that Ms. P does not have a well-founded fear of future persecution, she merits a grant of humanitarian asylum based on the severity of the past persecution that she experienced or because she likely would suffer other serious harm in Guatemala. Ms. P was beaten, sexually abused, raped, forced to abort pregnancies, and threatened with death. That persecution is very severe. The fact that Ms. P had to seek counseling after she arrived in the United States and that her symptoms are consistent with Post Traumatic Stress Disorder evidences the severity of the persecution that she suffered.²³ Other serious harm is mistreatment that rises to the level of persecution but is not on account of a protected ground.²⁴ Because of the high level of violence against women and femicide in Guatemala, even if Ms. P were able to escape Mr. S, she likely would be subject to victimization at the hands of other violent men in Guatemala

C. Ms. P Qualifies for Withholding of Removal

In order to prevail on a claim for withholding of removal under INA § 241(b)(3), an applicant must show that it is more likely than not that she will face persecution on account of a protected ground if returned to his country. If the applicant meets this standard, relief is mandatory rather than discretionary.

As discussed above, Ms. P has established a well-founded fear of future persecution on account of several protected grounds. Ms. P experienced past persecution when she was beaten, sexually abused, and threatened with death. This persecution was carried out on account of her

²² *Crespin-Valladares*, 632 F. 3d at 126.

²³ See *Matter of Chen*, 20 I&N Dec. at 19-21 (finding that a man who suffered persecution that left him anxious, fearful, and suicidal was entitled to asylum in the absence of well-founded fear of future persecution.)

²⁴ See 8 CFR § 1208.13(b)(1)(iii)(B).

political opinion and membership in a particular social group. Ms. P is entitled to a presumption that she would experience future persecution if returned to Guatemala.²⁵

Country conditions reports cited above, and others submitted by Ms. P establishes that the presumption that they would experience future persecution if returned to Guatemala cannot be rebutted. Also, for the reasons discussed above, internal relocation is not a viable option for Ms. P to avoid future persecution.

D. Ms. P Qualifies for Protection Under the Convention Against Torture.

To obtain protection under the Convention Against Torture, Ms. P must demonstrate that it is more likely than not that she would be tortured if returned to Guatemala. The term “torture” is defined as “any act by which severe pain or suffering... is intentionally inflicted on a person... for any reason based upon discrimination of any kind, when such pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity.”²⁶

The country conditions reports discussed above and others submitted by Ms. P clearly establish that it is more likely than not that Ms. P would experience torture if returned to Guatemala. In Guatemala, government officials acquiesce by purposely failing to protect indigenous women from domestic violence due to corruption, lack of training and support, and sometimes fear of violence or retaliation by criminals. In the instant case, law enforcement authorities did nothing to assist Ms. P even when she reported the crime. There is no likelihood that they would protect Ms. P from harm.

IV. MS. P’S CHILDREN ARE ELIGIBLE FOR ASYLUM

A. Ms. P’s children were included as derivatives in her asylum application filed with this court on January 26, 2018

Ms. P’s children, A and M, are in removal proceedings with her and are included as derivatives of her asylum application. As such, both should be granted asylum as derivatives of

²⁵ See 8 C.F.R. § 1208.16 (B)(1)(i).

²⁶ 8 C.F.R. § 1208.18(a)(1).

her claim. The familial relationship between Ms. P and her children has been established by the birth certificates submitted to this court. (See Submission of June 2023, Tab D.) In addition, despite the fact that M is now over the age of twenty-one, he is granted age-out protection under the Child Status Protection Act because the asylum application including him as a derivative was submitted before he turned twenty-one. The asylum application was filed on January 26, 2018. Per M's birth certificate, his date of birth is November XX, XXX, making him nineteen years old at the time the asylum application was filed.²⁷ Under INA 208(b)(3)(B), “[a]n unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph...if the alien attained 21 years of age after such application was filed but while it was pending.” Similarly, the USCIS Policy Manual interpreting the Child Status Protection Act states the following:

For derivative asylees, an adjustment applicant's CSPA age is his or her age on the date the principal applicant's [Form I-589](#) is filed. In other words, the applicant's age is frozen on the date the [Form I-589](#) is filed. If the applicant was under the age of 21 at the time of filing, the applicant is eligible for CSPA and will not age out.

Generally, in order to establish eligibility, a derivative asylee must have been listed on the principal applicant's [Form I-589](#) prior to a final decision on the principal's asylum application.²⁸

B. In the alternative, M and A have established eligibility for asylum in their own right

M and A have also established eligibility for asylum in their own right and have filed their own applications for asylum with this court. (See Submission of April 22, 2020, Tabs K, L.) For

²⁷ Note that Ms. P believes the XXX date to be in error. She asserts that M was born on November 17, XXX. Indeed a XXX date of birth is inconsistent with the date of birth of her son K, who was born in June XXX. However, Ms. P has been unable to have the date of birth on his birth certificate officially corrected.

²⁸ See USCIS Policy Manual, Chapter 7—Child Status Protection Act, <https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-7#footnote-1>

the same reasons as discussed above, the harm that M and A suffered rises to the level of persecution, as they endured beatings, abuse, verbal mistreatment, threats, and deprivation of liberty. M was forced by his father to work from a very young age in a very dangerous profession. In addition, both suffered persecution on account of protected grounds: specifically, they endured harm because of their race/nationality as indigenous Guatemalans. M recalls that his father insulted him and his siblings on many occasions, calling them “stupid Indians” and using insulting words for indigenous people such as “caitudos.” They also suffered harm based on their membership in the particular social group of the “nuclear family of Clara P.” For example, their father would specifically reference their relationship to their mother while beating them, telling them that they were good for nothing and “children of a whore.” One of the most severe incidents that M endured as a child was when his father threw a glass bottle at him for trying to defend his mother. He fell and started bleeding, and he still has a scar on his forehead as a result of this incident. It is clear that M was motivated to protect his mother due to his familial relationship with her, and that his father was motivated to target him for harm because of that same family relationship.

V. CONCLUSION

As outlined above and in the attached exhibits, Ms. P has demonstrated that she suffered persecution in the past on account of her protected characteristics. Furthermore, she has a well-founded fear of future persecution or torture if returned to Guatemala. For the reasons discussed, Ms. P requests that she be granted asylum or alternative relief to allow her to remain in the United States.

Respectfully submitted,

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