

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

**IN THE MATTER OF:**

**MR**

**A NUMBER**

**In Removal Proceedings**

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**BRIEF IN SUPPORT OF RESPONDENT’S APPLICATIONS FOR  
ASYLUM, WITHHOLDING OF REMOVAL AND  
RELIEF UNDER THE CONVENTION AGAINST TORTURE**

**I. INTRODUCTION AND SUMMARY OF PAST PERSECUTION<sup>1</sup>**

Ms. R is a Salvadoran woman who suffered years of gender-based violence in her home country. She fled to the United States in January 2019 after enduring years of abuse by her former partner, HP, the father of her eight-year-old daughter K. H was affiliated with a gang, and he subjected her to terrible domestic violence over the course of their relationship. He beat her, raped her, and constantly threatened her life and the lives of her children. Even when H was imprisoned in a Salvadoran jail following his deportation from the United States in 2017, his abuse of Ms. R did not cease. Rather, he forced her to visit him at jail, telling her that if she did not go to see him, she would be killed. During those forced visits, H raped and beat Ms. R in front of prison guards. Unable to stand the torture to which she was being subjected and knowing that there was no place in El Salvador that she could turn for assistance, Ms. R made the heartbreaking decision to leave her two young children in El Salvador in order to save her own life. Ms. R humbly and respectfully asks that she be provided safe haven in the United States in order to escape the horrific violence she endured in El Salvador.

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<sup>1</sup> The facts included in this section derive from Declaration of MRA, Exhibit A, unless otherwise stated.

Ms. R was born on XXX in San Alejo, La Union, El Salvador and she is a citizen of El Salvador. She grew up in San Alejo with her parents and four siblings. Her father worked in the fields and her mother was a housewife. While she came from a poor family, her father always worked hard to support the family. Ms. R was close to her parents and her siblings when she was growing up. Despite the close connections she felt with her family, her childhood was marred by sexual abuse. She was sexually abused by an uncle, Rudy, beginning when she was five years old. She also suffered a sexual assault by a man at her fifteenth birthday party.

When she was seventeen years old, Ms. R met the father of her son O, a man named OM. O was a violent person who mistreated her and beat her frequently. Her son O was born on XXX.

In April 2013, Ms. R started working as a cashier at a store called Supertienda Jose in San Alejo. One day around June 2013 a man named HP came into the store. He began to pursue her and started hanging around every time she left work. Ms. R thought at first that H was a kind and respectful person. He presented himself as a Christian who came from a Christian family. He was wearing long sleeves that hid his tattoos. Around July 2013, the two started a romantic relationship and Ms. RA became pregnant with her daughter K. K was born on DATE.

H was very upset when he found out that Ms. R was pregnant. He beat her and tried to force her to have an abortion, but she always refused. He frequently visited her work to try to force her to have an abortion. At her workplace, he threw her against the wall, hoping to provoke a miscarriage. Ms. R suffered through several more months of physical abuse by H due to her refusal to have an abortion.

Around the time that her daughter was born in April 2014, H traveled to the United States. Ms. R later learned that he had begun a relationship with a woman in El Salvador who had a twelve-year old daughter. H then sexually abused and raped that woman's daughter, and the young girl became pregnant. H fled El Salvador because the authorities there were looking for him. While H was in the United States, his gang associates would harass Ms. R on behalf of H, following her down the street and threatening her. They attacked her physically, beat her, and extorted her for money. They threatened her life, telling her that H kills for a living and would have no problem killing her.

Around March 2017, H was deported to El Salvador and detained by Salvadoran authorities. [See Submission of February 10, 2023, Tab F, ICE Press Release.] He was imprisoned for charges relating to the child rape as well as other charges relating to his association with the MS 13 gang. First H was put in a jail called Bartolinas La Union. In this jail, there was a lot more security and it was difficult for him to make phone calls. Around April 2017, H was moved to a different jail, called Centro Penal La Union. He was later moved again to a jail in San Miguel. H started to call Ms. R from where he was being held as a prisoner. He threatened to kill her and her family. Later he began to extort her and started asking her for money and other things that he wanted, like clothing, shoes, and other things for his personal use. Later he forced her to go into the center where he was being held to have sex with him. One time he forced her to bring K with her to jail when K was three years old.

In October 2017 H began forcing Ms. R to go into the jail twice a month to have sex with him. He always mistreated Ms. R and threatened to harm her. The guards would watch and not do anything to help her as he dragged her into the room and forced her to have sex with him. The room was dirty and disgusting, and Ms. R did not want to be there with him. On one occasion, a guard simply watched as he grabbed Ms. R by the neck and face and forced her into the room to have sex with him. On other occasions, guards watched H hit her and did not do anything about it. Ms. R ended up contracting sexually transmitted diseases and had to have a painful cervical procedure in El Salvador to address the damage done to her body. [Submission of February 10, 2023, Tab G.]

Ms. R felt that she could not say no to H because he would threaten her all the time from jail. He called her and told her that they would be sending her home to her family in San Alejo in a box, which was a clear threat against her life. She was also robbed on two occasions at the store she was working in in 2018 and had a gun put to her head. Ms. R believes that she was specifically targeted during these robberies because this only happened to her and not to the other employees.

Ms. R felt that she could no longer stand the abuse that she was being subjected to but felt obligated to do what H told her as long as she was in El Salvador. For that reason, she made the decision to immigrate to the United States and leave behind her two precious children. Ms. R continues to suffer a great deal because of what she went through in El Salvador. She has trouble

sleeping and she often cries when she thinks about the rapes that she endured and her separation from her children. She fears all men because of H's abuse of her.

Ms. R experienced past persecution on account of her membership in the particular social groups of **1) Salvadoran women in domestic relationships who are unable to leave; 2) Salvadoran women treated as property by virtue of their position in a domestic relationship; 3) Salvadoran women.** She also suffered past persecution on account of her political opinion when she expressed opposition to a forced abortion and was physically abused as a result. *See* INA §101(a)(42)(A) (stating that a refugee includes those who have been persecuted as a result of a refusal to undergo a forced abortion and that such persecution is deemed to be on account of a political opinion). Ms. RA fears future persecution on account of these same grounds.

The government of El Salvador is unable or unwilling to protect Ms. RA. Ms. RA was beaten and sexually assaulted in front of prison officials, who did nothing to come to her assistance. The government allowed an individual in prison convicted of violent crimes to have access to a phone where he continued to threaten the life of Ms. R and her children. In addition, country conditions reports cited below establish that the government of El Salvador is ineffective in protecting women from intimate partner violence.

Ms. R, by and through her undersigned counsel, respectfully submit this Brief in support of her application 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. RA arrived in the United States on January 28, 2019. She was issued a Notice to Appear but that Notice to Appear was never filed with the immigration court. Ms. RA filed an affirmative application for asylum with U.S. Citizenship and Immigration Services on January 24, 2020. Ms. R-Amaya's application was accepted but the application was then transferred to the immigration court after a new Notice to Appear was issued. Ms. RA submitted written pleadings to this court, in which she admitted the factual allegations and the charge of removability, and asked that her asylum hearing on the merits be scheduled. The court then scheduled an individual hearing for March 1, 2023.

### III. ARGUMENT

#### A. Ms. R is eligible for asylum

In order to apply for asylum, an applicant must prove by clear and convincing evidence that she filed her application for asylum within one year of her arrival in the United States or she must qualify for an exception to the one-year filing deadline.<sup>2</sup> Ms. R clearly applied within one year of her arrival. Specifically, she entered the United States on January 28, 2019 and filed for asylum on January 24, 2020. Therefore, the one-year filing deadline is not at issue in this case.

#### B. Ms. R 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.<sup>3</sup>

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

The harm experienced by Ms. R 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].<sup>4</sup> Threat of death and injury to a person’s body or freedom clearly constitute persecution.<sup>5</sup>

Ms. R was persecuted by H who repeatedly physically abused her over the course of their relationship. He subjected her to constant physical mistreatment, including frequent beatings. He threw her up against the wall when she was pregnant and tried to provoke an abortion. He raped her on multiple occasions, forcing her to come to prison and have sex with him in a dirty and disgusting room. He gave her STDs, forcing her to have a painful cervical procedure in 2018. H constantly threatened to kill Ms. R if she did not do what he wanted. He would send his gang

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

<sup>3</sup> INA § 101 (a)(42)(A).

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

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

associates to threaten her, rob her, and attack her. Ms. R also suffered persecution by her family member Rudy who sexually abused her as a child. She also suffered through another violent relationship with the father of her son O.

The harm suffered by Ms. R 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.<sup>6</sup> Under Fourth Circuit law, death threats on their own are persecution.<sup>7</sup> When asylum seeker experienced multiple instances of harm over time, one also must consider whether these incidents cumulatively rise to the level of persecution.<sup>8</sup> 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.<sup>9</sup> Ms. R clearly experienced more violent incidents than the respondents in *O-Z- & I-Z-*. Ms. R 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. R 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. R has been diagnosed with Post-Traumatic Stress Disorder. [Submission of February 10, 2023, Tabs B, C.] 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. R suffered was serious enough to rise to the level of persecution.

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<sup>6</sup> See *In re R-A-*, 22 I&N Dec. 906, 914 (BIA 1999), remanded by *Matter of R-A-*, 22 I&N Dec. 692 (A.G. 2008).

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

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

<sup>9</sup> *Id.*

**2. Ms. R experienced past persecution and has a well-founded fear of future persecution on account of protected grounds – particular social group and political opinion.**

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.<sup>10</sup>

The social groups identified by Ms. R are defined by common, immutable traits including 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.”<sup>11</sup> A group is particular if it has “well-defined boundaries” and is composed of a “discrete class of persons.”<sup>12</sup> Terms used in a group formulation must have commonly accepted definitions.<sup>13</sup> 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.”<sup>14</sup> 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.<sup>15</sup>

Ms. R identifies her proposed social groups in the following way: **1) Salvadoran women in domestic relationships who are unable to leave; 2) Salvadoran women treated as property by virtue of their position in a domestic relationship; 3) Salvadoran women.** Ms. R 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 in the context of domestic relationships in El Salvador 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 particular social group.) In addition, the evidence in the record supports

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

<sup>11</sup> *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).

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

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

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

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

the legal conclusion of nexus between the persecution Ms. R suffered and her membership in a cognizable particular social group.

a) **Ms. R suffered past persecution because she was a member of cognizable particular social groups**

**(1) Immutability**

The proposed social groups are defined by the immutable traits of nationality, gender, and permanence of the domestic relationship. This group is defined by nationality and gender – both of these characteristics are immutable. In *Matter of Acosta*<sup>16</sup>, 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*<sup>17</sup>, 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*<sup>18</sup> 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.”<sup>19</sup> UNHCR guidelines on International Protection<sup>20</sup> 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.

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

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<sup>16</sup> 19 I&N Dec. at 233

<sup>17</sup> 21 I&N Dec. at 366

<sup>18</sup> 472 F.3d 227, 232 (4<sup>th</sup> Cir. 2007).

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

<sup>20</sup> 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)



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. Respondent’s relationship status is an immutable characteristic because her ex-partner refused to let her end the relationship, even when he was in jail. Even in this extreme circumstance, Ms. R was subject to physical and sexual abuse by her abuse. Ms. R attempted to end the relationship but was forced into visiting her abuser in jail. She was subjected to threatening phone calls and threats that she would be sent home to her family in San Alejo in a box. Aware of the kind of person that H was, and of his involvement with gangs and the previous physical beatings she had endured, Ms. R knew that these were not idle threats. H’s gang associates frequently told her that H killed for a living and that he would have no problem killing Ms. R. H’s actions demonstrate that he did not recognize Ms. R’s attempts to leave the relationship or separate her and her children from him. He believed he had an unquestionable right to subject Ms. R to horrific physical and sexual violence, even while in prison. The country conditions evidence confirms that this is true for a staggering number of women attempting to leave abusive relationships in El Salvador. [Submission of February 10, 2023, Tabs I-O.] Thus, Ms. R’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*, “women” and “unable to leave the relationship” have commonly accepted meanings in Salvadoran society. In addition, “domestic relationship” also has an accepted meaning in Salvadoran society evidenced by the codification of laws directed particularly at persons in domestic relationships. The Salvadoran Law Against Intrafamily Violence (“*Ley Contra la Violencia Intrafamiliar, LVIF*”) recognizes both marital and domestic partnerships between non-married people in a relationship, and specifically aims to address the victimization of female partners in these relationships. [Affidavit of Aracely Bautista, Submission of February 10, 2023 at Tab K]. In addition, like the country conditions analyzed in *Matter of A-R-C-G*, the conditions in El Salvador 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*; see also State Department Human Rights Report describing lack of adequate protections for victims of domestic violence. [Tab M.] As discussed in more detail in the next section, El Salvador is characterized by a culture of “machismo,” a system of patriarchal gender biases which subject women to the will of men. Salvadorans are taught from early childhood that women are subordinate to men to whom they own obedience and submission. [Affidavit of Aracely Bautista, Submission of February 10, 2023 at Tab K].

### (3) Social Distinction

As in *Matter of A-R-C-G*, Salvadoran 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 socio-political 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 Salvadoran women unable to leave their domestic relationships, specifically, and Salvadoran 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.

***Salvadoran women are the objects of a machista culture***

Salvadoran 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” dating back to the legacy of Spanish colonialism. Machismo is defined as “a system of patriarchal gender biases which subject women to the will of men. Salvadorans are taught from early childhood that women are subordinate to men to whom they own obedience and submission.” [Submission of February 10, 2023, Affidavit of Aracely Bautista, Tab K.] This negative cultural attitude towards Salvadoran women pervades all aspects of Salvadoran society. As the expert declaration from Aracely Bautista notes, “[s]ocial norms in El Salvador continue to deprive women of a multitude of legal rights that men enjoy, while justifying the use of physical violence to perpetuate the control that men exert over women.” *Id.* Social norms in El Salvador relegate women to domestic roles such as childrearing, housekeeping and serving the needs of men and Salvadoran women are distinguished in society by these sexist expectations.

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

Salvadoran women, and particularly those in abusive domestic relationships, are also meaningfully distinguished in Salvadoran 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). El Salvador has one of the world’s highest rates of femicide in the world, with a woman being murdered every 24 hours in El Salvador. [Submission of February 10, 2023, Tab L.] The incidents of gender-based murders of Salvadoran woman, specifically those killed by their domestic partners, cannot simply be explained as part of the generalized violence in El Salvador. Femicides in El Salvador are carried out with an extreme viciousness that often includes appalling levels of mutilation and torture– which tend to indicate that the victims were killed specifically because they were women. See Submission of February 10, 2023, Tab K (listing the tortuous “signs of mutilation, severe traumas and sexual violations, and it is also common for women to be buried while still alive”).

Gang members will often resort to extreme violence and brutality, including cutting a woman's body into thirteen pieces. More than two thirds of Salvadoran women have experienced gender-based violence throughout their lives. [Submission of February 10, 2023, Tab L.] Salvadoran women are set apart in society as the targets for these types of gender-motivated harm, the commission of which is rarely punished. *Id.*

***Salvadoran women and Salvadoran women in domestic relationships are the beneficiaries of specialized legislation, although such laws are not effectively implemented.***

The social distinction of Salvadoran women, and specifically Salvadoran women in domestic relationships, is also evident from the fact that the Salvadoran government has enacted – though not effectively implemented – laws designed to protect Salvadoran women from forms of harm that are specific to them. As observed by the Court of Appeals for the Ninth Circuit in *Henriquez-R v. Holder*, 707 F.3d 1081, 1092 (9th Cir 2013), “It is difficult to imagine better evidence that a society recognizes a particular class of individuals as uniquely vulnerable ... than that a special [] law has been tailored to its characteristics.” 707 F.3d at 109. El Salvador's Law Against Intrafamily Violence (LVIF) was enacted with the goal of increasing women's access to the legal system and created special administrative and judicial procedures to prevent domestic violence. [Submission of February 10, 2023, Tab K.] However, the law has not been implemented effectively and has failed to protect women from violence in the home, as law enforcement authorities have resisted training on the law and lack gender-sensitivity training. There are also deep-seeded biases against women among police, judicial officers, and prosecutors. The Legislative Assembly enacted two laws to prevent and sanction violence against women and gender discrimination, the Ley de Igualdad and the Ley Integral, that went into effect in April 2011 and January 2012, respectively. However, these laws have not been effective at reducing violence, as there is not sufficient support to institute these laws. Many years after the laws went into effect, there has been no reduction in domestic violence or other violence against women in El Salvador. On the contrary, femicides have been on the rise.

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

The failure of Salvadoran authorities to effectively implement laws designed for the protection of Salvadoran women broadly, and specifically those in domestic relationships, is just one part of a larger problem of impunity for violence against women in El Salvador, which also distinguishes

the group in society. For example, the Yale Review of International Studies describes that Salvadoran femicides are notable for the shocking impunity with which they are carried out. [Submission of February 10, 2023, Tab L.] A 2018 study found that only 5% of femicide cases brought to court end in a sentence and only 3% of cases carry a guilty verdict. *Id.* Salvador'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 February 10, 2023, Tab M.]

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

#### **iv. Nexus**

The evidence demonstrates that Ms. R's 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 El Salvador. *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007) (citing INA § 208(b)(1)(B)(i)).

H's own actions show his motivations for violence by revealing his belief that he had the right to treat Ms. R as his property. For example, when Ms. R was pregnant with her daughter K, he was extremely physically abusive towards her and tried to provoke an abortion by beating her and throwing her against a wall. This type of harm is intrinsically gender-based and served to inflict a particularized form of terror that can only be felt by a pregnant woman. By threatening Ms. R in this way, H reminded Ms. R that he held the power to say whether she and her unborn baby lived or died. Moreover, whenever Ms. R attempted to separate herself from him, H's abuse of her intensified. Even when H was in the United States, he threatened Ms. R's life through his gang associates who harassed her. From prison, he would tell her that she had to visit him or she would be sent to her family in a box. H refused to recognize that Ms. R 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, H attempted to assert his control over Ms. R 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, H’s rapes of Ms. R, together with incidents of extreme violence and threats to kill Ms. R and her family, show that his motive was to exercise power and control over Ms. R, whom he believed that he could take sexually by force without consequence simply because she is a Salvadoran woman, and the nature of their shared domestic relationship gave him the authority to act with impunity. H’s actions reveal that he considered Ms. R to be his “property” who he could do as he wished with.

Experts on El Salvador have concluded that violence against Salvadoran women is motivated by gender and a culture of gender-based violence within the family structure. As Ms. Bautista, Salvadoran lawyer and expert on human rights explains, “[s]ociety accepts and tolerates men’s aggression towards women and their families, who violently punish women for violating these gender roles or disobeying male relatives...Social norms in El Salvador continue to deprive women of a multitude of legal rights that men enjoy, while justifying the use of physical violence to perpetuate the control that men exert over women.” [Submission of February 10, 2023, Tab K.]

The level of brutality inflicted on the bodies of femicide victims in El Salvador—including mutilation and signs of sexual torture before death—reveals that gender is a central motive for this type of persecution. The Board has recognized that the nature of a type of persecution can speak to the reason behind the harm. In *Matter of Kasinga*, the Board recognized that female genital mutilation was practiced “to control women’s sexuality” and “to assure male dominance and exploitation.” 21 I&N Dec. 357, 366 (BIA 1996). The same is true of femicide in El Salvador. In El Salvador, the killings of women are characterized by extreme violence—including appalling levels of mutilation and torture—which tend to indicate that the victims were killed specifically because they were women. *See* Tab K (listing the tortuous “signs of mutilation, severe traumas and sexual violations, and it is also common for women to be buried while still alive”). Gang members will often resort to extreme violence and brutality, including cutting a woman’s body into thirteen pieces. With grisly scenes like these in their streets, Salvadoran women live in a climate of fear. They also know that the abusers operate in an environment of impunity, as those who perpetrate rape and domestic violence are rarely punished. The misogynistic nature of violence against Salvadoran women shows – as in the case of female genital mutilation – how the

nature of the persecution itself and the societal context in which the persecution occurs can demonstrate the nexus between the harm and the protected ground.

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

Ms. R was persecuted by H on account of her political opinion when she refused to have an abortion that he tried to force upon her. Ms. R became pregnant with her daughter, K, in 2013. When she informed H of the pregnancy, he became enraged and subjected her to physical abuse for months thereafter as a result of her refusal to terminate the pregnancy. He would specifically beat her in the hopes of provoking an abortion and would come to her workplace in San Alejo and throw her against the wall. Despite the abuse that Ms. R endured, she refused to obtain an abortion and she gave birth to her daughter K on April 10, 2014. Ms. R was persecuted on account of her political opinion when she refused to be subjected to a forced abortion. The statute at INA §101(a)(42)(A) specifically defines a “refugee” as one who has been persecuted as a result of a refusal to undergo a forced abortion and that such persecution is deemed to be on account of a political opinion. Because Ms. R suffered months of physical abuse by H as a result of her refusal to have an abortion, she has been persecuted on account of her political opinion.

**3. Ms. R has a well-founded fear of future persecution on account of the protected grounds – particular social group and political opinion – described above.**

Because she experienced past persecution, Ms. R is presumed to have a well-founded fear of future persecution.<sup>21</sup> The Department of Homeland Security cannot rebut that presumption because gender-based violence and gang-based violence remain prevalent in all parts of El Salvador. Ms. R fled El Salvador four years ago and country conditions have not changed. Specifically, gender-based violence remains prevalent in El Salvador. Even independent of the presumption, Ms. R can establish that she will be persecuted upon return to El Salvador.

The Salvadoran police remain corrupt and ineffective.<sup>22</sup> The submitted country conditions evidence is replete with evidence that they do nothing to assist women who suffer domestic

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<sup>21</sup> See 8 C.F.R. § 1208.13(B)(1).

<sup>22</sup> United States Department of State, 2021 Country Reports on Human Rights Practices—El Salvador (discussing that violence against women and girls were infrequently addressed by the authorities and impunity persisted).

violence. In Ms. R's own case, she was raped and beaten in front of prison guards, who made no effort to assist her. Unfortunately, this is not uncommon in El Salvador, as "police...typically fail to respond adequately to violence against girls and women and, when officers do respond, it is commonly agreed that in a significant majority of instances they fail to take effective action to protect the victim or to conduct professional investigations."<sup>23</sup> Ms. R's well-founded fear is further bolstered by the fact that H's family has continued to contact her even while she has been in the United States.

In addition, internal relocation in a country such as El Salvador is close to impossible, given the small size of the country and the well-established communication networks that gangs have throughout their respective countries. Community life in El Salvador

**is defined by overlapping family-social networks, frequent social interaction, and the population's fixation on knowing who is in the social environment. Together, these factors make it virtually impossible for individuals to relocate to a new neighborhood or small community without being immediately recognized as newcomers. Also, because of the communication that naturally occurs between family and friends living in other areas of the countries, these overlapping family-social networks oftentimes ensure that news of an individual's or family's presence in a new area will soon be communicated back to their former community. When this occurs, the individuals whom the victim has fled from become aware of the victim's whereabouts and can easily travel to the new community or mobilize their criminal associates in that community to renew or initiate threats against him or her.**<sup>24</sup>

For all the above reasons, internal relocation is not a viable option for Ms. R. 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 El Salvador stands.

In sum, the circumstances of Ms. R's claim demonstrate that a "reasonable possibility" exists that she would be persecuted if she returned to El Salvador. An asylum applicant "need only show that his removal would create a 'reasonable possibility' – as low as ten percent chance

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<sup>23</sup> *Gang Culture and Violence Against Women in El Salvador, Honduras, and Guatemala*, Immigration Briefings, (8 May 2017).

<sup>24</sup> *Gang Culture and Violence Against Women in El Salvador, Honduras, and Guatemala*, Immigration Briefings at 10 (8 May 2017).



– of persecution<sup>25</sup>” in order to establish eligibility based on well-founded fear. Ms. R’s very 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. R would merit a grant of humanitarian asylum even in the absence of well-founded fear.**

If this court finds that Ms. R 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 El Salvador. Ms. R was beaten, sexually abused, and threatened with death. That persecution is very severe. The fact that Ms. R 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.<sup>26</sup> Other serious harm is mistreatment that rises to the level of persecution but is not on account of a protected ground.<sup>27</sup> Because of the high level of violence against women and femicide in El Salvador, even if Ms. R were able to escape H, she likely would be subject to victimization at the hands of other violent men in El Salvador.

**C. Ms. R 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. R has established a well-founded fear of future persecution on account of two protected grounds Ms. R experienced past persecution when she was beaten, sexually abused, and threatened with death. This persecution was carried out on account of her political opinion and membership in a particular social group. Ms. R is entitled to a presumption that she would experience future persecution if returned to El Salvador.<sup>28</sup>

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<sup>25</sup> *Crespin-Valladares*, 632 F. 3d at 126.

<sup>26</sup> 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.)

<sup>27</sup> See 8 CFR § 1208.13(b)(1)(iii)(B).

<sup>28</sup> See 8 C.F.R. § 1208.16 (B)(1)(i).

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

#### **D. Ms. R Qualifies for Protection Under the Convention Against Torture.**

To obtain protection under the Convention Against Torture, Ms. R must demonstrate that it is more likely than not that she would be tortured if returned to El Salvador. 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.”<sup>29</sup>

The country conditions reports discussed above and others submitted by Ms. R clearly establish that it is more likely than not that Ms. R would experience torture if returned to El Salvador. In El Salvador, government officials acquiesce by purposely failing to protect citizens from domestic violence and gang violence due to corruption, and law enforcement authorities’ fear of violence or retaliation by criminals. In the instant case, law enforcement authorities did nothing to assist Ms. R even when she was being raped and tortured in front of them. There is no likelihood that they would protect Ms. R from harm.

#### **IV. CONCLUSION**

As outlined above and in the attached exhibits, Ms. R 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 El Salvador. For the reasons discussed, Ms. R requests that she be granted asylum or alternative relief to allow her to remain in the United States.

Respectfully submitted,

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<sup>29</sup> 8 C.F.R. § 1208.18(a)(1).

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