Non-Detained

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
NEW YORK IMMIGRATION COURT
NEW YORK, NEW YORK

In the matters of:	:	
	:	
YRF	:	**File Nos. A *********
JCZ	:	*********;**
HCZ	:	*********;**
KCZ	:	***********
	:	
Respondents.	:	
	:	

Immigration Judge: James McCarthy

Next Hearing Date:
August 14, 2018 at 1:00 pm

Pre-Hearing Statement on Nexus & CAT Protection

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Pre-Hearing Statement

YRF ("Ms. YRF ") is a Honduran Garifuna woman who fled Honduras due to severe physical, sexual and emotional abuse and death threats by her husband, MZ ("MZ"). Her husband violently raped her. He also attempted to burn down the home while she and their child were present. Her husband also slapped her; threw a wrench at her; swung a machete at her; and came at her with a knife. MZ also took away the minor respondents, refusing to allow them to return to their mother.

The respondents submit the following pre-hearing statement regarding nexus, the Honduran government's inability and unwillingness to protect the respondents, as well as their eligibility for protection under the Convention against Torture.

1. ***MZ persecuted Ms. YRF on account of her actual and imputed political opinion in support of gender equality and opposition to the subordination of women within marital relationships***

In *Matter of R-A-,* the initial BIA precedent decision regarding domestic violence, the Board contemplates when a domestic violence claim might be framed as political persecution. 22 I&N Dec. 906 (BIA 1999). While this case was vacated, the Attorney General in *Matter of A-B-* refers to it often and approvingly. The Board found that on the facts in *R-A-,* political opinion was not appropriate because there was no evidence that her abuser imputed any political opinion onto her nor was he punishing her on account of it. *R-A-*, 22 I&N Dec. at 906. The Board reasoned that "the record indicates that the respondent's husband harmed the respondent regardless of what she actually believed or what he thought she believes. The respondent testified that the abuse began 'from the moment [they] were married.' Even after the respondent 'learned through experience' to acquiesce to his demands, he still abused her." *R-A-*, 22 I&N Dec. at 906.

Much of the harm MZ inflicted on Ms. YRF, however, was in direct response to what he perceived to be her resistance or lack of obedience to him. MZ became enraged whenever Ms.

YRF dared to speak out of turn against him; defy him by refusing his orders; or act out against him. *See, e.g.,* Ms. [redacted] Declaration in Support of Application for Asylum ("Resp. Decl."), ¶¶ 6-9; 12; 13; 14; 17-20; 23. This often took the form of Ms. YRF speaking 'out of turn' against her husband, which she attests, infuriated him. *See* Resp. Decl. ¶¶ 6-9; 17. When Ms. YRF "corrected him about something he had said," he slapped her across the face. Resp. Decl. ¶ 6. On another occasion, MZ became furious at Ms. YRF and kicked her out of the home after she "told him he was wrong about something." *Id.* ¶ 8. In a separate incident, he attempted to strike her with a large stick after Ms. YRF spoke out against his behavior. *Id.* ¶ 7. In another instance, MZ came at her with a knife after neighbors gave her an opportunity to speak about her experiences with MZ. *Id.* ¶ 17.

MZ also became enraged when Ms. YRF took actions against him – notably, when she had his employer give his income directly to her so that she could provide for the family expenses. *Id.* ¶ 11. When MZ learned of this, he became infuriated, hit Ms. YRF, threw things and yelled at her. *Id.* ¶ 12. Although her uncle was who orchestrated this arrangement and his father was also involved, MZ's violent anger was exclusively directed at his wife for acting in such a way that conveyed resistance to his role as the man. *Id.* Moreover, MZ accused her of speaking with other men and threatened to kill her with a wrench. *Id.* ¶ 16.

MZ also became infuriated and aggressive when Ms. YRF did not quickly comply with his orders. MZ insisted on having sexual relations with Ms. YRF, and he raped her when she refused. *Id.* ¶ 13. On another occasion, he swung a machete at Ms. YRF in response to her refusing to help him find money and telling him that she had already spent "his" money. *Id.* ¶ 14. When Ms. YRF insisted on going to church despite his demands that she stay home, he threatened that she would "see who's boss, then" and came at her and their daughter with a machete. *Id.* ¶ 19. Lastly, when MZ insisted that Ms. YRF return with him, he threatened that there would "be death" and that he would burn down the home, ultimately taking their daughters away from Ms. YRF to attempt to coerce her into returning with him. *Id.* ¶¶ 23-25; *see also* Resp. Subm., Tab H.

Ms. YRF's refusal to submit to the sexual domination and control of her husband violated a basic norm in Honduran society. That it is men, not women, who control sexual and marital relationships. The Second Circuit has made clear that "a claim of political persecution cannot be evaluated in a vacuum, as it was here, without reference to the relevant circumstances in which the claim arises." *Castro v. Holder*, 597 F.3d 93, 106 (2d Cir. 2010). The question is not whether Ms. YRF's actions are inherently "political," but whether her actions take on a political dimension in the socio-political climate in Honduras. In this case, they do. Her refusal to abide by gender-repressive social and cultural norms, norms promoted and tolerated at every level of society, take on a political dimension in Honduras, and in the mind of her persecutor. Not only did her actions and statements lead this this political opinion to be imputed onto Ms. YRF and cause MZ to harm her, but she in fact does hold this political opinion. Resp. Decl. ¶ 26.

This case demonstrates a clear relationship between Ms. YRF's insubordination and the brutal and violent retaliation by her husband. Statements that he made, threatening her for her lack of obedience and her refusal to submit to his demands and expectations of his wife, as well as the circumstances surrounding his violent actions, are indicative of his motivation. The severity with which he punished his wife's resistance is also compelling evidence, as the Second Circuit has

repeatedly found that disproportionately severe punishment may be indicative of political motives. *Vumi v. Gonzales*, 502 F.3d 150, 157-59 (2d Cir. 2007)(asking whether interrogation and punishment were disproportionate to the crime, which would indicated persecution on grounds of political opinion); *Islami v. Gonzales*, 412 F.3d 391, 396 (2d Cir. 2005)(noting that while compulsory military service not usually a basis for asylum, eligibility can be shown where refusal to serve in the military leads to disproportionately excessive penalties), overruled in part on other grounds, *Lin v. U.S. Dep't of Justice*, 494 F.2d 296, 305 (2d Cir. 2007)(en banc).

Political expression has not, and should not, be reserved for those elite actors in traditional electoral politics. The Second Circuit conducts a fact specific, context specific analysis to determine where a Petitioner's actions telegraph a political opinion. *Castro v. Holder*, 597 F.3d 93 (2d Cir. 2010)(Guatemalan police officer who denounced official corruption expressed a political opinion); *Delgado v. Mukasey*, 508 F.3d 702 (2d Cir. 2007)(refusal to offer technical assistance to the FARC can give rise to imputed political opinion); *Yuequin Zhang v. Gonzales*, 426 F.3d 540 (2d Cir. 2005)(opposition to endemic corruption may have a political dimension when it transcends mere self-protection and represents a challenge to the legitimacy or authority of the ruling regime); *Osorio v. INS*, 18 F.3d 1017, 1029-31 (2d Cir. 1994)(union activity can be a political activity); *Serna-Arbelaez v. Mukasey*, 278 Fed. Appx. 9, 11 (2d Cir. 2008)(Colombian's refusal to give list of paramilitaries to the ELN could give rise to anti-ELN political opinion).

Guidelines on International Protection from the UNHCR further note that "political opinion should be understood in the broad sense, to incorporate any opinion on any matter in which the machinery of the State, government, society, or policy may be engaged. This may include opinions about gender roles. It would also include nonconformist behavior which leads the persecutor to impute a political opinion to him or her." U.N. Doc. HCR/GIP/02/01 (2002)(32); *see also* U.S. Citizenship and Immigration Services' Workbook on Asylum: Female Asylum Applicants and Gender-Related Claims at 23 (noting that expression of political opinion can take the form of "refusal to comply with traditional expectations of behavior associated with gender (such as dress codes and the role of women in the family and society).").

Courts have consistently granted asylum to women whose refusal to submit to gender-repressive cultural norms put them at risk of persecution. *See Sarhan v. Holder*, 657 F.3d 649, 654 (7th Cir. 2011)(finding Jordanian women accused of being immoral criminals in accordance with social and religious norms to comprise a PSG); *Al-Ghorbani v. Holder*, 585 F.3d 980, 996 (6th Cir. 2009)(finding women opposed to repressive Yemeni Cultural and religious customs can be a PSG); *Yadegar-Sargis v. INS*, 297 F.3d 596, 603 (7th Cir. 2002)(Christian women in Iran who do not adhere to Islamic female dress code may be a PSG); *Gao v. Gonzales*, 440 F.3d 62 (2d Cir. 2006)(Chinese women forced into arranged marriages could comprise particular social group)(vacated on other grounds by *Keisler v. Hong Yin Gao*, 552 U.S. 801 (2007); *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993)(Iranian women who refuse to conform to the government's gender-specific laws and social norms may comprise a cognizable particular social group); *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996)(women of the Tchamba-Kunsuntu tribe opposed to the practice of FGM); *see also* 8 U.S.C. § 1101(a)(42)(regarding Chinese asylum applicants, "a person who has been forced to abort a pregnancy or undergo an involuntary sterilization…shall be deemed to have been persecuted on account of political opinion").

All of these practices—forced marriage, FGM, strict dress codes, and forced sterilization—are at their foundation methods of control over female sexual autonomy and agency. These claims have typically been analyzed as Particular Social Group claims, though courts have recognized that refusal to comply with societal customs designed to protect a patriarchal social hierarchy might also be understood as a political opinion. *Moghaddam v. INS*, 95 F.3d 1158 (9th Cir. 1996)("We note, however, that 'feminism' more appropriately refers to a political opinion than a particular social group and analyze the claim as such"); *Fatin,* 12 F.3d at 1241 (refusal to comply with gender-norms is inextricably linked to feminism); *Lazo-Majano v. INS*, 813 F.2d 1432, 1435 (9th Cir. 1987)(persecutor was "asserting the political opinion that a man has a right to dominate" and he persecuted Petitioner to force her to accept this opinion).

Political expression may take the form of words or action and, as with the women in the above cases, Ms. YRF's expression took the form of resistance. *See also Delgado v. Mukasey, supra* (resistance to demands of FARC may cause FARC to impute political opinion to Petitioner). In the socio-political context of Honduras' culture of patriarchy and machismo, Ms. YRF's audacity to believe that she was not subservient to her husband, that she is "free to make her own decisions" and not need to rely on a man "to decide things for" her (*see* Resp. Decl. ¶ 26), stands in stark contrast to pervasive norms of female subordination, and should be understood as a political opinion in the context of Honduras; a political opinion for which she was and will be brutally punished. *See, e.g.,* Respondents' Submission ("Resp. Subm."), Tab O at 111 ("The culture of machismo pervades Honduras. Machismo teaches that women are property of their intimate partners or fathers, that women are second-class citizens, and that women are to be dealt with as seen fit by the masculine sectors of society.") Accordingly, the Court should find that MZ persecuted Ms. YRF on account of her actual and imputed political opinion.

2. MZ persecuted Ms. YRF on account of her membership in a Particular Social Group

In *Matter of A-B-*, 27 I&N Dec. 227 (AG 2018), Attorney General Jefferson B. Sessions III overturned well established precedent in *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014). However, as acknowledged in *Matter of M-E-V-G-*, whether a Particular Social Group exists is a case-by-case determination and the AG's decision should not be read to foreclose alternative particular social group formulations for victims of domestic violence where the facts of the case support it. *Matter of M-E-V-G-,* 26 I&N 227, 242 (BIA 2014); *Matter of A-B-,* 27 I&N Dec. 227, 319 (AG 2018)(noting that this decision is consistent with *Matter of M-E-V-G-*). In light of the current dynamic legal landscape, Ms. YRF proposes five alternative Particular Social Groups.[1]

[1] The Attorney General recently stated that "[w]hen private actors inflict violence based on a personal relationship with a victim, then the victim's membership in a larger group may well not be 'one central reason' for the abuse." *Matter of A-B-*, 27 I&N Dec. 316, 338-39 (A.G. 2018). In this case, the violence that MZ inflicted on Ms. YRF was not solely because of their personal relationship. It was because of MZ's perception of Ms. YRF as a woman in a marital relationship in the larger context of Honduran society; her status as a Honduran Garifuna woman; her status as a Honduran woman; as a Honduran woman viewed as property by virtue of her marital relationship; as well as because of Ms. YRF's political opinion that women are not subservient to their male domestic partners, as explained in greater detail *supra* and *infra*. The fact that Ms. YRF had a personal relationship with her persecutor does not preclude a finding that the persecution was on account of a protected ground, as is well established by the case law.

a. ***MZ persecuted Ms. YRF on account of her membership in the particular social group of "married Honduran women"***

In *Matter of A-B-*, the Attorney General rejected the Particular Social Group agreed upon by all parties, including the Department of Homeland Security ("DHS" or "the Department"), in *Matter of A-R-C-G-*, of "married Guatemalan women who are unable to leave their relationship." While most of his decision was dedicated to his objection that precedent should not be arrived at by consent, it seems the Attorney General also opposes this particular social group as being "circular." While Ms. YRF believes this is a misunderstanding of circularity (the inability to leave is not, in fact, the persecution feared) as well as the nature of domestic violence, Ms. YRF also suggests that the "unable to leave" portion of the particular social group is not necessary in defining a cognizable group.

While the inability to leave goes toward the likelihood of future harm, the cognizability analysis in *Matter of A-R-C-G-* rested primarily on the nature and institution of the marital relationship. This is what is particular and socially distinct. And in certain cases, such as this one, the relationship is immutable where, as in Ms. YRF's case, attempts to physically leave make no difference in the way the persecutor understands the relationship and respondent's role in it. Resp. Decl. ¶ 29; *see also* Resp. Subm., Tab F (documenting the marriage between Ms. YRF and MZ). That is a factual determination to be made by the judge on a case by case basis. *M-E-V-G-, supra*. The Particular Social Group may be actual or imputed, so in a case like this where the abuser has made it clear that no matter what she does, Ms. YRF – as his wife – will always belong to him, her status in that relationship is functionally immutable. As the country conditions evidence in the record corroborates, MZ persecuted and will persecute Ms. YRF on account of her membership in this group.

b. ***Ms. YRF was persecuted on account of her membership in the particular social group of "Honduran women viewed as property by virtue of their marital relationship"***

Prior to *Matter of A-R-C-G-,* the Department submitted supplemental briefing in a case called *Matter of L-R-*.[2] The brief was submitted under the signature of David Martin, then-Principal Deputy General Counsel to DHS and former General Counsel to the INS. In addition to the particular social group ultimately supported in *A-R-C-G-*, the Department argued in favor of an alternative Particular Social Group consisting of "women viewed as property by virtue of their domestic relationship." In this case, MZ made it clear through his statements and actions that as his wife, Ms. YRF was his property, with whom he was entitled to act and do as he wished. Resp. Decl. ¶ 21 ("He thinks that I am his property and have to behave and act how he wants me to. Otherwise, I would pay the price."). Her husband's proprietary relationship over Ms. YRF is clear.

In its brief in *L-R-*, the Department recognizes that a respondent's status within a domestic relationship may be immutable where economic, cultural, or physical constraints prohibit a woman from leaving an abusive relationship or where the partner will not recognize divorce or separation as ending the abuser's rights over the respondent, as is the case here. The machismo which is

[2] Brief available at https://cgrs.uchastings.edu/our-work/matter-l-r .

prevalent in Honduran society causes Hondurans to view women in marital relationships a certain way – as property of their husbands or partners. *See* Resp. Subm. Tabs J-Q. A Honduran woman cannot change the fact that she is viewed as the property of her male relatives; even if she leaves a domestic relationship, Honduran society continues to consider her the property of her husband or partner. *See* Resp. Subm., Tab O at 111 ("Because the husband or male partner feels like he owns the woman, he also feels like he can treat her as personal property. Honduran men believe that they can abuse and rape their wives or partners with impunity because these women 'belong' to them and, like pieces of property, the men can do what they wish with a woman."). As the country conditions indicate, being "viewed as property" as a woman in a marital relationship is an immutable characteristic specific to Honduran society. *See* Resp. Subm., Tabs J-Q. The ownership of a man over a woman is an intrinsic part of a domestic relationship in Honduran society, and as such, this group is also discrete and identifiable.

With regard to social distinction (then still referred to as "social visibility"), the Department in its brief in *L-R-* looked to laws in Mexico designed to protect victims of domestic violence and country conditions evidence regarding domestic violence in Mexico, noting that "this evidence may reflect a societal view, applicable at least in parts of Mexico, that the status of a woman in a domestic relationship places the woman into a segment of society that will not be accorded protection from harm inflicted by a domestic partner. In this light, the female respondent's status by virtue of her relationship to [redact] could indeed be the kind of important characteristic that results in a significant social distinction being drawn in terms of who will receive protection from serious physical harm." *See* DHS' Brief in *L-R-*. Ms. YRF has submitted similar evidence with regard to Honduras. *See generally* Resp. Subm., Tabs M-O. The Department also noted that, while it would require a fact specific analysis, the proposed particular social group was sufficiently particular to determine who falls within that group. In this case, the institution of marriage is a formal, legal, relationship with well recognized boundaries.

MZ's statements and actions demonstrate that he persecuted Ms. YRF on account of her membership in this particular social group. Ms. YRF saw herself "dying by [MZ's] hands," as he reminded her constantly that she "was his woman" and "could be nobody else's," and how as "his property [she] ha[d] to behave and act how he want[ed]" or else she would "pay the price." Resp. Decl. ¶ 21. He physically, verbally, and sexually abused Ms. YRF for the same reason – because she was his woman, his property, and inferior to him. *See* Resp. Decl. The country conditions evidence in the record further demonstrates that MZ persecuted her on this basis. Notably, Honduran men like MZ "believe that they have complete dominion over their wives," just like "any piece of property that can be used or discarded as they please." Resp. Subm., Tab O at 115; *see also id.* at 111 ("Because the husband or male partner feels like he owns the woman, he also feels like he can treat her as personal property. Honduran men believe that they can abuse and rape their wives or partners with impunity because these women 'belong' to them and, like pieces of property, the men can do what they wish with a woman."). Accordingly, the Court should find that MZ persecuted Ms. YRF on account of her membership in the particular social group of "Honduran women viewed as property by virtue of their marital relationship."

c. ***Ms. YRF was persecuted on account of her membership in the Particular Social Group of "Honduran women"***

Honduras has been singled out as having one of the highest rates of femicide in the world. *See, e.g.,* Resp. Subm., Tab M. Notably, women are murdered with near total impunity, due to a combination of rampant corruption and entrenched machismo which places a lesser value on the lives of women than men. *See id.* at 89 (In Honduras, "over 96 percent of feminicides go unpunished . . . This impunity, an expression of symbolic and gender violence, sends a powerful message that women's lives are expendable and unimportant, as unresponsive justice system institutions fall short in implementing the law on the books."). Honduran women are second class citizens. Resp. Subm., Tab O at 111 ("The culture of machismo pervades Honduras. Machismo teaches that women are property of their intimate partners or fathers, that women are second-class citizens, and that women are to be dealt with as seen fit by the masculine sectors of society.")

The Board has never decided whether the women of a particular country, without an additional identifying characteristic, constitutes a cognizable particular social group, though it has identified sex as the kind of immutable characteristic that might go towards defining a particular social group. *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985). The Ninth Circuit did address this question in *Perdomo v. Holder*, and it determined that women of a particular country can constitute a cognizable particular social group without additional identifiers. 611 F.3d 662 (9th Cir. 2010). The Ninth Circuit looked to its decision in *Mohammed v. Gonzales*, where it recognized that because gender is an "innate characteristic" that is fundamental to one's identity, and because FGM occurs on account of being female, the Petitioner could define her particular social group either as Benadiri females or, more broadly, as Somali females, reasoning that this reflects "the only plausible construction" of our asylum law. 400 F.3d 785 (9th Cir. 2005). It noted that the Eighth Circuit followed its lead in *Mohammed*, holding that "Somali females" constitute a particular social group in *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007)).

While the Seventh Circuit did not reach the issue in *Cece v. Holder*, 733 F.3d 662 (7th Cir. 2013), it stated the following:

> Although nonbinding, the agency's own "Gender Guidelines," which provide Asylum Officers with guidance on adjudicating women's claims of asylum, provide a helpful understanding by noting that gender is an immutable trait that can qualify under the rubric of "particular social group." United States Bureau of Citizenship and Immigration Services, *Considerations for Asylum Officers Adjudicating Asylum Claims from Women* ("*INS Gender Guidelines*"), 26 May 1995, available at: http://www.unhcr.org/ refworld/docid/3ae6b31e7.html [accessed July 25, 2013]. And the Office of the United Nations High Commissioner for Refugees (again, not authoritative, but informative) has made clear that "women may constitute a particular social group under certain circumstances based on the common characteristic of sex, whether or not they associate with one another based on that shared characteristic." UNHCR, *Guidelines on International Protection: Membership of a Particular Social Group,* at 4 (HCR/GIP/02/02, 7 May 2002).

While gender alone may not constitute a particular social group in many, if not most, countries, the country conditions in Honduras - one of the most dangerous countries on earth to be a woman – show that it does comprise a particular social group in this case. *M-E-V-G-*, *supra* at 243 ("The act of persecution by the government may be the catalyst that causes the society to distinguish the former employees in a meaningful way and consider them a distinct group, but the immutable characteristic of their shared past experience exists independent of the persecution"); *see also* Resp. Subm., Tabs L, M.

The Board requires that particular social groups be immutable, particular, and socially distinct. It does not require that they be small. *Ucelo-Gomez v. Mukasey*, 509 F.3d 70, fn. 2 (2d Cir. 2007)("We agree that a large group can be a 'particular social group': the BIA must not mean that a group's size can itself be a sound reason for finding a lack of particularity."); *see also Singh v. INS*, 94 F.3d 1353, 1359 (9th Cir.1996)("We reject the notion that an applicant is ineligible for asylum merely because all members of a persecuted group might be eligible for asylum."). If a dominant ethnic group in a country begins to murder with impunity a disfavored ethnic group, we do not ask whether that persecuted ethnic group makes up 20% or 50% of the population. It is not relevant. Wealth or class may be amorphous. Being a woman is not. Accordingly, "Honduran women" constitutes a cognizable particular social group.

As highlighted by her specific experiences, MZ persecuted Ms. YRF on account of her membership in this particular social group. Ms. YRF's declaration indicates that the abuse she endured was the direct result of her gender, and her abuser's perception that she holds a subordinate position to men. *See* Resp. Decl. ¶ 4; ¶ 12 ("It was not proper for me, his woman, to have control of the money for the household."); ¶ 16 ("He accused me of having other lovers who weren't him. This was unacceptable to him, because as his woman I had to only be his and could not dare speak to other men."); ¶ 19; ¶ 21; ¶ 23; ¶ 26 ("I believe that as a woman should be free to make her own decisions. We should not have to rely on a man to decide things for us. MZ is a macho, chauvinist man and he does not respect this opinion."). The country conditions evidence in the record further demonstrates that MZ persecuted Ms. YRF for this reason. As shown in the reports in the record, Honduran women "live in a social milieu where physical and psychological mistreatment become part of the way things are; where women's 'private terrors' are part of life in the home, in the street, and in the workplace. Institutions reinforce and reflect this violent context through neglect and a lack of implementation of the laws." Resp. Subm., Tab M at 97; *see also* Tab O at 105 ("This sexist attitude holds that women must be subservient to men, that women obtain their identity from and belong to their partners, husbands and fathers, and that intimate relationships should be controlled by the man without any outside intervention.").

The Court should therefore find that Ms. YRF suffered persecution and will be persecuted on account of her membership in this particular social group.

d. ***Ms. YRF was persecuted on account of her membership in the Particular Social Group of "Honduran women who resist patriarchal social norms by refusing to subordinate within their domestic relationship"***

Ms. YRF's proposed particular social group, "Honduran women who resist patriarchal norms by refusing to subordinate within their domestic relationship" closely tracks her political opinion

argument. *Lukwago v. Ashcroft*, 329 F.3d 157, 175 (3d Cir. 2003)(noting that escaped child soldier's imputed political opinion and particular social group claim are intertwined and may be considered together). She posits this alternative "Particular Social Group" formulation simply because women who have suffered persecution on account of their resistance to gender repressive social and cultural norms have typically been framed as Particular Social Group claims, though she would argue that any one of these cases could have been framed as a political opinion. *Sarhan v. Holder*, 657 F.3d 649, 654 (7th Cir. 2011)(finding Jordanian women accused of being immoral criminals in accordance with social and religious norms to comprise a PSG); *Al-Ghorbani v. Holder*, 585 F.3d 980, 996 (6th Cir. 2009)(finding women opposed to repressive Yemeni Cultural and religious customs can be a PSG); *Yadegar-Sargis v. INS*, 297 F.3d 596, 603 (7th Cir. 2002)(Christian women in Iran who do not adhere to Islamic female dress code may be a PSG); *Gao v. Gonzales*, 440 F.3d 62 (2d Cir. 2006)(Chinese women forced into arranged marriages could comprise particular social group)(vacated on other grounds by *Keisler v. Hong Yin Gao*, 552 U.S. 801 (2007); *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996)(women of the Tchamba-Kunsuntu tribe opposed to the practice of FGM); *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993)(Iranian women who refuse to conform to the government's gender-specific laws and social norms may comprise a cognizable particular social group). Ms. YRF's proposed particular social group is consistent with this line of cases.

As discussed in greater detail *supra*, Ms. YRF was repeatedly punished because of her past acts of resisting subordination to her husband. This is a past experience that cannot be changed (rejecting the sexual advances of an unwanted suitor is also not something that a woman should be required to change). The country conditions evidence in record establishes that her resistance was to entrenched social norms in Honduras that women are to be subservient and obedient to their male counterparts. Just as women who resist FGM in societies that support this practice; or forced marriage in areas where it is legal and valid; or women who resist gender repressive laws who will be harmed as a result, Ms. YRF is eligible for protection.

Ms. YRF's proposed particular social group is no less particular or distinct than any of the above recognized particular social groups. *M-E-V-G-,* 26 I&N Dec. at 245 ("In clarifying that 'ocular visibility' is not required, we consider our interpretation of the phrase 'membership in a particular social group' to be consistent with our prior case law"). Where a social norm is well entrenched, those few individuals who oppose it set themselves apart from the rest—they are distinct. As the Seventh Circuit noted in *Sarhan v. Holder*, non-conformance with established social codes distinguishes a group from the rest of society. 658 F.3d 649, 655 (7th Cir. 2011). "Social stigma causes the violence. Society as a whole brands woman who flout its norms as outcasts." *Id.* The Court goes on to reason that women facing "honor killings" due to their non-compliance with gender repressive cultural norms in Jordan are "no less cohesive…and no more able to shed the stigmatizing characteristics that render them victims" than women opposed to FGM, women who do not adhere to Islamic female dress code, or Chinese women who face forced sterilization. *Id.* Similarly, the Sixth Circuit found in *Al-Ghorbani v. Holder*, that "a particular social group may be made up of persons who actively oppose the suppression of their core, fundamental values or beliefs." 585 F.3d 980, 996 (6th Cir. 2009). That Ms. YRF continued to act in ways that conveyed a resistance to her husband in the face of increasingly brutal punishment is indicative that her opposition to this paradigm is fundamental. *Fatin v. INS, supra*.

Such is the case in Honduras. Women who oppose the deeply entrenched societal norm of male hegemony set themselves apart and are thought of as distinct within Honduras. *See* Resp. Subm., Tab O ("Moreover, the prevailing cultural norms permit violence against women without sanction. The root of this inability to provide basic security to women stems from a culture of machismo. This sexist attitude holds that women must be subservient to men, that women obtain their identity from and belong to their partners, husbands and fathers, and that intimate relationships should be controlled by the man without any outside intervention."). This is further highlighted by reports discussing violence perpetrated against Honduran women who resist male dominance or otherwise disobey the expectations as to how they should behave in their role as women. *See* Resp. Subm., Tab M at 86 (discussing how the Honduran state "may perpetuate this devaluation [of women] when judges and police blame victims for the abuses against them by accusing them of failing to "behave well."). As the Board emphasized in *M-E-V-G-*, persecution may be the "catalyst for a group of individuals to experience a sense of "group" and for society to "discern that this group of individuals…is distinct in some significant way." 26 I&N Dec. at 243. Accordingly, the Court should find that Ms. YRF suffered past persecution on account of her membership in this particular social group.

e. ***Ms. YRF was persecuted on account of her membership in the particular social group of "Honduran Garifuna women"***

Ms. YRF was persecuted and also fears persecution on account of her membership in the particular social group of "Honduran Garifuna women." This social group is defined by nationality, gender, and race – all of which are recognized immutable traits. The group also possesses the requisite social distinction, as Honduran society regards Honduran Garifuna women as a distinct group. *M-E-V-G-*, 16 I&N Dec. at 239. "The social distinction requirement considers whether those with a common immutable characteristic are set apart, or distinct, from other persons within the society in some significant way." *Id.* at 237. Honduran Garifuna have a distinct culture and identity in Honduras, within which Garifuna women in particular have a distinct role. *See* Resp. Subm., Tab R ("The matrifocal traditions of the Garifuna culture do not, however, indicate a lack of gender disparities or challenges in the culture. For example, it is typically accepted that male Garifuna will have multiple partners despite expectations that female Garifuna remain monogamous with their husbands."); *see also* Resp. Subm., Tab S (noting a report by the United Nations that "in particular that women in Afro-Honduran and indigenous communities faced multiple forms of discrimination in all aspects of social, political, and economic life."). Lastly, this social group is sufficiently particular as it has discrete and have definable boundaries" that "provide a clear benchmark for determining who falls within the group." *M-E-V-G-*, 26 I&N Dec. at 239.

The Ninth Circuit has found that women of a particular country can constitute a cognizable particular social group without additional identifiers. *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010). The Ninth Circuit looked to its decision in *Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005) where it recognized that because gender is an "innate characteristic" that is fundamental to one's identity, and because FGM occurs on account of being female, the Petitioner could define her particular social group either as Benadiri females or, more broadly, as Somali females, reasoning that this reflects "the only plausible construction" of our asylum law. *Mohammed*, 400 F.3d at 785. It noted that the Eighth Circuit followed its lead in *Mohammed*, holding that "Somali females" constitute a particular social group in *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir.

2007)). Ms. YRF's formulation of "Honduran Garifuna women" closely tracks this articulation of a particular social group. Accordingly, the Court should find that Ms. YRF suffered past persecution on account of her membership in the particular social group of Honduran Garifuna women.

3. The Honduran government is unwilling and unable to provide protection to women in Ms. YRF's position on account of a protected ground.

Even if the Court were to find that the harms Ms. YRF's husband inflicted on her were not on account of a protected ground, she can also establish the requisite nexus where the Honduran government is unwilling and unable to protect her on account of a protected ground – namely, her membership in the particular social groups of "Honduran Garifuna Women" and "Married Honduran Women."

In analyzing whether an individual has a reasonable fear of return "on account of" a protected ground, the UNHCR has instructed parties to the Convention to analyze both the reason for the initial harm and the reason for the government's failure to protect. *See* UNHCR, Guidelines on International Protection: 'Membership of a Particular Social Group' within the context of Art. 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, U.N. Doc. HCR/GIP/02/02 (2002) (providing that "where the risk of being persecuted at the hands of a non-State actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for a Convention reason," the nexus element is met).

This is consistent with a plain reading of the definition of "refugee" as an individual who is "unwilling or unable to avail himself or herself of the protection of that country because of persecution, or a well-founded fear of persecution, on account of [a protected ground]." INA δ 101(a)(42). A person who has suffered or fears severe harm as a member of a protected class, whether the protected ground motivates the persecutor, or motivates the government's failure to protect one from persecution, would fit within that definition.

New Zealand, Australia, and the United Kingdom have all long applied this bifurcated nexus analysis. *Islam v. Secretary of State for the Home Department* [1999] 2 WLR 1015 (HL (1999)). Refugee Appeal No. 71427/99 (2000), available at: www.refugee.org.nz/Fulltext/71427-99.htm; *Minister for Immigration and Multicultural Affairs v. Khawar* [2002] 76 ALJR 667, available at: www. austlii.edu.au/au/cases/cth/HCA/2002/14.html. The House of Lords in the United Kingdom explains its reasoning using the quintessential example of persecution:

> "Suppose that the Nazi government in those early days did not actively organise violence against Jews, but pursued a policy of not giving any protection to Jews subjected to violence by neighbours. A Jewish shopkeeper is attacked by a gang organised by an Aryan competitor who smash his shop, beat him up and threaten to do it again if he remains in business. The competitor and his gang are motivated by business rivalry and a desire to settle old personal scores, but they would not have done what they did unless they knew that the authorities would allow them to act with impunity. And the ground upon which they enjoyed impunity was that the victim was a Jew. Is he being persecuted on grounds of race? Again,

> in my opinion, he is. An essential element in the persecution, the failure of the authorities to provide protection, is based upon race."

Islam v. Secretary of State for the Home Department, supra, page 24.

U.S. Courts have not yet explicitly contemplated this approach. The Third Circuit, in *Velihaj v. Atty. General*, seemed to assume it though ultimately denied asylum on changed country conditions. 336 Fed. Appx. 193, fn 2. (3rd Cir. 2009)(Velihaj also testified that the police are unable or unwilling to protect him from the mobsters. But, even if the police were motivated by Velihaj's political opinion, as explained below, changed conditions in Albania undermine his claim.).

A bifurcated approach is particularly appropriate where harm of all types is *de facto* permitted against someone, like Respondent, because her government places less value on her life than others due to her status as an ethnic minority and a woman. This is the context in which her husband terrorized her, and knew he could terrorize her with impunity, so it is additionally relevant to ascertaining her husband's motivation.

In Ms. YRF's case, the country conditions evidence in the record makes it clear that the state will fail to protect her on account of her membership in the particular social groups of "Honduran Garifuna Women" and "Married Honduran Women." The state's actions and inactions "amplify violence in the lives of Honduran women" and "sidelin[e] women's interests," further reinforcing inequality and "sending a message to women (and society) that their lives are unimportant." *See* Resp. Subm., Tab M at 83, 92. "[P]olitical responsibility for feminicide through omission has intensified, and the government began to more systematically target women and more openly and directly commit acts of violence against them." *Id.* at 94; *see also* Resp. Subm., Tab O at 127 ("[I]mpunity for violence against women occurs during all stages of law enforcement."). The authorities' inability and unwillingness to protect is even further compromised when it comes to Honduran Garifuna women. *See* Resp. Subm., Tab K at 67; Tab S (noting that indigenous communities "faced acts of violence when claiming their rights in a general environment of violence and impunity, and that they lacked access to justice."); *see also* Resp. Subm., Tabs P, R. Honduras's inaction in the face of such severe violence against women has rendered it complicit in their persecution, and its motivations should also be considered in determining whether nexus is established.

4. The Honduran government is unable and unwilling to protect Ms. YRF and her children

The Honduran government is not merely "unwilling or unable" to protect women like the Ms. YRF and her children, it is complicit. In Honduras, the brutal killings of women "denote the complicity of the state through its unwillingness or inability to provide prevention and response mechanisms." *See* Resp. Subm., Tab M at 83. "Political exclusion, entrenched gender ideologies, and persistent inequality contribute to escalating security risks for women in Honduras." *Id.* at 86; *see also* Resp. Subm., Tab J ("[S]ystemic failures are related to the largely 'institutionalized' violence against women in Honduras, which has an entrenched 'machismo and patriarchal culture."). Nearly 96 percent of feminicides in Honduras go unpunished, as "unresponsive justice system institutions fall short in implementing the law on the books." Resp. Subm., Tab M at 89; *see also* Tab O at 127 ("[I]mpunity for violence against women occurs during all stages of law

enforcement."). Notably, in a reflection of Honduran society's machista expectations, while the law "criminalizes rape as a public crime, [it] does not grant the same status to spousal rape" like the one Ms. YRF was brutally subjected to at the hands of her husband. *See* Resp. Subm., Tab M at 91. Honduran law and society see these "private terrors" as an inevitable part of a partnered woman's life in the home, and take no action to protect women like Ms. YRF. *Id.* at 97. Women who seek help from the police are told that "the issue is a matter for her husband or partner to decide, and that she should go home, be intimate with him, and he will forgive her. Other times, police simply tell the women to stop disobeying their husbands/partners." Resp. Subm., Tab O at 111.

The evidence in record clearly establishes the requisite government action for asylum. 8 C.F.R. § 1208.13(b)(1); *Acosta*, 19 I&N Dec. at 222; *see also Pavlova v. INS*, 441 F.3d 82, 91 (2d Cir. 2006) (finding that "direct governmental action" is not "required to make out a claim of persecution," as "it is well established that private acts may be persecution if the government has proved unwilling to control such actions.").[3] Notably, Ms. YRF is not required to have reported the abuses, rapes and death threats she suffered to the police where – as was here – such a report would have been futile. *Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000).

Ms. YRF has provided ample evidence of the Honduran government's inability or unwillingness to protect her. *See* Resp. Subm., Tabs J-T. As Ms. YRF attested to in her declaration, and as further corroborated by the country conditions evidence, reporting her husband's abuse to the authorities would have proven futile. *S-A-*, 22 I&N Dec. at 1335. The country conditions evidence makes it clear that the authorities would have done nothing to protect her or punish MZ. *See* Resp. Subm., Tabs K-T (discussing the context of impunity in Honduras as it relates to gender violence). The government's inability and unwillingness to help the respondents would be particularly exacerbated given their Garifuna race. *See* Resp. Subm., Tab K at 67 (discussing the lack of access to justice for Honduran women, which is "seriously compromised" particularly for

[3] While *Matter of A-B-* starts with the proposition that "[a]n applicant seeking to establish persecution based on violent conduct of a private actor…must show that the government condoned the private actions…," the standard in the Second Circuit is not, and never has been, direct government condonation of a private actor's acts of persecution, as explained here. *Pavlova v. INS*, 441 F.3d at 91; *see A-B-*, 27 I&N Dec. at 337. Indeed, the Attorney General himself concedes that where there is not government condonation, an applicant must "show not just that the crime has gone unpunished, but that the government is unwilling or unable to prevent it." *A-B-*, 27 I&N Dec. at 337. While the AG uses the phrase "complete helplessness" at one point in the decision this language is not used in the holding, which instead holds "The applicant must show that the government condoned the private actions *or demonstrated an inability to protect the victims*." (emphasis added) This is consistent with the way that the Second Circuit, and every other Circuit, have conducted the government action requirement. "Complete helplessness" is at most, dicta, more likely rhetorical flourish and should not be read to elevate Respondent's burden with regard to government action. *see also, e.g., Vahora v. Holder*, 707 F.3d 904, 908-09 (7th Cir. 2013) (explaining that asylum is only available if the persecution was inflicted by the government or "by private actors whom the government is unable or unwilling to control" and noting that reporting non-state violence to law enforcement isn't necessary to meet this requirement if doing so would have been futile); *Cece v. Holder*, 733 F.3d 662, 675 (7th Cir. 2013) ("T]he standard is not just whether the government of Albania was involved in the incident or interested in harming Cece . . . but also whether it was unable or unwilling to take steps to prevent the harm"); *Hor v. Gonzales*, 421 F.3d 497, 502 (7th Cir. 2005) (explaining that where the government had effectively told the petitioner he would have to protect himself because they could not protect him, the individual would have a "solid claim for asylum"); *Tarraf v. Gonzales*, 495 F.3d 525, 527 n.2 (7th Cir. 2007) (explaining that while *Hor I*, could be read broadly to suggest "that when an alien has been targeted by an armed insurgency . . . he can never establish" asylum eligibility, *Hor II* clarified that "persecution by private actors can give rise to viable asylum claims" and so *Hor I* "should not be over-read").

Afro-descendant women); *see also* Resp. Subm., Tab Q ("Members of indigenous, Afro-Honduran [communities] are reportedly subjected to threats, evictions and violence by members of the security forces, private security forces and organized criminal groups."); Tab S (discussing how indigenous communities "faced acts of violence when claiming their rights in a general environment of violence and impunity, and that they lacked access to justice."); Tab T at 147 ("[C]omplaints filed by indigenous peoples or communities of African descent are not investigated or, in cases in which officials do initiate a process, no orders to prosecute are issued."). Notably, in her coastal town of Tocamacho there was no local police station, further hindering her ability to access justice and highlighting the government's inability to protect her. *See* Resp. Decl. ¶ 27 ("There was no way to get police assistance in Tocamacho. It would have taken me about a day walking to get to the nearest police station.")

5. The Department Cannot Meet its Burden to Show that Ms. YRF Can Internally Relocate to Avoid Future Persecution

If past persecution is established, a regulatory presumption arises that the applicant has a well-founded fear of future persecution on the basis of his original claim. 8 C.F.R. § 1208.13(b)(1). The Department may rebut this presumption if it establishes by a preponderance of the evidence that the applicant's fear is no longer well-founded due to a fundamental change in circumstances or because the applicant could avoid future persecution by relocating to another part of the country and that it would be reasonable to expect him to do so. 8 C.F.R. § 1208.13(b)(1)(i)-(ii).[4] In this case, the Department cannot meet its burden to show that the respondents can reasonably relocate to avoid future persecution.

In order to demonstrate that an applicant can safely internally relocate, there must be an area of the country where the circumstances are "substantially better" than those giving rise to a well-founded fear of persecution on the basis of the original claim. *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33 (BIA 2012). When determining whether it is reasonable to expect an applicant to relocate, the Court should consider the following factors: whether the respondent would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographic limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. 8 C.F.R. § 1208.13(b)(3*); see also Dong Zhong Zheng v. Mukasey*, 552 F.3d 277, 288 n.7 (2d Cir. 2009).

In this case, it is impossible and unreasonable for Ms. YRF to relocate to another area of Honduras because of its small size and MZ's ability to find and harm Ms. YRF throughout the country. *See* Resp. Subm., Tab O at 117 ("Even if a woman did move, Honduras is a very small

[4] While the Attorney General in *Matter of A-B-* conjectures "[w]hen the applicant has suffered personal harm at the hands of only a few specific individuals, internal relocation would seem more reasonable than if the applicant were persecuted, broadly, by her country's government." *A-B-*, 27 I&N Dec. at 345. This language, however, is inconsistent with the plain language of the regulations. Under the plain language of the regulations, the identity of the persecutor cannot be treated as dispositive to the reasonableness of relocation under the totality of circumstances. Although the regulation specifies that listed factors are illustrative, the nature of factors listed makes it clear that the identity of the persecutor does not control or even strongly guide the reasonableness determination. 8 C.F.R. § 1208.13(b)(3); *see also Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996)(finding a fear of "country-wide persecution" where the persecutor was the applicant's husband, taking into account, *inter alia*, the country's small size; the police's tolerance of acts of violence against women; and the government's poor human rights record).

country and usually the abuser knows the woman's family or can easily find her through other means."). Despite Ms. YRF's previous attempts to relocate from Tocamacho to San Pedro Sula, her persecutor continued to track her down and threaten her with death. *See* Resp. Decl. ¶¶ 22-24. The gangs in San Pedro Sula also targeted and threatened Ms. YRF's daughters, further highlighting the unreasonableness of safely relocating. *See* Resp. Decl. ¶ 28; Resp. Subm., Tab C. Moreover, the country conditions evidence demonstrates that "it is not possible for a woman" like Ms. YRF "to secure protection by trying to relocate within the country." *See* Resp. Subm., Tab O at 117. Forcing Ms. YRF to return to Honduras will put her at imminent risk of further abuse and even death by MZ, no matter where she was to go. Given the current sociopolitical conditions of widespread violence, particularly against women and particularly Garifuna women in Honduras, relocation is neither a reasonable or effective possibility for Ms. YRF. Accordingly, the Department cannot rebut the presumption of a well-founded fear of future persecution.

6. Matter of A-B- should not be applied retroactively to currently pending asylum claims

Ms. YRF has provided several alternative paths to establish her asylum eligibility. However, if this Court determines that she is no longer eligible for asylum because of *Matter of A-B-*, then *Matter of A-B-* would constitute the type of "abrupt departure" from past precedent that should not be applied retroactively to asylum applications that were already pending at the time that *Matter of A-B-* came down.

The Second Circuit has established a five-part inquiry to determine whether an administrative decision should have retroactive application. In *Obeya v. Sessions*, the Circuit held that while agencies may create new rules through adjudication, the retroactive application of the resulting rules "must be balanced against the mischief of producing a result which is contrary to the statutory design or to legal and equitable principles." *Obeya v. Sessions*, citation (2d Cir. 2018), *quoting SEC v. Chenery Corp*, 332 U.S. 194, 203 (1947). To achieve this balance, Courts must consider (1) whether the case is one of first impression, (2) whether the new rule presents an abrupt departure from well-established practice or merely attempts to fill a void in an unsettled area of law, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) degree of the burden which a retroactive order places on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard.

Matter of A-B- was not dealing with an issue of first impression. It was specifically overruling Board precedent established in *Matter of A-R-C-G-*. Prior to issuance of *Matter of A-R-C-G-*, immigration judges and practitioners looked to supplemental briefing by the Department of Homeland Security in cases such as *Matter of L-S-* and *Matter of R-A-* for guidance. This guidance also established that women in domestic relationships they are unable to leave may establish a cognizable social group. *Matter of A-B-* constituted an abrupt departure from past precedent and practice to find that, in fact, this was not a cognizable particular social group. A group of former Immigration Judges and Board of Immigration Appeals Judges published a letter following issuance of *Matter of A-B-*, objecting to such an abrupt departure from past precedent and practice. The letter is attached to this statement.

Ms. YRF relied on this precedent. Ms. YRF timely applied for asylum on November 7, 2014. Ms. YRF was initially scheduled for a final hearing for her applications for relief before the New

York Immigration Court on September 15, 2016, but that hearing was thereafter cancelled through no fault of her own. Her individual hearing was subsequently rescheduled for November 20, 2017 and was thereafter once again canceled about a month before the scheduled hearing date. Her case was then rescheduled to the currently scheduled date of August 14, 2018. In order to provide this Court with the documents she believed necessary to establish her eligibility for asylum, Ms. YRF asked family members and friends abroad to write statements. Ms. YRF did this because she believed it necessary to obtain protection for herself and her children. She did this in reliance on settled precedent, *Matter of A-R-C-G-*. As such, it would be improper and unfair to apply *Matter of A-B-* retroactively to her pending claim. The fact that retroactive application of this case would place an enormous burden on Ms. YRF is self-evident. She can see no statutory interest in retroactive application of this case.

7. Ms. YRF and her children are eligible for protection under the Convention against Torture

In the event that the Court finds that Ms. YRF has not established a nexus between the harm she suffered and a protected ground, she and her children are also eligible for protection under the Convention against Torture because it is more likely than not they will be tortured or murdered by Ms. YRF's husband, MZ, with the acquiescence of the Honduran government.

In making this determination, the Court should look to the severity of the harm inflicted on Ms. YRF in Honduras. She has been raped; slapped; menaced with imminent harm with a machete, knife, and wrench; and threatened with death. Her abuser has made clear to her that similar or more serious harm awaits her if she is deported, and that he is awaiting her return in order to further harm her and the children. *See* Resp. Decl. ¶ 29 ("[MZ] has called me and said that he was going to make sure I get deported so that I had to return to him. He wants to punish me, rape, and kill me in Honduras.").

In addition, the "gross, flagrant, or mass human rights violations" being carried out against women in Honduras are well documented. *See* Resp. Subm., Tabs J-T. Past torture and evidence of gross, flagrant, or mass human rights violations in the country are both indicative of the likelihood of future torture against Ms. YRF and minor respondents. 8 C.F.R. 1208.16(c)(3)(i) & (iii). Ms. YRF's past experiences as well as the country conditions evidence in the record demonstrate that she and her children are more likely than not to suffer torture in Honduras. Notably, she has already been subjected to torture in the past at the hands of MZ. *See Zubeda v. Ashcroft*, 333 F.3d 463, 472-73 (3d Cir. 2003)("Rape can constitute torture. Rape is a form of aggression constituting an egregious violation of humanity.")(*citing to Kadic v. Karadzic*, 70 F.3d 232, 242 (2d Cir. 1995) (referring to allegations of "murder, rape, forced impregnation, and other forms of torture"). If she is forced to return to Honduras, MZ will attack, rape and kill Ms. YRF, and will similarly torture and disappear the minor respondents in order to punish Ms. YRF. *See* Resp. Decl. ¶ 29; *see also* Resp. Subm., Tab I (attesting that MZ has told him that he wishes to kill Ms. YRF).

Moreover, the respondents' inability to relocate to find safety within Honduras is relevant to establishing a likelihood of torture. As described *supra*, Ms. YRF and the minor respondents did attempt to relocate within Honduras, but MZ continued to seek them out to brutally punish them.

See Resp. Decl. ¶¶ 22-25; Resp. Subm., Tab H ("He said that there would be death if she did not let them take her children because he would burn down the house."). In addition, Ms. YRF's minority status as a Garifuna woman, as well as the nationwide presence of vicious gangs – which have previously threatened Ms. YRF's daughters – cut against any possibility of relocation. 8 C.F.R. 1208.16(c)(ii).

Information in the record establishes the total impunity with which perpetrators of gender violence act, and the Honduran government's willful blindness in preventing the torture of women. *See* Resp. Subm., Tabs J-T. This is due in part to widespread corruption in the Honduran government and the prevailing culture of machismo. As documented in the country conditions evidence in the record, the Honduran government refuses and "fails to protect women from violence and assure equality under the law." *See* Resp. Subm., Tab O at 119; *see also id*. at 126 ("[T]he Honduran judiciary all too often exhibits the same discriminatory attitudes against women endemic throughout Honduran society. This refusal to protect women takes many forms."). When investigators encounter a woman who has been killed within a context of domestic violence, they reason it is a "crime of passion" and deliberately fail to conduct an in-depth forensic-examination. *See* Resp. Subm., Tab M at 93; Tab O at 123. Moreover, as described *supra*, the Honduran government turns a blind eye to spousal rape, demonstrating the government's acquiescence to MZ's rape of his wife – Ms. YRF. *See* Resp. Subm., Tab M at 91 ("Reflecting social expectations of gendered behavior, the law criminalizes rape as a public crime but does not grant the same status to spousal rape."). This evidence establishes the requisite government acquiescence to torture by Ms. YRF's husband as defined in the Second Circuit. *De La Rosa v. Holder*, 598 F.3d 103 (2d Cir. 2010), looked to the same type of record evidence (widespread corruption and the government's overall inability to prevent torture) as indicative of government acquiescence to torture. Importantly, Honduras' inability to prevent the torture of women is attributed not simply to lack of resources but to corruption and machismo, establishing the level of "willful blindness" required in the Second Circuit. *Khouzam v. Ashcroft*, 361 F.3d 161 (2d Cir. 2004).

In addition to the problems they faced at the hands of their father, the minor respondents also fear retribution from the gangs in Honduras, as they refused to comply with their demands. *See* Resp. Decl. ¶ 28; Resp. Subm., Tab C. The country conditions evidence in the record establish that the minor respondents will more likely than not be tortured by the gangs with the Honduran government's acquiescence. *See* Resp. Subm. Tab Q at 180-88.

Respectfully submitted,

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