

NON-DETAINED

Pro bono Attorney for Respondents
RESPONDENT 1
RESPONDENT 2

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SAN FRANCISCO, CA

In the Matter of:

RESPONDENT 1,
RESPONDENT 2

Respondents,

In Removal Proceedings

File No. A XXX-XXX-XXX
A XXX-XXX-XXX

Individual Hearing: MONTH XX, XXXX
TIME

Immigration Judge: JUDGE

RESPONDENTS' PREHEARING BRIEF

Respondent, RESPONDENT 1 (“RESPONDENT 1” or “Lead Respondent”), hereby respectfully submits a prehearing brief regarding her eligibility for asylum, withholding of removal, and protection under the Convention Against Torture. Respondent 1 experienced past persecution consisting of sexual, physical, verbal, and emotional abuse, as well as death threats from her ex-partner and husband, NAME (“HUSBAND”), and his partner, NEW PARTNER (“NEW PARTNER”). HUSBAND beat and raped Respondent 1 countless times; Respondent 1’s youngest daughter and co-respondent RESPONDENT 2 (“Respondent 2”) is the product of rape. HUSBAND’s partner, NEW PARTNER, harassed and threatened to kill Respondent 1 Respondent 2. When Respondent 1 tried to relocate, HUSBAND and NEW PARTNER’s threats of harm continued, and the police refused to help. Without any recourse, Respondent 1 fled to the United States.

I. STATEMENT OF FACTS¹

RESPONDENT 1 has suffered sexual, physical, verbal, and emotional abuse at the hands of her ex-partner and husband, HUSBAND. She also suffered physical, verbal, and emotional abuse at the hands his new partner, NEW PARTNER. RESPONDENT 1 is a 36-year-old Guatemalan woman of Mam ethnicity. She grew up in the municipality of MUNICIPALITY, in a small village called TOWN, six hours from the town center.

When she was around 12 years old, she attended a carnival as part of a school activity. There, she was raped by a Ladino (non-indigenous) man, with the help of others. They put hands on her mouth so nobody could hear her scream. After she told her father about what happened, they discussed going to the police. They had heard stories that Mam individuals were not listened

¹ All of the facts in Section I, unless otherwise indicated, are from RESPONDENT 1’ Declaration, *see* Exh. A of simultaneously submitted filing titled “Documentation in Support of I-589 Application” (“Supp. I-589 Documentation”).

1 to by the police, and that one needed money for the police to do anything. For those reasons,
2 RESPONDENT 1 decided not to report that incident.

3 RESPONDENT 1 stopped going to school after she was raped. When she was around 13
4 years old, she nearly died in a mudslide on the road to another village. RESPONDENT 1' rape
5 and the mudslide both contribute to her memory problems: she cannot remember dates well and
6 accessing specific details of traumatic memories is particularly difficult.

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8 When RESPONDENT 1 was around 17 years old, she met HUSBAND. After around
9 three years, they were officially married. RESPONDENT 1 does not remember the exact date of
10 her marriage. While they were dating, RESPONDENT 1 did not think that HUSBAND was
11 abusive. That changed when RESPONDENT 1 became pregnant with her first daughter, OLDER
12 DAUGHTER ("OLDER DAUGHTER"). HUSBAND physically abused RESPONDENT 1,
13 hitting her on the face and making her nose bleed. He hit her because she did not cook the food
14 to his liking. He told her that because he was a man, he had more power than her. He said that he
15 was more "macho" than her, and that men were better than women. One time, he kicked her so
16 hard that some of her teeth fell out. HUSBAND also mistreated other female family members.
17 For instance, he would yell at his mother and did not respect her. He treated his sister "as if she
18 wasn't worth anything."

19
20 In addition to physical abuse, HUSBAND controlled RESPONDENT 1' life. He locked
21 her in the house regularly so that she could not leave, and so that he could "abuse
22 [RESPONDENT 1] whenever he wanted." HUSBAND also threatened to kill RESPONDENT 1
23 countless times – threats that did not cease until RESPONDENT 1 fled Guatemala. He told her
24 that he would kill her with a knife and told her that he knew people who could kill her.
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1 Despite the fact that HUSBAND had another partner, he returned to abusing and
2 controlling RESPONDENT 1. He raped RESPONDENT 1 countless times. Even after
3 RESPONDENT 1 said that she did not want to have sex, this would not stop HUSBAND. He
4 would respond by saying that she was not a “good woman” and not worth anything. If she
5 refused his advances, he would hit her; threaten to kill her; and rape her after. RESPONDENT 1’
6 youngest daughter, Respondent 2, is a product of rape.
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8 HUSBAND’s other partner, NEW PARTNER, also sought to harm RESPONDENT 1.
9 Like HUSBAND, NEW PARTNER threatened to harm both RESPONDENT 1 and
10 RESPONDENT 1’ young daughter, Respondent 2. On multiple occasions, NEW PARTNER
11 came to RESPONDENT 1’ house and banged on her door, yelling, “Why aren’t you coming
12 out?” On at least one occasion, NEW PARTNER saw RESPONDENT 1 and Respondent 2 out in
13 public. NEW PARTNER approached them; RESPONDENT 1 saw that she was carrying a knife.
14 Because no one was around to help, RESPONDENT 1 rushed to her house for safety. Anytime
15 that RESPONDENT 1 was outside of her house, she was afraid that NEW PARTNER could hurt
16 them.
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19 RESPONDENT 1 contemplated leaving MUNICIPALITY. When she told HUSBAND
20 that he wanted to leave, he said “If you want to leave, then leave, but you better leave your
21 daughters.” RESPONDENT 1 refused to part with her own daughters – daughters for whom she
22 was the sole caretaker.
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24 When her daughters were old enough, they fled to another part of Guatemala.
25 RESPONDENT 1 hoped that relocation would keep them safe from HUSBAND and NEW
26 PARTNER. However, the abuse continued – they found her phone number and threatened her.
27 Their threats never stopped throughout the entire time that RESPONDENT 1 moved away from
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1 MUNICIPALITY. HUSBAND told her, “I know where you are with your dad, in Escuintla. I
2 know that you’re there, and one day, I’m going to find and kill you in the mountains.”

3 RESPONDENT 1 had not gone to the police in MUNICIPALITY for the same reasons
4 why she had not when she was raped as a 12-year-old: she was Mam, and she had no money.
5 Instead, she tried in Escuintla to report HUSBAND and NEW PARTNER’s severe abuse. After
6 explaining to the police what had happened, the police asked whether they had money to file a
7 police report. The police also told her that she needed money for an attorney. As RESPONDENT
8 1 barely eked out a living working on a farm with her family, she did not have the funds that the
9 police required.
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11 HUSBAND and NEW PARTNER’s threats did not stop. RESPONDENT 1 “never felt
12 safe there.” HUSBAND and NEW PARTNER’s threats increased, forcing RESPONDENT 1 to
13 leave. HUSBAND and NEW PARTNER told her that they knew that she was in Escuintla and
14 that they were going to find them. In March 2019, RESPONDENT 1 fled to the United States
15 with her younger daughter, Respondent 2.
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17 RESPONDENT 1’s older daughter, OLDER DAUGHTER (“OLDER DAUGHTER”),
18 stayed behind in Guatemala for a time. *See* Supp. I-589 Documentation Exh. B (Decl. OLDER
19 DAUGHTER). NEW PARTNER continued her abuse and threats, directing them to OLDER
20 DAUGHTER. *Id.* She physically abused her, including pushing her down the stairs, beating her
21 countless times, and grabbing her neck. *Id.* She threatened her, telling OLDER DAUGHTER that
22 she would pay gangs to hurt her so they could rape and kill her. *Id.* She continued to threaten
23 RESPONDENT 1 through OLDER DAUGHTER: NEW PARTNER “demanded that [OLDER
24 DAUGHTER] tell her where [RESPONDENT 1] was ‘so [NEW PARTNER] can send someone
25 to kill her so [OLDER DAUGHTER] can be an orphan.’” *Id.* HUSBAND, in the meantime,
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1 refused to intervene, and did not protect OLDER DAUGHTER from NEW PARTNER. *Id.* In
2 June 2021, OLDER DAUGHTER fled Guatemala and arrived in the United States as an
3 unaccompanied minor. *Id.*

4 **II. PROCEDURAL HISTORY**

5 Respondents' Notices to Appear were filed with the Court on October 10, 2019. Because
6 of a clerical error regarding notice, Respondents were ordered removed *in absentia* on November
7 8, 2019. Respondents' motion to reopen, which included Lead Respondent's asylum application,
8 was granted on November 23, 2020. Respondents filed written pleadings on February 16, 2021.
9 This Court granted Respondents' motion to move Lead Respondent's asylum application and
10 supporting documents into the record on February 18, 2021. On March 19, 2021, this Court
11 scheduled Respondents for an individual hearing on October 21, 2021.

12 **III. RESPONDENT 1 QUALIFIES FOR A GRANT OF ASYLUM**

13 RESPONDENT 1 meets the standard for asylum: the past harm she suffered rises to the
14 level of persecution, the harm was on account of a protected ground, and it was committed by a
15 person that the government is unable or unwilling to control. No bars of asylum apply to this
16 case.

17 **A. PERSECUTION**

18 The physical abuse, sexual abuse, and death threats that RESPONDENT 1 suffered at the
19 hands of HUSBAND and NEW PARTNER rise to the level of persecution. *See Chand v. INS*,
20 222 F.3d 1066, 1073 (9th Cir. 2000) (noting that physical violence, such as rape, torture, assault,
21 and beatings has consistently been treated as persecution); *see also Kaur v. Wilkinson*, 986 F.3d
22 1216, 1223 (9th Cir. 2021) (noting that the Ninth Circuit has "consistently treated rape as one of
23 the most severe forms of persecution an asylum seeker can suffer."). Additionally, the Ninth
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1 Circuit has held that harassment, including threats, attacks on family, and intimidation amounts
2 to persecution. *See Chouchkov v. INS*, 220 F.3d 1077, 1083-84 (9th Cir. 2000). The threats and
3 abuse that she has suffered must be considered cumulatively. *See Korablina v. INS*, 158 F.3d
4 1038, 1044 (9th Cir. 1998) (relying on the cumulative effect of harms to determine whether the
5 abuse amounted to persecution). Here, HUSBAND physically assaulted RESPONDENT 1, raped
6 her, and threatened to kill her; his other partner, NEW PARTNER, also attempted to harm
7 RESPONDENT 1 and her daughter and NEW PARTNER threatened to kill RESPONDENT 1
8 countless times. While each incident is egregious, when taken as a whole, they undeniably rise to
9 the level of persecution.
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12 The psychological evaluation by Lexie Thomas , a licensed marriage and family
13 therapist and mental health clinician, corroborates the harm that RESPONDENT 1 suffered and
14 documents the long-lasting trauma that she continues to experience as a result of HUSBAND and
15 NEW PARTNER’s abuse. *See* Supp. I-589 Documentation Exh. F (Psychological Evaluation of
16 Lead Respondent conducted by Lexie Thomas). Thomas diagnosed RESPONDENT 1 with Post
17 Traumatic Stress Disorder (“PTSD”) and Major Depressive Disorder (“MDD”), recurrent, in full
18 remission. *Id.* ¶ 30. Respondent 1’s PTSD currently manifests itself in intrusive symptoms such
19 as nightmares and flashbacks; memory issues related to the trauma she suffered; and difficulty
20 concentrating. *Id.* ¶¶ 31-36. RESPONDENT 1’ MDD manifests itself as “depressed mood most
21 of the day, nearly every day... diminished ability to concentrate; and sleep disturbances.” *Id.* ¶
22 40.
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25 In sum, RESPONDENT 1 has clearly established the harm she experienced rises to the
26 level of persecution under the Act.

27 **B. PROTECTED GROUNDS AND NEXUS**

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1 The persecution RESPONDENT 1 suffered and will continue to suffer if she returns to
2 Guatemala is on account of the protected grounds of her feminist political opinion and
3 membership in the particular social groups (PSGs) of:

- 4 • Guatemalan women;
- 5 • Indigenous Guatemalan women;
- 6 • Guatemalan women who are unable to leave their relationship;
- 7 • Indigenous Guatemalan who are unable to leave their relationship;
- 8 • Guatemalan women viewed as property.
- Indigenous Guatemalan women viewed as property.

9 **1. Political Opinion**

10 RESPONDENT 1 suffered past persecution on the basis of her feminist political opinion.
11 An asylum applicant must satisfy two requirements in order to show that she was persecuted on
12 account of a political opinion. First, the applicant must show that she held (or that her
13 persecutors believed that she held) a political opinion. *Navas v. INS*, 217 F.3d 646, 656 (9th Cir.
14 2000) (internal citation omitted). Second, the applicant must show that her persecutor persecuted
15 her (or that she faces the prospect of such persecution) because of her political opinion. *Id.*

17 RESPONDENT 1 has a feminist political opinion, as she believes that men and women
18 should have the same rights. *See* Supp. I-589 Documentation Exh. A; *see Rodriguez Tornes v.*
19 *Garland*, 993 F.3d 743, 748 (9th Cir. 2021) (holding that feminism qualifies as a political
20 opinion within the meaning of the relevant statutes regarding asylum and that Petitioner’s
21 testimony that “there should be equality in opinions and in worth between the sexes” was
22 sufficient to find that the Petitioner held a feminist political opinion.) (internal quotation marks
23 omitted). And HUSBAND persecuted Respondent 1 because she thought men and women
24 should be equal, as elaborated upon below.

27 **a. Nexus**

1 Persecution is inflicted “on account of” a protected characteristic if that characteristic is
2 “**at least one** central reason” for the persecution. 8 U.S.C. § 1158(b)(1)(B)(i) (emphasis added).
3 The carefully chosen language “confirms that aliens whose persecutors were motivated by more
4 than one reason continue to be protected under section 208 of the Act if they can show a nexus to
5 a protected ground.” *In re J--- B--- N--*, 24 I&N Dec. 208, 2007 (BIA June 25, 2007) (emphasis
6 added).
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8 The Ninth Circuit in *Rodriguez Tornes* clarified that to show that the persecution was
9 “one central reason,” the petitioner must meet the *Parussimova* test. *See Rodriguez Tornes*, 993
10 F.3d at 751, citing *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2009). First, the
11 Petitioner must show that “the persecutor would not have harmed [her] if such motive did not
12 exist,” 555 F.3d at 741, that is, but-for cause. *See But-for Cause*, Black’s Law Dictionary (11th
13 ed. 2019) (“The cause without which the event could not have occurred.”). Second, *Parussimova*
14 requires the petitioner to show her protected ground was not “incidental, tangential, superficial,
15 or subordinate to another reason for harm.” *Parussimova*, 555 F.3d at 741.
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18 Direct and indirect evidence can be used to show that persecution was on account of a
19 political opinion. *See Rodriguez Tornes*, 993 F.3d 743; *Singh v. Holder*, 764 F.3d 1153, 1159
20 (9th Cir. 2014). “Testimony regarding a persecutor’s statements serves as direct evidence that the
21 persecution was motivated by a political opinion.” *Id.* So long as the IJ finds that a petitioner is
22 credible, that testimony can come from the petitioner herself. *Id.* A short temporal gap between a
23 petitioner’s actual or imputed assertion of a political opinion and her mistreatment provides
24 “indirect evidence of a nexus.” *Khudaverdyan v. Holder*, 778 F.3d 1101, 1107 (9th Cir. 2015). In
25 *Rodriguez Tornes*, the petitioner suffered episode after episode of physical and sexual abuse
26 because “she sought an equal perch in the social hierarchy.” 993 F.3d at 751. The Ninth Circuit
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1 evaluated the statements surrounding each incident of violence, as well as the temporal gap
2 between the petitioner’s assertion of political opinion and the mistreatment and found that the
3 record “compels” a finding of nexus and stated the “[p]etitioner’s political opinion is at least one
4 central reason for her past persecution.” *Id.* at 753.

5
6 One of the examples that *Rodriguez Tornes* points to in identifying nexus is when the
7 persecutor said that Petitioner did not have the right to have a job. The petitioner then “countered
8 that she did. [The persecutor] responded by hitting her.” *Id.* In the present case, RESPONDENT
9 1 told HUSBAND that she did not want to be with him. I-589 Supporting Docs Exh. A ¶ 37. “He
10 didn’t care and continued to abuse and rape [her].” *Id.* In another instance, when RESPONDENT
11 1 told him that she wanted to leave, he told her that she “better leave [her] daughters.” *Id.* Like
12 the abuser in *Rodriguez Tornes*, who stated that “I’m the man and you’re going to do what I say,”
13 RESPONDENT 1’s husband HUSBAND similarly took away her free will by forcing her to have
14 sex and preventing her from leaving by demanding that her daughters stay with him. 993 F.3d at
15 749.
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18 Another example the Court referenced to find nexus in *Rodriguez Tornes* was when the
19 petitioner said, “she was not obligated to have sex whenever [the persecutor] wished.” 993 F.3d
20 at 753. The persecutor said that it was her “‘obligation as a woman to serve him when he
21 wanted,’ and he raped her.” *Id.* In the present case, HUSBAND raped RESPONDENT 1
22 countless times; she recounts that she told him that she didn’t want to have sex with him. Supp.
23 I-589 Documentation Exh. A ¶ 35. HUSBAND told her that she “wasn’t worth anything” and
24 that “because he was the man, he had more power than [RESPONDENT 1].” *Id.* ¶ 26. He said
25 that he was more “macho” than RESPONDENT 1, and that “men were better than women.” *Id.*
26 and said, “I’m going to hit you, I’m going to kill you.” *Id.* He did those things and raped her as
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1 well. *Id.* ¶ 37. These statements draw a nexus between the rapes and RESPONDENT 1’ feminist
2 political opinion.

3 The Court in *Rodriguez Tornes* also concluded that nexus was apparent when the
4 petitioner bought her own trailer and attempted to prevent the persecutor’s entry onto her
5 property and the persecutor then raped and strangled her to show her that she was not going
6 anywhere. 993 F.3d at 753. *Id.* RESPONDENT 1 presents an equally strong example of nexus.
7 HUSBAND attempted to control RESPONDENT 1 by locking her in the house. Supp. I-589
8 Documentation Exh. A ¶¶ 26-27. HUSBAND did so “to be able to abuse [RESPONDENT 1]
9 whenever he wanted.” *Id.* ¶ 27.

10 Just as in *Rodriguez Tornes*, RESPONDENT 1 suffered episode after episode of physical
11 and sexual abuse because “she sought an equal perch in the social hierarchy.” 993 F.3d at 753.
12 HUSBAND’s statements and actions serve as direct evidence that the persecution was motivated by
13 a political opinion. Additionally, just as in *Rodriguez Tornes*, the temporal relationship between
14 RESPONDENT 1’ assertions of her feminist political opinion and her mistreatment serves as
15 indirect evidence of nexus, as some of the worst acts of violence, rape and kidnapping, occurred
16 “immediately after Petitioner asserted her rights as a woman.” *Id.* (internal quotation marks
17 omitted). Professor Nancy K.D. Lemon’s expert report submitted in this case describes domestic
18 abusers as generally harboring views that men should dominate women and squelch female
19 independence.² Professor Lemon’s report corroborates RESPONDENT 1’ experiences: her
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25 ² See Exh. A. of simultaneously submitted filing titled, “Country Conditions Evidence in Support
26 of I-589 Application,” (“Country Conditions”). This is the same report that the Ninth Circuit
27 relied upon in corroborating the petitioner’s assertions in *Rodriguez Tornes v. Garland*, 993 F.3d
28 743, 755 (9th Cir. 2021) (describing Professor Lemon as a “leading authority on domestic
violence”) (J. Paez, concurring). Thus, although the expert is not available as a witness, the
report itself should be given due weight, as the Ninth Circuit relied upon the same report in its
corroboration.

1 persecution occurred when she expressed a contrary opinion, and her abuser demonstrated ideals of
2 male domination and female subordination, the very points noted by Professor Lemon. If returned
3 to Guatemala, it is with almost certainty that HUSBAND would persecute her because of her
4 feminist political opinion.
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6 **2. Particular Social Groups**

7 An applicant seeking relief based on membership in a particular social group (“PSG”)
8 must establish that the group is “(1) composed of members who share a common immutable
9 characteristic, (2) defined with particularity, and (3) socially distinct within the society in
10 question.” *Matter of M-E-V-G*, 26 I&N Dec. at 237.
11

12 It is well-established that “any claim regarding the existence of a particular social group”
13 must be evaluated “in the context of the evidence presented regarding the particular
14 circumstances in the country in question” and on a case-by-case basis. *Diaz-Reynoso*, 968 F.3d
15 1070 (9th Cir. 2020); see *Matter of Acosta*, 19 I&N Dec. at 232-33. Recently, in *Matter of A-B-*,
16 28 I&N Dec. 307 (A.G. 2021) (“*A-B- III*”), the Attorney General vacated both *Matter of A-B-*, 27
17 I&N Dec. 316 (A.G. 2018) (“*A-B- I*”), and *Matter of A-B-*, 28 I&N Dec. 199 (A.G. 2021) (“*A-B-*
18 *II*”). According to the most recent *A-B-* decision, *A-B- I* and *A-B- II* used “broad language” that
19 “create[ed] a strong presumption against asylum claims based on private conduct.” *A-B- III* at
20 309. This language “threaten[ed] to create confusion and discourage careful case-by-case
21 adjudication of asylum claims,” as is required. *Id.* To avoid this confusion and to reiterate the
22 importance of case-by-case adjudication of these claims, *A-B- I* and *A-B- II* were vacated.
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25 **a. Guatemalan Women**

26 RESPONDENT 1 is a member of the various PSGs that satisfy the requirements outlined
27 in
28 *Matter of M-E-V-G*, including the PSG, “Guatemalan women,” which is cognizable

1 under the Act.

2 Immutability

3 “Guatemalan women” is defined by immutable characteristics. Gender and nationality are
4 innate characteristics that are fundamental to an individual’s identity. *See Mohammed v.*
5 *Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) (“Few would argue that sex or gender, combined
6 with clan membership or nationality, is not an innate characteristic, fundamental to individual
7 identit[y].”) (internal quotation marks omitted); *Matter of Acosta*, 19 I&N Dec. at 233; *see also*
8 *Ordonez-Quino v. Holder*, 760 F.3d 80, 89. (1st Cir. 2014), *Matter of A-R-C-G*, 26 I&N Dec.
9 388, 392 (BIA 2014).³

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11 Particularity

12 The group “Guatemalan women” also satisfies the particularity requirement. The
13 particularity inquiry recognizes that the social group must be defined by characteristics that
14 provide a clear benchmark for determining who falls within the group, such that the group
15 possesses “discrete and . . . definable boundaries.” *Matter of M-E-V-G-*, 26 I&N Dec. at 239.
16 Though discrete and definable boundaries are required, there is no outer limit on the size of the
17 defined group. *See Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010) (stating that “the size and
18 breadth of a group alone does not preclude a group from qualifying as such a social
19 group...innate characteristics of such broad and internally diverse social groups as homosexuals
20 and Gypsies” constitute PSGs for purposes of asylum). Unlike subjective and amorphous
21 qualities such as wealth or homelessness, which have been rejected by the Board, the main
22 characteristics of this group—gender and nationality—are easily definable and contain “adequate
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27 ³ Although *A-B- I* purportedly overruled *A-R-C-G-*, recently in *A-B- III*, the Attorney General
28 vacated both *A-B- I* and *A-B- II* and ordered that “immigration judges and the Board should
follow pre-*A-B- I* precedent, including *Matter of A-R-C-G-*.” *See A-B- III* at 309.

1 benchmark[s] for determining group membership.” *Matter of A-M-E- & J-G-U-*, 24 I&N Dec.
2 69, 76 (BIA 2007); *Escobar v. Gonzales*, 417 F.3d 363, 368 (3d Cir. 2005).

3 Social Distinction

4 Finally, the group “Guatemalan women” meets the social distinction requirement because
5 its members are perceived as a group by society. *See Matter of M-E-V-G-*, 26 I&N Dec. 227,
6 236, 240-243 (BIA 2014) (renaming “social visibility” as “social distinction” and defining it as
7 how a group is perceived by the society in question). When evaluating social distinction, courts
8 look to the evidence in the record to determine whether a society makes meaningful distinctions
9 based on the common immutable characteristics of the social group. *See Matter of C-A-*, 23 I&N
10 Dec. 951, 959 (BIA 2006).

13 Increased levels of violence against or differentiated treatment of a particular subsection
14 of society can indicate that society views its members as a distinct segment of the population.
15 *See, e.g., M-E-V-G-*, 26 I&N Dec. at 236 (explaining that *Matter of Toboso-Alfonso*, 20 I&N
16 Dec. 819 (BIA 1990), correctly determined that homosexuals were “socially distinct” based on
17 the type of mistreatment the applicant experienced when he was being forced to leave the
18 country for being homosexual and the evidence that suspected homosexuals were subjected to
19 physical examinations, interrogations, and beatings). Ninth Circuit precedent also makes clear
20 that evidence that a society has programs, organizations, or specialized laws specific to the
21 proposed particular social group indicate that society sees its members as distinct. *See*
22 *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013) (en banc) (holding that a
23 witness protection law designed specifically for witnesses of gang violence could establish social
24 visibility for the group, “people testifying against gang members”).
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1 Here, Guatemala has both increased violence against this segment of the population and
2 specialized (though ineffectual) femicide laws specific to the proposed PSG, demonstrating that
3 society sees Guatemalan women as distinct from other members of society. The U.S. State
4 Department Guatemala 2020 Human Rights Report acknowledged:
5

6 Violence against women, including sexual and domestic violence, remained
7 widespread and serious. The [femicide] law establishes penalties of five to eight
8 years for physical, economic, and psychological violence committed against
9 women due to their gender. As the government closed down nonessential
10 businesses and most forms of travel, imposing a strict curfew for COVID-19,
11 several NGOs, international organizations, and the government noted an increase
12 in domestic abuse and violence against women. Data was scarce and difficult to
13 collect, as some analysts noted women were not able to leave their homes to report
14 abuses confidentially to police.

15 *See* Country Conditions Exh. W at 379 (U.S. State Department, Guatemala 2020 Human Rights
16 Report).

17 The brutality towards Guatemalan women is undeniable. Guatemalan society's "gendered
18 hierarchy" is reflected in both the public and private arenas. Supp. I-589 Documentation Exh. D
19 ¶ 18 (citations omitted). Women are "frequent victims of physical, verbal, and psychological
20 domestic abuse." *Id.* As Claudia Paz y Paz Bailey explained in her 2016 report:

21 The widespread acceptance in many sectors of society of this growing violence
22 could be explained by the feeling of impotence in the face of such a serious
23 problem. However, one should also consider the historically high level of tolerance,
24 and tacit acceptance, in Guatemala toward gender-based violence, which often is
25 not even identified as violence, is not questioned, and is not perceived as unusual.
26 In Guatemala, these cases involving violence against women have reached
27 epidemic proportions, with corresponding alarming increases in the levels of
28 violent deaths of women.

Country Conditions Exh. B (Decl. Attorney Claudia Paz y Paz Bailey) at 65.

29 In response to this endemic violence, Guatemala passed the Law Against Femicide and
30 Other Forms of Violence Against Women. However, "neither this principal law nor any other
31 law in the Guatemalan legal system has reduced violence against women or the impunity that

1 perpetrators enjoy when they commit this violence.” Country Conditions Exh. C (Decl.
2 Guatemalan Attorney Elisa Portillo Najera) at 71. Civil society groups, including the Guatemalan
3 Women’s Group, or GGM, found that the “patriarchal interests, the macho interests...[were]
4 taking the teeth out of that [femicide] law...GGM laid out various ways in which the law’s
5 impact has been weakened by lack of funds, contradictory legal developments, and bureaucratic
6 slow-walking. Country Conditions Exh. E (INTERCEPT: *Trump Administration’s Limits on*
7 *Asylum for Domestic Violence Put Guatemalan Women in Peril*) at 113.

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9 The disproportionate levels of violence that Guatemalan women and girls face and the
10 existence of specialized laws, however ineffectual, are clear evidence that Guatemalan women and
11 girls are viewed as a distinct class of persons in society, with an increased need of protection.

12
13 **b. Guatemalan Women Who are Unable to Leave Their Relationship and**
14 **Guatemalan Women Treated as Property**

15 For the same reasons articulated above, the defining characteristics of nationality and
16 gender, make “Guatemalan women who are unable to leave their relationship” and “Guatemalan
17 women treated as property” cognizable PSGs. “Guatemalan women treated as property” is
18 substantially similar to a group articulated by the Department of Justice in the case *Matter of L-*
19 *R-*. See DHS Br., *Matter of L-R-* (Apr. 13, 2009) (arguing that “Mexican women who are viewed
20 as property by virtue of their position in a domestic relationship” was cognizable under the Act.),
21 available at

22
23 https://cgrs.uchastings.edu/sites/default/files/Matter_of_LR_DHS_Brief_4_13_2009.pdf.

24 Moreover, “Guatemalan women unable to leave their relationship” has been recognized by
25 *Matter of A-R-C-G* and its progeny. See *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014) This
26 was recently reaffirmed in *A-B- III* by the Attorney General, who in vacating *A-B- I* and *A-B- II*,
27 mandated “immigration judges and the Board should follow pre-*A-B- I* precedent, including
28

1 *Matter of A-R-C-G-.*” 28 I&N Dec. 307 (A.G. 2021). And in discussing immutability in *A-R-C-*
2 *G*, the BIA stressed the “common immutable characteristic of gender.” 26 I&N Dec. at 392. It
3 also stated that DHS conceded that the group is defined with particularity, as the terms used to
4 describe the group “married,” “women,” and “unable to leave the relationship” all have
5 commonly accepted definitions. *Id.* at 393.

7 The Ninth Circuit also recognized a nearly-identical PSG recently, that of “indigenous
8 women in Guatemala who are unable to leave their relationship.” *See Diaz-Reynoso*, 968 F.3d
9 1070 (9th Cir. 2020); *infra* Section III.B.2.d. The petitioner in *Diaz-Reynoso*, like
10 RESPONDENT 1, was subjected to physical and sexual abuse from her partner. *See* Supp. I-589
11 Documentation Exh. A (Decl. Lead Respondent). In *Diaz-Reynoso*, the Ninth Circuit reiterated
12 the well-established principle that a particular social group must exist independently of the harm
13 asserted. *Diaz-Reynoso*, 968 F.3d at 1087. The Ninth Circuit further clarified that BIA precedent
14 unequivocally establishes that a group’s persecution may be relevant to social distinction. *Diaz-*
15 *Reynoso*, 968 F.3d at 1081. The Court explained that “the idea that the inclusion of persecution
16 [in the proposed group] is a sort of poison pill that dooms any group does not withstand
17 scrutiny.” *Id.* at 1082 (citing *Matter of C-A-*, 23 I&N Dec. at 960 (confirming that “persecutory
18 action toward a group may be a relevant factor in determining the visibility of a group in a
19 particular society”))) (citation omitted).

22 In *Diaz-Reynoso*, the Ninth Circuit held that the BIA failed when it rejected the proposed
23 PSG because it assumed that domestic violence was the only reason petitioner was unable to
24 leave her relationship, when “it is **not** clear that the reason [she] was ‘unable to leave’ her
25 relationship was limited to domestic violence.” *Id.* at 33 (emphasis added). The Ninth Circuit
26 then articulated that in addition to evidence of the abuse perpetrated by her partner, the petitioner
27
28

1 also put forth evidence of “economic, societal, and cultural factors that also may have prevented
2 her from leaving her relationship.” *Id.* at 34. It found that the BIA failed to engage in the case-
3 by-case analysis required, presuming that the proposed PSG was premised solely on domestic
4 violence, ignoring the other proffered evidence. *Id.*

5
6 The factual record in RESPONDENT 1’s case demonstrates that she has suffered
7 persecution because of her membership in the PSGs “Guatemalan women who are unable to
8 leave their relationship” and “Guatemalan woman treated as property.” RESPONDENT 1 is a
9 Guatemalan woman who was in a domestic relationship with her husband, HUSBAND. *See*
10 Supp. I-589 Documentation Exh. A (Decl. Lead Respondent). Throughout her relationship with
11 HUSBAND, she was socially isolated; locked in her house; repeatedly physically abused and
12 assaulted; and was raped countless times. *Id.* ¶¶ 27, 28, 34-36. When RESPONDENT 1 wanted
13 to leave, HUSBAND demanded that she leave her daughters with him. *Id.* ¶ 37. When she was
14 able to relocate with her daughters, HUSBAND’s persecution of her continued, through specific
15 threatening phone calls that he would hunt her down where she was. *Id.* ¶ 39-43. In addition to
16 HUSBAND, his new partner NEW PARTNER also continued to threaten her, and she did
17 before. *Id.* ¶ 41. NEW PARTNER was angry and jealous of RESPONDENT 1’s marriage to
18 HUSBAND, despite the fact that RESPONDENT 1 did not want to be with HUSBAND. *Id.* ¶
19 39; Supp. I-589 Documentation Exh. B ¶ 14-16 (Decl. OLDER DAUGHTER). Similar to
20 petitioners in both *Diaz-Reynoso* and *Matter of A-R-C-G*, in addition to the fear of physical and
21 sexual abuse from her partner, there were societal and cultural factors that prevented
22 RESPONDENT 1 from leaving her relationship Guatemala.

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26 One societal factor that prevented RESPONDENT 1 from leaving HUSBAND was the
27 failure of the police in Guatemala to protect Guatemalan women. *See Matter of A-R-C-G*, 26
28

1 I&N Dec. 388, 394 (BIA 2014) (finding that failure by the Guatemalan National Civilian Police
2 “to respond to requests for assistance related to domestic violence” was evidence of the existence
3 of social distinction). RESPONDENT 1 sought police protection from HUSBAND’s abuse and
4 threats. Supp. I-589 Documentation Exh. A ¶¶ 44 – 49. Instead of providing assistance, the
5 police demanded money, not even allowing her to make a police report. *Id.* Without the
6 protection of the police, RESPONDENT 1 felt that “[n]obody could help [her] escape the
7 situation.” *Id.*

9 Country conditions corroborate this societal factor. According to the U.S. State
10 Department, “[p]olice had minimal training or capacity to investigate sexual crimes or assist
11 survivors of such crimes, and the government did not enforce the law effectively.” Country
12 Conditions Exh. W at 378. Police “often blame women for their partners’ ‘misbehavior.’”
13 Country Conditions Exh. C (Decl. of Elisa Portillo Najera) at 76. Though the police are “the
14 most easily accessible sector for most Guatemalan women,” they “often failed to respond to calls
15 for help related to domestic violence, and may lack training in dealing with domestic violence or
16 assisting survivors.” Country Conditions Exh. P (The Advocates for Human Rights, “Guatemala:
17 Violence Against Women”) at 297. The futility that women experience is due to “patriarchal
18 norms...so deeply entrenched that these officials act in a biased ways towards women... these
19 officials are often indifferent to or ignorant about the cycle of domestic violence, whereby
20 women are abused over and over or even killed by their partners. *Id.*

22 A second factor that prevents RESPONDENT 1 from leaving her relationship, which also
23 contributed to the inability of the police to protect her, is the culture of *machismo*. *See Matter of*
24 *A-R-C-G-*, 26 I&N Dec. 388, 394 (BIA 2014) (finding that “unrebutted evidence that Guatemala
25 has a culture of ‘machismo and family violence’” was evidence of the existence of social
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1 distinction). RESPONDENT 1 discussed that HUSBAND was ingrained with the ideals of
2 *machismo*, obvious in his statements that he was “more macho” than her; that he had “more
3 power than [RESPONDENT 1] because he was a man;” and that she wasn’t a “good woman”
4 because she did not submit to having sex with him when he wanted. Supp. I-589 Documentation
5 Exh. A (Decl. Lead Respondent) ¶¶ 26, 35. As EXPERT notes, “the culture of machismo in
6 Guatemala supports the view that many Guatemalan men have that their wives are their property,
7 to be dominated and controlled.” *Id.* Exh. E (Decl. of EXPERT) ¶ 21. According to EXPERT’s
8 own experience working in Guatemala:
9

10 The view that women are men’s property is so normalized...that friends and
11 colleagues in Guatemala frequently shared with me the ways in which their male
12 partners tried to control them and asked me how I had received permission from
13 my husband to travel to Guatemala to conduct fieldwork.

14 *Id.* RESPONDENT 1’s inability to leave her relationship with HUSBAND was not solely due to
15 his repeated physical and sexual abuse, but also due to the societal and cultural factors in
16 Guatemala, namely that 1) for Guatemalan women trying to escape abuse, the police are either
17 ineffective or target the women themselves; and 2) there is a pervasive culture of machismo.

18 For these reasons, RESPONDENT 1 is a member of a protected group due to her being a
19 Guatemalan woman, her inability to leave her domestic relationship, and her being treated as
20 property in Guatemala.
21

22 **c. Indigenous Guatemalan Women**

23 For the same reasons that “Guatemalan women” is a PSG, *see supra* Section. II.B.2.a.,
24 the PSG of “indigenous Guatemalan women” also satisfies with requirements of immutability,
25 particularity, and social distinction.
26
27
28

1 With respect to social distinction in particular, Guatemala's extreme rates of violence
2 against indigenous women indicate the distinct space in society that indigenous women occupy.

3 The IACHR found the following about the treatment of indigenous women in Guatemala:

4 The UN Permanent Forum on Indigenous Issues has also observed that 'cultures of
5 violence, imposed by systemic racism and the infliction of direct, symbolic and
6 structural violence against indigenous peoples through colonization, are reproduced
7 in countless ways, leading to the implosion and severe dysfunction of many
8 indigenous communities and cultures and subsequent increased rates of violence
9 against women and girls.

10 Country Conditions Exh. I (IACHR, "Indigenous Women and Their Human Rights in the
11 Americas,") at 166.

12 Minority Rights Group International found the following about the treatment of
13 indigenous women in Guatemala:

14 In particular, femicide of indigenous women remains rife in Guatemala. Though
15 rooted in colonial times, the practice increased in frequency and intensity during
16 the decades-long armed conflict...88 per cent of those affected by violence during
17 the war were indigenous Mayan women and girls targeted for gender-based
18 violence...Even after the conflict, Guatemala still has one of the highest rates of
19 femicide in the region, with few perpetrators brought to justice and a culture of
20 impunity being the prevailing norm.

21 Country Conditions Exh. L (Minority Rights Group International, "World Directory of
22 Minorities and Indigenous Peoples – Guatemala") at 232-33.

23 The abuse of indigenous women in Guatemala is undeniable. Although there have been
24 "efforts made to develop laws and institutions" to provide protection for women in general and
25 "for indigenous women in particular," the Commission was "briefed about the shortage of
26 resources and staff at most of these institutions, which weakens their capacity to act effectively."

27 Country Conditions Exh. O (Inter-American Commission on Human Rights ("IACHR"),
28 "Situation of Human Rights in Guatemala,") at 285. This is especially true for indigenous
women's access because "in spite of institutional mechanisms developed in the country," there

1 are obstacles to indigenous women accessing the mechanisms including “acts of discrimination,
2 lack of adequate assistance, and lack of coordination on the part of local authorities.” *Id.* at 286-
3 87. These findings are consistent with the U.S. government’s estimation of the persecution of
4 indigenous Guatemalan women. The U.S. State Department 2020 Guatemalan Human Rights
5 Report notes that although “the law establishes the principle of gender equality, women, and
6 particularly indigenous women, faced discrimination.” Country Conditions Exh. W at 380.

8 These country conditions establish that the Guatemalan government and society
9 recognize “indigenous Guatemalan women” as a distinct class of people with an increased need
10 of protection.

12 **d. Indigenous Guatemalan Women Who are Unable to Leave Their
Relationship and Indigenous Guatemalan Women Treated as Property**

13 For the same reasons articulated above regarding Guatemalan women, indigenous
14 Guatemalan women, and Guatemalan women who are unable to leave their relationship and
15 treated as property, *see supra* Section III.B.2.a-2c, “indigenous Guatemalan who are unable to
16 leave their relationship” and “indigenous Guatemalan women treated as property” are cognizable
17 PSGs. *See Diaz-Reynoso v. Barr*, 968 F.3d 1070 (9th Cir. 2020). The Department of Homeland
18 Security (“DHS”) first recognized domestic violence as a valid basis for asylum in its brief in the
19 case of Rody Alvarado in 2004 and the agency has reiterated its “official position” on these
20 claims in subsequent cases including *Matter of L-R-*. *See supra* pp. 13-14. The Attorney
21 General’s underscored this recently in *Matter of A-B- III*, which acknowledged *A-B-*’s earlier
22 “confusion and [discouraging of] careful case-by-case adjudication of asylum claims.” 28 I&N
23 Dec. 307, 309 (A.G. 2021).

26 For the same reasons articulated above, *see supra* Section. II.B.2.a, the factual record in
27 RESPONDENT 1’ case demonstrates that she has suffered persecution because of her identity as
28

1 an indigenous woman in Guatemala who is unable to leave her relationship and as an indigenous
2 Guatemalan woman treated as property.

3 Country conditions further corroborate RESPONDENT 1' inability to leave her
4 relationship and HUSBAND treating her like property because of her status as an indigenous
5 woman.
6

7 Guatemala "has a strong history of discrimination of indigenous populations in general and
8 women in particular Exclusion and racism have produced structural, legal and
9 institutionalized forms of violence and discrimination that deepen in the case of indigenous
10 women." Country Conditions Exh. J (UN Women, "Americas and the Caribbean: Guatemala") at
11 203. According to the Inter-American Commission on Human Rights ("IACHR"),
12

13 [I]ndigenous women in [Guatemala] do not usually report it when they are victims
14 of intrafamily or sexual violence and of other violations, because they may be
15 unaware of their rights, are concerned about being victims of further assaults,
16 receive threats on their families, or are ashamed because of what their community
17 will say. These women have also claimed that they are afraid of being ignored and
mistreated by judicial officials. When the women have opted to report these crimes,
the lack of adequate and timely access to justice ends up making them feel guilty
for doing so because it affects their families.

18 Country Conditions Exh. I (IACHR, "Indigenous Women and Their Human Rights in the
19 Americas") at 184. And as EXPERT confirms in her expert report and fieldwork, it is normal
20 that indigenous women, "like RESPONDENT 1, experience regular threats and incidents of
21 physical and sexual violence.... [Men] believe that they can treat their wives in any way that
22 they desire, including abusively, because they own them." Supp. I-589 Documentation Exh. D ¶¶
23 19, 21.
24

25 **e. RESPONDENT 1 Meets the "One Central Reason" Nexus Standard**

26 RESPONDENT 1 can establish that the persecution she suffered was on account of her
27 membership in the proposed PSGs, *see supra* Section III.B (proposed PSGs); Section III.A.1.a
28

1 (laying out the standard for nexus). RESPONDENT 1' perpetrator acted in ways that express his
2 hostility toward Guatemalan women. When he would beat RESPONDENT 1, he would
3 frequently tell her that she wasn't worth anything, that men were better than women, and that he
4 was more "macho" than her. Supp. I-589 Doc Exh. A ¶ 26. He mistreated other women in his
5 life, including his sister and mother. *Id.* He said that she wasn't a "good woman," and forced her
6 to have sex with him; RESPONDENT 1' younger daughter is a product of rape. *Id.* ¶ 35. This
7 type of language and actions showed his disdain for her gender. When RESPONDENT 1
8 escaped HUSBAND, he responded to this act of independence by threatening RESPONDENT 1
9 that he would find her and kill her. *Id.* ¶ 42. These threats never stopped while RESPONDENT 1
10 was in Guatemala. *Id.* ¶ 53.

13 The circumstances surrounding HUSBAND's treatment of RESPONDENT 1 make the
14 motivations behind his actions apparent as well. He would become enraged with her when she
15 refused to have sex with him, or when she even thought about leaving. *Id.* ¶¶ 35-37. Anytime she
16 went against prescribed gender roles in Guatemalan society, his response was a violent attack or
17 threats of such. *Id.* This behavior, when taken in context with his threats and violence, indicates
18 his animosity towards Guatemalan women and that his actions against RESPONDENT 1 were
19 motivated by it. This is not uncommon amongst men in domestic relationships in Guatemala.

21 Elisa Portillo Najera reports:

22 In Guatemalan culture, it is widely accepted that a man has the right to abuse his
23 partner. Women are expected to endure such violence, because it is viewed as
24 normal. The abuse stems from a culture that places a man at the tip of a hierarchy
25 granting him control over all aspects of a woman's life, from her economic
26 situation, to her politics, to her sexuality... Women who challenge this patriarchal
27 structure are penalized by their families, their husbands or partners, and their
28 churches for being "bad." It is commonly accepted that women deserve harassment
and abuse because of what they wear, or because they are "disobedient." Family
members frown upon those who attempt to leave abusive relationships, and exert
pressure upon them. For example, a woman whose husband physically and

1 psychologically abused her was placed in jail during trial, and family pressure
2 forced her to go to the jail to have sex with him.

3 Country Conditions Exh. C at 75.

4 That HUSBAND harmed RESPONDENT 1 *because of* her membership in the articulated
5 PSGs is evident; every incident of harm can be traced to an act of independence, violating
6 Guatemalan machismo understanding of a woman's role. Moreover, NEW PARTNER's role in
7 her harm and threats directed at RESPONDENT 1 and her daughters – is also directly tied
8 RESPONDENT 1' marriage to HUSBAND. It was RESPONDENT 1' marriage, and the product
9 of her marriage – her two daughters OLDER DAUGHTER and Respondent 2 – which was one
10 of the main reasons for NEW PARTNER's persecution of RESPONDENT 1. Exh. B. (Decl.
11 OLDER DAUGHTER) ¶¶ 2-5; 17.

12
13 Thus, the timing and nature of these encounters show RESPONDENT 1 was persecuted
14 on account her membership in the aforementioned PSGs.

15
16 **C. GUATEMALA IS UNABLE AND UNWILLING TO PROTECT RESPONDENT 1**

17 RESPONDENT 1 was persecuted by forces that the Guatemalan government was unable
18 or unwilling to control.⁴ *See Navas*, 217 F.3d at 655-56. An applicant can demonstrate the
19 government's lack of ability or willingness to respond to violence by “establishing that private
20 persecution of a particular sort is widespread and well-known but not controlled by the
21 government” or “showing that others have made reports of similar incidents to no avail.” *Castro-*
22 *Martinez v. Holder*, 674 F.3d 1073, 1081 (9th Cir. 2011).

23
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25
26 ⁴ This standard was recently affirmed in *A-B- III*, which overturned both *A-B- I* and *A-B- II*,
27 which had previously confused the governmental standard. The Attorney General ordered
28 immigration judges and the Board to follow pre-*A-B- I* precedent, including using this “long
held” standard, that “harm may qualify as ‘persecution’ if it is inflicted . . . by non-governmental
actors that the relevant government is unable or unwilling to control.” *A-B- III* at 307.

1 An applicant can also meet this burden by “demonstrating that a country’s laws or
2 customs effectively deprive the petitioner of any meaningful recourse to governmental
3 protection” or by “convincingly establish[ing] that [going to the authorities] would have been
4 futile or would have subjected [the individual] to further abuse.” *Id.* Additionally, as reaffirmed
5 in the recent case *Davila v. Barr*, a respondent need not make a report of abuse to the police,
6 “[w]hether a victim has reported or attempted to report violence or abuse to the authorities is a
7 factor that may be considered, as is credible testimony or documentary evidence explaining why
8 a victim did not report.” *Davila*, 968 F.3d at 1143 (citing *Bringas-Rodriguez v. Lynch*, 805 F.3d
9 1171 (9th Cir. 2015)).
10

11
12 The Guatemalan government has demonstrated its inability and unwillingness to control
13 the persecution against people like RESPONDENT 1. For one, violence against women and
14 femicide is widespread, well-known, and uncontrolled in Guatemala. According to Guatemala’s
15 Secretariat against Sexual Violence, Exploitation, and Trafficking in Persons, “the Office of the
16 Public Prosecutor registered 7,845 complaints for crimes of sexual violence, while in 2016 7,949
17 complaints were recorded. For [2016], less than 1% of the cases have been disposed of with
18 judgment.” Country Conditions Exh. O (IACHR, Situation of Human Rights in Guatemala) at
19 291. Although there have been efforts made to develop laws to provide justice for Guatemalan
20 women, the United Nations Committee on the Elimination of Discrimination Against Women
21 (“CEDAW”), among others, noted
22

23 [t]he insufficient capacity of law enforcement officials to investigate and prosecute
24 cases and the resulting high level of impunity for perpetrators of gender-based
25 violence against women, often owing to corruption, the lack of independence of the
26 judiciary or the influence that powerful non-State actors exert on judges, including
through assassinations and threats of violence.

27 Country Conditions Exh. G (U.N. CEDAW, “Concluding observations on the combined eighth
28 and ninth periodic reports of Guatemala,” CEDAW/C/GTM/CO/8-9) at 122.

1 RESPONDENT 1 saw this failure of efforts to protect women like her first-hand. As a
2 child, she was raped by Ladino men, but based on her family's knowledge of how poor
3 indigenous individuals were treated by the police, they chose not to report the incident. Supp. I-
4 589 Documentation. Exh. A ¶ 15. Moreover, in her own case related to HUSBAND and NEW
5 PARTNER's abuse and threats of her, RESPONDENT 1 did go to the police. *Id.* ¶¶ 44-49. The
6 police "didn't do anything." *Id.* Instead, they told RESPONDENT 1 and her father that they
7 "needed to give [the police] money." *Id.*

8
9 As the police rebuffed RESPONDENT 1 when she sought their protection, and
10 Guatemala's laws and customs "effectively deprive the petitioner of any meaningful recourse to
11 governmental protection," *Castro-Martinez v. Holder*, 674 F.3d at 1081, the Guatemalan
12 government is unable or unwilling to control RESPONDENT 1's persecutors.

13
14 **D. RELOCATION IS UNREASONABLE, AS HUSBAND AND NEW PARTNER'S**
15 **PERSECUTION CONTINUED AFTER RESPONDENT 1 ATTEMPTED TO**
16 **RELOCATE**

17 When an asylum applicant has established that she suffered past persecution, the burden
18 is on the government to show by a preponderance of the evidence that the applicant can
19 **reasonably** relocate internally to an area of safety. 8 C.F.R. § 1208.13(b)(2)(ii); *Singh v.*
20 *Whitaker*, 914 F.3d 654, 659 (9th Cir. 2019) (emphasis added).

21 RESPONDENT 1 already attempted to relocate to another part of Guatemala, to no avail.
22 After she relocated, she began receiving calls from HUSBAND and NEW PARTNER. Supp. I-
23 589 Documentation Exh. A. ¶ 41. They called her "bad names" and made her "scared that they
24 were going to come to Escuintla and hurt [her] and [her] daughters." *Id.* RESPONDENT 1's fears
25 were confirmed when she received a call from HUSBAND. *Id.* ¶ 42. He said, "I know where you
26 are...I know that you're there, and one day, I'm going to find and kill you in the mountains." *Id.*
27
28 As noted above, RESPONDENT 1's attempt to go to the police in Escuintla were fruitless.

1 HUSBAND and NEW PARTNER threatened RESPONDENT 1 non-stop; they called
2 “every couple months.” RESPONDENT 1 declares that “[j]ust when [she] tried to forget that
3 horrible part of [her] life, HUSBAND called again and threatened [her]. *Id.* ¶ 51. In the months
4 before she left, HUSBAND again told her, “I know you’re in Escuintla, I know we’re going to
5 find you.” *Id.* ¶ 52. NEW PARTNER also called RESPONDENT 1 telling RESPONDENT 1 that
6 she didn’t care where she was – “I’m going to find you.” *Id.*

8 The experience of RESPONDENT 1’ eldest daughter, OLDER DAUGHTER, lends
9 further support that RESPONDENT 1 would be in danger if she returned to Guatemala. OLDER
10 DAUGHTER did not accompany RESPONDENT 1 and RESPONDENT 1’ youngest daughter,
11 Respondent 2, when they fled to the United States. During the two-plus years that OLDER
12 DAUGHTER was in Guatemala without her mother and sister, HUSBAND’s partner, NEW
13 PARTNER, terrorized OLDER DAUGHTER through physical and mental abuse. Supp. I-589
14 Documentation Exh. B (Decl. OLDER DAUGHTER). HUSBAND ignored OLDER
15 DAUGHTER, allowing NEW PARTNER to abuse OLDER DAUGHTER, such as by hitting her
16 repeatedly, and in another instance, pushing her down the stairs. *Id.*

19 As a single woman in a country with a violence-against-women epidemic,
20 RESPONDENT 1 cannot reasonably relocate and avoid HUSBAND and NEW PARTNER’s
21 continuing persecution, especially considering that RESPONDENT 1 already tried.
22 RESPONDENT 1’ failed attempt to escape HUSBAND demonstrates that he will find her and
23 cause her serious harm no matter where she lives in Guatemala.

25 **E. NO BARS**

26 RESPONDENT 1 and her daughter entered the United States on or about March 23,
27 2019. *See* Notice to Appear (Mar. 24, 2019). RESPONDENT 1 expressed a fear of return to
28

1 immigration officials. *See* Respondents’ Notice of *Mendez-Rojas* Class Membership (Subclass
2 B.II) (filed July 14, 2021) at 2. Pursuant to the *Mendez-Rojas* Settlement Agreement, this Court
3 must deem Respondents’ asylum applications to have been timely filed. *Id.* No other bars to
4 asylum apply.
5

6 **III. CONCLUSION**

7 For the reasons articulated above, RESPONDENT 1 is eligible and deserving of a grant
8 of asylum based on the past persecution she suffered in Guatemala on account of her feminist
9 political opinion and her membership in the PSGs of Guatemalan women, indigenous
10 Guatemalan women, Guatemalan women who are unable to leave their relationship, indigenous
11 Guatemalan women who are unable to leave their relationship, and Guatemalan women treated
12 as property, and indigenous Guatemalan women treated as property.
13
14

15 DATED: September 21, 2021

Respectfully submitted,
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19 _____
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21 *Pro bono* Attorney for Respondents
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RESPONDENT 1, XXX-XXX-XXX
RESPONDENT 2, A# XXX-XXX-XXX

PROOF OF SERVICE

On September 21, 2021, I, [REDACTED], an attorney at the Law Office of Helen Lawrence, mailed or delivered a copy of **RESPONDENTS' PREHEARING BRIEF** and any attached pages to **DHS/OFFICE OF THE CHIEF COUNSEL – SAN FRANCISCO** at the following address: P.O. Box 26449 San Francisco, CA 94126-6449 , by:

☐ First Class Mail at the address provided above.

X Electronic Service, in accordance with applicable office procedures and DHS policies regarding eService, to the addressee set forth above, at the following e-mail address:

☐ Courier Service (___ FedEx/ ___ UPS) to the person at the address set forth above.

(signature)

(date)