



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, IL

In the Matter of:



In Removal Proceedings

File No.:



Immigration Judge Sheila McNulty

Next Hearing: July 31, 2012 at 1:00pm

RESPONDENT'S BRIEF IN SUPPORT OF APPLICATION
FOR ASYLUM, WITHHOLDING OF REMOVAL, AND
RELIEF UNDER THE CONVENTION AGAINST TORTURE

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Before the Honorable Sheila McNulty

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INTRODUCTION

██████████ (“Respondent” or “██████████” by and through her attorneys, Jones Day in connection with the National Immigrant Justice Center, respectfully submits this brief in support of her application for asylum pursuant to Section 208 of the Immigration and Nationality Act (“INA” or the “Act”), for withholding of removal pursuant to INA § 241(b), and relief under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) pursuant to 8 C.F. R. §§ 208.16 and 208.17. As set forth below, the facts, relevant statutes and case law support a grant of asylum, withholding of removal and/or relief under CAT.

██████████ a Salvadoran woman who was the victim of domestic abuse in El Salvador, seeks asylum after having suffered severe persecution for being a member of a particular social group. As discussed below, ██████████ suffered violent beatings, rape, repeated death threats, and emotional abuse at the hands of her former partner, ██████████ a member of the Mara Salvatrucha gang (“MS-13”). The Salvadoran government was unable or unwilling to protect ██████████ ██████████ had three “choices”: (1) stay with ██████████ and suffer repeated physical, emotional and sexual abuse; (2) seek “haven” with her family, friends or Salvadoran strangers and face near certain physical abuse or death at the hands of ██████████ and fellow MS-13 gang members; or (3) flee El Salvador. The first two were not, and still are not, real choices. ██████████ reasonably fears that, if forced to return to El Salvador, she will face further persecution, torture and death.

██████████ fear of future persecution is reasonable in light of the past persecution she suffered, the Salvadoran government’s well-established record of failing to protect women from domestic abuse and from members of the MS-13, and the absence of any changed country conditions that may eliminate the basis for her fear. As such, we respectfully request that this Court exercise its discretion and grant ██████████ petition for asylum.

SUMMARY OF FACTS

I. RECOGNIZED VIOLENCE AGAINST WOMEN IN EL SALVADOR

“El Salvador is one of the most violent countries in the world.” Immigration and Refugee Board of Canada, *El Salvador: The Presence and Activities of Mara Salvatrucha (MS or MS-13) and of Mara 18 (M18) in El Salvador, Recruitment, Measures Taken by the Government to Fight the Maras, and Protection Offered to Victims of the Maras (2008-2010)*, June 3, 2010, available at <http://www.unhcr.org/refworld/docid/4dd223432.html> (hereinafter “*The Presence and Activities of Mara Salvatrucha and of Mara 18*”) (Ex. G). Of the 44 most dangerous countries in the world for women, El Salvador is ranked number one. Douglas Gonzales, *We Live in the Most Violent Country Against Women*, LA PAGINA, (Oct. 11, 2011), <http://www.lapagina.com.sv/nacionales/56989/mujeres-asesinatos-El-Salvador> (hereinafter “*We Live in the Most Violent Country Against Women*”) (Ex. H).

In 2004, the U.N. Special Rapporteur on violence against women visited El Salvador and noted that “the failure of authorities to investigate, prosecute and punish those responsible for gender-based violence contributed to an environment of impunity that resulted in little confidence in the justice system; impunity for crimes, socio-economic disparities and the *machista* culture fostered a generalized state of violence, subjecting women to a continuum of multiple violent acts, including murder, rape, domestic violence, sexual harassment and commercial sexual exploitation.” Yakin Erturk, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, United Nations Economic and Social Council: Commission on Human Rights, Dec. 20, 2004, at 2, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/101/90/PDF/G0510190.pdf?OpenElement> (Ex. I). In 2010, a new U.N. Special Rapporteur returned from a fact-finding country visit and noted “that the situation has changed little in El Salvador.” Rashida Manjoo, *Report of the Special Rapporteur*

on *Violence Against Women, Its Causes and Consequences: Follow-Up Mission to El Salvador*, Feb. 14, 2011, at 1, available at daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/112/37/PDF/G1111237.pdf?OpenElement (hereinafter “2010 Report of the Special Rapporteur”) (Ex. F).

El Salvador faces high levels of poverty, inequality and unemployment, as well as “alarming levels of crime, impunity and declining trust in public institutions.” 2010 Report of the Special Rapporteur, at 5. It is plagued with severe socio-economic inequalities, with approximately 40 percent of the population living in poverty. *Id.* Living conditions in El Salvador have progressively deteriorated in recent years due to an economic model “that has fostered the privatization of essential public services and allocated limited resources to social development.” *Id.* The patriarchal attitudes and pervasiveness of a *machista* culture have led women to be placed at a severe disadvantage in El Salvador. *Id.* “The disadvantaged situation of women is patent at all levels of society, from educations and employment to political participation, contributing to the decline of their economic status and to greater vulnerability to violence and exploitation.” *Id.*

A. Domestic Violence in El Salvador

The U.N. Special Rapporteur reported that “[h]igh levels of domestic violence remain of utmost concern in El Salvador. Despite the prohibition of domestic violence through the adoption of legal and policy measures, including the Intra-Family Violence Law of 1996, which calls for sentences ranging from six months to one year, violence within the family remains largely concealed by prevailing social attitudes that condone it and by the reluctance of victims to report abuse.” 2010 Report of the Special Rapporteur at 7. The 2008 national survey on family health found that 31 percent of women interviewed were subjected to physical violence before the age of 18. *Id.* This same study revealed that 44 percent of women who had been married or lived with a partner suffered psychological violence, 24 percent suffered physical

violence and 12 percent suffered sexual violence. *Id.* The Institute for the Advancement of Women reported that the number of domestic violence cases against women and girls in El Salvador increased 164 percent from 2004 to 2008, and there have been no signs of this dramatic trend changing. *Id.*

Several other forms of violence against women are prevalent and pervasive, including rape, sexual harassment, commercial sexual exploitation and murder. *Id.* at 6. In fact, El Salvador has the highest femicide rate in the world: 129 out of every 100,000 women are murdered. *We Live in the Most Violent Country Against Women.* According to a 2009 report by the Institute for the Advancement of Women, a woman is assaulted every seven minutes in El Salvador, and U.N. officials report that approximately 7,240 women were victims of violent crimes in the first half of 2011. *Id.*

Despite legislative efforts, femicide rates have risen dramatically in El Salvador, increasing five fold in the last decade and outpacing El Salvador's overall murder rate. Hanna Stone, *El Salvador Sees Epidemic of Violence Against Women*, IN SIGHT, May 23, 2011, <http://www.insightcrime.org/insight-latest-news/item/960-el-salvador-sees-epidemic-of-violence-against-women> (Ex. J). Not only is the rate of these femicides alarming, so is the level of brutality associated with them. Femicides in El Salvador often involve sexual violence, mutilation and torture, with mangled bodies of the victims left in public places. *Id.* The Centre for Women's Studies (Centro des Estudios para la Mujer) says that "there are two constants in homicide against women [in El Salvador]: 8 out of every 10 women murdered are killed by a spouse or former spouse, and . . . the murders are committed by men." Immigration and Refugee Board of Canada, *El Salvador: Violence Against Women, Legislation, and the Protection Offered to Victims 2007 - June 2009*, July 13, 2009, available at

<http://www.unhcr.org/refworld/country,,,QUERYRESPONSE,SLV,,4a7040b92,0.html> (quoting Centros de Estudios para la Mujer, El Salvador, Jan. 2008, at Sec. 1.7.3) (Ex. J).

“Deeply rooted patriarchal attitudes and the pervasiveness of a *machista* culture that reinforces stereotypes about the roles and responsibilities of women and men in the family, the workplace and society constitute serious obstacles to women’s rights, in particular their right to be free from all forms of violence.” 2010 *Report of the Special Rapporteur*, at 5. In 2010, the Special Rapporteur voiced concern at the “significant challenges” that continued to exist in the area of violence against women, including “the failure of authorities to investigate, prosecute and punish those responsible for gender-based violence.” *Id.* at 1. Such failure has “contributed to an environment of impunity that [has] resulted in little confidence in the justice system.” *Id.*

Police in El Salvador rarely respond to reports of violence against women. Declaration of Thomas Boerman (“Boerman Decl.”) ¶15 (Ex. D). When officers do respond, it is rare that they take effective action to protect the victim, at least in part because officers are only authorized to make arrests if they actually witness the violence. *Id.* Attempts by the Salvadoran legislature to curb violence against women have had no discernable effect. *Id.* at ¶16. Violence against women, including domestic violence, rape and femicide, remains rampant in El Salvador and male offenders continue to act with near impunity. *Id.* at ¶15.

B. Gang Violence in El Salvador

The increase in violence against women in El Salvador has coincided with the growth of organized crime and gang activities in recent years. The principal gangs in El Salvador are the MS-13 and their rivals, the 18th Street gang. *Id.* at ¶19. According to the Overseas Security Advisory Council, there are over 25,000 people, in a country of only 6.1 million, who belong to street gangs in El Salvador, and it is believed that the gangs have forged ties with Salvadoran

organized crime. *The Presence and Activities of Mara Salvatrucha and of Mara 18*. Salvadoran gangs are involved in a wide range of criminal activities including robbery, extortion, kidnapping, prostitution, murder, and trafficking in drugs, stolen vehicles, weapons, and persons. Boerman Decl. ¶19.

Thus far, the Salvadoran government has been unwilling or unable to control the gangs. In 2003, the Salvadoran government implemented a series of strategies known colloquially as “Mano Dura” (firm, or tough hand), which were ultimately counterproductive and contributed to a worsening of the problem. *Id.* at ¶¶20, 27. A subsequent 2003 law, known as LAM (Ley Anti-Mara), led to nearly 20,000 arrests on suspicion of gang membership, but less than ten percent of those arrested were ever charged with gang related crimes. *Id.* at ¶20. The “Super Mano Dura” followed in 2004 and has been similarly ineffective, as have subsequent attempts to curb gang violence, one of which seems to have motivated gang attacks on public buses, which resulted in the killing of seventeen people and the government’s abandonment of the proposed alternative to Mano Dura. *Id.* at ¶¶22, 30-31.

In 2010, the Salvadoran Asamblea approved a law known as the “Proscripción de Pandillas.” *Id.* at ¶31. Similar to Mano Dura, the law criminalizes gang membership and defines sentencing guidelines for gang members and leaders. *Id.* Proscripción de Pandillas differs from Mano Dura in that it targets gangs and other organized criminal groups using statutes similar to the Racketeer Influenced and Corrupt Organizations Act (RICO) in the United States. *Id.* Thus, the law requires a combination of resources, expertise, judicial infrastructure, professional integrity, and political will that are absent in El Salvador. *Id.* at ¶32. The Central American Coalition for the Prevention of Violence believes that, like the Mano Dura laws of the past, this law will fail because it does not acknowledge or respond to past failures or address the causes of

the gang violence problem. *Id.* Since the passage of this law in September 2010, gang members have increased the targeted assassinations of police and military officials, held public protests, and violently shut down the country's public transportation sector. *Id.* at ¶33. Though MS-13 and the 18th street gang recently agreed to a truce, the Salvadoran government has noted its fragility and the continued danger the gangs pose. *Id.* at ¶37. Furthermore, it is unclear what, if any, long term effects the truce will have on gang violence against the general public. *Id.*

The Salvadoran government has regularly failed to uphold its obligation to ensure the safety of its population and to investigate and prosecute those responsible for violence. Harvard Law School International Human Rights Clinic, *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador*, Feb. 2007, at 65-68, available at [http://www.law.harvard.edu/programs/hrp/documents/FinalElSalvadorReport\(3-6-07\).pdf](http://www.law.harvard.edu/programs/hrp/documents/FinalElSalvadorReport(3-6-07).pdf) (hereinafter "*No Place to Hide: Gang, State, and Clandestine Violence in El Salvador*" (Ex. L).

The Salvadoran justice system as a whole is considered weak and ineffective . . . but the state's failure to protect the poorest and most vulnerable of its citizens—those most likely to be victims or perpetrators of violence—is especially pronounced. . . . In El Salvador, the lack of protection for presumed or future victims of gang and other violence take a number of forms, including failure to ensure the security of potential victims of violence; a lack of witness protection; and inadequate or non-existent criminal investigations into alleged or presumed inter- or intra-gang violence.

Id. at 60–61.

II. ██████████ WAS A VICTIM OF DOMESTIC VIOLENCE IN EL SALVADOR.

A. ██████████ Was Beaten and Threatened by Her Former Partner.

██████████ met ██████████ ██████████ ██████████ in the spring of 2009 while working at Restaurante ██████████. Declaration of ██████████ ██████████ ██████████ ("██████████ Decl.")

¶6 (Ex. A). After a few months of dating around September of 2009, ██████████ and her daughter,

██████████ who was 3 years old at the time, moved in with ██████████ *Id.* at ¶7. They lived in a room in ██████████ parents' house in San Salvador, El Salvador. *Id.*

When ██████████ and ██████████ first began dating, ██████████ treated ██████████ and ██████████ well, but once ██████████ and ██████████ moved in with ██████████ things changed. *Id.* at ¶8. ██████████ became extremely possessive and controlling, then violent. *Id.* at ¶¶8-12. ██████████ would degrade ██████████—treating her like his property, telling her that she was his woman, that she was nothing and that she had to do what he said. *Id.* at ¶¶11-12, 20, 43. He often grabbed her hair or her face in anger and shoved her. *Id.* at ¶¶11, 16, 20, 36, 42, 50. ██████████ became especially aggressive whenever ██████████ said that she was going to leave the house, and because of her fear of ██████████ ██████████ stopped seeing friends or even visiting her family. *Id.* at ¶15.

██████████ became extremely afraid of ██████████ even before ██████████ did. *Id.* at ¶10. Though ██████████ frequently tried to grab ██████████ or pull her hair, ██████████ always intervened and became his target instead. *Id.* ██████████ was so terrified of ██████████ that she began wetting her bed and telling ██████████ that she wanted to move out of ██████████ house. *Id.* The more that ██████████ defended ██████████ and herself, the worse things became, and ██████████ grew terrified for her safety and that of her daughter. *Id.* at ¶¶13, 32, 36, 48.

██████████ liked to tell ██████████ that if she left him, he would kill her. *Id.* at ¶13. If she was not with him, he would say she could not be with anyone. *Id.* at ¶¶13, 77. The first time that ██████████ threatened to leave ██████████ he grabbed her face and yelled at her to be quiet, warning her that she could not talk back to him because she was his woman. *Id.* at ¶11. She and ██████████ were trapped.

On December 24, 2009, ██████████ violence escalated to a new level. ██████████ was furious with ██████████ for not ironing his clothes when he asked. *Id.* at ¶20. Yelling at her that he was

going to make her understand that she was his woman and had to do what he said, [REDACTED] threw [REDACTED] on the ground and beat her in front of [REDACTED]. *Id.* at ¶¶20-21. [REDACTED] yelled that [REDACTED] should see what happens to her mother. *Id.* at ¶21. After beating her, [REDACTED] tied [REDACTED] to the bed to prevent her from going to her mother's house as she had planned, and left. *Id.* at ¶22.

[REDACTED] mother came into the room and untied [REDACTED]. *Id.* at ¶24. They found [REDACTED] hiding under the bed where [REDACTED] had been tied. [REDACTED] was terrified, shaking and inconsolable, saying that she thought that [REDACTED] was going to die. *Id.* at ¶25. [REDACTED] and [REDACTED] mother agreed that [REDACTED] should leave [REDACTED] but then [REDACTED] returned, apologetic, and reassured [REDACTED] that things were going to get better and that he knew what he had done was wrong. *Id.* at ¶¶ 24, 26-27. [REDACTED] believed him. *Id.* at ¶27.

Just over two weeks later, on January 18, 2010, [REDACTED] birthday, [REDACTED] became enraged when [REDACTED] fed [REDACTED] dinner before she fed him. *Id.* at ¶33. He threw a plate of food at [REDACTED] and accused her of preferring her daughter over him. *Id.* at ¶¶34-35. [REDACTED] told [REDACTED] that she would never be with anyone else because he would kill her first. *Id.* at ¶36. He threw [REDACTED] to the ground, grabbed her by her hair and yelled in her face that he was serious. *Id.* [REDACTED] pressed a pair of scissors against [REDACTED] face as he threatened her. *Id.* When he was finished yelling at [REDACTED] he threw the scissors on the floor and left. *Id.* at ¶36-37. [REDACTED] had never before been so afraid of [REDACTED]. *Id.* at ¶36.

After [REDACTED] left, [REDACTED] and [REDACTED] mother, fearing for [REDACTED] life, called the police. *Id.* at ¶38. The police arrived about five minutes later, and [REDACTED] explained to them what had happened. *Id.* at ¶39. [REDACTED] arrived home shortly after, and [REDACTED] identified him as the man who attacked her. *Id.* at ¶40. The police put [REDACTED] in handcuffs, but he just laughed,

saying that he would be back soon. *Id.* [REDACTED] was correct—the police held [REDACTED] at the station for less than one day. *Id.* at ¶41. After that, the abuse continued. *Id.* at ¶42.

[REDACTED] is a member of MS-13. *Id.* at ¶¶29-32. [REDACTED] first told [REDACTED] that he was in MS-13 in early 2010, and initially she did not believe him. *Id.* at ¶29. One day, three men [REDACTED] did not know came to the door of [REDACTED] parents' house asking for [REDACTED]. *Id.* at ¶30. They told [REDACTED] that they needed [REDACTED] to do a “mandado,” which means “errand” in Spanish. *Id.* When [REDACTED] asked [REDACTED] why they were there, he told her that they were just friends. *Id.* [REDACTED] gradually told [REDACTED] more details of his gang membership and said on several occasions that he had to go do a “mandado.” *Id.* at ¶31. It was not until [REDACTED] saw a report on television about MS-13 when she learned that “mandado” was code for gang activities involving drugs or weapons. *Id.* [REDACTED] also once told [REDACTED] that he had to go look for a member of the rival 18th Street gang because he had stolen an MS-13 member's girlfriend and they needed to kill him. *Id.* Once [REDACTED] knew that [REDACTED] was a member of MS-13, she became even more afraid of him. *Id.* at ¶32.

[REDACTED] also suffered sexual abuse by [REDACTED] repeatedly raped [REDACTED] and raped her in front of [REDACTED] on at least one occasion. *Id.* at ¶¶43-45. When [REDACTED] told [REDACTED] that she did not want to have sex with him, he would tell her that she could not say no to him because she was his woman. *Id.* at ¶43. While raping her, [REDACTED] would yell at [REDACTED] calling her a prostitute. *Id.* at ¶46. He would hit her in the face and ask how much he had to pay to have sex with her. *Id.* He would tell [REDACTED] that she was nothing, that she was a worthless piece of shit. *Id.* Although [REDACTED] stopped wanting to have a sexual relationship with [REDACTED] it was always worse for her when she fought him, and she often just let him have sex with her so that he would not hit her. *Id.* at ¶47. She had no control over her life or her body. *Id.* at ¶48.

On April 23, 2010, ██████ attempted to leave the house to see her mother, whom she had not seen in months. *Id.* at ¶49. ██████ did not want ██████ to go and threatened to tie her up again. *Id.* at ¶50. ██████ taunted and threatened ██████ with a knife held against her face and asked if she wanted to die. *Id.* He told ██████ that he could kill her, that she did not know what he was capable of and that she would not be the first person he had watched die. *Id.* After repeatedly telling ██████ that he could kill her, ██████ left. *Id.* ██████ was in the room and had witnessed everything. *Id.* at ¶51.

After this last incident, ██████ fled with ██████ to her mother's house. *Id.* ██████ followed about an hour later. *Id.* at ¶52. ██████ mother saw that ██████ was holding a machete. Declaration of ██████ ██████ ("█████ Decl.") ¶6 (Ex. B); ██████ Decl. ¶52. ██████ stayed for hours, screaming at the house, calling for ██████ to come out and threatening to kill everyone in the house. ██████ Decl. ¶7. Even after he left, the family was terrified and felt trapped. *Id.* at ¶12; ██████ Decl. ¶53. ██████ returned again the next day and refused to leave even after ██████ mother threatened to call the police. ██████ Decl. ¶9. ██████ said that it would not matter and he was not afraid. *Id.* ██████ mother called the police, but the police did not arrive until hours later and ██████ had stopped for the day. *Id.* at ¶11. When the police finally arrived, they only stayed for a few minutes and did not write anything down. ██████ Decl. ¶54. They told ██████ mother that things would be fine and that she should call them next time there was a problem. *Id.*; ██████ Decl. ¶11. It was clear to ██████ that the police would do nothing to protect them. ██████ Decl. ¶54.

After two days of being trapped in her mother's house and fearing for her life and for her family's safety, ██████ decided that she had to flee the country. *Id.* at ¶55. She believed that if she was anywhere in El Salvador, ██████ would find and kill her. *Id.* The decision to leave

██████████ was heartbreaking for ██████████ but she knew it was too dangerous to take ██████████ along. *Id.* at ¶56. ██████████ arranged for ██████████ father to come get ██████████ in the early morning hours of April 25th, 2010. *Id.* at ¶57. Shortly after he arrived, ██████████ said a tearful goodbye to her family and left for the United States. *Id.* at ¶58-59. ██████████ suffered emotional abuse, physical abuse and sexual abuse by ██████████. She also suffered the psychological abuse of knowing that her young daughter observed and lived through the abuse, as well. That pain continues today.

B. ██████████ Former Partner Continued to Threaten Her and Try to Find Her After Her Arrival in the United States.

After ██████████ left El Salvador, ██████████ continued to harass her and her remaining family in El Salvador. ██████████ Decl. ¶¶72, 74; ██████████ Decl. ¶¶13-16. He continued to visit ██████████ mother's house about twice a day to yell and threaten ██████████ family. ██████████ Decl. ¶¶13-16. ██████████ and some of his fellow MS-13 members threw rocks at the house and spray-painted MS-13 symbols on it. *Id.* at ¶¶13, 16. Things were so bad that ██████████ mother feared for her and her son's safety. *Id.* at ¶¶17-20. As a result, ██████████ mother eventually fled El Salvador. *Id.* at ¶20.

Shortly after ██████████ fled El Salvador, ██████████ called ██████████ now-husband, ██████████ a legal permanent resident and friend of ██████████ family, and told him to tell ██████████ that if she ever set foot in the airport in El Salvador, ██████████ would chop her up and send her body in a bag to her family. ██████████ Decl. ¶72. ██████████ eventually discovered that ██████████ was living with ██████████ through ██████████ cousin, a fellow member of the MS-13 who apparently was in prison with ██████████. *Id.* at ¶¶70-74. ██████████ cousin called ██████████ and asked for money and made veiled threats to hurt ██████████ daughter, ██████████ who still lives in El Salvador. *Id.* at ¶74. ██████████ had to change his phone number multiple times in an attempt to prevent contact from ██████████ or ██████████ cousin. *Id.*

██████ has learned from family members that ██████ had been a suspect in two murders and was arrested and imprisoned for a third. *Id.* at ¶62. She also learned that he now has several MS-13 tattoos, which he did not have while they were together. *Id.* ██████ violent nature, his increased gang involvement and his ability to use the extensive MS-13 network makes ██████ terrified that he will act on his threats and murder her as soon as she sets foot in El Salvador if she is forced to return. *Id.* at ¶67.

ARGUMENT

I. ██████ MEETS THE STATUTORY DEFINITION OF A REFUGEE AND THEREFORE SHOULD BE GRANTED ASYLUM.

██████ undoubtedly is a “refugee” within the statutory definition set forth in the Immigration and Nationality Act (“INA”) and, thus, should be granted asylum. A refugee is a person who is unable to return to her home country “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.” INA §§ 101(a)(42)(A), 208(b). In order to qualify for asylum, ██████ must demonstrate that “she *either* was the victim of past persecution *or* maintains a well-founded fear of future persecution” if she returns to her country of origin. *Oryakhil v. Mukasey*, 528 F.3d 993, 998 (7th Cir. 2008) (emphasis added); *see also* 8 C.F.R. § 208.13(b). Because ██████ persecutor was not a foreign state, she must show that her home country was unwilling or unable to control her persecutor. *See Hor v. Gonzales*, 421 F.3d 497, 501 (7th Cir. 2005) (“You cannot even claim asylum on the basis of persecution by a private group unless the government either condones it or is helpless to prevent it, but if either of those conditions is satisfied, the claim is a good one.”); *Bace v. Ashcroft*, 352 F.3d 1133, 1138 (7th Cir. 2003) (“There is no rule requiring that persecution actually be directed by the state or by an organized political party.”).

█████ meets all of the required elements for asylum: As demonstrated in more detail below and in the accompanying materials, █████ was persecuted by her partner █████ on account of her membership in a particular social group, and her home country of El Salvador failed to take any meaningful action to protect her. █████ maintains a well-founded fear of future persecution by █████ and other members of the MS-13 gang if she returns to El Salvador. Given El Salvador's attitude toward domestic violence and its inability to control members of MS-13, █████ has a reasonable fear that the government will continue to be unwilling or unable to control █████ and the MS-13 gang and to protect her against them if she returns. As such, we respectfully request that the Court grant █████ █████ █████ asylum.

A. █████ Suffered Past Persecution on Account of Her Membership in a Particular Social Group.

█████ sworn declaration demonstrates, and her anticipated testimony will show, that (1) █████ was persecuted by her former partner █████ (2) the Salvadoran government was unwilling or unable to control █████ and (3) the persecution was motivated by █████ gender and her relationship with a MS-13 gang member. While █████ declaration alone is sufficient to establish past persecution without corroboration, *see e.g.* 8 C.F.R. § 208.13(a), her testimony is bolstered by several other documents: an expert declaration; an declaration from █████ mother, a witness to the persecution █████ suffered and a victim of harassment and threats herself; a letter from a domestic violence organization with which █████ has been working; U.S. State Department and human rights organization reports; and multiple news articles corroborating the persecution of women in El Salvador.¹

¹ In addition, in an attempt to seek additional corroborating evidence, Respondent's counsel has spoken to a member of the legal community in El Salvador, █████, who plans to submit a declaration supporting █████ application identifying █████ as a known member of MS-13. Respondent's counsel intends to seek leave from the Court to supplement this filing once counsel has obtained the declaration.

1. ██████████ Partner, ██████████ Persecuted Her.

The domestic abuse ██████████ suffered satisfies the definition of persecution for purposes of an asylum claim. Persecution “involves . . . the use of *significant* physical force against a person’s body, or the infliction of comparable physical harm without direct application of force . . . or nonphysical harm of equal gravity.” *Stanojkova v. Holder*, 645 F.3d 943, 948 (7th Cir. 2011) (emphasis in original). The Seventh Circuit includes “detention, arrest, interrogation, prosecution, imprisonment, illegal searches, confiscation of property, surveillance, beatings, or torture” in its definition of persecution. *Begzatowski v. INS*, 278 F.3d 665, 669 (7th Cir. 2002).

Courts of appeals and the BIA agree that domestic violence is a form of persecution. *See, e.g., Ngenwe v. Mukasey*, 543 F.3d 1029, 1031–32 (8th Cir. 2008) (granting petition for review where widowed Cameroonian female was beaten and threatened by her husband’s parents); *Faruk v. Ashcroft*, 378 F.3d 940, 943 (9th Cir. 2004) (granting petition for asylum where mixed-race, mixed-religion couple had been persecuted by family and neighbors who had threatened and attacked them); *Matter of S-A-*, 22 I&N Dec. 1328, 1334–35 (BIA 2000) (sustaining appeal from denial of asylum application where woman was persecuted by her father through physical assaults, imposed isolation and deprivation of education).

Nonphysical harm may constitute persecution “even though the only harm it causes is psychological.” *Stanojkova*, 645 F.3d at 948. To qualify as persecution, the complained-of conduct must rise above “mere harassment,” although it need not constitute “threats to life or freedom.” *Vladimirova v. Ashcroft*, 377 F.3d 690, 696–97 (7th Cir. 2004). Thus, “a credible threat to inflict grave physical harm” similarly satisfies the persecution requirement. *Id.* Furthermore, “[v]iolence or threats to one’s close relatives is an important factor in deciding whether mistreatment sinks to the level of persecution.” ██████████ *v. Holder*, 588 F.3d 228, 232

(4th Cir. 2009); *Haxhiu v. Mukasey*, 519 F.3d 685 (7th Cir. 2008) (granting petition for review where government officials had threatened and attacked alien's family).

As [REDACTED] declaration demonstrates, [REDACTED] violence against [REDACTED] included beating her, imprisoning her in her own home and raping her in front of her young daughter. [REDACTED] also repeatedly threatened to kill [REDACTED]. In fact, his repeated death threats are independently sufficient to establish that he persecuted [REDACTED] and establish prima facie eligibility for asylum. *See Stanojkova v. Holder*, 645 F.3d at 948. Threats against [REDACTED] family members are an additional, important consideration in [REDACTED] persecution claim. As explained in both [REDACTED] and her mother's declarations, [REDACTED] and his fellow gang members continued to harass her family even after [REDACTED] had fled El Salvador. [REDACTED] Decl. ¶¶60; [REDACTED] Decl. ¶¶13-16. The evidence undisputedly demonstrates that the attacks and threats that [REDACTED] suffered and the additional threats to her family satisfy the persecution requirement for asylum.

2. **The Salvadoran Government Was Unable or Unwilling to Control**

[REDACTED]

An asylum applicant can claim asylum on the basis of persecution by a private individual or group if the government "either condones [the persecution] or is helpless to prevent it." *Hor v. Gonzales*, 421 F.3d 497, 502 (7th Cir. 2005). In such a situation, "the [asylum] claim is a good one." *Id.* (noting that "[p]ersecution cognizable under the Act can emanate from sections of the population that do not accept the laws of the country at issue, sections that the government of that country is unable or unwilling to control"). This principal is well-established in the Seventh Circuit and other jurisdictions. *See, e.g., Mohideen v. Gonzales*, 416 F.3d 567, 569 (7th Cir. 2005) (granting petition for review where applicant was persecuted by a militant group in Sri Lanka seeking to establish a separate Tamil state); *Poradisova v. Gonzales*, 420 F.3d 70, 81 (2d Cir. 2005) (granting petitions for review where a "general climate of lawlessness[] ha[d]

manifested itself in widespread discrimination and violence against Jews both by the government and by private individuals who act with impunity”); *Borja v. INS*, 175 F.3d 732, 735 n.1 (9th Cir. 1999) (granting petition for review where applicant was persecuted by a revolutionary Communist group actively opposing the Philippine government).

As discussed in greater detail above, the Salvadoran government is both unable and unwilling to protect women from domestic violence and gang violence. *See* Summary of Facts (“SOF”) § I.A.–B. Police in El Salvador rarely respond to violence against women, whether it is domestic violence, general violence against women, sexual violence or femicide. Boerman Decl. ¶15. When officers do respond to charges of violence against women, it is rare that they take effective action to protect the victim and are, in fact, only authorized to make arrests if they actually witness the violence. *Id.* This apathy toward violence against women is consistent with the “[d]eeply rooted patriarchal attitudes and the pervasiveness of a *machista* culture that reinforces stereotypes about the roles and responsibilities of women and men in the family, the workplace and society.” *2010 Report of the Special Rapporteur*, at 5. The limited attempts by the Salvadoran government to curb violence against women have had no discernable effect. Boerman Decl. ¶16.

Furthermore, the Salvadoran government has proven both unable and unwilling to curb gang violence. Both *Mano Dura* and *Super Mano Dura* failed miserably and resulted in a consolidation and strengthening of MS-13 and the 18th Street gangs. *See* SOF § I.B. The Salvadoran government has continually failed to uphold its obligation to protect the population from the horrific violence of these gangs. *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador*, at 60-61. The gangs’ persistent impunity is the result of the state’s failure to investigate and prosecute gang violence. *Id.* at 65.

In this case, ██████ called the police after ██████ attacked her in January 2010 and learned that they could not, or would not, take any meaningful action to help her. ██████ was allowed to return to his house after one day without any consequences, empowering ██████ to continue his abusive and violent behavior with impunity. When ██████ mother called the police to report ██████ threats and harassment outside her home, the police arrived hours later, did not appear to make any record of the incidents and did not stop the conduct from occurring, even the very next day. The virtual inaction by the police demonstrates that the Salvadoran government was both unable and willing to protect ██████ from ██████ abuse (and demonstrate that ██████ has no reason to expect any different in the future).

3. ██████ Persecuted ██████ on Account of Her Membership in a Particular Social Group Based on Her Gender.

██████ qualifies for asylum because ██████ persecuted her “on account of” her membership in two particular social groups based on her gender. The groups are El Salvadoran women and El Salvadoran women who are unable to leave their partners.

In *Matter of Acosta*, the BIA interpreted “the phrase ‘persecution on account of membership in a particular social group’ to mean persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic. . . . such as *sex*, color, or kinship ties” 19 I&N Dec. 211, 233 (BIA 1985) (emphasis added). Accordingly, the BIA established a test to determine whether an applicant has demonstrated membership in a particular social group, noting that the other grounds for protection within the refugee definition—race, religion, nationality and political opinion—encompass certain innate characteristics (*e.g.*, race or nationality) or characteristics one should not be required to change (*e.g.*, religion or political opinion). *Id.* at 233.

The *Acosta* test provides that, in order to be a protected ground, membership in “a particular social group” must be based either on a characteristic that a member cannot change or one that a member should not be required to change. *Id.* Federal courts of appeals—including the Seventh Circuit—have adopted the *Acosta* test, which has governed the analysis of social group claims for decades. *See, e.g., Gatimi v. Holder*, 578 F.3d 611, 616 (7th Cir. 2009); *Lwin v. INS*, 144 F.3d 505, 511 (7th Cir. 1998); *Niang v. Gonzales*, 422 F.3d 1187, 1199 (10th Cir. 2005); *Castellano-Chacon v. INS*, 341 F.3d 533, 546-48 (6th Cir. 2003); *Fatin v. INS*, 12 F.3d 1233 (3rd Cir. 1993) (Alito, J.); *Alvarez-Flores v. INS*, 909 F.2d 1, 7 (1st Cir. 1990); *see also Safaie v. INS*, 25 F.3d 636, 640 (8th Cir. 1994) (citing with approval the *Acosta* formulation).²

Gender is, without question, an “immutable characteristic” that properly satisfies the *Acosta* test. *See Acosta*, 19 I&N Dec. at 233 (identifying “sex” as an immutable characteristic). Because of her gender, ██████ is part of two particular social groups: El Salvadoran women and El Salvadoran women who are unable to leave their partners.

(a) El Salvadoran Women.

██████ was persecuted on account of her membership in the particular social group of El Salvadoran women, and she has a well-founded fear of future persecution if she is forced to

² It should be noted that there is no requirement in INA § 101(a)(42)(A) that a social group be narrowly defined. Nor are there any international treaties recognized as the basis of U.S. asylum law requiring social groups to be narrowly defined. *See* 1951 Convention Relating to the Status of Refugees, July 28, 1951, 10 U.S.T. 6259, 189 U.N.T.S. 150 (1951 Refugee Convention); United Nations High Commissioner for Refugees (UNHCR) Handbook on Procedures and Criteria for Determining Refugee Status (Geneva 1992). “Fears of ‘opening the floodgates’ . . . apply equally to other grounds—especially race and nationality, which by definition encompass numerically large groups.” ██████ ██████ Membership in a Particular Social Group: Developments in U.S. Law, 1566 PLI/Corp 195 (2006); *see also* ██████ ██████, Law of Asylum in the United States, §5:42 et seq, §5:47-55 (2011 ed.). Denying asylum on this basis would be contrary to immigration policy. *See Matter of H-*, 21 I&N Dec. 337, 343 – 44 (BIA 1996) (“[T]he fact that almost all Somalis can claim clan membership and that interclan conflict is prevalent should not create undue concern that virtually all Somalis would qualify for refugee status, as an applicant must establish he is being persecuted on account of that membership.”); *INS v. Cardoza-Fonseca*, 480 US 421, 444-45 (1987) (“[A]lthough Congress could have crafted a narrower definition, it chose to authorize the Attorney General to determine which, if any, eligible refugees should be denied asylum.”).

return to El Salvador because she is a woman. This group is defined in an distinct and particular fashion, and there is no question as to who belongs in this group.

The Seventh Circuit and other circuits have recognized particular social groups based on gender. *See, e.g., Agbor v. Gonzales*, 487 F.3d 499, 502 (7th Cir. 2007) (holding that women in Cameroon can constitute a particular social group for purposes of obtaining asylum based on fear of female genital mutilation); *Lin v. Ashcroft*, 385 F.3d 748, 752 (7th Cir. 2004) (holding that women who face forced sterilization in China comprise a particular social group); *see also Bi Xia Qu v. Holder*, 618 F.3d 602, 607-08 (6th Cir. 2010) (holding that Chinese women who are sold or forced into marriage and involuntary servitude constitute a particular social group); *Perdomo v. Holder*, 611 F.3d 662, 667, 669 (9th Cir. 2010) (“acknowled[ing] that women in a particular country, regardless of ethnicity or clan membership, could form a particular social group” and remanding to the BIA to determine whether women in Guatemala constitute a particular social group); *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) (“Although we have not previously expressly recognized females as a social group . . . the recognition that girls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group is simply a logical application of our law.”); *Niang v. Gonzalez*, 422 F.3d 1187, 1199 (10th Cir. 2005) (“[T]he female members of a tribe would be a social group. Both gender and tribal memberships are immutable characteristics . . . [i]ndeed *Acosta* itself identified sex and kinship ties as characteristics that can define a social group.”); *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993).

In *Fatin v. INS*, then-Third Circuit Judge Alito explained that “to the extent that the Respondent in this case suggests that she would be persecuted or has a well-founded fear that she would be persecuted in Iran simply because she is a woman, she has satisfied the [particular

social group element].” *Id.* at 1240; *see also Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007) (holding that “Somali women” constitutes a particular social group in light of the “immutable trait of being female”). The same reasoning applies here.

(b) El Salvadoran Women Who Are Unable to Leave Their Partners.

██████████ is also a member of a narrower social group: El Salvadoran women who are unable to leave their partners. In its 2009 supplemental brief in *Matter of L-R-*, DHS set forth its “current position” regarding whether victims of domestic violence are members of a particular social group within the meaning of the Act. Supplemental Brief of Department of Homeland Security at 4, *Matter of L-R-* (April 13, 2009) (hereinafter “DHS L-R- Brief”) (Ex. M). DHS explained that “the particular social group . . . based on domestic violence is best defined in light of the evidence about how the respondent’s abuser and her society perceive her role within the domestic relationship.” *Id.* at 14. DHS continued, “A group defined in light of this evidence might be articulated as ‘Mexican women in domestic relationships who are unable to leave’ or as ‘Mexican women who are viewed as property by virtue of their positions within a domestic relationship.’” *Id.*; *see also* Brief of Department of Homeland Security, *Matter of Rodi Alvarado-Pena*, No. A 73 753 922, United States Department of Justice, San Francisco, Cal. (Feb. 19, 2004), at 26–27 (“A group defined as ‘married women in Guatemala who are unable to leave the relationship’ meets the requirements for a particular social group and accurately identifies the reason why the persecutor chose his wife as his victim.”) (Ex. N).

Here, as DHS posited in *L-R-*, the evidence establishes that ██████████ perceived ██████████ as belonging to him—that she was “his woman” and would never be anyone else’s. ██████████ Decl. ¶¶12, 20, 43. Salvadoran societal norms and perceptions supported ██████████ deranged view. *See* SOF § I.A. As discussed above, ██████████ was faced with three choices: she could stay with

█████ and continue to endure his abuse and possible eventual death at his hands, and harm to or death of her child; she could move elsewhere in El Salvador and almost certainly be found and persecuted and/or killed; or she could flee El Salvador as she did. Her membership in the social group of women in El Salvador unable to leave their partners entitles her to asylum.³

4. The Type of Harm ██████ Fears and Country Condition Documentation Serve as Evidence of Nexus.

Here, there is both direct and circumstantial evidence that ██████ persecuted ██████ “on account of” her membership in the social groups discussed above. In *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992), the Supreme Court established the bedrock principal that a persecutor’s reason for inflicting harm may be established through direct or circumstantial evidence. The Board recently restated the importance of drawing inferences and conclusions from evidence—including circumstantial evidence—in an asylum analysis:

An inference is not impermissible as long as it is supported by record facts, or even a single fact, viewed in the light of common sense and ordinary experience. Drawing inferences from direct and circumstantial evidence is a routine and necessary task of any fact finder, and in the immigration context, the IJ is the fact finder.

Matter of D-R-, 25 I&N Dec. 445, 454 (BIA 2011) (internal citations and quotation marks omitted). Drawing an inference as to a persecutor’s reason for inflicting harm is appropriate in cases where country condition evidence points to both the type of harm an asylum seeker is

³ ██████ is also a member of the narrower particular social group of women who have left relationships with gang members. Though ██████ was not aware of ██████ membership in MS-13 for some time, it became clear throughout their relationship, and ██████ gang involvement appears to have increased since ██████ left El Salvador. The fact that ██████ escaped a relationship with a gang member makes her a member of this particular social group, and will subject her to certain persecution upon her return. See Argument § I.B, below. The Seventh Circuit has recognized particular social groups based upon immutable past actions or affiliations. See *Escobar v. Holder*, 657 F.3d 537, 546–48 (7th Cir. 2011) (former truck drivers who opposed the FARC are a social group because they cannot change their former jobs, prior opposition to the FARC, or cooperation with the government); *Benitez Ramos v. Holder*, 589 F.3d 426, 430-31 (7th Cir. 2009) (former MS-13 members who faced persecution after leaving the gang are a social group). Thus, ██████ former relationship with ██████ a gang member, and escape from him are immutable characteristics that make her a member of this social group.

likely to face and the reason for that harm. See *In re S-P-*, 21 I&N Dec. 486, 489–90 (BIA 1996) (acknowledging that “[p]ersecutors may have differing motives for engaging in acts of persecution” and because “[p]roving the actual, exact reason for persecution or feared persecution may be impossible” “the standard for review is whether the applicant has produced evidence from which it is reasonable to believe that the harm was motivated by a protected ground”). Where the record presents evidence that a certain class of people is targeted for persecution based on a shared characteristic, an asylum seeker need not show exactly what “spur[ed] the persecutor’s wrath or otherwise motivate[ed] the harm or persecution.” *In re Kasinga*, 21 I&N Dec. 357, 375–76 (BIA 1996) (“Rather, such requests involve a determination of whether the shared characteristics are those which motivate an agent of persecution to seek to overcome or otherwise harm the individual.”) (internal citations omitted).⁴

(a) Direct Evidence

Use of derogatory statements in the course of an attack “amply establishes the connection between the acts of persecution and [the petitioner’s protected class].” *Sinha v. Holder*, 564 F.3d 1015, 1021 (9th Cir. 2009); see also *Ivanovo v. Gonzales*, 157 F. App’x 939, 942 (7th Cir. 2005) (stating that petitioner presented evidence that his ethnicity was one of the motives for his persecution because his attackers called him a “Gypsy”, a racial epithet, when they attacked him); *Smolniakova v. Gonzales*, 422 F.3d 1037, 1049 (9th Cir. 2005) (finding that there was a nexus between asylum applicant’s persecution and her religion because the assailants referred to the applicant by an ethnic slur). ██████ repeatedly used words referring to ██████ gender

⁴ Where adjudicators have failed to consider the context of persecution when conducting a nexus analysis, the circuit courts of appeals have found legal error and cause for remand. See, e.g., *Ndonyi v. Mukasey*, 541 F.3d 702, 711 (7th Cir. 2008) (vacating the removal order of an asylum-seeker after finding the immigration judge and the Board “utterly fail[ed] to consider the context of [the asylum-seeker’s] arrest.”); see also *Osorio v. INS*, 18 F.3d 1017, 1029-30 (2d Cir. 1994) (reversing the Board’s decision that persecution was not on account of a political opinion where the Board “ignored the political context of the dispute” and showed “a complete lack of understanding of the political dynamics” in the country).

when he emotionally abused, threatened, beat and raped her. He said that she could not leave him because she was his woman. █████ Decl. ¶¶11, 20. He told her that she had to have sex when he wanted because she was his woman and said that “[y]ou are my woman and you have to take it.” *Id.* at ¶44. █████ also called █████ a prostitute while he forced her to have sex with him. *Id.* at ¶¶43-47. When █████ acted against █████ wishes he would tell her that she was “his woman” so could not talk back to him and had to do what he said. *Id.* at ¶¶11, 20. █████ abusive and traumatizing comments are direct evidence that █████ status as a woman was at least one central reason why █████ targeted her for persecution.

(b) Circumstantial Evidence

In this case, country condition reports serve as circumstantial evidence that █████ persecuted █████ because El Salvadoran cultural norms excuse and permit violence against women, and encourage men to view women as their property. █████ fears a type of harm commonly perpetrated against women in El Salvador precisely because they are women in El Salvador. As described in greater detail above, violence against women is pervasive in that country and the Salvadoran government has consistently failed to curb the violence or provide any meaningful protection against it. *See* SOF § I.A. The U.N. Special Rapporteur reported that this failure, combined with cultural norms and socio-economic conditions, has resulted in “a generalized state of violence, subjecting women to a continuum of multiple violent acts, including murder, rape, domestic violence, sexual harassment and commercial sexual exploitation.” *Id.* (quoting 2010 *Report of the Special Rapporteur*, at 1). In addition, there appears to be a strong correlation between gang culture and violence against women because females are often devalued in gang culture. Boerman Decl. ¶¶53-55.

The types of harm that █████ inflicted upon █████—threats of death if she were to leave him, beatings and rape—are all consistent with gender-related violence; here, violence

inflicted on [REDACTED] because she is a woman. The DOJ's Office on Violence Against Women has described domestic violence as one of several "forms of mistreatment *primarily directed at girls and women*" that "may serve as evidence of past persecution on account of one or more of the five grounds." Phyllis Coven, U.S. Dep't of Justice, Considerations for Asylum Officers Adjudicating Asylum Claims From Women, at 4 (May 26, 1995) (emphasis added), available at <http://www.unhcr.org/refworld/docid/3ae6b31e7.html> (Ex. O); see also *Angoucheva v. INS*, 106 F.3d 781, 793 n.2 (7th Cir. 1997) (stating that "[r]ape and sexual assault are generally understood today . . . as acts of violent aggression that stem from the perpetrator's power over and desire to harm his victim.").

[REDACTED] persecution of [REDACTED] conforms to what the circumstantial evidence demonstrates is gender-related violence. Country conditions in El Salvador further demonstrate how cultural perceptions and norms regarding the role of women support [REDACTED] claim that [REDACTED] behavior towards her was motivated by her gender.

B. [REDACTED] Has a Well-Founded Fear of Future Persecution in El Salvador.

Because [REDACTED] has suffered past persecution, she is entitled to a presumption of a well-founded fear of future persecution and is provisionally eligible for asylum. See 8 C.F.R. § 208.13(b)(1); *Bace v. Ashcroft*, 352 F.3d 1133, 1137 (7th Cir. 2003). It is the government's burden to rebut the presumption by either establishing by a preponderance of the evidence that conditions in El Salvador have changed to such an extent that [REDACTED] no longer has a well-founded fear, or that by moving to another part of El Salvador, she can avoid the persecution and that it would be reasonable to expect her to do so. 8 C.F.R. § 208.13(b)(1)(i) (2001). The evidence supports neither of those arguments.

1. Conditions Have Not Changed.

The government cannot establish that conditions have changed to such an extent that ██████ fear is no longer well-founded. As demonstrated by the 2010 *Report of the Special Rapporteur* and discussed in detail above, El Salvador remains one of the most dangerous countries in the world for women. See SOF § I.A.–B. MS-13 remains a powerful and virtually undeterred force. Boerman Decl. ¶¶19, 25-26, 36. Though ██████ is now married, her change in status will not have dissuaded ██████ from wanting to harm her. *Id.* at ¶55. Given that ██████ seems to have become even more involved in gang activity since ██████ left and the gang's notions of "disrespect" and "insult," it is possible and may be likely that ██████ marriage after escaping ██████ will put her in even greater danger. See ██████ Decl. ¶62; Boerman Decl. ¶¶47, 54-55.

2. Relocation Is Not an Option.

Relocation within El Salvador would be unreasonable for ██████ as shown in Dr. Boerman's declaration. Boerman Decl. ¶¶74-77. Due to the informal, yet extraordinarily efficient communication network between the United States and El Salvador, news of ██████ deportation and return to El Salvador would be known soon after, or even before, her return and ██████ would be able to track her down anywhere in the country. *Id.* at ¶¶74-75.

As someone who has fallen into disfavor with a member of the MS-13 and has been targeted by the gang, there is an exceptionally high risk that ██████ will be physically harmed or murdered if she returns to any part of El Salvador. *Id.* at ¶¶54-55, 65. The gang network is so pervasive in El Salvador, a country roughly the size of Massachusetts and containing over 20,000 gang members, that it is essentially impossible for an individual to escape the gang's radar once they have been targeted. *Id.* at ¶76. Both ██████ who continued to threaten ██████ after her departure and warned her that she would be killed if she ever set foot in El Salvador, and his

fellow MS-13 members will seek revenge for ██████ disloyal and insubordinate behavior once they receive word that she has been deported to El Salvador. *Id.* at ¶69 (“One of the most fundamental elements of gang mentality is the principle that ‘your enemy is my enemy,’ which manifests as an almost unconditional willingness on the part of gang members to act on behalf of those with whom they share positive relations by subjecting people who have fallen into disfavor to violent reprisals.”).

Furthermore, if returned, ██████ would be a single young woman with young children to protect and support in a country hostile to women where underemployment is very high amongst women. *See 2010 Report of the Special Rapporteur*, at 5. ██████ would be without the emotional or financial support of family or friends. In El Salvador, these circumstances would prove exceedingly difficult and, even setting aside the danger from ██████ and MS-13, potentially unsafe for ██████ and her children.

3. The Facts Demonstrate That Future Persecution Is a “Reasonable Possibility.”

Notwithstanding the presumption of a well-founded fear, however, the facts ██████ case are sufficient to establish her well-founded fear of future persecution. To show a “well-founded fear of persecution,” ██████ is not required to prove that it is more likely than not that she will be persecuted in her home country. *Cardoza-Fonseca*, 480 U.S. 421, 449 (1987). Rather, she must demonstrate that persecution is a “reasonable possibility.” *Id.* at 430–32, 440.

██████ satisfies this burden and can demonstrate, as required, that her fear is both subjectively genuine and objectively reasonable in light of credible evidence. 8 C.F.R. § 208.13(b)(2); *Gjerazi v. Gonzales*, 435 F.3d 800, 808 (7th Cir. 2006). The subjective component of this requirement will be established by ██████ testimony and credibility. *Gjerazi*, 435 F.3d at 808. To satisfy the objective component, ██████ provides specific, detailed facts

demonstrating that a reasonable person would fear persecution upon returning to the country from which she seeks asylum. *Kllokoqi v. Gonzales*, 439 F.3d 336, 345 (7th Cir. 2005).

██████ describes in detail in her declaration the brutal emotional, physical and sexual abuse she endured from ██████. See ██████ Decl. ██████ also threatened to kill ██████ repeatedly, often noting that if she was not with him, she would not be with anyone. *Id.* at ¶¶13, 36, 50, 77. ██████ and her new husband have received threatening calls in the United States, including the threat that if ██████ ever sets foot in El Salvador again, ██████ will deliver her body in pieces to her family. *Id.* at ¶¶72, 74. If returned to El Salvador, ██████ will be forced to face an abusive ex-partner without protection from a government that has done little to protect women suffering from domestic abuse and violence. See SOF § I.A. above.

██████ also faces a threat from MS-13, ██████ gang. ██████ leaving is an affront to ██████ and contrary to the subordinate role that MS-13 members expect from their women. *Id.* at ¶¶53-55. If ██████ is forced to return to El Salvador, ██████ will not recognize a separation or ██████ subsequent relationship as ending his right to abuse her and—with the support and assistance of his fellow MS-13 members—will seek revenge for ██████ behavior. *Id.* Members of MS-13 continued to threaten ██████ family after she fled to the United States, vandalizing ██████ mother's house, and warning her not to get involved in what they viewed as a domestic issue between ██████ and his woman. ██████ Decl. ¶15. ██████ also has reason to believe that ██████ gang involvement has increased since she fled to the United States, having heard that he has been imprisoned with other gang members and now has the facial tattoos characteristic of MS-13 members. ██████ Decl. ¶62. Due to the fact that ██████ is a Salvadoran woman who left her partner, a member of MS-13, and the prevalence and well-established

communication network of the MS-13 gang, it would be nearly impossible for ██████ to go unnoticed and avoid becoming the target of gang violence and, perhaps, murder. *See* SOF § I.B.

For the aforementioned reasons, ██████ has a genuine and objectively reasonable fear of persecution if she is returned to El Salvador and, therefore, she is entitled to asylum.

C. ██████ Is Entitled to “Humanitarian Asylum” Because There Is a Reasonable Probability That She May Suffer Other Serious Harm Upon Removal to El Salvador.

“[A]n applicant who has already shown past persecution may still be granted asylum, even when the presumption of a well-founded fear of future persecution has been rebutted, by establishing . . . that there is a ‘reasonable probability’ that he may suffer ‘other serious harm’ upon removal to his country under [8 C.F. R.] § 1208.13(b)(1)(iii)(B).” *Matter of L-S-*, 25 I&N Dec. 705, 710 (BIA 2012). The “other serious harm” need not be inflicted on account of membership in a particular social group or other asylum ground, nor is there a requirement for a nexus between the “other serious harm” and an asylum ground. *Id.* at 714. However, the “other harm” must be “so serious that it equals the severity of persecution.” *Id.* (citing 65 Fed. Reg. 31,947). This analysis is forward looking and does not require an analysis of the severity of the past persecution. *Id.* (“When considering the possibility of ‘other serious harm,’ the focus should be on current conditions and the potential for new physical or psychological harm that the applicant might suffer. . . . and may be wholly unrelated to the past harm.”).

The country conditions in El Salvador are so dangerous for women in general that ██████ would be at extreme risk of egregious physical harm and/or death if returned to El Salvador. *See* SOF §I. El Salvador is the most dangerous country in the world for women. *We Live in the Most Violent Country Against Women*. This general threat is exacerbated by the fact that ██████ has left a relationship with a gang member. As demonstrated in detail above, the Salvadoran government has been both unable and unwilling to protect women from violence or

control the gangs in El Salvador. *See* SOF §§ I., II. As a woman, and one with a prior connection to a gang member, ██████ faces a “reasonable probability” that she may suffer “other serious harm” if she is returned to El Salvador. For the aforementioned reasons, and because ██████ has sufficiently established past persecution, she should be granted humanitarian asylum.

II. ██████ MUST BE GRANTED WITHHOLDING OF REMOVAL BECAUSE THERE IS A CLEAR PROBABILITY THAT SHE WILL BE PERSECUTED IF REMOVED TO EL SALVADOR.

██████ persecution also entitles her to withholding of removal. While an application for asylum doubles as an application for withholding of removal, 8 C.F.R. § 208.3(b), granting of asylum and withholding of deportation are “two distinct forms of relief.” *Cardoza-Fonseca*, 480 U.S. at 429 n.6. An individual seeking withholding of removal must make a showing of a “clear probability of persecution.” *Najafi v. INS*, 104 F.3d 943, 946 (7th Cir. 1997). Although withholding of removal requires a more difficult showing than an asylum application, it is not discretionary. *Cardoza-Fonseca*, 480 U.S. at 424. Any petitioner who satisfies the standard for withholding of removal is *automatically entitled* to not be deported. *Id.* at 443; *see also* INA § 241(b)(3). Because ██████ has established a clear probability of persecution if returned to El Salvador, the court must grant her application for withholding of removal.

A clear probability of persecution exists “where the applicant demonstrates that it is ‘more likely than not’ that she would be persecuted if returned to her native country.” *Zheng v. Gonzales*, 409 F.3d 804, 809 (7th Cir. 2005). Importantly, if an applicant establishes “that she has been subjected to past persecution,” then by law a presumption arises “that the persecution will continue upon her return.” *Id.*; *see also* 8 C.F.R. § 208.16(b)(1)(i) (establishing statutory presumption of future threat to the applicant’s life or freedom on the basis of past persecution).

██████ history, and well-founded fear, of emotional abuse, beatings, rape, and even death, along with country conditions that have not improved since her departure and government ineffectuality, make it “more likely than not” that she will be singled out for persecution by ██████ and members of the MS-13 if forced to return to El Salvador. Therefore, ██████ is entitled to withholding of removal.

III. THE UNITED NATIONS CONVENTION AGAINST TORTURE PRECLUDES ██████ REMOVAL.

The United States’s adoption of the United Nations Convention Against Torture (“CAT”) also prohibits ██████ removal to El Salvador. Under CAT, the Government must provide protection, in the form of withholding of removal or deferral of removal, where an individual will “more likely than not” be tortured upon removal. 8 C.F.R. § 208.16(c)(4) (2009). Torture is the intentional infliction of severe pain or suffering, which pain or suffering is inflicted, instigated or consented or acquiesced to, by a public official. 8 C.F.R. § 208.18(a)(1). Unlike persecution required for asylum eligibility, “[t]he feared torture need not be on account of an enumerated basis.” *See Ochoa v. Gonzales*, 406 F.3d 1166, 1172 (9th Cir. 2005). In determining whether to withhold removal under Article 3 of the Convention, the Court may consider all evidence relevant to the possibility of future torture, including evidence of past torture and gross human rights violations. *See* 8 C.F.R. § 208.16(c)(3); *Lhansom v. XXX*, 430 F.3d 833, 843 (7th Cir. 2005).

As described above, ██████ was beaten, detained, emotionally abused, and raped in El Salvador. She was also repeatedly threatened with death. Her past torture, along with the ongoing prevalence of persecution against women in El Salvador, demonstrates that it is more likely than not that ██████ will be tortured if she returns. Salvadoran authorities have acquiesced in gender-based torture, in ██████ torture in El Salvador, and will continue to do

so if she is removed there. Thus, [REDACTED] is entitled to relief under the Convention Against Torture.

CONCLUSION

For the reasons stated herein, Respondent [REDACTED] [REDACTED] [REDACTED] respectfully asks the Court to grant her application. Having been violently physically and sexually abused by her partner, a known member of the MS-13, [REDACTED] was persecuted while in El Salvador. If returned to that country, [REDACTED] will be subject to further persecution and, perhaps, death at the hands of her abuser, [REDACTED] and his fellow MS-13 gang members.

WHEREFORE, Respondent [REDACTED] [REDACTED] [REDACTED] respectfully requests that the Court grant her request for asylum, humanitarian asylum, withholding of removal and/or relief under the Convention Against Torture.

Dated: June 29, 2012

Respectfully submitted,

[REDACTED]

CERTIFICATE OF SERVICE

I, [REDACTED] hereby certify that I have served a copy of the foregoing Respondent's Brief in Support of Application for Asylum, Withholding of Removal, or Relief Under the Convention Against Torture on DHS, Office of the District Counsel, located at 525 W. Van Buren Street, Suite 701, Chicago, Illinois 60607 on June 29, 2012.

Allyson Sparchet
[REDACTED]

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