

No. 18-60665

**In the
United States Court of Appeals
For the Fifth Circuit**

S.K.E.R.; N.G.L.R.; D.J.E.R.,
Petitioners-Appellees,

v.

WILLIAM P. BARR, U.S. ATTORNEY GENERAL,
Respondent-Appellant.

On Petition for Review
from an Order of the Board of Immigration Appeals

Motion for Leave to File Brief of *Amici Curiae*

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Pursuant to Federal Rules of Appellate Procedure 27 and 29, *Amici Curiae* respectfully move this Court for leave to file the attached Brief of *Amici Curiae* in Support of Petitioners-Appellees and Reversal. *Amici* have met and conferred with all parties regarding the brief's filing. Petitioners have consented to the filing, whereas Respondent William P. Barr has represented he does not oppose.

Amici have a keen interest in ensuring that U.S. immigration law is properly applied and developed, so that individuals seeking asylum and other related relief receive fair and proper consideration under standards consistent with U.S. laws and treaties.

The National Immigrant Women's Advocacy Project or NIWAP, Inc. ("NIWAP") is a non-profit training, technical assistance, and public policy advocacy organization that develops, reforms, and promotes the implementation and use of laws and policies that improve legal rights, services, and assistance to immigrant women and children who are victims of domestic violence, sexual assault, stalking, child abuse, human trafficking, and other crimes. NIWAP is a national resource center offering technical assistance and training at the federal, state, and local levels to assist a wide range of professionals who work with

immigrant crime victims and/or whose work affects these victims.

Additionally, NIWAP's Director Leslye E. Orloff was closely involved with the 1994 enactment of the Violence Against Women Act ("VAWA")—landmark legislation aimed at improving community-based responses to domestic violence.

The Texas Legal Services Center is a non-profit legal organization that advocates for social justice on behalf of vulnerable people. Its Crime Victims' Program is dedicated to providing trauma-informed legal services to victims of violent crimes, like family violence, sexual assault, and stalking. Its direct representation of clients often involves the intersection of immigration law and family law. The Program's Managing Attorney is on the Board of Directors for the Battered Women's Justice Project and has decades of experience representing crime victims, including as the Chief Prosecutor in the Protective Order Division of the Travis County Attorney's Office.

The Tom Green County Sheriff's Crisis Intervention Unit has been working with victims of violent crimes for the past twenty years. Its mission is to provide prompt and comprehensive crisis intervention to these victims. It provides domestic violence victims with relevant

information and agency referrals for various types of assistance, including legal assistance, assistance with Crime Victim's Compensation, and assistance with both emergency and long-term Protective Orders.

The Tahirih Justice Center ("Tahirih") is the largest multi-city direct services and policy advocacy organization specializing in assisting immigrant women and girls who survive gender-based violence. Tahirih offers legal and social services to women and girls fleeing all forms of gender-based violence, including human trafficking, forced labor, domestic violence, rape and sexual assault, and female genital cutting/mutilation. Through direct legal and social services, policy advocacy, and training and education, Tahirih protects immigrant women and girls so that they can live in safety and dignity.

Laurie Cook Heffron, PhD, LMSW, is a licensed social worker, researcher, and Assistant Professor of the School of Behavioral and Social Sciences at St. Edward's University in Austin, Texas. She focuses her social work practice and research on the intersections of migration and violence against women, particularly women from Guatemala, Honduras, and El Salvador. She regularly serves as a pro bono expert;

provides psycho-social assessments in immigration cases related to domestic violence, human trafficking, asylum, U visas, T visas, and VAWA; and conducts research interviews with domestic violence survivors.

American Gateways—formerly the Political Asylum Project of Austin—provides direct legal representation and advocacy to thousands of low-income immigrants in central Texas, including pro se assistance to hundreds of asylum seekers annually. Its mission is to champion the dignity and human rights of immigrants, refugees, and survivors of persecution, torture, conflict, and human trafficking, through free or low-cost legal services, education, and advocacy.

Amici believe that the decisions of this case’s Immigration Judge (“IJ”) and Board of Immigration Appeals are premised on critical misconceptions about the nature of domestic violence, coercive control in abusive relationships, and the increased difficulties and dangers facing victims who attempt to terminate relationships with their abusers. If similar misunderstandings were reflected in a decision by this Court, it could adversely impact the lives of many women who have suffered domestic abuse because they found themselves unable to escape their

abusers' control. Accordingly, *Amici* submit this brief to offer insight into the relationship between an abuser and a victim who is seeking to escape his clutches. A proper understanding of this relationship is critical to the outcome of this case.

In the years since the Board decided *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), *overruled by Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), the Board, immigration judges, and asylum officers have consistently reaffirmed that a domestic violence victim can establish her membership in a cognizable particular social group by showing that for religious, societal, cultural, legal, or other reasons, she was unable to leave the relationship with her abuser. Indeed, the IJ who decided Petitioner's case below assumed that one of Petitioner's three proposed particular social groups may be cognizable: "Honduran women unable to leave a domestic relationship," "Honduran women viewed as property by virtue of their status in a domestic relationship," and "Honduran women unable to leave a relationship with the father of their child." Ultimately, however, the IJ determined that since Petitioner no longer resided with her abuser, she effectively left her abuser and was therefore

not a member of any of her proposed social groups. This decision incorrectly assumed that an abusive relationship ends upon physical separation. In reality, an abusive relationship becomes increasingly dangerous and violent once a victim attempts to leave her abuser, because the abuser will do nearly anything to maintain control over his victim.

On appeal, the Board did not independently analyze whether Petitioner was able to leave her abusive relationship. Instead, it determined that Petitioner's purported social groups were generally not cognizable under a recent Attorney General opinion, *Matter of A-B*, 27 I&N Dec. 316. The Board did not explicitly state that Petitioner's relationship-based social groups were inherently circular. But to the extent the Board relied on *Matter of A-B*'s circularity concerns, it would have denied Petitioner's claims on the same misconceptions of domestic violence upon which *Matter of A-B* is premised—primarily, that a domestic violence victim's inability to “leave” the relationship hinges solely on her fear of further physical abuse. This is demonstrably incorrect, as an abuser's varied use of ongoing control tactics is what truly prevents the victim from leaving.

Amici believe the decisions of the IJ and Board failed to appreciate that domestic violence relationships are primarily defined by coercive control, not by ongoing cohabitation or physical abuse. *Amici* will present research showing that an abusive domestic relationship does not end when the victim manages to physically escape from her abuser's residence. They will explain how the abuse may become even more violent and disempowering after the victim attempts to separate herself from her abuser. They will also present research showing that there are many reasons, aside from physical abuse, that might prevent a victim from leaving her relationship. Her abuser might start focusing his abuse on the victim's family members and children, stalking the victim, or intimidating her through weapons. Such tactics make it impossible for the victim to leave the relationship, because they provide a new means for the abuser to exert coercive control over the victim.

Amici believe this information will aid the Court in determining whether Petitioner is a member of a cognizable particular social group. *Amici* urge this Court to take this research into account so that Petitioner's asylum claims can be properly considered in the context of coercive control.

For the foregoing reasons, *Amici* hereby ask that the Court grant them leave to file an *amici curiae* brief in support of Petitioners.

DATED: APRIL 8, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 1,305 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).
2. This motion also complies with the typeface and style requirements of Fed. R. App. P. 27(d)(1), Fed. R. App. P. 32(a)(5), and Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally-spaced typeface using Microsoft Word in Century font, 14-point size.

DATED: APRIL 8, 2019

/s/ Linda T. Coberly
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CERTIFICATE OF SERVICE

I hereby certify that, on April 8, 2019, I caused the foregoing Motion for Leave to File Brief of *Amici Curiae* and the accompanying Brief of *Amici Curiae* in Support of Petitioners-Appellees and Reversal to be filed electronically with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system.

All participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

DATED: APRIL 8, 2019

/s/ Linda T. Coberly
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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 28.2.1, the undersigned counsel of record certifies that the following listed persons or entities have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

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<p>National Immigrant Women’s Advocacy Project (NIWAP, Inc.)</p> <p>Texas Legal Services Center</p> <p>Tom Green County Sheriff’s Crisis Intervention Unit</p> <p>Tahirih Justice Center</p> <p>Laurie Cook Heffron, PhD, LMSW, Assistant Professor of the School of Behavioral and Social Sciences at St. Edward’s University*</p> <p>American Gateways</p>	<p>Linda T. Coberly Heather P. Lamberg Monica T. Kociolek Nareeneh Sohbatian WINSTON & STRAWN LLP</p>

/s/ Linda T. Coberly
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* For purposes of this case, the amicus is the individual professor and not her affiliated institution.

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INTRODUCTION
AND INTEREST OF *AMICI CURIAE**

Amici submit this brief to correct two critical false premises underlying the decisions of the Immigration Judge and Board of Immigration Appeals—namely, (1) that a domestic violence victim succeeds in “leaving” the relationship with her abuser merely by escaping from the abuser’s home, and (2) that a victim’s fear of further physical abuse is the only reason she is unable to “leave” her relationship. These apparent assumptions fail to appreciate that domestic violence relationships are primarily defined by coercive control, not by ongoing cohabitation or physical abuse.

In the years since the Board decided *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), *overruled by Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), the Board, immigration judges, and asylum officers have consistently reaffirmed that a domestic violence victim can establish her membership in a cognizable particular social group by showing that for religious, societal, cultural, legal, or other reasons, she was unable

* *Amici* certify that no party or party’s counsel authored this brief in whole or in part. Nor did any party or party’s counsel contribute any money to fund this brief’s preparation. No one other than *Amici* and the undersigned firm contributed money to this brief’s preparation and filing.

to leave the relationship with her abuser. In this case, Petitioner was eligible for asylum based on her status in three particular social groups: “Honduran women unable to leave a domestic relationship,” “Honduran women viewed as property by virtue of their status in a domestic relationship,” and “Honduran women unable to leave a relationship with the father of their child.”

Still, the Immigration Judge (“IJ”) denied Petitioner’s application for asylum even after assuming that one of her proposed particular social groups may be cognizable. In so doing, the IJ determined that since Petitioner no longer resided with her abuser, she effectively left her abuser and was therefore not a member of any of the proposed social groups. This decision incorrectly assumed that an abusive relationship ends upon physical separation, suggesting that the IJ did not fully understand the coercive control element of domestic violence relationships.

A single-member panel of the Board of Immigration Appeals subsequently affirmed the IJ’s denial of Petitioner’s claims. Unlike the IJ, the Board did not independently analyze whether Petitioner was able to leave her abusive relationship. Instead, it determined that

Petitioner's purported social groups were generally not cognizable under a recent Attorney General opinion, *Matter of A-B*, 27 I&N Dec. 316. The Board did not explicitly state that Petitioner's relationship-based social groups were inherently circular. But to the extent the Board relied on *Matter of A-B*'s circularity concerns, it would have denied Petitioner's claims on the same misconceptions of domestic violence upon which *Matter of A-B* is premised—primarily, that a domestic violence victim's inability to "leave" hinges solely on her fear of further physical abuse. This is demonstrably incorrect, as an abuser's varied use of ongoing control tactics is what truly prevents the victim from leaving the relationship.

Accordingly, the IJ and Board's decisions both reflect a misunderstanding about the nature of coercive control in domestic violence relationships. As discussed below, research shows that an abusive relationship does not end simply because the victim physically separates herself from her abuser. To the contrary, in abusive relationships the frequency and dangerousness of abuse is typically exacerbated when the victim attempts to leave the couple's shared residence. This is because the abuser's control over the victim—the

hallmark of domestic violence relationships—is jeopardized by the victim’s decision to leave. When the abuser feels his victim is becoming less susceptible to his typical control tactics, he might begin stalking the victim, brandishing a weapon during his threats, or even directing his threats at the victim’s children. These various tactics are all manifestations of an abuser’s coercive control and can prevent a victim from leaving a relationship just as much as physical abuse can.

Moreover, when the victim and abuser have a child in common, the victim’s ability to leave is often frustrated because the shared child gives the abuser both the opportunity and the means to continue his abuse and control over the victim—especially in cultures that place high priority on masculinity and fatherhood. For these reasons, there is no logical basis or evidence-based research to support the Board’s decision that Petitioner’s relationship-based social groups are not cognizable.

Amici are well-suited to provide the Court with the necessary context and research on all these issues. *Amici* have a keen interest in ensuring that U.S. immigration law is properly applied and developed, so that individuals seeking asylum and other related relief receive fair

and proper consideration under standards consistent with U.S. laws and treaty obligations.

The National Immigrant Women’s Advocacy Project or NIWAP, Inc. (“NIWAP”) is a non-profit training, technical assistance, and public policy advocacy organization that develops, reforms, and promotes the implementation and use of laws and policies that improve legal rights, services, and assistance to immigrant women and children who are victims of domestic violence, sexual assault, stalking, child abuse, human trafficking, and other crimes.

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mission is to champion the dignity and human rights of immigrants, refugees, and survivors of persecution, torture, conflict, and human trafficking.

Amici write to provide this Court with scholarly information and perspective on fundamental concepts related to domestic violence that the IJ and Board misunderstood, to ensure that Petitioner's case is properly considered. *Amici* fear that lives of many immigrant women and children could be adversely affected if domestic violence asylum claims are not fully appreciated within the context of coercive control.

STATEMENT

Petitioner S.K.E.R.'s story is unfortunately all too common.* Not only does it illustrate the unique persecution that women regularly face in male-dominated countries like Honduras, but it is also a textbook example of the coercive control that often prevents domestic violence victims from meaningfully and effectively leaving their abusers.

As a child, Petitioner was coerced into a relationship with her abuser in 2001, when she was 12 years old and he was around 21 years old. ROA.181–82. Before this, Petitioner “never had an intimate relationship with another boy.” ROA.26. On occasion, her abuser would appear at her school unannounced to make sure she was following his rules. ROA.124, 182–83. He was very jealous and possessive of her: he told her that he was “the only male in [her] life,” that “she was not allowed to be friends with her male classmates or speak to other males in his presence,” that she “belonged” to him, and that “[she] was his.” ROA.124, 182.

When Petitioner was 15 years old, her abuser told her she had to choose between him or her family, or else she would never see him

* This Statement is based on uncontested facts in the record.

again. ROA.124, 184. He reassured her that everything would be fine if she went with him, so she did, because she thought she loved him.

ROA.184. But when she arrived at her abuser's home, he took her into his bedroom, threw her on his bed, tore off her clothes, and raped her—brutally stealing her virginity. ROA.125, 185. Petitioner told him to stop and that he was hurting her, but he did not listen. ROA.185. For the next year, her abuser made her life a “living hell” and treated her like a “sexual slave.” ROA.125, 177, 186, 188. He raped her whenever he felt like it, which was “almost every day,” even though she never consented to sex and did not want him to touch her. ROA.125, 186.

As a result of these rapes, Petitioner became pregnant. *See* ROA.125. Her abuser told her that he did not want more children, and tried to force pills into her mouth to induce an abortion. ROA.125. When Petitioner spit out the pills, he hit her in her face until she bled. ROA.125–26. And despite the pregnancy, her abuser continued to rape, beat, hit, punch, and kick her. ROA.125–26, 177–78, 192. Indeed, not a week went by where he did not hit her, and even though his family witnessed his behavior, they “never intervened” when he sexually, physically, or verbally abused Petitioner. ROA.125; *see* ROA.185–86.

Although Petitioner wanted to leave her abuser, she could not, because he not only threatened to kill her if she tried to leave him, but kept her captive in his home. ROA.125, 177, 190–91. The house had only one door, which was always locked, and windows that were barred, and Petitioner did not have a key. ROA.125. Moreover, her abuser was always around the house, using illegal drugs and doing “illicit business” with his friends, and was constantly armed with a firearm. ROA.125, 188–89; *see* ROA.129. And since Petitioner did not have access to an active phone, she could not report her abuse. ROA.125, 191.

When her abuser finally agreed to allow her to go to the hospital to give birth to their child after she begged him to take her there, he threatened to steal her baby if she told anyone at the hospital about the abuse. ROA.126, 193. The hospital did not allow her abuser to go into the birthing wing with her, so after she gave birth, she used one of the hospital’s phones to call her mother, who helped her secretly escape through the hospital’s back door. ROA.126, 194.

Two days after Petitioner escaped, her abuser found her at her parents’ home. ROA.126, 195. He told her mother that Petitioner was his woman and that both Petitioner and her daughter had to be with

him. ROA.126, 195–96. Soon after, he accosted Petitioner when she was shopping with their daughter and demanded that Petitioner “be with him” because she was his property. ROA.126, 196. For the next year, he followed Petitioner as if he was her “shadow,” stalking her every day. *Id.* He would appear suddenly at her home, job, bus stop, and family members’ homes. ROA.49.

Due to this stalking, Petitioner was fired from her first job at a grocery store because her abuser would come to her work, grab her by force, and tell her that she had to be with him, causing a scene which would make customers leave the store. ROA.30, 126, 178, 197–98. He also stalked Petitioner at her second job at a clothing store, sometimes as much as three times per week. ROA.198–99. Once when she was waiting for the bus with her coworker after work, the abuser saw and approached them, beat her coworker, and then beat her in the street while calling her a whore. ROA.126–27, 173, 199.

He also appeared at Petitioner’s sister-in-law’s home where Petitioner was staying. ROA.127, 201. He banged on the doors and windows until about 1:00 or 2:00 a.m. and screamed that Petitioner had “to go back with him.” *Id.* Another time while Petitioner was walking in the

street, he grabbed her by the hair, threw her to the ground, and hit her in the face because he thought she was in that neighborhood to see another man. ROA.127, 202. Her brother got word that Petitioner was being assaulted in the street, so he came to rescue her with a baseball bat. *Id.*

Petitioner eventually went to the police to file a complaint against her abuser. ROA.127. She showed them the bruises on her face and scratches on her hands and knees inflicted by her abuser. ROA.127, 204. The police refused to assist her, did not take her complaint, and said “women like when men treat...[them] badly, when men beat...[them] up. ROA.127, 204. Petitioner said this was not so, but the police said “they would not waste their time, that they had better things to do.” ROA.204.

Petitioner then made a complaint with the Women’s Rights office—a non-governmental organization that assists domestic violence victims—which helped her get a hearing in court. ROA.127, 292. At the hearing, Petitioner told the judge that she wanted her abuser to leave her alone. ROA.204–05. The judge issued a restraining order and ordered the abuser to pay child support in order to have visitation with

his daughter. ROA.127, 204. The judge informed him that he would be jailed if he failed to comply with the order. ROA.127–28, 205.

Although at first the abuser visited with the child, he later failed to pay child support, so Petitioner told him he was no longer entitled to visitation. ROA.128, 178. Petitioner returned to court to inform the judge that her abuser was not complying with the court's order, and the judge provided Petitioner with a letter to give to the police to arrest the abuser. ROA.128, 208. Petitioner went to the police and drove around in their patrol car with them to help them find her abuser. ROA.128. Although Petitioner pointed out the abuser, the police failed to pursue him as he fled on foot. ROA.128, 209–11. As a result, Petitioner felt that the police would not act to protect her, because they were supposed to arrest him but they did not. ROA. 128, 178. A few days later, after the abuser again threatened Petitioner, she returned to court but was informed that no one could assist her at the time. *See* ROA.128, 211.

Around this time, rumors began to circulate, saying that the abuser had been killed by a rival gang. ROA.178. When Petitioner no longer encountered him in public, she believed the rumors to be true. ROA.178. Petitioner got married and had another son during this time.

ROA.128. But the abuser eventually reappeared, confronted Petitioner on the street, and asked her if she missed him. ROA.34, 51, 128, 178. He had her telephone number, knew she had married, and knew that she had a new son. *See* ROA.34, 50, 128. He also must have been watching and trying to interact with her daughter at school because when he confronted Petitioner and her daughter in the street, the daughter recognized him. ROA.128. Following this incident, Petitioner yet again sought police assistance. *Id.*

Just like before, the police refused to accept her complaint. ROA.129. They indicated that her complaint was not logical, as the abuser was the biological father of her daughter so he would not be trying to steal her. Petitioner asked the police to station an officer near her daughter's school, but the police informed her that they could not grant her request. Additionally, they said that if she did not shut her mouth, she would be taken into police custody for disturbing the peace.

In March 2015, the abuser came back to Petitioner's home, demanding to see her daughter. He said he did not need permission to see her and ordered Petitioner "to give him the child." He returned a few days later and again attempted to take her child. She pleaded with him,

and he offered to allow Petitioner to keep her daughter if she agreed to traffic drugs into a prison for him by hiding them in her vagina. He pressed a gun against Petitioner's stomach and threatened to kill her if she refused to traffic the drugs for him. He also threatened to kill her son and to use her daughter for the trafficking if she did not abide by his order. *Id.*

Following this incident, Petitioner feared her abuser could find her and her children anywhere in Honduras, and that he would "kill the children and kill [her]." ROA.36, 129–30. Because Petitioner could not obtain help from the police, who had failed to help her many times, she believed the only way to protect herself and her children was to seek asylum in the United States. *See* ROA.36, 129–30.

ARGUMENT

The defining characteristic of domestic violence is an abuser’s coercive control over the victim. TK Logan, *“If I Can’t Have You Nobody Will”*: *Explicit Threats in the Context of Coercive Control*, 32 *Violence & Victims* 126, 126 (2017) [hereinafter *If I Can’t Have You Nobody Will*] (explaining that an abusive relationship is “characterized by coercive control, which is an intentional and systematic course of conduct to dominate one’s partner” through control tactics). Any time an abuser’s control over the victim is jeopardized—like when the victim manages to escape her abuser’s home—the abuser will do nearly anything to take back his control. *See infra* Parts I–II. He might intensify his physical abuse towards the victim, maintain contact with her through their shared children, or stalk her endlessly. *Id.*

Not all of these tactics involve physical abuse, but they all provide a new means for the abuser to reassert coercive control. *Id.* And as long as the abuser maintains coercive control over his victim, the victim will never truly be able to leave the relationship. *Id.* This is especially true in Petitioner’s home country of Honduras, where cultural norms reinforce

the very gender-based subordination and control that Petitioner has been unable to escape. *See infra* Part III.

I. Coercive control does not end simply because the victim manages to escape from her abuser’s residence.

Social science research consistently reaffirms that an abusive relationship can and usually does continue after the victim physically separates herself from her abuser. *See, e.g.*, TK Logan, et al., *An Integrative Review of Separation in the Context of Victimization: Consequences and Implications for Women*, 5 *Trauma, Violence, & Abuse* 143, 167 (2004) [hereinafter *An Integrative Review of Separation*] (stating victims not only “face violence during the relationship, [but] they may face ongoing violence and psychological terror after leaving the relationship as well”); TK Logan, Robert Walker, Lisa Shannon & Jennifer Cole, *Factors Associated with Separation and Ongoing Violence Among Women with Civil Protective Orders*, 23 *J. Fam. Violence* 377, 377 (2008) (“Some people think women experiencing partner violence should ‘just leave.’ However, leaving does not always mean that the violence ends”). This is because the very essence of an abusive relationship is that the abuser is in control, which means that the victim does not have the power to end the relationship

or the violence unilaterally. *See* Cathy Humphreys & Ravi K. Thiara, *Neither Justice nor Protection: Women's Experiences of Post-Separation Violence*, 25 J. Soc. Welfare & Fam. L. 195, 200 (2003) (explaining that a fundamental aspect of the cycle of abuse is the man's use of violence to entrap the woman so that she feels she cannot leave even after she has tried).

Consequently, a victim's attempt to physically separate from her abuser often results in more severe acts of violence, rather than relief from abuse. *See* Ruth E. Fleury, et al., *When Ending the Relationship Doesn't End the Violence: Women's Experiences of Violence by Former Partners*, 6 Violence Against Women 1363, 1371 (2000) (noting that half of the women who attempt to leave their abusers suffer some form of injury upon separation, and nearly three-quarters of those injured experience severe physical abuse). In fact, women are at greatest risk of homicide after separation. *See* Jennifer L. Hardesty, *Separation Assault in the Context of Postdivorce Parenting: An Integrative Review of the Literature*, 8 Violence Against Women 597, 601 (2002) (stating that the risk of intimate-partner femicide increases six-fold after a woman tries to leave an abusive partner).

To quantify and help determine whether homicide is a potential reality in any given case, social scientists have created the “Danger Assessment.” Jacquelyn C. Campbell, Daniel Webster & Nancy Glass, *The Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide*, 24 J. Interpersonal Violence 653, 653 (2009) [hereinafter *The Danger Assessment*]. This tool uses 20 indicators “to assist battered women in assessing their danger of being murdered (or seriously injured) by their intimate partner or ex-intimate partner.” *Id.* at 657–58. As outlined below, at least 14 of these 20 factors are present in Petitioner’s case. *See id.* at 655 (listing all the factors).

- Factor 1: Petitioner’s abuser has used increasingly severe physical violence against her over time. *See* ROA.129, 220–21 (Petitioner stating that by 2015, her abuser “was worse” than he was before, because his violence escalated into holding a gun against her).
- Factor 2: He owns a gun. *See* ROA.129 (evidencing he had a gun because he held one against Petitioner in the incident noted above); ROA.125 (IJ recounting that the abuser

“carried firearms”); ROA.188–89 (stating Petitioner saw three firearms in her abuser’s house).

- Factor 5: He has threatened Petitioner with a lethal weapon. ROA.129 (stating that during the gun incident noted above, the abuser “took out a gun, pressed it to . . . [Petitioner’s] stomach, and demanded his daughter” after Petitioner “refused to give [her] to him”).
- Factor 6: He has threatened to kill her. *See, e.g.*, ROA.190–91 (Petitioner explaining that her abuser told her she would “be dead” if she ever tried to leave him); ROA.129 (showing that years after Petitioner moved out, her abuser told her that if she refused to go through with his drug smuggling plan, “he would kill her”).
- Factor 7: He has avoided being arrested for domestic violence. *See* ROA.178 (noting that the first time Petitioner went to the police, the police said “they would not take [her] complaint . . . because it was a waste of time” and “they had better things to do”); ROA.209–11 (stating that the next time Petitioner went to the police, the police “drove around in the

police car and when they saw [the abuser] walking on the street, they did not chase after him when he ran,” even though Petitioner “was expecting the police to put him [in jail]”; ROA.128–29 (stating that when Petitioner again went back to the police to complain that her abuser was trying to steal her daughter, the police said “they didn’t see the logic of that because he was the biological father,” and if Petitioner “did not ‘shut [her] mouth,’ she would be taken into police custody and held for twenty-four hours for disturbing the peace”).

- Factor 8: Petitioner has a child that is not her abuser’s. ROA.129 (showing her abuser knew that Petitioner “had a new husband and a new child” that was not his).
- Factor 9: Her abuser has forced her to have sex when she did not wish to do so. *See, e.g.*, ROA.125 (detailing that the abuser brutally took Petitioner’s virginity at age 15 and then raped her “almost every day” while she lived with him, even though she “never consented to sex” with him).

- Factor 11: He uses illegal drugs. ROA.125 (stating his “friends frequently visited the house and ‘used drugs’ with him”); ROA.190 (Petitioner recalling that “while living with him, [she] saw him using drugs”).
- Factor 13: He has controlled most or all of Petitioner’s daily activities. *See, e.g.*, ROA.125–26 (discussing that among other things, Petitioner’s abuser “never allowed her to leave the house,” he said that she could not leave him otherwise “she would be dead,” he “sexually, physically, [and] verbally abused” her against her wishes, and he “force[d] her to take ‘pills to try to get an abortion’”).
- Factor 14: He is violently and constantly jealous of her. ROA.124 (stating he was “very jealous and possessive” of Petitioner and told her that she “belonged” to him and was “his,” that he was “the only male in [her] life,” and that “she was not allowed to be friends with her classmates or speak to other males in his presence”); ROA.202 (explaining that he physically assaulted her in the street because he believed she was coming around a certain neighborhood to see

another man); ROA.31 (describing a separate time when he beat up one of her male coworkers at a bus stop because he thought he was her husband).

- Factor 15: He has beaten her while she was pregnant.

ROA.191–92 (noting that when Petitioner told him she was pregnant, he “began hitting [her] in [her] face until [she] began to bleed”).

- Factor 17: He has threatened to harm her children. ROA.129 (stating that he told Petitioner he would kill her and her son if she did not smuggle drugs for him into a prison, and then would use her daughter for the job by hiding the drugs in her vagina).

- Factor 18: Petitioner believes he is capable of killing her.

ROA.130 (stating Petitioner fled to the United States because she feared her abuser would “kill the children and kill [her]” if he found them).

- Factor 19: He has followed her when she did not want him to. *See* Part II.B *infra* (discussing his persistent stalking of Petitioner).

When scored in total, the presence of these 14 factors places Petitioner at the level of “severe danger” for femicide at the hands of her abuser. *See The Danger Assessment, supra*, at 662. Thus, if she is forced to return to Honduras, it is all but certain that she would be subjected to grave and even fatal harm, as punishment for attempting to break free from her abuser’s control.

II. There are various ways, aside from physical abuse, in which an abuser can exert coercive control over his victim.

Although coercive control can manifest itself through physical abuse during periods of separation in the ways explained above, there are also other control mechanisms—separate and aside from physical violence—that an abuser can use to prevent his victim from leaving the relationship. As evidenced by Petitioner’s case, an abuser might use the children he has in common with his victim to maintain contact with her despite separation, *see Part II.A infra*, or he might stalk her to reaffirm he still has power over the relationship, *see Part II.B infra*.

A. Children in Common

First, when a woman has a child in common with her abuser, the very existence of the child all but guarantees that she cannot truly “leave” the relationship. *See Humphreys & Thiara, supra*, at 207

(finding that “child contact arrangements . . . provided the most consistent vulnerability to post-separation violence and under-mined relocation as a safety strategy”); Leslye Orloff & Olivia Garcia, *Dynamics of Domestic Violence Experienced by Immigrant Victims* 14 (2013) (discussing that abused women are usually forced to remain in some kind of relationship with their abusers post-separation as the necessary price of maintaining relationships with their children, which in turn exposes them to ongoing abuse); K. Thiara & Aisha K. Gill, *Domestic Violence, Child Contact and Post-Separation Violence: Issues for South Asian and African-Caribbean Women and Children* 17 (2012) (finding that an abuser’s co-parenting and child contact post-separation often replaced the romantic relationship as the avenue for the abuser’s continual control and harm).

Petitioner’s experience exemplifies how abusers use their children as pawns to continue to manipulate and exercise control over their victims after separation. *See generally* Statement, *supra*. Ever since Petitioner fled from her abuser’s home, her abuser has been using the child he has in common with Petitioner to maintain contact with her. He got to see Petitioner when he picked up the child for visits. He

purposely stalked the child at school so that he could confront Petitioner as she picked the child up. Not only did he threaten to steal the child from Petitioner on multiple occasions for over a decade, but he insisted that he had the right to speak with Petitioner because of the child. When Petitioner refused to give him the child, he pressed a gun against her stomach and told her that he would kill her and her son, and use the daughter's body for smuggling drugs.

B. Stalking Tactics

Second, an abuser's stalking tactics are "a dimension of dominance and control" that allow an abuser to stay in the victim's life post-separation. Judith McFarlane, et al., *Intimate Partner Stalking and Femicide: Urgent Implications for Women's Safety*, 20 *Behav. Sci. & L.* 51, 53, 66 (2002); see Sarah M. Norris, et al., *A Pattern of Violence: Analyzing the Relationship Between Intimate Partner Violence and Stalking*, 26 *Violence & Victims* 103, 112 (2011) (stating that "batterers are motivated to commit stalking behaviors to reestablish control of the relationship and victim"); TK Logan & Robert Walker, *Partner Stalking: Psychological Dominance or "Business as Usual"?*, 10 *Trauma, Violence, & Abuse* 247, 257 (2009) ("Stalking victims have daily

evidence they lack control over their life and are constantly reminded that someone else is in control of their life.”). Stalking is “at the extreme end” of an abuser’s controlling behaviors, precisely because it “can be maintained even if there is separation between the [abuser] and the victim.” McFarlane, et al., *supra*, at 66; Norris, et al., *supra*, at 112; *see also* Katrina Baum, et al., Bureau of Justice Statistics, U.S. Dep’t of Justice, *Stalking Victimization in the United States 2* (2009) (showing that some stalkers, like Petitioner’s abuser, can maintain contact with their victims “for 5 years or more”).

Critically, an abuser’s use of stalking tactics correlates strongly with the victim’s being in danger of severe physical harm. Jacomina Gerbrandij, et al., *Evaluating Risk Assessment Instruments for Intimate Partner Stalking and Intimate Partner Violence*, 5 *J. Threat Assessment & Mgmt.* 103, 104 (2018) (showing studies involving attempted and completed femicide have found “a significant association between stalking and intimate partner physical assault”). This is especially true when the abuser uses a number of stalking tactics in combination. TK Logan & Robert Walker, *Stalking: A Multidimensional Framework for Assessment and Safety Planning*, 18 *Trauma, Violence,*

& Abuse 200, 205 (2017) [hereinafter *Stalking: A Multidimensional Framework*]. Such common stalking tactics include explicit and implicit threats, third-party targeting, workplace harassment, and weapon intimidation. *See id.* at 203.

When abusers stalk their victims after they have attempted to physically separate from them, the abusers frequently threaten them with harm. *See* TK Logan & Kellie R. Lynch, *Dangerous Liaisons: Examining the Connection of Stalking and Gun Threats Among Partner Abuse Victims*, 33 *Violence and Victims* 399, 399–400 (2018) [hereinafter *Dangerous Liaisons*]; *If I Can't Have You Nobody Will*, *supra*, at 127 (referring to explicit and implicit threats of harm “as the do what I want ‘or else’ component of coercive control”). Stalkers’ implicit threats of harm—like following, tracking, and watching the victim—are often just as effective at inducing fear in victims as explicit threats. *See* McFarlane, et al., *supra*, at 53; *Stalking: A Multidimensional Framework*, *supra*, at 206.

In addition to threats, one of the most powerful tactics an abuser uses to continue to exert control over his victim is through stalking third parties close to the victim, like the victim’s children, family, and

friends. *See id.* at 207; *If I Can't Have You Nobody Will*, *supra*, at 135 (discussing that 40% of one study's victims "reported their abusive partner had actually threatened someone close to them" after separation); *Stalking: A Multidimensional Framework*, *supra*, at 207 (finding that 22% of the stalkers in another study targeted their victims' family members and friends). A victim's children are particularly vulnerable targets of ex-partner stalking. *An Integrative Review of Separation*, *supra*, at 161. According to one study, 64% of the study's abusers threatened to harm their victims' children 11 times on average, and 17% threatened to abduct their victims' children. *Id.*; *see also Stalking: A Multidimensional Framework*, *supra*, at 207 (stating that "threatening messages toward victims and their children, [are] associated with an increased likelihood of attempted and actual homicide" of the victim herself).

Another prevalent way abusers stalk their partners is through workplace harassment, since work "is a relatively easy point of access to the [victim]." Emily F. Rothman, et al., *How Employment Helps Female Victims of Intimate Partner Violence: A Qualitative Study*, 12 J. Occupational Health Psychol. 136, 136 (2007). According to one study,

96% of domestic violence victims who are employed experience problems at work due to their abusers. *Statistics*, Nat'l Domestic Violence Hotline, <https://www.thehotline.org/resources/statistics> (last visited Apr. 8, 2019). Workplace stalking is considered a form of economic control because it typically jeopardizes the victim's job, which in turn sabotages the victim's financial security. *See Impact of Stalking, supra*, at 81; Rothman, et al., *supra*, at 136 (finding that between 21 and 60% of victims of intimate-partner violence lose their jobs due to reasons stemming from their abuse).

Furthermore, abusers can combine stalking with the tactic of weapon intimidation to maintain control over their victims. *See Dangerous Liaisons, supra*, at 400, 412 (discussing that “guns are frequently used within the context of partner abuse to threaten, intimidate, and harass victims”). Not only is “an abuser’s access to a firearm [] significantly associated with attempted and contemplated intimate partner homicide,” *see id.*, but “the majority of women killed by a partner are killed by a gun,” *see If I Can’t Have You Nobody Will, supra*, at 136.

Since Petitioner stopped living with her abuser, he has used every one of the stalking tactics described above. *See generally* Statement, *supra*. Just two days after Petitioner escaped from the hospital, he found her at her mother's home. He then continually stalked her not only at her mother's home but at public places like her workplace, demanding that she return to him. He likewise stalked her daughter at school and even assaulted Petitioner's coworker when he thought Petitioner was romantically involved with him. The abuser's stalking became increasingly dangerous over time and culminated in his holding a gun against her, threatening to kill her and her children if she did not smuggle drugs for him.

These various control tactics—all separate and aside from physical abuse—have perpetuated Petitioner's inability to leave the relationship with her abuser. These tactics, taken together, had the cumulative effect of instilling in Petitioner a grave fear of harm—so much so that she felt her only chance at survival was through fleeing the country.

III. Coercive control can be influenced by cultural norms and country conditions.

In countries like Honduras where *machismo* is culturally prevalent, domestic violence victims often have a harder time leaving abusive relationships because cultural norms reinforce that women are subordinate to men, and that women can be treated like property by their male partners. For example, in cultures with rigid gender roles, a female victim of domestic violence might be deterred from otherwise attempting to leave her relationship, because her risk of femicide is greater than it would be in a more gender-equal culture. *See* Mary Ann Dutton & Giselle Haas, *Expert Testimony Concerning Battering*, Manual on VAWA Immigration Relief 5 (2000).

Women likewise have a harder time leaving abusive relationships in countries where there is a general lack of police enforcement of laws and inadequate prosecution of domestic violence. *See* Cecilia Menjívar & Shannon Drysdale Walsh, *The Architecture of Femicide: The State, Inequalities, and Everyday Gender Violence in Honduras*, 52 *Latin Am. Res. Rev.* 221, 225 (2017). Petitioner's home country of Honduras is particularly known for its impunity for gender-motivated crimes:

[D]espite international recognition of the growing incidence of violence against women in Honduras, over 96 percent of femicides go unpunished. This impunity, an expression of symbolic and gender violence, sends a powerful message that women's lives are expendable and unimportant, as unresponsive justice system institutions fall short in implementing the law on the books.

Id. at 228 (internal citations omitted). Where there is governmental inaction, like in Honduras, male abusers know that they can control their female victims with increasingly severe threats of violence, since their abuse will go unpunished, no matter how fatal. *See id.*

Petitioner's case illustrates precisely how rigid gender roles can both trigger and perpetuate a male abuser's control over his female victim, and how impunity for domestic violence can exacerbate a victim's inability to leave an abusive relationship. *See generally* Statement, *supra*. Petitioner's abuser specifically targeted her because she was a child, since he could easily succeed in coercing her into a domestic relationship with him. Once he had her captive in his home, he knew he could abuse, rape, and control her, because the Honduran culture of *machismo* solidified that that his family would never intervene. Even after Petitioner escaped from his home, he could continue to control her through stalking, threats, and further physical

abuse, because he knew that the police would not punish him—and he was right.

Petitioner’s case is a textbook example of these well-established phenomena of domestic violence and coercive control. As explained, the fact that Petitioner no longer resides with her abuser does *not* mean she successfully “left” the relationship. Additionally, Petitioner’s fear of physical abuse is *not* the only reason she cannot “leave” her relationship. Rather, her abuser’s ongoing control over her life is what ensures that for Petitioner, “leaving” the relationship is impossible.

CONCLUSION

Amici urge this Court to take this research into account and to consider Petitioner’s asylum claims in the context of coercive control, because the IJ and Board overlooked the predominate impact that the abuser’s control had on Petitioner’s ability to leave her relationship. Given the evidence-based research discussed above and Petitioner’s own lived experience, it is clear that a victim’s ability to “leave” is influenced by a host of reasons, including an abuser’s stalking, threats towards children, workplace harassment, and weapon intimidation—especially in countries where cultural norms encourage male-dominance and subordination of women, and government officials fail to enforce domestic violence laws.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(a)(5) because it contains 6,494 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief also complies with the typeface and style requirements of Fed. R. App. P. 32(a)(5)(A) and Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally-spaced typeface using Microsoft Word in Century font, 14-point size.

DATED: APRIL 8, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2019, the foregoing was filed with the Clerk of this Court through the CM/ECF system, which will serve all counsel of record.

DATED: APRIL 8, 2019

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