

No. 19-71452

In the United States Court of Appeals for
the Ninth Circuit

GABRIELA PEREZ CRUZ,

Petitioner,

v.

WILLIAM BARR, ATTORNEY GENERAL,

Respondent.

On Petition for Review of an Order of the Board of
Immigration Appeals, A#087-677-730

**BRIEF OF 21 *AMICI CURIAE* GROUPS INTERESTED IN
DOMESTIC VIOLENCE ISSUES AND WOMEN'S AND
IMMIGRANTS' RIGHTS, IN SUPPORT OF PETITIONER**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amici Curiae* Adjunct Justice, Association of Asian Indian Women in Ohio, Battered Women's Justice Project, Center for Safety and Change, Community Legal Aid, DV LEAP, Equal Justice Center, Family Violence Appellate Project, Family Violence Law Center, Futures Without Violence, Immigrant Worker Project, Los Angeles Center for Law and Justice, Migrant and Immigrant Community Action Project, National Association of Women Lawyers, National Immigrant Women's Advocacy Project, Inc., National Indigenous Women's Resource Center, Public Interest Law Project, San Diego Volunteer Lawyer Program, Safe Shelter of St. Vrain Valley, Stand Up Placer, Inc., and Tahirih Justice Center hereby disclose:

- There are no parent companies of any of these entities.
- No publicly held company owns ten percent (10%) or more of any of these entities.

Dated: July 2, 2020

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INTEREST OF *AMICI CURIAE*¹

Amici Curiae are 21 organizations interested in domestic violence issues and women's and immigrants' rights. They include Adjunct Justice, Association of Asian Indian Women in Ohio, Battered Women's Justice Project, Center for Safety and Change, Community Legal Aid, DV LEAP, Equal Justice Center, Family Violence Appellate Project, Family Violence Law Center, Futures Without Violence, Immigrant Worker Project, Los Angeles Center for Law and Justice, Migrant and Immigrant Community Action Project, National Association of Women Lawyers, National Immigrant Women's Advocacy Project, Inc., National Indigenous Women's Resource Center, Public Interest Law Project, San Diego Volunteer Lawyer Program, Safe Shelter of St. Vrain Valley, Stand Up Placer, Inc., and Tahirih Justice Center.

¹ All parties have consented to this brief's filing. No counsel for a party wrote this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici Curiae*, their members, or their counsel made a monetary contribution intended to fund the brief's preparation or submission.

These groups are interested in the outcome of this case given the potential for it to impact the rights of domestic violence survivors, women, their families, and immigrants. They also bring a wealth of expertise. Three of these groups highlight the interests amici have here:

Family Violence Appellate Project (“FVAP”) is a nonprofit organization dedicated to ensuring, through the appellate legal system, the safety and well-being of domestic violence survivors and their children. FVAP provides legal assistance to domestic violence survivors at the appellate level through direct representation, collaborating with pro bono attorneys, offering training to those who practice family law, and advocating for domestic violence survivors on important appellate issues. FVAP’s work with survivors includes a focus on survivors in marginalized and underrepresented communities, including by race and ethnicity, gender identity, sexual orientation, language, and immigration status. FVAP monitors appellate litigation raising domestic violence issues and has identified this case as one that has the potential to impact domestic violence survivors’ interests.

The National Immigrant Women’s Advocacy Project, Inc. (“NIWAP”) addresses the needs of immigrant women, immigrant

children, and immigrant victims of domestic violence, sexual assault, and other crimes by advocating for reforms in law, policy and practice. NIWAP is a national provider of training, legal and social science research, policy development, and technical assistance to advocates, attorneys, pro bono law firms, law schools, universities, law enforcement, prosecutors, social service and health care providers, justice system personnel, and other professionals who work with immigrant women, children and crime victims. NIWAP's work supports those in the field and in government who work to improve laws, regulations, policies, and practices to enhance legal options and opportunities for immigrant women and children. NIWAP has identified this case as one that could impact the legal options and opportunities for immigrant women.

The mission of the National Association of Women Lawyers ("NAWL") is to provide leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective

success. As part of its mission, NAWL promotes the interests of women and families by participating as *amicus curiae* in cases impacting their rights. NAWL has taken interest in this case because of its potential to impact the interests of women and families.

INTRODUCTION

This case involves a domestic violence survivor, Gabriela Perez Cruz (“Perez”), who was denied both withholding of removal and Convention Against Torture (“CAT”) relief. It presents this Court with an opportunity to address how domestic violence issues can impact an applicant’s eligibility for each of these two claims for relief.

Withholding of Removal. An applicant convicted of a “particularly serious crime” is ineligible for withholding of removal. *Gomez-Sanchez v. Sessions*, 892 F.3d 985, 996 (9th Cir. 2018). “[O]nly aggravated felonies for which the [applicant] was sentenced to at least five years’ imprisonment are categorically particularly serious for the purposes of withholding of removal.” *Blandino-Medina v. Holder*, 712 F.3d 1338, 1346 (9th Cir. 2013). The seriousness of other crimes (like the residential burglary for which Perez received a four-year prison sentence) turns on several factors. A “crime is particularly serious if [1]

the nature of the conviction, [2] the underlying facts and circumstances[,] and [3] the sentence imposed *justify the presumption that the convicted immigrant is a danger to the community.*” *Gomez-Sanchez*, 892 F.3d at 991; AR 3.

Dangerousness “is the ‘essential key’ to determining whether the individual’s conviction was for a particularly serious crime.” *Gomez-Sanchez*, 892 F.3d at 991. This Court recently recognized that in considering the dangerousness of an applicant, the “Agency must take all reliable, relevant information into consideration when making its determination, *including the defendant’s mental condition at the time of the crime, whether it was considered during the criminal proceedings or not.*” *Id.* at 996 (emphasis added).

As Perez argues in her opening brief, the BIA here failed to consider all evidence relevant to the circumstances at the time of the crime, including Cruz’s mental health and the duress she was under when she burglarized a residence. Pet’r Opening Br. 14–21. This case thus presents a vehicle for this Court to build upon *Gomez-Sanchez* by outlining factors that immigration judges should consider to determine

whether, and how, domestic violence issues impacted an applicant's mental health at the time of the crime in question. *See id.*

Amici propose several factors for immigration judges to consider, including (1) whether a domestic violence perpetrator coerced an applicant into committing the crime at issue; (2) whether fear of retaliation, trauma, or other common outcomes of domestic violence prevented an applicant from reporting during the criminal proceedings that the crime was coerced; and (3) whether an applicant who has been subject to domestic violence may have suffered from a traumatic brain injury that impacted her mental health. *See Pt. I. B. 1–3.*

This Court should take the opportunity to provide further guidance now. The issues in this case are likely to recur. Exposure to trauma and domestic violence are “prevalent” among “Latina immigrants from Central America, South America, and Mexico.” E.g., Stacey Kaltman, et al., *Contextualizing the Trauma Experience of Women Immigrants from Central America, South America, and Mexico*, 24 J. Traumatic Stress 6, 635–42 (Dec. 2011). Guidance about which factors to consider in evaluating immigration petitions involving domestic-violence-related criminal activity would aid immigration

judges in assessing the availability of withholding of removal given an applicant's mental health. *See Gomez-Sanchez*, 892 F.3d at 994.

CAT Relief. To obtain CAT relief, “a petitioner must show that torture would be ‘inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.’” *Afryie v. Holder*, 613 F.3d 924, 937 (9th Cir. 2010) (quoting 8 C.F.R. § 208.18(a)(1)). “Relevant considerations for a CAT claim include evidence of past torture inflicted upon the applicant, evidence of safe internal relocation, evidence of mass violations of human rights within the country of removal, and other pertinent country conditions.” *Singh v. Whitaker*, 914 F.3d 654, 663 (9th Cir. 2019).

Here, substantial evidence compels the conclusion that Perez is entitled to CAT relief, as Perez argues in her opening brief. Pet'r Opening Br. 20–23. It also allows this Court to address the likelihood of torture against women in Mexico. Violence against women has existed in Mexico for decades—including after a 2009 decision by the Inter-American Court of Human Rights that found Mexico responsible for the rapes, deaths, and disappearance of women and girls in Ciudad Juarez, Mexico. *See González et al. (“Cotton Field”) v. Mexico* (Inter-Am. Ct.

H.R. Nov. 16, 2009) (“*Cotton Field Cases*”); *infra* Pt. II. A. Given this widespread, unchecked violence, it would be unsafe for Perez (a single mother of two who suffers from mental illness) to relocate within Mexico, where she was previously tracked down by her abuser and beaten severely with the acquiescence of Mexican police. *Infra* Pt. II. B.

BACKGROUND

Gabriela Perez Cruz, a mother of two in her 30s, was born in Oaxaca, Mexico, and first came to the United States with her family as a child. AR 90, 1577. Perez’s family now lives in California; none of them live in Mexico. AR 90, 1577. Perez has survived multiple acts of domestic violence, has suffered significant additional trauma, and was diagnosed with a mild neurocognitive disorder and post-traumatic stress disorder (“PTSD”). AR 89. Some of these acts of domestic violence were perpetrated by Perez’s former intimate partner, Daniel Lopez (“Daniel” or “Lopez”), who currently lives in Mexico. AR 1580.

For instance, after Perez was last in Mexico around 2010, Lopez locked Perez in a residence in Tijuana, Mexico. AR 1578. While Perez was there, Lopez “beat and tortured” Perez; threatened, stalked, and humiliated her; kept her locked in the home whenever he left; drugged

and “violated” Perez (i.e., sexually assaulted her) at night; and allowed “other men to sexually abuse” Perez. AR 1578.

One day, Perez escaped the Tijuana residence. AR 1578. She fled to Oaxaca, Mexico, but Lopez tracked her down. AR 1578. When Lopez found Perez in Oaxaca, he “beat [her] horribly” and “someone called the police.” AR 1578. Yet when the police showed up, the “police did not arrest” Lopez after he bribed them. AR 1578. Instead, the police told Perez that she “had to be submissive. They said, ‘that’s the life in Mexico.’” AR 1578.

Perez not only recounted this highly probative incident of abuse in a declaration; she also testified about it at the hearing before the immigration judge (“IJ”): “the police told me that I had to be submissive to him, that I had to submit to him, because no one, no one was going to help me. No one, no one, no one helped me.” AR 225–26, 1578.

The IJ found Perez credible but denied her withholding of removal and CAT relief. AR 3, 94. The Board of Immigration Appeals (“BIA”) affirmed the IJ’s decision. AR 3–6.

As to the withholding of removal claim, both the IJ and BIA determined that Perez was statutorily ineligible for this type of relief

because she was convicted of residential burglary and sentenced to four years in prison, a crime the IJ and BIA concluded was “particularly serious.” AR 3, 98. In so concluding, the IJ focused on the type of crime Perez committed (a residential burglary) and a probation sentencing report. AR 96–97.

But Perez separately informed the IJ that she got “involved in the burglary” because (at the time of the crime) Lopez had taken Perez’s daughter, demanded money in exchange for her return, threatened Perez that she would “never see [her] daughter again,” and suggested that Perez “go find money in a house” because Lopez needed “it right away.” AR 1579. In their analysis of whether Perez’s crime was a “particularly serious” one, neither the IJ nor the BIA addressed how these circumstances or the history of domestic violence against Perez impacted her mental state at the time of the crime. AR 3–6.

The IJ and BIA rejected the CAT claim as well, concluding that Perez will unlikely be tortured in Mexico. AR 5–6. The IJ and BIA reasoned that Perez had not endured past torture in Mexico, that Perez could internally relocate within Mexico, and that the country conditions in Mexico did not show a likelihood of future torture. AR 5–6.

ARGUMENT

I. When conducting the “particularly serious crime” analysis for a withholding of removal claim, immigration judges should consider the effects of domestic violence on a petitioner’s mental health.

A. Scientific literature and case law both recognize that domestic violence can impact a person’s mental health.

Domestic violence against women “can have wide ranging and long-term effects,” including “an increased risk for developing a number of health problems,” such as “depression, anxiety, and PTSD.” Sheryl Kubiak et al., *Best Practice Toolkit for Working with Domestic Violence Survivors with Criminal Histories*, Michigan Coalition Against Domestic and Sexual Violence 35 (Dec. 2011) (“Kubiak et al., *Best Practice Toolkit*”). Physical abuse that results in a traumatic brain injury to a domestic violence survivor, for example, can “cause” such short-term effects as memory loss and concentration issues. *See, e.g.*, U.S. Department of Health & Human Services, Office of Women’s Health, *Relationships and Safety: How is traumatic brain injury related to domestic violence?* (Jan. 30, 2019), available at <https://www.womenshealth.gov/relationships-and-safety/effects-violence-against-women> (last visited July 1, 2020). Other effects that make it difficult for a domestic violence survivor to leave an abusive

relationship—including “the ability to make a plan and carry it out”—can emerge over longer periods of time. *Id.*

This Court’s jurisprudence in the criminal law context recognizes the connection between the effects of domestic violence and a survivor’s mental health. In *United States v. Lopez*, 913 F.3d 807 (9th Cir. 2019), for instance, this Court held that expert testimony about Battered Woman Syndrome (“BWS”) “may be used by a defendant to support her duress defense and rehabilitate her credibility.” *Id.* at 811; *see also United States v. Nwoye*, 824 F.3d 1129, 1136 (D.C. Cir. 2016) (Kavanaugh, J.) (“Most courts that have considered the question—especially in recent years—have recognized that expert testimony on battered woman syndrome can be relevant to prove duress”). Immigration case law recognizes this connection, too. *See Hernandez v. Ashcroft*, 345 F.3d 824, 836–37 (9th Cir. 2003) (observing that the “literature” has recognized that “although a relationship may appear to be predominantly tranquil and punctuated only infrequently by episodes of violence, ‘abusive behavior does not occur as a series of discrete events,’ but rather pervades the entire relationship. . . . The effects of psychological abuse, coercive behavior, and the ensuing

dynamics of power and control mean that “the pattern of violence and abuse can be viewed as a single and continuing entity.”).

Despite the well-established connection between domestic violence and a survivor’s mental health, the IJ here did not explore or address how the history of domestic violence against Perez impacted her mental state when she carried out a residential burglary. The IJ should have conducted that analysis, even though Perez did not appear to claim that she had BWS. This Court’s case law requires an IJ to determine whether a crime was “particularly serious” by considering “all reliable, relevant information,” including “the defendant’s mental condition at the time of the crime, whether it was considered during the criminal proceedings or not.” *Gomez-Sanchez*, 892 F.3d at 996.

B. Where an applicant has survived domestic violence, immigration judges should explore at least three factors that are relevant to assessing an applicant’s mental state at the time of the crime.

In cases such as this, where domestic violence played a role in the applicant’s mental state and the commission of a crime, this Court should require an IJ to explore at least three factors that can clarify whether, and how, domestic violence impacted an applicant’s mental health at the time of the crime:

- (1) whether a domestic violence perpetrator coerced an applicant into committing the crime in question;
- (2) whether fear of retaliation, trauma, or other common outcomes of domestic violence prevented an applicant from reporting during the criminal proceedings that the crime was coerced; and
- (3) whether an applicant who has been subject to domestic violence may have suffered from a traumatic brain injury that impacted her mental health.

We discuss each of these factors below and explain how they bear on an IJ's assessment of "whether the circumstances of the crime are so serious as to justify removal to a country where there is a significant risk of persecution." *See Gomez-Sanchez*, 892 F.3d at 994.

1. Immigration judges should consider whether the applicant was coerced into committing the crime or got involved with drugs due to domestic violence.

Domestic violence sometimes plays a role in criminal activity, including coerced crimes and unlawful drug use or possession. Kubiak et al., *Best Practice Toolkit* at 33.

Coerced Crimes. Coercion is "central to understanding domestic violence." Tamara L. Kuennen, *Analyzing the Impact of Coercion on*

Domestic Violence Victims: How Much is Too Much, 22 Berkeley J. Gender L. & Just. 2. 8 (2007); see also Evan Stark, *Expert Report of Evan Stark, PhD, MSW in the Matter of State of Louisiana v. Laura Dugas* (June 22, 2019). Abusers “deploy a broad range of nonconsensual, nonreciprocal tactics over an extended period to subjugate or dominate a partner, rather than merely to hurt them physically.” Evan Stark, *Expert Report of Evan Stark, PhD, MSW in the matter of State of Louisiana v. Laura Dugas* (June 22, 2019).

Further, women under the “coercive control” of an abuser are often “subjected to an ongoing strategy of intimidation, isolation and control that extends to all areas of [their] life, including access to food, money, help, protection, friendships, family and children; work; transportation; control over [their] own sexuality; and the minutiae of everyday life.” *Id.*; accord Karla Fisher et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. Rev. 2117, 2119–20 (1993) (describing a “culture of battering” as one in which perpetrators impose their will and exert extreme control over the daily activities of the family, enforce rules by punishment, and reinforce

the connection between rules and punishment through emotional abuse, fear, and social isolation).

“Many battered women are criminally charged or incarcerated because they were coerced into criminal activity by their batterers.” See Meredith Blake, *Coerced into Crime: The Application of Battered Woman Syndrome to the Defense of Duress*, 9 Wis. Women’s L.J. 67, 68 (1994). Since “[w]omen often feel that their families depend on them for care giving and providing essential goods,” some “batterers use this internalized expectation and the idea that women will be treated more ‘gently’ by the criminal legal system to coerce them into economically-driven crimes.” Kubiak et al., *Best Practice Toolkit* at 33.

Survivors of domestic violence may be convicted of crimes in which they may not have played a primary role, out of fear of retaliation and abuse against themselves and their children. See Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims* at 23 (“Coercion can also result from a woman’s status as a mother. Society puts great pressure on mothers to maintain the sanctity of the family. A mother’s love for her child is expected to overcome all ‘physical, financial, emotional and moral obstacles.’”).

“In trying to understand the dynamics of coercive control, context is everything”—“[e]conomic, political, cultural, familial, social, and individual factors—as well as their interactions—give meaning to an abuser's coercive behavior.” Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims* at 17. Indeed, “[c]ultural beliefs about family and gender roles among Latinas and other communities, such as subgroups of Asian Americans, may cause victims to keep the violence hidden.” *Id.*; accord Beth E. Richie, *Compelled to Crime: The Gender Entrapment of Battered Black Women* (1996) (collecting stories of “African-American women from low-income communities who” were battered and coerced into crime). “Immigrant women” face not only “these challenges” but also immigration-related abuse and the “risk of deportation.” Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims* at 17.

Here, the IJ should have considered the duress Perez was under at the time of the crime, as this evidence is probative of the fact that Perez herself is not a danger to the community. See *Gomez-Sanchez*, 892 F.3d at 996. As Perez explained to the IJ: “Around September 2015, Daniel came to where [she] was living with [her] sister Jessica, and he

asked [Perez's eldest daughter] to come to him and she did." AR 1579. Perez "was pregnant and couldn't do anything to stop him." AR 1579. After Lopez took Perez's eldest daughter, he told Perez that he "would not bring her back unless [Perez] gave him money." AR 1579. Perez was "desperate to get some money. Daniel kept telling [her], I don't know what you should do, go find money in a house, I need it right away. He kept telling me I would never see my daughter again." AR 1579.

Despite this highly probative evidence of why Perez committed the crime, the IJ failed to explore how domestic violence impacted Perez's mental state during the crime. *See Gomez-Sanchez*, 892 F.3d at 996.

* * *

Immigration judges should consider whether a crime was coerced by a domestic violence perpetrator. This consideration goes to the mental state of the applicant and her alleged dangerousness, particularly if an applicant has escaped her abuser and he can no longer coerce her into engaging in any further criminal behavior. Here, for instance, Perez's former abuser (Lopez) has been deported to Mexico and therefore can no longer take Perez's child, demand a ransom, and

suggest that Perez burglarize a residence to get the ransom money. AR 1579, 1580.

Indeed, just as a defendant in a criminal case can be excused for committing a crime under duress from a domestic violence perpetrator, an applicant in an immigration proceeding should not be considered “dangerous” if she was coerced into committing a crime by her abuser. *See Lopez*, 913 F.3d at 811; *Gomez-Sanchez*, 892 F.3d at 996; *accord In re Ajami*, 22 I. & N. Dec. 949, 950 (BIA 1999) (observing that it is appropriate to consider whether the applicant’s conduct was “inherently base, vile, or depraved” in determining whether a crime is “particularly serious”); *see also* Beth I. Z. Boland, *Battered Women Who Act under Duress*, 28 New Eng. L. Rev. 603, 626 (1994) (observing that “evidence of past abuse is relevant in assessing the blameworthiness of the defendant’s decision to engage in criminal activity rather than to risk the physical abuse she faces”).

Unlawful Drugs. “Some women use illegal substances as a way to cope with abuse, appease their batterers who pressure them to do so, or to prevent abuse.” Kubiak et al., *Best Practice Toolkit* at 34. Indeed, there is evidence suggesting “that some women victims of domestic

violence develop substance abuse problems in response to their victimization.” James J. Collins et al., *Recent Developments in Alcoholism* 387 (2002); *see also* Shelby A.D. Moore, *Understanding the Connection between Domestic Violence, Crime, and Poverty*, 12 *Tex. J. Women & L.* 451, 465–67 (2003) (observing that women in abusive relationships sometimes commit drug offenses and property crimes).

Here, in determining that the coerced residential burglary was particularly serious, the IJ noted in passing that “methamphetamine was present at the crime scene” as well as in a prior crime. AR 97–98. But domestic violence issues appear to have played a role here as well. As Perez explained in her declaration, “Daniel knew that I had used drugs when I was younger, and he wanted to make me an addict again. I never wanted to use drugs.” AR 1579. For example, Daniel “used to drug” Perez while she was asleep and “would violate [her] at night and give [her] drugs from behind.” AR 1579. Perez remembers “waking up and thinking why do I feel this way? He would say things like ‘it's because you're crazy. You should be ashamed of yourself.’” AR 1579.

The IJ here should have considered the impact of domestic violence on Perez’s alleged possession of drugs at the time of the crime;

she may not have been using drugs, either at all or out of her own free will. *See* Kubiak et al., *Best Practice Toolkit* at 34. In any event, immigration judges should consider domestic violence in evaluating an applicant's involvement with drugs since drug use or possession may be further evidence of abuse or reflect a survivor's coping mechanisms rather than his or her criminality. *See id.*

2. Immigration judges should also determine whether fear of retaliation, trauma, or other common outcomes of domestic violence prevented an applicant from reporting that a crime was coerced by an abuser.

The IJ appears to have determined that she could comply with this Court's *Gomez-Sanchez* decision by considering a probation report in the underlying criminal proceedings to determine Perez's mental state at the time of the crime. AR 96–97. But domestic violence survivors often “fear violent retaliation from such abusers for bringing their abuse to light, or for engaging in any conduct that the abuser regards as disloyal,” and therefore the coerced nature of the crime may not have been disclosed during the criminal proceedings. *See* Peter Margulies, *Battered Bargaining: Domestic Violence and Plea Negotiation in the Criminal Justice System*, 11 S. Cal. Rev. L. & Women's Stud. 154, 165–66 (2001) (“Survivors coerced into criminal acts by abusers are likely to

experience greater violence with less recourse than other persons at risk for intimate abuse.”).

And there are other reasons why the coerced nature of a crime might not have come to light in the underlying criminal case. Domestic violence survivors who are untrained in the law may not know to raise the issue as an explanation and may never have been asked. Some survivors, for example, “may have plead guilty to a lesser charge because of the generally insurmountable obstacles of presenting expert testimony on BWS for claims of duress.” Blake, *Coerced into Crime*, 9 Wis. Women’s L.J. at 93. “Other [persons] may have gone to trial, raised the issue of duress, but then found the court unwilling to allow the jury to hear evidence regarding BWS.” *Id.*

Immigration judges therefore should not piggyback on criminal court proceedings when determining the mental state and dangerousness of an applicant convicted of a crime. *See Gomez-Sanchez*, 892 F.3d at 994 (observing that “the Board’s assumption that consideration of mental health would implicate reassessment of the criminal court’s finding is flawed because the mental health evidence the individual wishes to offer in the immigration court may never have

been presented to the criminal court”).

Indeed, the IJ here should have recognized that fear of retaliation, trauma, or other common outcomes of domestic violence may have prevented Perez from reporting the coerced nature of the crime at the time of the criminal proceedings. In short, the IJ should have explored all of the record evidence—not just the probation report. *See id.* For instance, Perez’s declaration explaining the duress she was under at the time of the coerced residential burglary, as it is highly relevant to assessing Perez’s mental state. AR 1578.

3. Many victims of domestic violence suffer traumatic brain injury that impacts their mental health. This, too, should be considered by immigration judges.

Perez has suffered significant physical violence at the hands of domestic violence perpetrators—so “many beatings,” in fact, that she has a “dent” in her head. AR 137–38. When presented with evidence such as this, an immigration judge should evaluate whether a traumatic brain injury impacted an applicant’s mental state at the time of the crime. *See Gomez-Sanchez*, 892 F.3d at 996. “There is growing research showing that abused women are frequently subjected to repeated head and serious facial injuries as well as strangulation, all of

which can cause brain injury with potential long-term chronic neurological symptoms.” Jacquelyn Campbell, et al., *Implications of Brain Injury in Abused Women for Advocacy and Health Care*, 25 Domestic Violence Report 45, 45 (February/March 2020); *see also* U.S. Gov’t Accountability Office, *Domestic Violence: Improved Data Needed to Identify the Prevalence of Brain Injuries Among Victims* (June 2020) (observing that “[i]ntimate partner violence affects over 30 percent of women and men in the United States, and research has raised concerns about brain injuries sustained by these domestic violence victims”).

Since a traumatic brain injury can have such long-term effects as depriving a woman of “the ability to make a plan and carry it out,” an IJ should not ignore potential evidence of a traumatic brain injury, as it may show that a domestic violence perpetrator directed the crime for which an applicant was convicted. *See, e.g.*, U.S. Department of Health & Human Services, Office of Women’s Health, *Relationships and Safety: How is traumatic brain injury related to domestic violence?* (Jan. 30, 2019). Given the significant physical trauma Perez has endured and that “Mr. Lopez told Ms. Perez to ‘rob a house’” (Pet’r Opening Br. 5), the IJ here should have considered whether a traumatic brain injury

impacted Perez’s mental state at the time of crime. *See id.*; Helene Jackson, et al., *Traumatic Brain Injury: A Hidden Consequence for Battered Women*, 33 *Professional Psychology: Research and Practice* 1, 39, 43 (2002) (“Women identified as battered should be screened routinely for traumatic brain injury, including direct questioning about the onset, frequency, and duration of blows to the head and face, severe shaking, loss of consciousness, and the presence of symptoms consistent with” post-concussive syndrome).

* * *

This Court should remand the case so that the IJ can consider whether, and how, domestic violence affected Perez’s mental state when she committed the coerced residential burglary.

II. When assessing claims under the Convention Against Torture, immigration judges should consider evidence from domestic violence survivors that shows a likelihood of torture if they are returned to their designated country of removal.

A. Police and high-level government officials in Mexico have acquiesced in killings, rapes, and violence against women since at least the mid-1980s.

Violence against women in Mexico has occurred with the acquiescence of public officials for decades. Mexico has “one of the highest rates of gender violence in the world.” Jessica Wright, *Women*

Under Siege Project: Mexico (Dec. 7, 2012). One survey reports that 66% of Mexican women 15 years and older have suffered abuse; the Mexican government itself estimates the figure is closer to 80%. Amnesty International, *Amnesty International Report 2017/18* (2018); *Beating Domestic Violence in Mexico*, CCTV America (Sept. 20, 2015).

Since 1985, there have been “more than 50,000 killings of women” in Mexico. Associated Press in Mexico City, *Mexico: murders of women rise sharply as drug war intensifies*, *The Guardian* (Dec. 14, 2017). As a report by Mexico’s interior department reveals, “misogyny” is reflected in some of these murders: “while the vast majority of male homicide victims are killed with firearms, many femicides continue to be by ‘the most cruel means’ such as stabbing, beating and strangling.” *The Guardian*, *Mexico: murders of women rise sharply as drug war intensifies* (Dec. 14, 2017); see also World Health Organization, *Understanding and addressing violence against women: Femicide* (2012) (“Femicide is generally understood to involve intentional murder of women because they are women, but broader definitions include any killings of women or girls”); Judith Matloff, *Six women murdered each day as femicide in Mexico nears a pandemic*, *Al Jazeera America* (Jan.

4, 2015) (“Hate is what marks these crimes. The bodies show 20 or 30 blows They slice off breasts and faces and throw the fragments in the garbage.”).

The United Nations estimates that “44 percent of women in the country have been the victims of some sort of sexual attack, from unwanted touching to rape.” Jamie Forde, *Current Reflections: Sexual Violence in Mexico, United Explanations* (December 27, 2013). And many survivors of this violence do not “report the abuse they endured, seeing the impunity for rape in the justice system,” which fails “to provide a solution for rampant domestic and sexual violence.” Human Rights Watch, *The Second Assault: Obstructing Access to Legal Abortion After Rape in Mexico* (Mar. 2006).

Moreover, local authorities in Mexico have “been known to denounce rape victims as ‘prostitutes.’” Emily Wassell, *Mexico: A Machista Culture of Corruption and Violence? Safe World for Women* (July 15, 2012). Indeed, violence against Mexican women is like the “tip of an iceberg with more systemic and complex problems lurking below the surface, which can only be understood in the context of socially entrenched gender inequality on the one hand and a multilayered

governance and legal system that does not effectively respond to violent crime, including gender-based violence, on the other hand.” Office of the United Nations High Commissioner for Human Rights, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Mission to Mexico* (Jan. 13, 2006).

Mexico has been on notice of this violence for years. In November 2009, the Inter-American Court of Human Rights decided the *Cotton Field Cases*. The *Cotton Field Cases* were initiated after the bodies of Claudia Gonzalez, 20, Esmeralda Herrera, 15, and Berenice Ramos, 17, were found with the corpses of five other women in an area known as Campo Algodonero on the outskirts of Ciudad Juarez, a sprawling industrial city near the U.S.-Mexico border. See *González et al. (“Cotton Field”) v. Mexico* (Inter-Am. Ct. H.R. Nov. 16, 2009) (“*Cotton Field Cases*”); Jessica Wright, *Women Under Siege Project: Mexico* (Dec. 7, 2012); Emilio Godoy, *Mexico Ignores Inter-American Court Rulings*, IPS News (May 31, 2010). Hundreds of other women and girls had also been raped, murdered, or disappeared in Ciudad Juarez over the prior decade; few arrests and no prosecutions for those crimes had ever taken place either. *Cotton Field Cases* at 2, 127.

The Inter-American Court of Human Rights “found Mexico guilty of violations of the American Convention on Human Rights and the 1994 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.” Jessica Wright, *Women Under Siege Project: Mexico* (Dec. 7, 2012). The Inter-American Court of Human Rights found Mexico responsible for “the lack of measures for the protection of the victims,” the “lack of prevention of these crimes, in spite of full awareness of the existence of a pattern of gender-related violence that had resulted in hundreds of women and girls murdered, the lack of response of the authorities to the disappearance (of the women), the lack of due diligence in the investigation of the homicides,” and “the denial of justice and the lack of an adequate reparation” to their families. Emilio Godoy, *Mexico Ignores Inter-American Court Rulings*, IPS News (May 31, 2010).

The *Cotton Field Cases* established a “landmark ruling” on a global scale: “it was the first time a state was found responsible in cases of gender-based murders, known as ‘femicides.’” Emilio Godoy, *Mexico Ignores Inter-American Court Rulings*, IPS News (May 31, 2010). Yet effective reforms by Mexico “to address safety and justice for women

remain to be seen.” Jessica Wright, *Women Under Siege Project: Mexico* (Dec. 7, 2012). Indeed, femicides have increased sharply in recent years. The Guardian, *Mexico: murders of women rise sharply as drug war intensifies* (Dec. 14, 2017). The disappearance and deaths of women in Ciudad Juarez “captured worldwide attention,” but the “problem” of violence against Mexican women “is everywhere” in Mexico. *Beating domestic violence in Mexico*, CCTV America (Sept. 20, 2015).

* * *

Perez’s past torture in Mexico is just one more example of a systemic issue that has existed in Mexico for many, many years. Not much has changed even after key data began to be collected in 1985 and an international human rights decision issued in 2009. Nor have country conditions changed since Perez was severely beaten by Lopez with the acquiescence of Mexican police, who refused to help Perez and instead told her that she had to be “submissive” because “that’s the life in Mexico.” See AR 1578; 8 C.F.R. § 1208.18(a)(1) (defining torture, in part, as “any act by which severe pain or suffering . . . is intentionally inflicted on a person ... for any reason based on discrimination of any kind”); *Cole v. Holder*, 659 F.3d 762, 771 (9th Cir. 2011) (observing that

“[a]cquiescence by government officials requires only that they were aware of the torture but remained willfully blind to it”).

B. Internal relocation in Mexico is unsafe for domestic violence survivors like Perez.

As Mexico’s first Special Prosecutor for Attention to Crimes of Violence Against Women observed: there is “widespread gender-based violence throughout” Mexican society. Declaration of Mexico Expert Alicia Elena Pérez Duarte y Noroña at AR 1665. And women who are the victims of domestic violence “confront major obstacles when—in trying to put an end to abuse that they are suffering—they seek the protection of judicial authorities: if they attempt to move to other locations within the country, they are unprotected and there is no way to hide their whereabouts; there are no guarantees for their safety, and they can be tracked down relatively easily through a variety of means.” *Id.* at AR 1665.

This case shows just how easy it is for a domestic violence perpetrator to track down a victim. Perez escaped from Lopez while she was living in Tijuana and he tracked her down in Oaxaca. AR 1578. The beatings then continued with the acquiescence of police in Mexico, who accepted Lopez’s money in exchange for turning a blind eye to the

abuse; instructed Perez that she had to be “submissive”; and apprised her, “that’s the life in Mexico.” AR 1578. “No one, no one, no one helped” her. AR 225–26.

Since unchecked violence against women exists throughout Mexico, it would not be safe for domestic violence survivors like Perez to relocate there, particularly where, as here, the abuser is there and has already proven that he can track her down with impunity. *See* AR 1580; *Kaiser v. Ashcroft*, 390 F.3d 653, 660 (9th Cir. 2004) (concluding that internal relocation was not safe for an applicant where he faced persecution in various regions of the country); *Cardenas v. INS*, 294 F.3d 1062, 1067 (9th Cir. 2002) (holding that a State Department Report did not prove that applicant could relocate internally where the Report failed to identify a safe area within Peru).

* * *

This Court should order the BIA to grant CAT relief on remand. At a minimum, the CAT claim should be reversed and remanded for the IJ to consider all evidence relevant to future torture, including evidence that police in Mexico did nothing to protect Perez from her abuser.

CONCLUSION

For the foregoing reasons and those in Perez’s opening brief, this Court should reverse and remand the BIA’s decision. In particular, this Court should hold that when conducting the “particularly serious crime” analysis for a withholding of removal claim, immigration judges should consider the impacts of domestic violence on a petitioner’s mental health, including (1) whether a domestic violence perpetrator coerced an applicant into committing the crime at issue; (2) whether fear of retaliation, trauma, or other common outcomes of domestic violence prevented an applicant from reporting during the criminal proceedings that the crime was coerced; and (3) whether an applicant who has been subject to domestic violence may have suffered from a traumatic brain injury that impacted her mental health.

Dated: July 2, 2020

Respectfully submitted,

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FORM 8. CERTIFICATE OF COMPLIANCE FOR BRIEFS

9th Cir. Case Number(s): No. 19-71452

I am the attorney or self-represented party.

This brief contains 6,467 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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Signature: /s/ Mary-Christine Sungaila **Date:** July 2, 2020

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of July, 2020, I electronically filed the foregoing *BRIEF OF 21 AMICI CURIAE GROUPS INTERESTED IN DOMESTIC VIOLENCE ISSUES AND WOMEN'S AND IMMIGRANTS' RIGHTS, IN SUPPORT OF PETITIONER* with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: July 2, 2020

HAYNES AND BOONE, LLP

By: /s/ Mary-Christine Sungaila
Mary-Christine Sungaila
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