

No. 19-60166

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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REINA VICTORIA RODRIGUEZ-RAMIREZ,  
Petitioner-Appellee,

v.

BARR,  
Respondent-Appellant.

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Petition for Review of an Immigration Matter

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**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE***

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## **I. INTRODUCTION**

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 Petitioner-Appellee and Reversal. Amici have met and conferred with all parties regarding the brief's filing. Petitioner-Appellee and Respondent-Appellant have consented to the filing of the Amici Curiae Brief.

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

## **II. AMICI'S INTERESTS**

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 (including incest), 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"), which was landmark legislation aimed at improving community-based responses to crimes against women and children including domestic violence and sexual assault.

American Gateways (formerly the Political Asylum Project of Austin) serves the indigent immigrant population in central Texas, through legal representation and advocacy for thousands of indigent and low-income immigrants before the Department of Homeland Security and the Immigration Courts. 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. American Gateways' clients are, more often than not, women fleeing domestic violence (including incest) and sexual assault in their home country.

Texas Council on Family Violence ("TCFV") is the Texas statewide coalition of family violence service providers and allied programs working to promote safe and healthy relationships by supporting service providers, facilitating strategic prevention efforts, and creating opportunities for freedom from family violence. TCFV is a membership organization with over 1,300 members comprised of family violence programs, supportive organizations, survivors of family violence, businesses and professionals, communities of faith and other concerned citizens. In

promoting safe and healthy relationships, TCFV advocates for the well-being of all Texans and recognizes the increased vulnerability and need for specific attention and protections for those from historically marginalized populations, including immigrant survivors of violence and abuse. As the statewide advocacy voice standing with and for survivors of family violence, we support survivors of abuse at the hands of family members and intimate partners and the vital pathways to relief and healing.

### **III. REASONS FOR BRIEF**

Amici believe that the decisions by the Immigration Judge ("IJ") and the Board of Immigration Appeals ("BIA") are premised upon the material misunderstanding of the nature of incest as a forced domestic relationship founded upon sexual violence, intimidation, and control committed by the abuser who views his daughter, niece, or sister as his spouse and property. The sexual deviance of the relationship does not, thereby, exclude same from the definition of "domestic relationship." Further, the BIA's decision, which failed to include any case-specific analysis, ignores the social science dynamic of domestic abuse, such as incest, which prevents a victim from escaping their abuser. If a decision of this Court were to reflect similar misunderstandings of the incestuous relationship, it could adversely impact the lives of women who have suffered from incest and been unable to escape their abuser's control and violence. Accordingly, Amici hereby submit this brief in

order to offer insight into incestuous relationships and the victim's inability to escape the abuser without grave danger of death or serious bodily injury. A thorough understanding of this domestic relationship is crucial to the outcome of this case.

Relying on *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), the IJ rejected two of Petitioner's proposed social groups, finding that *A-R-C-G-* only applied to "marriages, domestic relationships, and intimate partnerships." Thereafter, the Attorney General overruled the *A-R-C-G-* decision in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), and the BIA, relying on the latter decision, expressly rejected Petitioner's proposed social group, "Honduran women and girls unable to leave their familial relationship." The BIA conducted no case-specific analysis in arriving at that decision. The BIA also affirmed the IJ's decision that "female Hondurans viewed as property by virtue of their status in their family," was not cognizable because Petitioner had not "identified a specified domestic relationship forming the basis for her membership in the type of particular social group she seeks to define." The IJ and BIA decisions both incorrectly assumed that an incestuous relationship is not a domestic relationship. Further, the BIA decision failed to consider the underlying facts of Petitioner's case and the social science of domestic abuse that prevented Petitioner from escaping her family and her abuse.

In holding that Petitioner's abusive relationships were not domestic relationships, the IJ and BIA decisions failed to recognize the facts that incestuous

relationships are (1) presumed to be domestic relationships under various state domestic violence statutes, and (2) share the same characteristics as abusive spousal and dating relationships. Amici will present statutory and social science research support establishing that incestuous relationships are inherently domestic. In particular, they will identify statutes from across the United States and the District of Columbia that will establish how state legislatures have defined victims of domestic abuse to include spouses, former spouses, those in dating relationships, family members, and those living or having lived in the same home with the abuser. Amici will explain how Congress incorporated those laws into the Immigration and Nationality Act – the very law at issue in this case. They will also present social science research showing how abusers in incestuous relationships control their victims and treat them as their spouses and their property, the same way abusers in marital and dating relationships treat their victims. In addition, Amici will present research establishing the inability of an incest victim to leave the domestic relationship, just as the victim in an abusive marital or dating relationship is unable to leave the domestic relationship.

#### **IV. CONCLUSION**

Amici believe this information will aid the Court in determining whether or not Petitioner is a member of one or more cognizable particular social groups.

For the foregoing reasons, Amici hereby ask that the Court grant them leave to file an amici curiae brief in support of Petitioner and in favor of reversal.

DATED: August 16, 2019

Respectfully submitted,

*/s/ Elizabeth L. Yingling*

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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 1,122 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 Times New Roman font, 14 point size.

DATED: August 16, 2019

/s/ Elizabeth L. Yingling  
Elizabeth L. Yingling



**CERTIFICATE OF SERVICE**

I hereby certify that, on August 16, 2019, I caused the foregoing Motion for Leave to File Brief of Amici Curiae 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.

/s/ Elizabeth L. Yingling  
Elizabeth L. Yingling

Counsel of Record for Amici Curiae

**CERTIFICATE OF CONFERENCE**

On August 15, 2019, counsel for Petitioner-Appellee and counsel for Respondent-Appellant conferred regarding the merits of this Motion. Petitioner-Appellee and Respondent-Appellant are unopposed to this motion.

*/s/ Elizabeth L. Yingling* \_\_\_\_\_  
Elizabeth L. Yingling

No. 19-60166

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FOR THE FIFTH CIRCUIT**

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REINA VICTORIA RODRIGUEZ-RAMIREZ,  
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Petition for Review of an Immigration Matter

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**BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER-APPELLEE  
AND REVERSAL**

---

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## CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities, as described in the fourth sentence of Rule 28.2.1 of the Federal Rules of Appellate Procedure, have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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**TABLE OF CONTENTS**

I. INTEREST OF AMICI CURIAE .....1

II. INTRODUCTION.....2

III. ARGUMENT .....5

    A. The Incest Relationship is a Domestic Relationship. ....5

        1. Federal law definitions of domestic violence extend beyond marital and dating relationships.....6

        2. Incest victims are abused because they are part of a domestic relationship. ....9

        3. Incestuous abusers treat victims as their "wives." .....12

        4. Just as in abusive marital or dating relationships, incestuous abusers use violence to control their victims who they view as "property." ...14

    B. Incest Victims, Like Other Victims of Domestic Violence, Cannot Escape the Abuse and, thus are Unable to Leave Their Families. ....15

        1. Honduran societal norms support the abuser's coercive control and views of ownership and thwart the victim's ability to escape.....16

        2. Leaving the abuser does not end the abuse. ....18

        3. Because Petitioner is unable to escape the relationship, she is at a high risk of homicide if she is sent back to Honduras. ....21

IV. CONCLUSION .....25

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<b><u>Cases</u></b>	
<i>Matter of A-B-</i> , 27 I&N Dec. 316 (A.G. 2018) .....	4
<i>Matter of A-R-C-G-</i> , 26 I&N Dec. 388 (BIA 2014) .....	4
<i>Cardona v. Sessions</i> , 848 F.3d 519 (1st Cir. 2017).....	5
<b><u>Rules</u></b>	
Federal Rules of Appellate Procedure Rule 29(a)(4)(E) .....	2
<b><u>Statutes</u></b>	
23 Pa. Cons. Stat. § 6102(a) (2019) .....	8
8 U.S.C. § 1101(a) .....	3
8 U.S.C. § 1158(b) .....	3
8 U.S.C. § 1231(b) .....	3
8 U.S.C. § 1227(a) .....	6, 7
34 U.S.C. § 12291(a) .....	6
Ala. Code §13A-6-139.1 (2019) .....	8
Alaska Stat. § 18.66.990 (2019).....	7, 8
Ariz. Rev. Stat. § 13-3601(A) (LexisNexis 2019).....	7, 8
Ark. Code Ann. § 9-15-103 (2017).....	7, 8
Cal. Fam. Code § 6211 (Deering 2019).....	7, 8
Conn. Gen. Stat. § 46b-38A (2019).....	7, 8

D.C. Code § 4-551(1) (2019).....	7
Del. Code Ann. Tit. 10, § 1041 (2019).....	7
Del. Code Ann. tit. 10, § 901 (2019) .....	7
Fla. Stat. Ann. §741.28 (LexisNexis 2019) .....	7, 8
Haw. Rev. Stat. § 321-471 (2018) .....	7, 8
Idaho Code § 39-6303 (2019).....	7, 8
Ill. Comp. Stat. 60/103 (2019) .....	7, 8
Ind. Code Ann. § 34-6-2-34.5 (LexisNexis 2019).....	7
Ind. Code Ann. § 34-6-2-44.8 (LexisNexis 2019).....	7
Iowa Code § 236.2 (2018) .....	7, 8
Kan. Stat. Ann. § 21-5414 (2019).....	8
Ky. Rev. Stat. Ann. § 430.720 (LexisNexis 2019).....	8
La. Stat. Ann. § 14:35.3(A) (2019).....	8
Mass. Ann. Laws ch. 209A, § 1 (LexisNexis 2019).....	7, 8
Md. Code Ann., Fam. Law § 4-501(b) (LexisNexis 2019) .....	7, 8
Me. Rev. Stat. tit. 19-A, § 4002 (2014) .....	7
Mich. Comp. Laws Ann. § 400.1501(d) (LexisNexis 2019).....	8
Minn. Stat. § 518B.01 (2019) .....	7, 8
Miss. Code Ann. § 93-21-3(a) (2019).....	7
Mo. Rev. Stat. § 455.010(1) (2019).....	8
Mont. Code Ann. § 45-5-206(1) (2019) .....	8
N.C. Gen. Stat. § 50B-1(a) (2019).....	8
N.D. Cent. Code § 14-07.1-01 (2) (2019).....	8



N.H. Rev. Stat. Ann. § 173-B:1(I) (LexisNexis 2019)	8
N.J. Rev. Stat. § 2C:25-19(a) (2019)	8
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Neb. Rev. Stat. Ann. § 42-903(1) (LexisNexis 2019)	8
Nev. Rev. Stat. Ann. § 33.018(1) (LexisNexis 2019)	8
Ohio Rev. Code Ann. § 2919.25(A)-(D) (LexisNexis 2019)	8
Okla. Stat. Ann. tit. 21, §21-644(C) (2019)	8
Or. Rev. Stat. Ann. § 107.705(1) (2019)	8
R.I. Gen. Laws 12-29-2(a) (2019)	8
S.C. Code Ann. § 16-25-10 (2019)	8
S.C. Code Ann. § 16-25-20 (2019)	8
S.D. Codified Laws § 25-10-1 (2019)	8
S.D. Codified Laws § 25-10-3.1 (2019)	8
Tenn. Code Ann. § 36-3-601(4) (2019)	8
Tex. Fam. Code Ann. § 71.004(1) (West 2019)	6
Tex. Fam. Code Ann. § 71.003 (West 2019)	6
Tex. Fam. Code Ann. § 71.005 (West 2019)	6
Tex. Penal Code Ann. § 22.01(b) (West 2019)	6
Utah Code Ann. § 77-36-1(4) (LexisNexis 2019)	8
Utah Code Ann. § 78B-7-102(1) (LexisNexis 2019)	8
Va. Code Ann. § 16.1-228 (2019)	8
Vt. Stat. Ann. tit. 15, § 1101(1) (2019)	8
W. Va. Code Ann. § 48-27-202 (LexisNexis 2019)	8

W. Va. Code Ann. § 48-27-204 (LexisNexis 2019).....	8
Wash. Rev. Code Ann. § 26.50.010(1) (LexisNexis 2019).....	8
Wis. Stat. § 813.12(1)(am) (2019).....	8
Wyo. Stat. § 35-21-102(a)(iii) (2019).....	8

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Merriam-Webster Online Dictionary, <a href="http://www.merriam-&lt;br/&gt;webster.com/dictionary/domestic">http://www.merriam- webster.com/dictionary/domestic</a> .....	5
Merriam-Webster Online Dictionary, <a href="http://www.merriam-&lt;br/&gt;webster.com/dictionary/kin">http://www.merriam- webster.com/dictionary/kin</a> .....	5
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TK Logan, Robert Walker, Lisa Shannon & Jennifer Cole, <i>Factors Associated with Separation and Ongoing Violence Among Women with Civil Protective Orders</i> , <i>23 J. Fam. Violence</i> 377 (2008).....	19
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## I. INTEREST OF AMICI CURIAE

Amici have a keen interest in ensuring that U.S. immigration law is properly applied and developed, so that individuals subjected to domestic violence seeking asylum and other related relief receive fair and appropriate consideration under standards consistent with U.S. laws and treaties. They submit this brief in order to correct two fallacies underlying the decisions of the Immigration Judge ("IJ") and the Board of Immigration Appeals ("BIA"): (1) That an incest victim and her abuser are not part of a domestic relationship; and (2) that an incest victim is able to successfully leave the abusive relationship. These inaccurate assumptions resulted in the failure of the IJ and BIA to properly address whether Petitioner had proven one or more cognizable social groups.

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 (including incest), sexual assault, stalking, child abuse, human trafficking, and other crimes.

American Gateways (formerly the Political Asylum Project of Austin) serves the indigent immigrant population in central Texas, through legal representation and advocacy for thousands of indigent and low-income immigrants before the

Department of Homeland Security and the Immigration Courts. 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. American Gateways' clients are, more often than not, women fleeing domestic violence (including incest) and sexual assault in their home country.

Texas Council on Family Violence ("TCFV") is the Texas statewide coalition of family violence service providers and allied programs working to promote safe and healthy relationships by supporting service providers, facilitating strategic prevention efforts, and creating opportunities for freedom from family violence. TCFV is a membership organization with over 1,300 members comprised of family violence programs, supportive organizations, survivors of family violence, businesses and professionals, communities of faith, and other concerned citizens.

Pursuant to Rule 29(a)(4)(E) of the Federal Rules of Appellate Procedure, Amici state that (i) no party's counsel authored this Brief, in whole or in part, (ii) no party or party's counsel contributed money that was intended to fund preparing or submitting the Brief, and (iii) no person, other than Amici or the undersigned firm, contributed money that was intended to fund preparing or submitting the Brief.

## **II. INTRODUCTION**

Petitioner was born in Honduras and, starting at the age of ten, when she was

forcibly kissed and touched, was repeatedly sexually abused by her uncle and then her brother. ROA.394-99. Petitioner's family offered no protection for her. In fact, when her uncle first raped her when she was twelve years old, Petitioner's grandmother was in the same bed, saw what was happening, and did nothing. ROA.395. Petitioner attempted to escape her uncle multiple times, only to be tracked down by him and raped again and again. ROA.395-97. Petitioner sought government protection, only to be turned away because the rapes did not occur in public but, instead, in the home. ROA.397. On the one occasion when the rapes did occur in a public hotel (one in which Petitioner's uncle was imprisoning her after forcibly kidnapping her from a public street), the police "rescued her," but refused to take her statement and allowed her uncle (after a brief detention) to walk free without any charges. ROA.396. These facts are undisputed, as is Petitioner's credibility. ROA.401-02.

The Immigration and Nationality Act ("INA") sets forth a statutory framework pursuant to which an individual can seek and obtain asylum and withholding of removal. In order to be successful, an individual must prove (1) persecution or fear of persecution (2) on account of, among other possibilities, membership in a "particular social group." 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1)(A), 1231(b)(3)(A). The IJ found that Petitioner was "indisputably" subjected to persecution by her uncle and brother. ROA.404. The BIA did not disturb this finding.



ROA.3-4. However, both the IJ and the BIA found that Petitioner failed to carry her burden of proving membership in cognizable particular social groups.

Specifically, the IJ and the BIA rejected two of Petitioner's proposed social groups: "Honduran women and girls unable to leave their familial relationship," and "female Hondurans viewed as property by virtue of their status in their family." The IJ found that *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014) was inapplicable because it only applied to "marriages, domestic relationships, and intimate partnerships" and that the incestuous relationships with Petitioner's uncle and brother could not be so categorized. ROA.403. After the IJ's decision was issued, the Attorney General overturned *Matter of A-R-C-G-* in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), and, on that basis, the BIA – without conducting any case-specific analysis – rejected the first social group. ROA.4. The BIA assumed, *arguendo*, that Petitioner's second social group was cognizable but, like the IJ, found that Petitioner had not "identified a specific domestic relationship forming the basis for her membership in the type of particular social group she seeks to define."<sup>1</sup> ROA.5.

The IJ and BIA were incorrect in ruling that incestuous relationships are not domestic relationships. The BIA was also incorrect in ignoring the undisputed facts and social science establishing that Petitioner was unable to escape the abuse.

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<sup>1</sup> In so holding, the BIA re-defined Petitioner's proposed social group by substituting "domestic relationship" for "familial relationship." *Compare* ROA.3-4 *with* ROA.403.

### III. ARGUMENT

#### A. The Incest Relationship is a Domestic Relationship.

The Merriam-Webster Dictionary defines "domestic" as "of or relating to the household or family."<sup>2</sup> "Relationship" is defined as "the relation connecting or binding participants in a relationship: such as kinship."<sup>3</sup> In turn, "kin" is defined as "a group of persons of common ancestry."<sup>4</sup> Therefore, by definition, "domestic relationship" means a family or household relationship. Because incest necessarily occurs between members of the same family,<sup>5</sup> the incestuous relationship equates to a domestic relationship.

Even setting aside the dictionary definitions, a review of applicable federal and state statutes, as well as a comparison between abusive marital and dating relationships to incestuous relationships dictate the same result: The incestuous relationship, however deviant and repugnant, is a domestic relationship.

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<sup>2</sup> "domestic," Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/domestic> (last visited Aug. 5, 2019). *See also Cardona v. Sessions*, 848 F.3d 519, 523 (1st Cir. 2017)(citing with approval the BIA's reliance on the dictionary definition of "domestic" when determining whether a short-term dating relationship was considered a "domestic relationship").

<sup>3</sup> "relationship," Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/relationship> (last visited Aug. 5, 2019).

<sup>4</sup> "kin," Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/kin> (last visited Aug. 5, 2019).

<sup>5</sup> "Incest is any sexual contact between individuals who are closely related . . . includ[ing] siblings, mothers, uncles, aunts or grandparents." *Incest: Sexual Abuse within the Family*, Texas Association Against Sexual Assault (TAASA), [https://www.taasa.org/wp-content/uploads/2015/05/BR\\_Incest\\_2014.pdf](https://www.taasa.org/wp-content/uploads/2015/05/BR_Incest_2014.pdf) (last visited Aug. 6, 2019) [hereinafter "TAASA"].

**1. Federal law definitions of domestic violence extend beyond marital and dating relationships.**

The Violence Against Women Act (VAWA) offers protection for victims of domestic violence. Under VAWA, the "term 'domestic violence' includes felony or misdemeanor crimes of violence committed by . . . any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction." 34 U.S.C. § 12291(a)(8). Likewise, the INA, which makes domestic violence a deportable offense, defines "crime of domestic violence" to include any crime of violence by any individual "against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State . . . ." U.S.C. § 1227(a)(2)(E). In turn, state domestic violence laws protect far more than spouses or those in dating relationships.

For example, in Texas, "family violence" means the commission of physical harm, bodily injury, assault or sexual assault by a family or household member against another family or household member. Tex. Fam. Code Ann. § 71.004(1) (West 2019). "Family" includes "individuals related by consanguinity or affinity," and "household" member means "persons living together in the same dwelling, without regard to whether they are related to each other." *Id.* §§ 71.003, 71.005. Assault on a family or household member, i.e., domestic violence, is a third-degree felony. Tex. Penal Code Ann. § 22.01(b)(2) (West 2019). Thus, in Texas, the rapes of Petitioner by her uncle and brother would fall squarely within the civil and penal

protections afforded victims of domestic violence. More telling, had Petitioner's uncle or brother been a resident alien at the time of the attacks and been convicted therefor, they would have been subject to removal under the INA. *See* 8 U.S.C. § 1227(a)(2)(E).

Other states and the District of Columbia also provide similarly broad protections. For example, state domestic violence laws protect persons abused by family members such as brothers and uncles.<sup>6</sup> State domestic violence laws also

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<sup>6</sup> Alaska Stat. § 18.66.990(3),(5)(E) (2019) (fourth degree of consanguinity); Ariz. Rev. Stat. § 13-3601(A)(5) (LexisNexis 2019) (brother or sister); Ark. Code Ann. § 9-15-103(3),(4) (2017) (persons related by blood within fourth degree of consanguinity); Cal. Fam. Code § 6211(f) (Deering 2019) (person related by consanguinity or affinity within second degree); Conn. Gen. Stat. § 46b-38A(1),(2)(C) (2019) (persons related by blood); Del. Code Ann. tit. 10, §§ 1041(1),(2), 901(12) (2019) (brother or sister); D.C. Code § 4-551(1) (2019) (family member); Fla. Stat. Ann. § 741.28(2)(3) (2019) (persons related by blood or marriage); Haw. Rev. Stat. § 321-471 (2018) (each sibling or person related by consanguinity); Idaho Code § 39-6303(1),(3) (2019) (persons related by blood); 750 Ill. Comp. Stat. 60/103(1),(3),(6) (2019) (persons related by blood); Ind. Code Ann. §§ 34-6-2-34.5, 34-6-2-44.8(a)(4) (LexisNexis 2019)(related by blood or adoption); Iowa Code § 236.2(2),(4) (2018) (persons related by consanguinity or affinity); Me. Rev. Stat. tit. 19-A, § 4002(1),(4) (2014) (adult household member related by consanguinity or affinity); Md. Code Ann., Fam. Law § 4-501(b),(m)(3) (LexisNexis 2019) (related by blood, marriage, or adoption); Mass. Ann. Laws ch. 209A, § 1 (LexisNexis 2019) (related by blood or marriage); Minn. Stat. § 518B.01 (2019) (persons related by blood); Miss. Code Ann. § 93-21-3(a) (2019) (individual related by consanguinity or affinity); Mo. Rev. Stat. § 455.010(1),(7) (2019) (person related by blood or marriage); Mont. Code Ann. § 45-5-206(1),(2) (2019) (brothers and sisters); Neb. Rev. Stat. Ann. § 42-903(1),(3) (LexisNexis 2019)(persons related by consanguinity or affinity); Nev. Rev. Stat. Ann. § 33.018(1) (LexisNexis 2019) (persons related by blood or marriage); N.H. Rev. Stat. Ann. § 173-B:1(I),(X) (LexisNexis 2019) (persons related by consanguinity or affinity); N.Y. Soc. Serv. Law § 459A(1),(2)(a) (LexisNexis 2019) (same); N.D. Cent. Code § 14-07.1-01 (2),(4) (2019) (persons related by blood or marriage); Ohio Rev. Code Ann. § 2919.25(A)-(D),(F)(1)(a)(ii) (LexisNexis 2019) (persons related by consanguinity or affinity); Okla. Stat. Ann. tit. 21, §21-644(C) (2019) (persons related by blood or marriage); Or. Rev. Stat. Ann. § 107.705(1),(3)(c) (2019) (persons related by blood, marriage, or adoption); 23 Pa. Cons. Stat. § 6102(a) (2019) (persons related by consanguinity or affinity); 12 R.I. Gen. Laws 12-29-2(a),(b) (2019) (persons related by blood or marriage); S.D. Codified Laws §§ 25-10-1(1), 25-10-3.1(5) (2019) (siblings); Tenn. Code Ann. § 36-3-601(4),(5)(D) (2019) (adults or minors related by blood or adoption); Utah Code Ann. §§ 77-36-1(4), 78B-7-102(1)(2)(c) (LexisNexis

protect victims who reside or did reside in the same residence as the abuser even though they were not in a sexual relationship with him.<sup>7</sup>

Accordingly, domestic violence laws throughout the country prohibit violence committed against those with whom the abuser is in a domestic relationship, i.e., family or household members. The INA's incorporation of those laws into section 1227 is at least implicit acceptance that the INA has adopted a broader definition of domestic relationship – one that includes relationships within and among family and household members and one that is not solely limited to marital and dating

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2019) (persons related by blood or marriage); Va. Code Ann. § 16.1-228 (2019) (“family or household member” includes brothers, sisters); Wash. Rev. Code Ann. § 26.50.010(1),(2) (LexisNexis 2019) (persons related by blood or marriage); W. Va. Code Ann. §§ 48-27-202, 48-27-204(7)(C) (LexisNexis 2019) (brother or sister, uncle, niece); Wis. Stat. § 813.12(1)(am),(b) (2019) (person related by blood or adoption).

<sup>7</sup> Ala. Code §13A-6-139.1(2),(3)(f) (2019); Alaska Stat. § 18.66.990(3),(5)(B) (2019); Ariz. Rev. Stat. § 13-3601(A)(1) (LexisNexis 2019); Ark. Code Ann. §9-15-103(3),(4) (2019); Cal. Fam. Code § 6211(b) (Deering 2019); Conn. Gen. Stat. § 46b-38a(1),(2)(D) (2019); Fla. Stat. Ann. §741.28(2),(3) (LexisNexis 2019); Haw. Rev. Stat. § 321-471 (2019); Idaho Code § 39-6303(1),(6) (2019); 750 Ill. Comp. Stat. 60/103(1),(3),(6) (2019); Iowa Code § 236.2(2),(4) (2019); Kan. Stat. Ann. § 21-5414(a),(c)(1) (2019); Ky. Rev. Stat. Ann. § 430.720(1),(2) (LexisNexis 2019); La. Stat. Ann. § 14:35.3(A),(B)(5) (2019); Md. Code Ann., Fam. Law § 4-501(b),(m) (LexisNexis 2019); Mass. Ann. Laws ch. 209A, § 1 (LexisNexis 2019); Mich. Comp. Laws Ann. § 400.1501(d),(e)(ii) (LexisNexis 2019); Minn. Stat. § 518B.01; Mo. Rev. Stat. § 455.010(1),(7) (2019); Neb. Rev. Stat. Ann. § 42-903(1),(3) (LexisNexis 2019); Nev. Rev. Stat. Ann. § 33.018(1) (LexisNexis 2019); N.H. Rev. Stat. Ann. § 173-B:1(I),(X) (LexisNexis 2019); N.J. Rev. Stat. § 2C:25-19(a),(d) (2019); N.Y. Soc. Serv. Law § 459A(1),(2)(e) (LexisNexis 2019); N.C. Gen. Stat. § 50B-1(a),(b)(2) (2019); N.D. Cent. Code § 14-07.1-01 (2),(4) (2019); Okla. Stat. tit. 21, § 21-644(C) (2019); Or. Rev. Stat. § 107.705(1),(3)(d) (2019); 12 R.I. Gen. Laws 12-29-2(a),(b) (2019); S.C. Code Ann. §§ 16-25-10(3)(d), 16-25-20 (2019); Tenn. Code Ann. § 36-3-601(4),(5)(B) (2019); Utah Code Ann. §§ 77-36-1(4), 78B-7-102(1)(2)(f) (LexisNexis 2019); Vt. Stat. Ann. tit. 15, § 1101(1),(2) (2019); Va. Code § 16.1-228 (2019) (“Family Abuse,” “Family or household member”); Wash. Rev. Code Ann. § 26.50.010(1)(2) (LexisNexis 2019); W. Va. Code Ann. §§ 48-27-202, 48-27-204(5) (LexisNexis 2019); Wis. Stat. § 813.12(1)(am),(c) (2019); Wyo. Stat. § 35-21-102(a)(iii),(iv)(F) (2019).

relationships. Thus, Petitioner's relationships with her uncle and brother were "domestic relationships."

**2. Incest victims are abused because they are part of a domestic relationship.**

By definition, incest occurs between members of the same family.<sup>8</sup> Indeed, it is because of the nature of the family, i.e., domestic, unit that incest occurs at the outset and is allowed to continue for years. In short, but for the dysfunctional domestic relationship amongst abusive fathers and their daughters, abusive uncles and their nieces, and abusive brothers and their sisters, incest could not occur.<sup>9</sup>

Child incest, in particular, takes place in families that lack adults who are able or willing to care for and offer protection to the child. Kim M. Anderson, *Surviving Incest: The Art of Resistance*, 87 *Families in Soc'y* 409, 410 (2006) [hereinafter "*Surviving Incest*"]. The perpetrator's position in the family network, his proximity to his victim, and the absence of properly functioning caretaking relationships foster an environment in which the perpetrator is able to maintain control over the victim and continue to abuse her. See Linda Gordon & Paul O'Keefe, *Incest as a Form of Family Violence: Evidence from Historical Case Records*, 46 *J. of Marriage & Family* 27, 27, 32 (1984) [hereinafter "*Incest as a Form of Family Violence*"]; Yvette

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<sup>8</sup> See TAASA, *supra*.

<sup>9</sup> Although incest abusers can also be women and incest victims can be male, due to the facts of this case, the illustrations and arguments in this brief involve abusive men and female victims.

G. Flores-Ortiz, *The Broken Covenant: Incest in the Latino Family*, 1 *Voces: A J. of Chicana/Latina Studies* 48, 55-56 (1997) [hereinafter "*The Broken Covenant*"]; *Surviving Incest, supra*, at 410. Incest may be classified as a “situational offense” that arises from distorted family relationship and opportunism. Vernon L. Quinsey, *The Assessment and Treatment of Child Molesters: A Review*, 18 *Canadian Psychological Review* 204, 207 (1977); *see also* Lorna M. Anderson & Gretchen Shafer, *The Character-Disordered Family: A Community Treatment Model for Family Sexual Abuse*, 49 *Am. J. of Orthopsychiatry* 436 (1979) (incestuous family unit, comprising a number of individuals who exhibit various personality traits of a character-disordered person, help establish a climate conducive to the occurrence of incest). This dysfunctional dynamic in incestuous families, in which the victim’s plea for help is rejected by other family members or the victim is confronted by distrust and denial from her family, does not only enable incest but also adds to the traumatization of the victim. *See* Richard P. Kluft, *Ramifications of Incest*, *Psychiatric Times*, <https://www.psychiatrictimes.com/sexual-offenses/ramifications-incest> (January 12, 2011); S. Caroline Taylor & Caroline Norma, *The Ties That Bind: Family Barriers for Adult Women Seeking to Report Childhood Sexual Assault in Australia*, 37 *Women's Studies Int'l Forum* 114, 117-19 (2013). Therefore, the dominant position of the incest perpetrator and other men in the family structure, passivity of women in the family in the face of injustice and

brutality, and the general reluctance to expose family shame all help prolong the abuse of the incest victim. See Sudha Jha Pathak, *Domestic Violence - An Insight into Incest*, 5 Nirma University Law Journal 69, 76 (2016), available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3371422](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3371422); *The Broken Covenant, supra*, at 55-56 (1997). As in the case of other forms of domestic violence, the society, particularly those characterized by strong patriarchal norms, often turns a blind eye on the abuse that takes place within the confines of the home. *The Broken Covenant, supra*, at 55.

The familial link also means that the perpetrator can readily access the victim and has frequent opportunities to abuse her, and makes it difficult to resist or escape the abuse, particularly if it begins when she is young. *Surviving Incest, supra*, at 401. This phenomenon is evidenced by the fact that childhood incest, like marital violence, is often repeated for several years. See *Surviving Incest, supra*, at 410; Irene H. Frieze, *The Female Victim: Rape, Wife Battering, and Incest*, *Cataclysms, Crises, and Catastrophes: Psychology in Action* 109, 134 (G. R. VandenBos & B. K. Bryant eds. 1987).

Petitioner's family provides a textbook example of the domestic relationships that give rise to incest. In particular, the dysfunctional family dynamic encouraged, rather than prevented, Petitioner's sexual abuse by her uncle. Petitioner revealed her uncle's abuse to her grandmother (and his mother) on a number of occasions.



ROA.491-92, 495-96, 519. Petitioner's grandmother was present at, and a witness to, her rape by her uncle when she was twelve years old but did not intervene to stop the rape or provide any help to prevent subsequent abuses. ROA.494-95. The grandmother cautioned Petitioner that if her mother found out what had happened, she would be sent to jail, and the grandmother would be kicked out of the house. ROA.496.

As the social science literature makes clear, incest is borne out of a dysfunctional family unit. The abuser chooses the victim because she is a member of that domestic unit. In short, the relationship between the incestuous abuser and his victim is inherently a domestic relationship.

### **3. Incestuous abusers treat victims as their "wives."**

While not a legal marital relationship, the incestuous abuser treats his victim as if she were his spouse, thereby reinforcing the domestic nature of the relationship. Social science research explains that the male perpetrator, in order to maintain his incestuous relationship, attempts to "brainwash" the female victim that she is special and privileged because she is engaging in a "special relationship" with him. *The Broken Covenant, supra*, at 56. In paternal incest, in particular, the daughter is often subjected to domestic imprisonment, assuming the role of a "surrogate mother[]." *Incest as a Form of Family Violence, supra*, at 32 (explaining the reason why incest victims are less resistant than victims of other types of family violence in their

attempts to flee). In the perpetrator's mind, the victim has seduced him to engage in a sexual relation and she is a sexual substitute for his wife, who must, therefore, help him attain sexual gratification. *The Broken Covenant, supra*, at 56-57; see also Bruno M. Cormier et al., *Psychodynamics of Father Daughter Incest*, 7 Canadian Psychiatric Ass'n J. 203, 211 (1962) (suggesting that an incestuous father may be motivated by his daughter's symbolic and physical resemblance to his wife as a young woman); Wini Breines & Linda Gordon, *The New Scholarship on Family Violence*, 8 Women & Violence 490, 527 (1983) [hereinafter "*New Scholarship*"] (in paternal incest, the father believes that, as the provider of the family, he has the right to be nurtured and served by his daughter if his wife is not available). In short, the incestuous abuser treats his victim as his spouse.

Just as the social science literature explained, Petitioner's uncle treated her as if she were his wife. When her uncle kidnapped and imprisoned her before repeatedly raping her when she was seventeen years old, he threatened her that, "I'm going to keep you here, and here, you're going to be like my woman. You're going to do whatever I tell you to do." ROA.500. He also impressed upon her that he was her "first husband" and that she became his since age twelve, when he raped her for the first time. ROA.501. Similarly, in 2016, while her uncle raped Petitioner at her mother's place, he told her, "Don't you know that you're mine because I am your first husband? Why are you fleeing? I am capable of anything." ROA.516. Petitioner

believes that her uncle feels entitled to rape her as, in his distorted mind, he is her “first husband.” See ROA.523.

Both social science and the facts in this case support the notion that an incestuous relationship is a domestic one. While not a legal marriage between the parties, the abuser treats his victim as his spouse – a spouse he believes he has the right to rape at will.

**4. Just as in abusive marital or dating relationships, incestuous abusers use violence to control their victims who they view as "property."**

The abuser-victim dynamic in an incestuous relationship resembles that of intimate partner violence. *New Scholarship, supra*, at 521 (“Once placed within the framework of family violence, incest, it becomes evident, shares characteristics with wife beating, since it is usually an assault by a male against a female.”). Abusive domestic relationships arise from the abuser's need to exercise coercive control over the victim. Mary Ann Dutton & Lisa A. Goodman, *Coercion in Intimate Partner Violence: Towards a New Conceptualization*, 52 *Sex Roles* 743, 743-44 (2005). The control that the abuser exerts over the incest victim is an expression of the abuser's need for power and control and a channel to vent his frustration on those less powerful than himself. See *The Broken Covenant, supra*, at 54, 57-58; Zlatka Rakovec-Felser, *Domestic Violence and Abuse in Intimate Relationship from Public*

*Health Perspective*, 2(3) *Health Psychol. Res.* (2014)<sup>10</sup>. In order to feel powerful and capable, the abuser treats the victim like a property that he owns and controls, a means to compensate for his emotional, psychological, and sexual issues. *See The Broken Covenant, supra*, at 54, 57.

The abuse to which Petitioner was subjected at the hands of her uncle evidences his domination and control over Petitioner as if she were his property. When Petitioner fled to her grandmother's place in Juticalpa, her uncle tracked her down and raped her "in order for [her] to remember that [she] belong[s] to [him]." ROA.518. When her uncle kidnapped and raped Petitioner, he carved his initials into her arms and told her that he was the "owner of [her] life." ROA.498-504.

As social science explains, in abusive domestic relationships, the abuser believes he owns the victim because of his relationship with her. The undisputed facts in this case establish that Petitioner's uncle treated her as his property. Thus, just as marital and dating relationships are defined as domestic relationships, so should incestuous relationships be defined.

**B. Incest Victims, Like Other Victims of Domestic Violence, Cannot Escape the Abuse and, thus are Unable to Leave Their Families.**

The defining characteristic of an abusive relationship is the abuser's coercive control over the victim. TK Logan, *"If I Can't Have You Nobody Will": Explicit*

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<sup>10</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4768593/>.

*Threats in the Context of Coercive Control*, 32 *Violence & Victims* 126, 126 (2017) (explaining that an abusive relationship is “characterized by coercive control, which is an intentional and systematic course of conduct to dominate” someone else through control tactics). Any time an abuser’s control over the victim is jeopardized—like when the victim manages to escape—the abuser will do nearly anything to take back his control. Ultimately, this exercise of control necessarily prevents the victim from unilaterally ending the relationship. Peter G. Jaffee, et al., *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, *Juv. & Fam. Ct. J.* 57, 59–60 (2003). In fact, separation may be a signal to the perpetrator to escalate his behavior in an attempt to continue to control or punish his victim for attempting to leave. *Id.* It is therefore not surprising that the coercive control that characterizes abusive relationships in general often continues well after the victim leaves her abuser.

**1. Honduran societal norms support the abuser's coercive control and views of ownership and thwart the victim's ability to escape.**

The misogynistic notion of male supremacy that encourages the view that women are subordinate to men, and that women are relegated to property owned by men is often supported and reinforced by prevalent social norms and culture. *See Incest as a Form of Family Violence, supra*, at 33; Smita Vir Tyagi, *Incest and Women of Color: A Study of Experiences and Disclosure*, 10 *J. of Child Sexual Abuse* 17, 22 (2002) [hereinafter "*Incest and Women of Color*"] (explaining that in

some cases men view incest or rape as their right if they are not able to achieve sexual gratification through other means). In countries like Honduras where the culture of machismo and rigid conformity to gender roles are prevalent, these cultural influences help foster unbalanced interpersonal relationships and set the stage for normalizing the abusers' belief that they are entitled to ownership of women within their family and, thus, their violent treatment of women. *See The Broken Covenant, supra*, at 59; Karen Musalo, *El Salvador - A Peace Worse Than War: Violence, Gender and a Failed Legal Response*, 30 *Yale J.L. & Feminism* 3, 32 (2018) [hereinafter "*A Peace Worse Than War*"]; 'Men can do anything they want to women in Honduras': *Inside one of the most dangerous places on Earth to be a woman*, abcNEWS (May 3, 2017, 11:37 AM);<sup>11</sup> *Young Latin Americans see violence against women as normal: survey*, Reuters (July 25, 2018, 2:09 AM)<sup>12</sup>.

Thus, deeply engrained patriarchal values in countries like Honduras underpin the misogynistic structure that promote and justify domestic violence against women. *See A Peace Worse Than War, supra*, at 41-43. Similarly, incest perpetrators, particularly those accustomed to pervasive, authoritarian male-centric cultures, distort and hide behind cultural patterns and beliefs to break the social

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<sup>11</sup> <https://abcnews.go.com/International/men-women-honduras-inside-dangerous-places-earth-woman/story?id=4713528>.

<sup>12</sup> <https://www.reuters.com/article/us-latam-women-rights/young-latin-americans-see-violence-against-women-as-normal-survey-idUSKBN1KF0IY>.

prohibition (and perhaps their own inhibition) against incest and justify their violent treatment of female victims. *See The Broken Covenant, supra*, at 58; *Incest and Women of Color, supra*, at 21 (“Cultural attitudes . . . not only legitimize sexual violence but also provide perpetrators with social and cultural invisibility.”).

Because of Honduras' patriarchal social norms, abuse victims like Petitioner have a much more difficult time escaping because there is a lack of police enforcement to curb domestic violence. *See Cecilia Menjivar & Shannon Drysdale Walsh, The Architecture of Femicide: The State, Inequalities, and Everyday Gender Violence in Honduras*, 52 *Latin Am. Res. Rev.* 221, 225 (2017). In fact, more than ninety-six percent of femicides go unpunished in Honduras. *Id.* at 228. The lack of punishment "sends a powerful message that women's lives are expendable and unimportant. . . ." *Id.*

Petitioner's experience with the police provides evidentiary support for the descriptions of Honduran society discussed above – a society in which men are valued and women are devalued. These societal norms, and Petitioner's suppression thereunder, explain her inability to escape the incestuous abuse she suffered. In addition, social science provides other reasons for her inability to leave.

## **2. Leaving the abuser does not end the abuse.**

A substantial percentage of women who leave the home they share with their abusers continue to be abused. Tina Hotton, *Spousal Violence After Marital*

*Separation*, Juristat: Canadian Centre for Justice Statistics (Catalogue no. 85-002-XIE), at 1 (2001). Indeed, the term “separation assault” was coined to describe the violence men use to prevent women from leaving the relationship, to force them to return, or to retaliate after they had left. See Michelle L. Toews & Autumn M. Bermea, “*I Was Naïve in Thinking, ‘I Divorced This Man, He Is Out of My Life’*”: *A Qualitative Exploration of Post-Separation Power & Control Tactics Experienced by Women*, 32 *J. of Interpersonal Violence* 2166 (2017); see also 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) (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 Experience of Post-Separation Violence*, 25 *J. of Soc. Welfare & Fam. L.* 195, at 200-201 (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).

Petitioner's case is a disturbing illustration of this phenomenon. As a fifteen-year old child, Petitioner begged her mother to let move to her grandmother's house on the other side of the country in order to escape her uncle. ROA.783-86. After getting to her grandmother's house, Petitioner's uncle showed up with a gun, forcibly removed her from the house, and brought her back to her mother's house. ROA.518-21. As a sixteen-year old child, Petitioner again tried to escape her uncle's control by moving in with her boyfriend. ROA.518, 521-22. Petitioner's uncle tracked her

down, abducted her from a bus stop, and held her prisoner in a hotel for days where he repeatedly raped her. ROA.497-509. The abuse exhibited by Petitioner's uncle predicts a significant likelihood of homicidal violence if Petitioner were deported back to Honduras.

**3. Because Petitioner is unable to escape the relationship, she is at a high risk of homicide if she is sent back to Honduras.**

To quantify and help determine whether homicide is a potential reality in any given case, social scientists have created the “Danger Assessment.” See 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 (2009) [hereinafter "*The Danger Assessment*"]. The Danger Assessment, which is reflective of a victim's inability to leave a violent domestic relationship, uses 20 indicators designed to assist battered women in assessing their danger of being murdered (or seriously injured) by their intimate partner or ex-intimate partner. *Id.* at 657–658. First developed in 1985 and empirically validated in 2003, the tool was subsequently revised based on input from abused women, law enforcement agencies and victim advocates. See *Lethality Assessment: An Impressive Development in Domestic Violence Law in the Past 30 Years*, 30 Hastings Women’s L.J. 211, 217-18 (2019) [hereinafter "*Lethality Assessment*"]. The weighted scoring system enables identification of various danger levels ranging from “variable” to “extreme.” *Id.* at 218. The list below contains the

12 of the 20 lethality factors that are present in Petitioner’s case. *See The Danger Assessment, supra*, at 655 (listing all the factors).

1. **Increased Violence:** Petitioner’s uncle has used increasingly severe physical violence against her over time. *See* ROA.499-505 (Petitioner's uncle's violence escalated over the years from unwanted kissing and touching, to rape, kidnapping, imprisonment, torture, and assault with a lethal weapon).
2. **Gun Ownership:** Petitioner’s uncle owns a gun. *See* ROA.518 (Petitioner’s uncle placed a gun on her leg to threaten her before proceeding to rape her when she was fifteen years old); ROA.498 (Petitioner explaining that “Juan observed that [Petitioner's uncle] was carrying a gun in his hip” immediately before Petitioner's uncle kidnapped her); ROA.505 (Petitioner stating that “[Petitioner's uncle] always goes around with his gun.”).
3. **Lethal Weapon Threats:** Petitioner’s uncle has threatened Petitioner with a lethal weapon. *See, e.g.,* ROA.504 (Petitioner's uncle grabbed his gun and ordered Petitioner to perform oral sex); ROA.518 (Petitioner's uncle threatened Petitioner with a gun to go back with him when she fled to her grandmother’s place).
4. **Threats to Kill:** Petitioner’s uncle has threatened to kill Petitioner numerous times, whether by saying so explicitly or making strong references. *See* ROA.504-05 (Petitioner's uncle forced her to perform oral sex by grabbing his

gun and saying at the same time "You have to do it. If not, you already know."); ROA.649 (When Petitioner's uncle raped her when she was twelve years old, he told her he would kill her if she told anyone); ROA.651 (When her uncle raped Petitioner when she was fourteen years old, he again threatened to kill her if she told anyone about it).

5. **Arrest Avoidance:** Petitioner's uncle has avoided being arrested for domestic violence. *See* ROA.508-11 (immediately after the police rescued Petitioner from the hotel room where she was imprisoned and abused by her uncle, he was taken into police custody but, several weeks later, released without charges); ROA.531-33 (when Petitioner reported subsequent rapes to the police, they declined to help her because the rapes were not done in public).
6. **Having a Child That is Not the Abuser's:** Petitioner has a child that is not her uncle's. *See, e.g.,* ROA.521-22 (establishing that her uncle knew that Petitioner had a boyfriend and a daughter with him).
7. **Forced Sexual Relations:** Petitioner's uncle has forced her to have sex when she did not wish to do so. *See, e.g.,* ROA.494-522 (detailing that her uncle forcibly raped Petitioner starting at the age of twelve, and then again multiple times including by kidnapping, imprisoning, and torturing her and raping her in the house where her infant daughter was present).

8. **Choking Attempts:** Petitioner's uncle has tried to choke her. *See* ROA.494 (Petitioner explaining that “He got me from the neck. He was squeezing it very tightly”).
9. **Violent and Constant Jealousy:** Petitioner's uncle was violently and constantly jealous of her. *See, e.g.,* ROA.518 (when Petitioner's uncle raped Petitioner, he told her that he was raping her to remind her that she belonged to him); ROA.500-502 (when Petitioner's uncle kidnapped her in front of her boyfriend and imprisoned her in a hotel room to rape her, he told her that he would always be her “first husband” and that she was going to do whatever he told her to do); ROA.516 (the last time he raped her in 2016, Petitioner's uncle told her, “Don’t you know that you’re mine because I am your first husband?”).
10. **Capable of Killing:** Petitioner believes that her uncle is capable of killing her because he repeatedly threatened her with a gun. *See* ROA.501-02, 518, 651.
11. **Stalking:** Petitioner's uncle has followed her when she did not want him to do so. *See, e.g.,* ROA.543-44 (despite Petitioner’s relocation to her grandmother’s place, her boyfriend's place, and elsewhere, Petitioner's uncle found her and raped her). Petitioner's uncle told Petitioner that he would always find her, wherever she goes. *See* ROA.522.

12. **Suicide Attempt:** Petitioner has tried to commit suicide twice. *See* ROA.545 (describing her two suicide attempts using a motorcycle and by electrocution).

When scored in total, the presence of these 12 factors places Petitioner at the level of “increased danger” for femicide at the hands of her uncle. *See The Danger Assessment, supra*, at 662. Importantly, six of these risk factors in the assessment are identified as the “most highly correlated with the risk of near-fatal assault or homicide.” *Lethality Assessment, supra*, at 218 (identifying gun ownership, threats to kill, threats with a weapon, having a child that is not the abuser’s child, forced sex, and non-fatal strangulation). Thus, if Petitioner is forced to return to Honduras, she will be subjected to grave and even fatal harm as punishment for attempting to break free from her uncle's abuse and control, while family members and local police do nothing.

In short, as with other women subjected to domestic violence, victims of incest, like Petitioner, are unable to leave their families in order to escape the violence of their abusers.

#### IV. CONCLUSION

When considering whether or not Petitioner's incestuous relationships were domestic, Amici respectfully urge the Court to take into account the U.S. statutory protections afforded victims of domestic violence that are far more inclusive than just marital or dating relationships, as well as the social science research supporting

the identical characteristics of abuse faced by incest victims and marital and dating abuse victims. Further, Amici urge the Court to consider the undisputed facts underlying Petitioner's case, as well as social science, supporting her inability to escape the domestic violence she suffered.

DATED: August 16, 2019

Respectfully submitted,

*/s/ Elizabeth L. Yingling*

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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 6,358 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 Times New Roman font, 14 point size.

DATED: August 16, 2019

*/s/ Elizabeth L. Yingling*  
Elizabeth L. Yingling



**CERTIFICATE OF SERVICE**

I hereby certify that, on August 16, 2019, the foregoing was filed electronically with the Clerk of this Court through the CM/ECF system, which will serve all counsel of record.

/s/ Elizabeth L. Yingling  
Elizabeth L. Yingling