

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

NELSA ROSA HERNANDEZ CABRERA; A.J.E.H.,
Petitioner-Appellee,

v.

MATTHEW G. WHITAKER, ACTING U.S. ATTORNEY GENERAL,
Respondent-Appellant.

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

**Brief for *Amicus Curiae* National Immigrant Women’s Advocacy Project
 (“NIWAP”) in Support of Petitioner-Appellee and Reversal**

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CORPORATE DISCLOSURE STATEMENT

National Immigrant Women’s Advocacy Project (“NIWAP”) is a non-profit organization. NIWAP is not publicly held. There is no parent corporation or any publicly held corporation that owns 10% or more of NIWAP’s stock. To the best of NIWAP’s knowledge, there is no other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation and this case does not arise out of a bankruptcy proceeding.

DATED: FEBRUARY 14, 2018

/s/ Linda T. Coberly

LINDA T. COBERLY

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**INTRODUCTION
AND STATEMENT OF *AMICUS CURIAE***

Amicus Curiae, the National Immigrant Women’s Advocacy Project (“NIWAP”), submits this brief to correct a false premise underlying the findings below—namely, that a domestic violence victim succeeds in leaving the relationship with her abuser merely by moving out of the couple’s shared residence.

In the years since the Board of Immigration Appeals decided *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), *overruled by Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), the Board, immigration judges, and asylum officers have consistently reaffirmed that a domestic violence victim can establish her membership in a cognizable particular social group (“PSG”) by showing that for religious, societal, cultural, legal, or other reasons, she was unable to leave the relationship with her abuser. In this case, Petitioner was eligible for asylum based on her status in two PSGs: “Honduran women who are unable to leave their domestic relationship” and “Honduran women viewed as property by their domestic partners.” Still, the Immigration Judge (“IJ”) denied her application for asylum, and the Board dismissed her appeal. In doing so, the Board interpreted a recent Attorney General opinion (*Matter of*

A-B) to find a “general rule” against asylum claims involving domestic violence. The Board determined that since Petitioner had moved out of the couple’s shared residence, she effectively left her abuser and was not eligible for asylum. This decision below incorrectly assumed that by moving out, Petitioner could and did unilaterally end her abusive relationship.

The IJ and Board’s decisions reflect a fundamental misunderstanding about the nature of domestic violence, coercive control in abusive relationships, and the difficulties and dangers facing victims who attempt to terminate their abusive relationships, particularly when a shared child is involved and when the abuser is a stalker. As discussed below, research shows that an abusive relationship does not end simply by the victim moving out. To the contrary, in abusive relationships the frequency and dangerousness of the abuse is typically exacerbated when the victim attempts to leave the couple’s shared residence. This is because her abuser’s control over the victim—the hallmark of and a fundamental factor in domestic violence relationships—is jeopardized by the victim’s decision to leave. It is thus no surprise that the abuse often becomes more violent, debilitating, and

disempowering as the victim attempts to free herself from her abuser's control. Having children in common gives the abuser both the opportunity and the means to continue his abuse and control over the victim—particularly in a culture that places a high priority on masculinity and fatherhood.

In fact, the abuser will do nearly anything to maintain his control over the victim. For example, if the abuser feels his victim is becoming less susceptible to his typical control tactics, he might begin stalking the victim, brandishing a weapon during his threats toward the victim, or even begin directing his threats at third parties close to the victim—like the victim's children and family members. It is the abuser's continual reassertion of coercive control that prevents the victim from truly escaping the relationship's cycle of violence, despite the couple's new living arrangement. For these reasons, there is no logical basis or evidence-based research to support the assumption that a domestic violence victim is able to end the relationship with her abuser or is able to bring an end to the abuse just by moving out. On the contrary, once a victim musters the courage to leave an abusive relationship, she needs to find ways to protect herself—and, often, her child—from the

likelihood of escalating abuse and stalking. *Amicus* therefore urges this Court to reverse the Board's decision below.

Amicus is well-suited to provide the Court with the necessary context and research on all these issues. *Amicus* has a keen interest in ensuring that U.S. immigration law is properly applied and developed, so that individuals seeking asylum and other related relief receive fair and proper consideration under standards consistent with U.S. laws and treaty obligations.

NIWAP is a non-profit training, technical assistance, and public policy advocacy organization that develops, reforms, and promotes the implementation and use of laws and policies that improve legal rights, services, and assistance to immigrant women and children who are victims of domestic violence, sexual assault, stalking, child abuse, human trafficking, and other crimes. NIWAP is a national resource center offering technical assistance and training at the federal, state, and local levels to assist a wide range of professionals who work with immigrant crime victims and/or whose work affects these victims. NIWAP provides direct technical assistance and training for attorneys, advocates, immigration judges, Board judges and staff, state court

judges, police, sheriffs, prosecutors, Department of Homeland Security adjudication and enforcement staff, and other professionals.

Additionally, NIWAP's Director Leslye E. Orloff was closely involved with the 1994 enactment of the Violence Against Women Act ("VAWA")—landmark legislation aimed at improving community-based responses to domestic violence, dating violence, sexual assault, and stalking. Among other things, NIWAP's Director played a part in the creation of VAWA's 1994 self-petition; its 2000 T- and U-visas; and its 1996, 2000, 2005, and 2013 immigration and confidentiality protections. NIWAP's Director has also published legal and social science research articles about the domestic violence experienced by immigrant women and children.

Amicus writes to provide this Court with scholarly information and perspective on critical issues that this case's IJ and single-judge Board of Immigration Appeals panel failed to resolve correctly below. If the same misunderstanding that infects these judges' decisions were repeated by this Court, it could adversely impact the lives of many immigrant women who have suffered persecution because they are trapped in abusive relationships and plagued by stalking.

**SUPPLEMENTAL CERTIFICATE
OF INTERESTED PERSONS**

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

STATEMENT

Petitioner Hernandez Cabrera's story is unfortunately all too common: not only does it illustrate the unique persecution that women regularly face in the violent, male-dominated country of Honduras, but it is also a textbook example of the cycle of violence that women in almost all domestic violence relationships continually endure when they cannot meaningfully or effectively leave their abusers.* Petitioner desperately fled her home country of Honduras to escape her domestic partner's recurrent emotional, physical, and sexual abuse, stalking, threats to kill the petitioner, threats with weapons, and threats to kidnap the child he had in common with the Petitioner. Because Petitioner is both (1) a Honduran woman who cannot leave her relationship and (2) a Honduran woman viewed as property by her partner, she needs this Court's protection.

Petitioner first met her abuser in her neighborhood in 2010. They each had one child from a prior marriage. R. at 567. The two began a relationship in 2011. R. at 566. After just two short months of knowing each other, the couple started living together. *Id.* Shortly thereafter, the

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

cycle of violence began. One night when her abuser arrived home drunk, he hit and strangled her, claiming she was unfaithful. *Id.* After that, the violence was frequent and the sexual assault and mistreatment happened often. *See* R. at 566–570; *see also* R. at 102 (Petitioner testified in front of the IJ that her abuser would harm her almost every day through physical, emotional, and sexual violence).

Sometimes, Petitioner would arrive home from work and her abuser was already there, waiting to beat her. R. at 566. Other times, he would prevent her from leaving the house and from seeing her friends and family; he locked her in their home. R. at 102. Additionally, Petitioner’s abuser regularly forced her to perform sexual acts against her will, forcibly holding her down and taking her clothes off. *See* R. at 567–568. While she was being raped, her abuser would yell at her that she was a prostitute, hold her down, and pull her hair. R. at 567.

Petitioner’s abuser also publicly shamed, humiliated, assaulted, and harassed her. R. at 566–570. She was a cook and a waitress at a restaurant. R. at 566. Her abuser would come to the restaurant and yell at her in front of her co-workers and the restaurant patrons. *Id.* He would tell her she was “an easy woman” when she waited on other men

in the restaurant, exhibiting extreme jealousy. *Id.* Eventually, her boss and co-workers got tired of the “scenes” that her abuser caused. R. at 567. Petitioner was fired from her job because of her abuser’s behavior at her workplace. *Id.*

The abuser also emotionally battered Petitioner, telling her that everything bad that happened to him was her fault. *Id.* He blamed her for his financial troubles. *Id.* He told her he “needed to punish her.” R. at 10. He told her that he would find another woman to do the sexual things he liked that she refused to do. R. at 567. He regularly accused her of cheating on him. *See* R. at 566–570.

Eventually, after almost a year of continuous sexual, emotional, and physical abuse, Petitioner told her abuser she was leaving him. R. at 568. When she told him, he raped her, asserting his dominance and control over her, and attempting to scare her into submission. *Id.* One week later, her abuser showed up at Petitioner’s family home, threatening to kill her if she did not return to him. R. at 10. He told her that she belonged to him and that she was “his woman.” *Id.*

Soon after, Petitioner realized she was pregnant: a result of rape at the hands of her abuser. R. at 568. When her abuser found out that

she was pregnant with his child, he asked her to return to him. *Id.* She refused. *Id.* This is when the stalking escalated. Her abuser began regularly coming to her parents' home and threatening her there. R. at 568. On one occasion, he threatened Petitioner with a machete. R. at 10; R. at 569. During these encounters at her family home, Petitioner's abuser tried to force her to engage in sexual intercourse, during her pregnancy, by hitting her and throwing her on the bed. R. at 569. He would hold her down forcibly and accuse her of being in another relationship. *Id.*

When Petitioner's child was born, her abuser appeared at the hospital uninvited. *Id.* He reminded her that he was still in control despite their physical separation; he used the child as a reason to keep stalking her. *Id.* Her abuser would come to Petitioner's parents' home, claiming that he had a right to be there because the child was half his. *Id.* He threatened her and told her not to tell anyone. *Id.* He told her that he had an attorney and could take the child away. *Id.* He threatened to kill her if she did not return to him. R. at 63. It was clear that even though Petitioner was no longer living with her abuser, she was not safe or free of his terror. Fearing for her life, she fled Honduras

with her oldest child, A.J.E.H., to seek safety in the United States; Petitioner was unable to take the daughter she had with her abuser with her when she fled because the baby was too young to travel. The baby stayed with her mother in Honduras. *Id.* Petitioner and her oldest child arrived in the U.S. on May 25, 2015. R. at 570.

Although she fled Honduras, Petitioner could not escape the cycle of violence with her abuser. This is because she has achieved only physical separation from her *abuser* in the U.S., not full detachment from the *abuse*. First, when Petitioner fled, she called her mother from a midway point in Mexico to report that she and her son were surviving the journey. R. at 10; R. at 569. Her mother informed her that her abuser had left Honduras and was following her to the U.S. *Id.* Fortunately, her abuser was not successful in his attempt to track her down because he was deported from Mexico back to Honduras. *Id.*

Petitioner lives in ongoing fear that her abuser will harm her if she is forced to return to Honduras. Her mother reports that her abuser comes to Petitioner's mother's home every three months and threatens to take away the baby. R. at 104. Her abuser says he has an attorney.

R. at 566. She believes that her abuser will torture her and her children if she returns to Honduras. *Id.*

Petitioner believed the only way to protect herself was to seek asylum in the U.S., but an IJ rejected her asylum request on April 14, 2018. R. at 128. Despite the IJ's belief that Petitioner "provided credible testimony" about her experiences in Honduras and her fear of returning to that country (R. at 135), the IJ nonetheless found that Petitioner failed to meet her burden of proof to establish eligibility for asylum. *Id.* Specifically, the IJ found that she "ha[d] not sufficiently corroborated her claim" for asylum. R. at 135–136.

The decision to deny asylum was based in part on the IJ's belief that Petitioner did not belong to the protected social groups because, according to the IJ, Petitioner "successfully terminated her relationship..." R. at 138. The IJ assumed that since Petitioner no longer shared a residence with her abuser, she had successfully left the abusive relationship. *See* R. at 138–139. The IJ further assumed that since Petitioner had also resumed a relationship with a domestic partner she had prior to her relationship with the abuser, she had successfully left her abusive relationship. *Id.* (IJ stating that Petitioner

left her abusive relationship when she “lived with her parents” for a time and then “resumed her relationship with her former domestic partner...in the United States.”). Yet the IJ ignored the reason she moved out of the couple’s residence in the first place, the reason she fled the country of Honduras, and the fact that the abuser attempted to follow her to the United States. *See* R. at 139 (IJ failing to mention these facts). No matter where she lived, she could not escape the ongoing abuse.

Second, the IJ stated that Petitioner did not belong to a protected social group of “Honduran women who are unable to leave their domestic partners” because she and her abuser are unmarried. R. at 140. The IJ noted that a domestic partnership “is distinguishable from a marriage, in that a marriage has a common definition with clear boundaries.” R. at 140. But notably, the record contained evidence to corroborate that Petitioner and her abuser were engaged in a relationship that had all the hallmarks of a domestic partnership: they had a child in common and they cohabited for a period of time. R. at 566–570.

Petitioner appealed the IJ’s decision. On September 20, 2018, a single judge panel of the Board dismissed Petitioner’s appeal, finding that she did not establish membership in either of her purported social groups. R. at 34. Like the IJ, the Board found that Petitioner “was able to leave her domestic relationship” and that she and her abuser were never married. R. at 35. Because Petitioner believes the record establishes her status in both of the purported social groups—“Honduran women who are unable to leave their domestic relationship,” and “Honduran women viewed as property by their domestic partners”—she now seeks review of the Board’s decision.

ARGUMENT

- I. **The defining characteristic of domestic violence is an abuser’s coercive control, which does not end simply because a victim leaves the shared residence.**

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

Post-separation acts of violence and abuse permit abusers to continue their control, making it emotionally and physically difficult for women to find a place of safety that would enable them to leave the relationship. Cathy Humphreys & Ravi K. Thiara, *Neither Justice nor Protection: Women's Experiences of Post-Separation Violence*, 25 J. Social Welfare & Family L. 195, 200 (2003) (explaining that a fundamental aspect of the cycle of abuse is the man's use of violence to entrap the woman so that she feels she cannot leave, even or especially after she has tried); *see also id.* at 201 (explaining that women were more vulnerable after separation because they "had no way of knowing whether threats would actually be carried through" because they could not "predict the situation in ways which were possible when they were co-habiting").

To maintain control, abusers use various tactics like stalking and threatening other individuals who are close to the victim during the separation period—to reassert control over the victim. *An Integrative Review of Separation, supra*, at 158–59. A substantial percentage of women who leave the home they share with their abusers are followed and harassed or further attacked. Tina Hotton, *Spousal Violence After*

Marital Separation, Statistics Canada, Catalogue no. 85-200, at 1;
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, *J. Interpersonal Violence* 3 (2015) (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.”). Rather than easing the abuse, separation often results in more severe acts of violence—a certain result here if Petitioner were forced to return to Honduras. 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, 1364–1365 (2000); Pet. Br. at 40–41 (describing the post-separation acts of violence); *see also* Pet. Affidavit, R. at 570 (“If I return to Honduras, he will look for me and cause me more harm a [sic] possibly even kill me for not obeying him.”).

Two factors often present in abusive relationships predict that leaving the shared home will not be equivalent to leaving the abusive relationship: when the victim has children with her abuser, and when

the abuser is a stalker. Both of these factors are present in the instant case.

A. Children in Common

When a woman has a child in common with her abuser, the very existence of the child all but guarantees that she cannot truly “leave” the relationship. Humphreys & Thiara, *supra* at 20, at 207 (“child contact arrangements . . . provide the most consistent vulnerability to post-separation violence and undermined relocation as a safety strategy”). Abusers often use the children to maintain control over and prevent the abused woman from leaving the relationship. Numerous studies have found that abusers will use their children as pawns to continue to harm, manipulate, and exercise control over their victims, even after separation. Thiara & Gill, *supra* at 33, at 17 (summarizing the findings of numerous studies showing that co-parenting and child contact often replaces the romantic relationship as the avenue for men to control and harm female partners). In the face of these threats, abused women are often forced to remain in some kind of relationship with their abuser and to continue to suffer abuse, and worse, as the necessary price of maintaining their relationships with their children.

See Leslye Orloff & Olivia Garcia, *Dynamics of Domestic Violence Experienced by Immigrant Victims* 14 (2013).

Currently, Petitioner's child in common with her abuser is living at her parents' house in Honduras, as Petitioner was unable to take the baby with her to the U.S. R. at 569. This provides no guarantee that the child will remain safe. On several occasions, the abuser has threatened to take away the child. R. at 570. He continues to visit the parents' home at least every three months. R. at 104. On one occasion, he even brandished a machete. R. at 568. If Petitioner were forced to return to Honduras, she would certainly once again become the target of escalating abuse and violence, and any safety her child may have achieved will be shattered. Upon her return, both she and her children—like many if not most victims in families of abuse—will face significant and potentially deadly risks.

B. Stalking Tactics

An abuser's stalking tactics are "a dimension of dominance and control" that allow an abuser to stay in the victim's life and engage in IPV. Judith McFarlane, et al., *Intimate Partner Stalking and Femicide: Urgent Implications for Women's Safety*, 20 *Behav. Sci. & L.* 51–53, 66

(2002); see Sarah M. Norris, et al., *A Pattern of Violence: Analyzing the Relationship Between Intimate Partner Violence and Stalking*, 26 *Violence & Victims* 103, 112 (2011) (stating that “batterers are motivated to commit stalking behaviors to reestablish control of the relationship and victim”); TK Logan & Robert Walker, *Partner Stalking: Psychological Dominance or “Business as Usual”?*, 10 *Trauma, Violence, & Abuse* 247, 257 (2009) (“Stalking victims have daily evidence they lack control over their life and are constantly reminded that someone else is in control of their life.”).

Indeed, stalking is “at the extreme end” of an abuser’s controlling behaviors, precisely because it “can be maintained even if there is separation between the [abuser] and the victim.” McFarlane, et al., *supra*, at 66; Norris, et al., *supra*, at 112. Stalking allows an abuser to maintain contact with a victim even after moving out, because stalkers “often target victims at their [new] homes.” TK Logan & Robert Walker, *Impact of Stalking Victimization on Separation: Assessing and Addressing Safety and Economic Security*, 22 *Domestic Violence Rep.* 69, 81 (2017).

Studies involving attempted and completed femicide have found “a significant association between stalking and intimate partner physical assault.” Jacomina Gerbrandij, et al., *Evaluating Risk Assessment Instruments for Intimate Partner Stalking and Intimate Partner Violence*, 5 J. Threat Assessment & Mgmt. 103, 104 (2018). In fact, “most victims of stalking are a prior intimate partner of the offender, and □ this group of victims is at greatest risk for physical, even fatal violence.” *Id.* at 116.

Furthermore, 50% of stalkers explicitly threaten their victims, and the stalkers most likely to be violent are “those individuals who have had a prior sexually intimate relationship with the victim.” McFarlane, et al., *supra*, at 53; *see also* TK Logan & Robert Walker, *Stalking: A Multidimensional Framework for Assessment and Safety Planning*, 18 Trauma, Violence, & Abuse 200, 206 (2017) [hereinafter *Stalking: A Multidimensional Framework*] (“Explicit threats of harm are more common in situations where stalkers and targets are acquainted with each other.”). Prior-intimate-partner stalkers are also the most dangerous type of stalker: “research shows that ex-partner

stalkers are the most threatening, violent, and interfering.” *Stalking: A Multidimensional Framework, supra*, at 212.

One of the most powerful ways an abuser continues to exert control over his victim is through stalking third parties close to the victim—like the victim’s children, family, and friends. *See Stalking: A Multidimensional Framework, supra*, at 207. This type of stalking is a powerful control technique because “victims may be especially concerned or protective about friends and family being the target of harassment.” *See* TK Logan, “*If I Can’t Have You Nobody Will*”: *Explicit Threats in the Context of Coercive Control*, 32 *Violence & Victims* 126, 136 (2017) [hereinafter *If I Can’t Have You Nobody Will*]. Not surprisingly, then, abusers often stalk their victims’ family members after the victims attempt to leave their relationships. *See id.* at 135 (discussing that 40% of one study’s victims “reported their abusive partner had actually threatened someone close to them” after separation); *Stalking: A Multidimensional Framework, supra*, at 207 (finding that in another study, 22% of the stalkers targeted their victims’ family members and friends). A stalker’s threats toward a victim’s children are especially stressful and concerning during

separation. *An Integrative Review of Separation, supra*, at 161.

According to one study, 64% of the study's abusers threatened to harm their victims' children 11 times on average, and 17% threatened to abduct their victims' children. *Id.* Notably, when an abuser threatens harm to a victim's children, research suggests that the victim's own "potential risk of severe abuse greatly increases." McFarlane, et al., *supra*, at 65; *Stalking: A Multidimensional Framework, supra*, at 207 (stating that "threatening messages toward victims and their children, [are] associated with an increased likelihood of attempted and actual homicide" of the victim herself). These various stalking tactics ensure that an abuser maintains control over the relationship after the victim moves out.

Another prevalent way abusers stalk their partners is through workplace harassment. One study, reported by the National Domestic Violence Hotline, found that 96% of domestic violence victims who are employed experience problems at work due to the abuse.* Another study found that between 21–60% of victims of IPV lose their jobs due to reasons stemming from the abuse. E.F. Rothman, et al., *How*

* <https://www.thehotline.org/resources/statistics>.

Employment Helps Female Victims of Intimate Partner Violence: A Qualitative Study, 12 J. Occupational Health Psychology 136 (2007); see also TK Logan et al. *Partner Stalking and Implications for Women's Employment*, 22 J. Interpersonal Violence 268 (2007) Victims of stalking report higher rates of on-the-job harassment, indirect job disruption, and indirect job performance interference than other victims of IPV, resulting in lower productivity and lost wages. Unfortunately, stalkers succeed in gaining physical access to their victims at work, since work "is a relatively easy point of access to the [victim]." *Id.*

Workplace stalking is also a form of economic control. *See Impact of Stalking, supra*, at 81 (explaining that workplace harassment is an effective way in which stalkers "deliberately, intentionally, and insidiously sabotage victims' economic security"). This is, in part, because stalking at work jeopardizes the victim's job. *Id.*

Every one of these tactics is present in Petitioner's case. Before she moved out, Petitioner was fired from her job because her abuser kept showing up at work and harassing her and causing a "scene." R. at 567. Petitioner was fired from her job *because* of her abuser's behavior at her workplace. *Id.* She was then forced to stay in the home she

shared with her abuser, which he often refused to let her leave. R. at 567. Petitioner moved out of the home she shared with her abuser in January 2012, before she gave birth to the couple’s daughter—and ever since then, he has stalked her continually. Only one week after she moved out, he began tormenting her through a campaign of intimidation and stalking, with the hope of scaring her into reuniting with him. He showed up at her parent’s home and threatened to kill her if she did not return with him. R. at 568. One time, he came to her family home, and brandished a machete. *Id.* Additionally, he continues to visit her family’s home and threatens to take away their shared child, even though Petitioner is now in the U.S. R. at 569. Petitioner’s mother wrote to the IJ that she is scared that if Petitioner returns to Honduras, she would be in “great danger” because her abuser “will take revenge.” R. at 276. Notably, the more times a stalker approaches his victim, the more likely it is that the victim will suffer severe violence at the stalker’s hands. *Stalking: A Multidimensional Framework, supra*, at 210.

Indeed, the abuser’s attempts to control Petitioner intensified precisely *because* she attempted to leave him. He continued to stalk her

as punishment for rejecting him. *See Stalking: A Multidimensional Framework, supra*, at 208 (stating that an abuser’s stalking and subsequent violence can be triggered by “separation and . . . other experiences characterized by rejection”). Eventually this caused Petitioner to move again—this time fleeing the country. Despite her relocation, her abuser attempted to follow. He would have succeeded had he not been apprehended in Mexico and sent back to Honduras. These stalking behaviors, taken together, had the cumulative effect of instilling in Petitioner a grave fear of harm—so much so that she felt her only chance at survival was through fleeing the country. *See R.* at 265–273, 570 (finding Petitioner has Post Traumatic Stress Disorder as a result of her abusive relationship and that she fears that her abuser will torture and kill her and her son if she returns to Honduras).

II. Moving out of a shared home does not bring an end to an abusive relationship but instead can intensify the violence.

Nearly three-quarters of women assaulted by their partners after leaving the relationship experienced severe physical abuse, and approximately half of these women suffered some form of injury. Fleury, *supra*, at 1371; *see also* 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*] (finding that “[a]cross studies of risk factors for IPH [intimate partner homicide], prior IPV [intimate partner violence] is clearly the most common risk factor...” (internal citations omitted)). It is not surprising that “separation has been identified as a very high risk period for assault and lethal violence” (*See Stalking: A Multidimensional Framework, supra*, at 210) given that separation can threaten her abuser’s control over the victim. *If I Can’t Have You Nobody Will, supra*, at 126 (explaining that “[p]artner abuse is characterized by coercive control, which is an intentional and systematic course of conduct to dominate one’s partner” through control tactics). In fact, women are at greatest risk of homicide at the point of separation or after leaving a violent partner. Jennifer L. Hardesty, *Separation Assault in the Context of Postdivorce Parenting: An Integrative Review of the Literature*, 8 Violence Against Women 597, 601 (2002) (risk of intimate femicide increases six-fold when a woman leaves an abusive partner); Jennifer L. Hardesty & Grace H. Chung, *Intimate Partner Violence, Parental Divorce, and Child Custody: Directions for*

Intervention and Future Research, 55 Family Relations 200, 201 (2006) (“[S]eparation is a time of heightened risk for abused women. Studies indicate that violence often continues after women leave and sometimes escalates.”).

To quantify and help determine whether homicide is a potential reality in any given case, social scientists have created “The Danger Assessment.” Campbell, *The Danger Assessment*, *supra*. This tool uses 20 factor indicators “to assist battered women in assessing their danger of being murdered (or seriously injured) by their intimate partner or ex-intimate partner.” *Id.* at 657–658. For Petitioner, 13 of these 20 factors are present. The Danger Assessment factor numbers relevant here are listed in the parentheses following each factor present in Petitioner’s case: the abuser has used increasingly severe physical violence (1), he has threatened her with a lethal weapon (5), he threatens to kill her (6), Petitioner has a child that is not her abuser’s (8), the abuser has forced her to have sex when she did not wish to do so (9), he has choked her (10), he is a problem drinker (12) (R. at 566-570, explaining how he would become intoxicated and physically and sexually harm her), he abuser controlled all of her daily activities (*See id.* explaining how he

refused to let Petitioner leave the house and caused her to lose her employment) (13), he was violently and constantly jealous of her (14), he beat her while she was pregnant (15), he threatened to harm her children (17), Petitioner believes her abuser is capable of killing her (18), and he followed her when she did not want him to (19). *See id.* at 655 (listing the Danger Assessment factors). Taken in total, the presence of these factors in this case place Petitioner at the level of “increased danger” for femicide by her abuser. *Id.* at 662.

Furthermore, the likelihood of an escalation of the abuse is even greater in cultures with rigid gender roles, where men believe that they must maintain sexual control over their partners at all times. Mary Ann Dutton & Giselle Haas, *Expert Testimony Concerning Battering*, Manual on VAWA Immigration Relief 5 (2000) (“[R]esearch has shown that extreme sexual jealousy and separation, in particular, are associated with domestic homicides. Battered immigrant women experience high levels of extreme jealousy in abusive relationships. Cultures which socialized individuals into rigid gender roles often make women responsible if other men perceive them as sexually desirable, a situation which breeds significant jealousy on her partner and a desire

to control her.”); *see also* R. at 347 (“[T]he prevailing cultural norms permit violence against women without community sanction [in Honduras]. The root of this inability to provide basic security to women stems from a culture of *machismo*. This sexist attitude holds that women must be subservient to men, that women obtain their identity from *and belong to* their partners, husbands and fathers, and that intimate relationships should be controlled by the man without any outside intervention.”) (emphasis added).

In this case, Petitioner’s abuser exhibited these exact paradigms of Honduran *machismo*: he told her she needed to “ask his permission to go out or do anything.” R. at 567. He told her “she belonged to him” and was “his woman.” R. at 568. He also followed through with his oral threats: he locked her in the house, requiring her to gain his permission when she wanted to leave, and he raped her—both acts of ultimate power and control. R. at 130–131; R. at 568. All of this evidence tends to show that his abuse would escalate if Petitioner were to return to Honduras and could even result in her murder. Dutton & Haas, *supra*.

Finally, a woman’s inability to leave an abusive relationship following separation is increased where, as here, there is a lack of police

enforcement and inadequate prosecution of domestic violence. R. at 347 (“Honduran women are not adequately protected under existing laws, by law enforcement officials, prosecutors or the judiciary,” and “[w]omen in Honduras cannot escape violence—either by seeking protection from the authorities or by physical relocation.”).

Petitioner’s own experience is a textbook example of these well-established phenomena. When she moved out, he abuser pursued her. R. at 568. His violence escalated. He showed up at the birth of her child unannounced. R. at 569. He showed up at her home and workplace. R. at 566–568. He told her he would kill her. R. at 568. His drive to maintain control over and a relationship with the Petitioner even led her abuser to attempt to follow her to the U.S. Obviously, as so for many abused women, the fact that Petitioner moved out of a shared residence does *not* mean she successfully “left the relationship.” Rather, her abuser’s ongoing control over her life ensures that, for Petitioner, “leaving” the relationship is impossible.

CONCLUSION

Amicus urges this Court not to make the same mistake that the IJ and single-judge Board panel made in their decisions below. Since *Matter of A-R-C-G-*, the Board, immigration judges, and asylum officers have universally accepted the notion that domestic violence victims may establish eligibility for asylum by showing that for religious, societal, cultural, legal, or other reasons, they were unable to leave an abusive relationship. In this case, the IJ and Board assumed that Petitioner could not make that showing in part because she had physically moved out of the couple's shared home. That assumption is demonstrably incorrect, given the evidence-based research discussed above and Petitioner's own lived experience.

The mere fact that an abused woman moved out of the residence she shared with her abuser does *not* mean that she could or did unilaterally "leave the relationship." Research shows that abusive relationships—and an abuser's control over a victim—can often continue well after the victim moves out. This is particularly true for victims like Petitioner, whose abusive relationship includes significant numbers of danger assessment factors. Indeed, the victim's attempts to

extract herself from the relationship when many danger assessment factors are present increases that likelihood that the attempted separation will make the abuser's behavior even more threatening, violent, and ultimately lethal.

Amicus urges this Court to take this research into account and to vacate the flawed decisions below.

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Respectfully submitted,

/s/ Linda T. Coberly_____

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the length limitation of Fed. R. App. P. 29(a)(5) because it contains 6,191 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief also complies with the typeface requirements of 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 14-point size.

DATED: FEBRUARY 14, 2018

/s/ Linda T. Coberly _____
LINDA T. COBERLY

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2019, the foregoing was filed with the Clerk of this Court through the CM/ECF system, which will serve all counsel of record.

DATED: FEBRUARY 14, 2018

/s/ Linda T. Coberly

LINDA T. COBERLY