

No. 18-2618

In the
United States Court of Appeals
For the Seventh Circuit

N.Y.C.C.,
Petitioner,

v.

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

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

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Pursuant to Federal Rules of Appellate Procedure 27 and 29, *Amici Curiae* the National Immigrant Women’s Advocacy Project (“NI-WAP”); the Immigrant Justice Clinic at the University of Wisconsin Law School (“IJC”)¹; End Domestic Abuse Wisconsin, the Wisconsin Coalition Against Domestic Violence (“End Abuse”); the Legal Aid Society of Metropolitan Family Services (“LAS”); and the Lafayette Urban Ministry (“LUM”) Immigration Clinic respectfully move this Court for leave to file the attached *amici curiae* brief in support of Petitioner N.Y.C.C. *Amici* have met and conferred with all parties regarding the brief’s filing: Petitioner has consented to the filing, whereas Respondent Matthew G. Whitaker has represented he does not oppose.

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

¹ The amicus for purposes of this case is the Immigrant Justice Clinic and not its affiliated institution.

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NIWAP is a law and policy center with a special interest in the rights of immigrant women and, particularly, domestic violence survivors.

IJC represents individuals facing removal from the United States and those seeking asylum in the United States, specifically concentrating on representing women and children fleeing persecution and torture.

End Abuse is a statewide organization that seeks to transform societal attitudes, practices, and policies in order to prevent and eliminate domestic violence, abuse, and oppression. It provides training, support, and technical assistance to local domestic abuse programs, and engages in domestic violence policy work at the local, state, and national levels.

LAS is part of a non-profit social service organization that provides services—including social services, counseling, financial assistance, legal advice, and representation—to low-income residents in the Chicago metropolitan area. It currently has seven attorneys who exclusively provide direct legal representation to low-income domestic violence victims in both family law and order-of-protection cases.

The LUM Immigration Clinic is a small, nonprofit immigration service provider that primarily assists with family-based petitions, humanitarian-based petitions, permanent resident card renewals, and naturalization applications. It believes that victims of domestic abuse have a right to gender-based asylum.

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Amici believe the decisions of this case’s Immigration Judge (“IJ”) and single-member Board of Immigration Appeals (the “Board”) demonstrate a fundamental misunderstanding of domestic violence, coercive control in abusive relationships, and the increased difficulties and dangers facing victims who attempt to terminate relationships with their abusers. If these same misunderstandings were reflected in a decision by this Court, it could adversely impact the lives of many women who have suffered domestic abuse because they found themselves unable to escape their partners’ control. *Amici* submit this brief to offer insight into the relationship between an abuser and a victim who is seeking to escape his clutches. A proper understanding of this relationship is critical to the outcome of this case.

In the years since the Board decided *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), *overruled by Matter of A-B-*, 27 I&N Dec. 316

(A.G. 2018), the Board, immigration judges, and asylum officers have consistently reaffirmed that a female domestic violence victim could establish her membership in a cognizable particular social group by showing that for religious, societal, cultural, legal, or other reasons, she was unable to leave the relationship with her abuser. Indeed, the IJ who decided this case below acknowledged that Petitioner could seek asylum based on her status in the particular social group defined as “Mexican women who cannot leave their relationship”—as did the case’s single-member Board panel, despite citing *Matter of A-B*. Ultimately, however, the IJ and Board distinguished this case from *Matter of A-R-C-G* on the ground that Petitioner had left the relationship with her abuser, since she had moved out of the couple’s shared residence. The below decisions incorrectly assumed that by moving out, Petitioner could and did unilaterally end the abusive relationship.

Amici will present research showing that an abusive domestic relationship does not end when the victim moves out of the couple’s shared residence. They will also explain how the abuse may become even more violent and disempowering after the victim attempts to move

on with her life—and how such an attempt may cause the abuser to focus his abuse on third parties, like the victim’s family members, as a way of maintaining control over the victim after the couple no longer lives together. An abuser’s cartel membership may place additional force behind the abuser’s threats and may expand the abuser’s ability to control the victim well beyond the walls of the couple’s shared home. *Amici* believe this information will aid the Court in determining whether Petitioner’s status as either a woman who cannot leave her abusive relationship or as a mother of a cartel member’s child is an immutable characteristic giving rise to an asylum claim based on membership in a particular social group.

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

DATED: NOVEMBER 26, 2018

Respectfully submitted,

/s/ Linda T. Coberly_____

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CERTIFICATE OF SERVICE

I hereby certify that, on November 26, 2018, I caused the foregoing MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE and the accompanying BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER to be filed electronically with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

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

DATED: NOVEMBER 26, 2018 /s/ Linda T. Coberly
LINDA T. COBERLY

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

BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 18-2618

Short Caption: N.Y.C.C. v. Whitaker

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3): The National Immigrant Women’s Advocacy Project (“NIWAP”); the Immigrant Justice Clinic at the University of Wisconsin Law School (“IJC”); End Domestic Abuse Wisconsin, the Wisconsin Coalition Against Domestic Violence (“End Abuse”); the Legal Aid Society of Metropolitan Family Services (“LAS”); and the Lafayette Urban Ministry (“LUM”) Immigration Clinic

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(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court: Winston & Strawn LLP

(3) If the party or amicus is a corporation:
(i) Identify all its parent corporations, if any: Not applicable
(ii) List any publicly held company that owns 10% or more of the party’s or amicus’ stock: Not applicable

Attorney’s Signature: /s/ Linda T. Coberly Date: 11/26/18

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(ii) List any publicly held company that owns 10% or more of the party’s or amicus’ stock: Not applicable

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**INTRODUCTION
AND STATEMENT OF *AMICI CURIAE***

Amici Curiae the National Immigrant Women’s Advocacy Project (“NIWAP”); the Immigrant Justice Clinic at the University of Wisconsin Law School (“IJC”)⁵; End Domestic Abuse Wisconsin, the Wisconsin Coalition Against Domestic Violence (“End Abuse”); the Legal Aid Society of Metropolitan Family Services (“LAS”); and the Lafayette Urban Ministry (“LUM”) Immigration Clinic submit 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 (the “Board”) decided *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), *overruled by Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), the Board, immigration judges, and asylum officers have consistently reaffirmed that a female domestic violence victim could establish her membership in a cognizable particular social group by showing that for religious, societal, cultural, legal, or other reasons, she was unable to leave the relationship with

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her abuser. Indeed, the Immigration Judge (“IJ”) who decided this case below acknowledged that Petitioner could seek asylum based on her status in the particular social group defined as “Mexican women who cannot leave their relationship”—as did the case’s single-member Board panel, despite citing *Matter of A-B*. Ultimately, however, the IJ and Board distinguished this case from *Matter of A-R-C-G* on the ground that Petitioner had left the relationship with her abuser, since she had moved out of the couple’s shared residence. These decisions below incorrectly assumed that by moving out, Petitioner could and did unilaterally end her abusive relationship.

This case’s IJ and Board decisions reflect a fundamental misunderstanding about the nature of domestic violence, coercive control in abusive relationships, and the increased difficulties and dangers facing victims who attempt to terminate their abusive relationships. 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 the 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.

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 sharpen 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 nor evidence-based research to support the assumption that a domestic violence victim is able to end the relationship with her abuser or stop the abuse just by moving out. *Amici* therefore urge this Court to reverse the Board’s decision below.

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

that individuals seeking asylum and other related relief receive fair and proper consideration under standards consistent with U.S. laws and treaty obligations.

NIWAP is a non-profit 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, human trafficking, and other crimes. NIWAP is a national resource center offering technical assistance and training to assist a wide range of professionals at the federal, state, and local levels, 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 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 part in 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.

IJC represents individuals facing removal from the United States and those seeking asylum in the United States, specifically concentrating on representing women and children fleeing persecution and torture.

End Abuse is a statewide organization that seeks to transform societal attitudes, practices, and policies in order to prevent and eliminate domestic violence, abuse, and oppression. It provides training, support, and technical assistance to local domestic abuse programs, and it engages in domestic violence policy work at the local, state, and national levels.

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The LUM Immigration Clinic is a small, nonprofit immigration service provider that primarily assists with family-based petitions, humanitarian-based petitions, permanent resident card renewals, and naturalization applications. It believes that victims of domestic abuse have a right to gender-based asylum.

Amici write to provide this Court with scholarly information and perspective on critical issues that this case's IJ and single-judge Board panel resolved below. If the same misunderstanding that infects these judges' decisions were repeated by this Court, it could adversely impact the lives of many women who have suffered persecution linked to their being trapped in abusive relationships.

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**SUPPLEMENTAL CERTIFICATE
OF INTERESTED PERSONS**

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

STATEMENT

Petitioner N.Y.C.C.'s story is unfortunately all too common: Not only does it illustrate the unique persecution that women regularly face in male- and cartel-dominated Latin America countries, 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.⁶ Petitioner desperately fled her home country of Mexico to escape the recurrent threats, stalking, and harassment of a dangerous local cartel and her abusive cartel-member partner. Because Petitioner is both (1) a Mexican woman who cannot leave her relationship and (2) the mother of a cartel member's child, she needs this Court's protection.

Petitioner began a relationship with an abuser in 2011, while she was a young and single mother of one. R. at 41. At that time, Petitioner was living in her hometown—in Michoacán, Mexico—and was working at a local restaurant to provide for her child. R. at 41. It was at this restaurant that she first encountered her abuser: He approached her, complimented her, and gave her attention. R. at 41. He also promised to

⁶ This Statement is based on uncontested facts in the record.

support both her and her child—for whom she had been struggling to provide. R. at 41.

Like most domestic violence relationships, Petitioner’s relationship with her abuser appeared normal at first and progressed quickly. R. at 80. After just two short months of knowing each other, the couple started living together. R. at 80. But rather than stay near Petitioner’s mother and her job, the abuser convinced Petitioner to move to his house in a town that was two hours away by bus. R. at 41, 163.

Once her abuser had isolated Petitioner in a new place (as abusers often do), the cycle of violence began. *See* R. at 21. Petitioner quickly became afraid of the abuser because he was behaving like a cartel member. *See* R. at 21, 41–42, 80–81. He regularly failed to come home, which constantly left Petitioner alone and in worry. *See* R. at 42, 80–81. And when he did finally come home, he would often have a new expensive car, despite his lack of employment. R. at 41, 82. While the abuser clearly had funds for his various vehicles and his large, opulent house, he refused to give Petitioner any money to support herself and her child. R. at 41, 82.

What is more, he would secretively associate with strange men who wore all black and who carried guns, just as the cartel La Familia Michoacana did. *See* R. at 42. He never referred to these men by name; rather, he ambiguously called them his “cousins.” *See* R. at 42. He forbade Petitioner from interacting with these “cousins” even though they frequented the couple’s home. R. at 42, 158. And although he demanded that she leave the room whenever the “cousins” were around, she once overheard the abuser plotting to complete a “job” with them—which she understood to be an illegal act based on context. R. at 42.

Another time, Petitioner found a gun in the couple’s home but quickly learned she was not allowed to discuss it; in fact, when she confronted her abuser about it, he not only became angry, but he instructed that she never look at it again and demanded that she stop asking him questions altogether. R. at 158. Despite all this, Petitioner unfortunately continued to live with her abuser because she was afraid he would harm her if she left him. R. at 82.

When she was eight months pregnant with their son, her abuser allowed her to stay temporarily at her mother’s home so that she could have help with their son after his birth. *See* R. at 21–22, 54–55 (stating

that the abuser told Petitioner she “was going to leave for only a few weeks”). The relationship’s cycle of violence persisted after her move.

Once the couple’s son was born in August 2012, her abuser reminded Petitioner that he was still in control despite their physical separation. First, he denied Petitioner’s request for assistance with their newborn son’s hospital bill, and insisted that his name be put on the son’s birth certificate—despite his subsequent lack of interest in the son for almost a year. *See* R. at 55, 81. Next, he and his cartel initiated a campaign of intimidation and stalking to force Petitioner to return to him. R. at 11. Her abuser and his cartel would drive slowly by her mother’s house at all hours of the day. R. at 43. They followed her to and from work, and lurked outside her mother’s home. R. at 44. They surveilled her oldest child by standing outside of his school. R. at 44. Petitioner became so frightened for her children’s safety that she stopped letting them play outside, fearing that her abuser or his cartel might kidnap them. R. at 227.

After weeks of instilling fear in Petitioner, her abuser came into the restaurant where she worked and demanded that she and the children return to him. R. at 81. When her employer saw her abuser in the

restaurant, he rushed to hide her youngest son in the bathroom to prevent his kidnapping. From the bathroom, the employer heard her abuser speaking to Petitioner in a “highly aggressive tone.” R. at 44. He became furious and threatened to take her children the “bad way” if she did not move back to Morelia with him. R. at 55. He left the restaurant irate that day and relentlessly continued to stalk Petitioner and her children. *See* R. at 81.

In an effort to escape this stalking, Petitioner moved again—this time to an apartment on the outskirts of town—but even that did not stop his abuse. R. at 383. Her abuser and his cartel quickly let Petitioner know that she had not escaped. They would shine their car headlights through the windows of her new apartment and rev their car engines throughout the night to let her know that she was being watched. R. at 383. Petitioner was frightened for her own and her children’s safety, so in December 2014, she sought police protection. R. at 81. The police not only dismissed her concerns but said that she was the one to blame for her abuser’s conduct. R. at 55. It was clear that even though Petitioner was no longer living with her abuser, she was not safe or free

of his terror. After “[r]ealizing each measure she had undertaken to protect herself and her sons had met failure, [she] fled Mexico with her two sons to seek safety in the United States.” R. at 44.

And though she fled to the United States, Petitioner cannot escape the cycle of violence with her abuser. This is because Petitioner has achieved only physical separation from the *abuser* in the United States, not full detachment from the *abuse*. For example, Petitioner remains victim to the abuser’s never-ending surveillance and control: He still seeks information about her whereabouts, still monitors her home in Mexico in case she returns, and still tasks his cartel members and family with finding out her contact information. R. at 50–51. In short, his obsession with controlling Petitioner has not subsided, despite the couple’s nearly four years of physical separation.

Today, Petitioner lives in ongoing fear that her abuser and his cartel will harm her if she is forced to return to Mexico—especially considering the cartel’s long reach and the police’s lack of concern for her safety. *See* R. at 3, 40. Indeed, when her previous attempts at finding safe shelter in Mexico were unsuccessful, she had no choice but to flee the country entirely. *See* R. at 44.

At the peak of her abuse, Petitioner believed the only way to protect herself and her kids was to seek asylum in the United States, *see* R. at 44, but an Immigration Judge (IJ) rejected her asylum request on July 19, 2017, R. at 83. Despite the IJ’s belief that Petitioner “testified credibly about her experiences in Mexico and her fear of returning to that country,” R. at 83, the IJ nonetheless found that Petitioner had “not demonstrated she fears harm on account of a protected ground,” R. at 85–86.

First, the IJ stated that she did not belong to the protected social group for Mexican women who cannot leave their relationships, because according to the IJ, Petitioner “did successfully leave her relationship.” R. at 86. The IJ assumed that since Petitioner no longer shared a residence with her abuser, she successfully left the abusive relationship. *See* R. at 86 (IJ stating that Petitioner left the abusive relationship when she left the shared home to live “with her mother for a time,” and then to live “alone until she departed for the U.S. in December 2014”). Yet the IJ ignored the reason she moved out of the couple’s residence in

the first place, as well as the reason she kept having to relocate even after that—because no matter where she lived, she could not escape the ongoing abuse. *See* R. at 86 (IJ failing to mention this fact).

Second, the IJ stated that she did not belong to the protected social group for mothers of a cartel member’s child, referring to her testimony about the abuser’s cartel ties as speculative. R. at 86. The IJ did not cite any evidence to support this finding; the IJ merely noted that Petitioner “did not demonstrate [the abuser] is a member of a cartel.” *See* R. at 86. But notably, the record did contain evidence to corroborate the abuser’s cartel membership. *See, e.g.*, R. at 42 (discussing that the abuser “associated with men who exhibited the clear characteristics of cartel members” because they “dressed in all black, referred to each other as ‘cousin,’ and spoke with an accent commonly associated with [a] cartel”); R. at 42 (stating the abuser had been spotted in the cartel’s territory, “riding around in black trucks and with men carrying large guns”).

Petitioner subsequently appealed the IJ’s decision, believing that the IJ’s “finding[s] ignore[d] facts in the record . . . and the realities of

domestic violence.” R. at 54. On June 28, 2018, the Board of Immigration Appeals (the “Board”) affirmed the IJ’s decision on appeal, finding that Petitioner did not establish membership in either of her purported social groups. R. at 3–5. Like the IJ, the Board did not believe Petitioner could not leave her relationship, stating that she “was able to leave [the abuser] when she returned to her hometown . . . and resumed working at a restaurant,” and that she “did not hear from [the abuser] for 1 year.” R. at 5. The Board refused to consider that “[e]stablished sociological principles [might] demonstrate that [Petitioner] could not meaningfully extricate herself from [her] relationship even though she managed to temporarily physically separate from her partner,” stating that the record apparently lacked evidence to support that contention. R. at 5.

Additionally, the Board agreed that Petitioner’s claim to be the mother of a cartel member’s child was speculative—primarily because “no one has ever told [Petitioner] that [the abuser] was a member of the cartel.” R. at 5; *but see* R. at 42 (showing that when Petitioner “attempted to elicit information from [the abuser] about his [cartel] associates, he became agitated and evasive,” so Petitioner stopped pressing

the issue because she “feared he would become violent”). The Board did, however, acknowledge that the record contained certain testimony supporting the abuser’s cartel membership. *See* R. at 5. Because Petitioner believes the record establishes her status in both of the purported social groups, she now seeks review of the Board’s decision.

SUMMARY OF ARGUMENT

Both the IJ and Board assumed that by moving out, Petitioner could and did successfully “leave” the abusive relationship. These decisions reflect a fundamental misunderstanding of the nature, dangers, and mechanics of domestic abuse. By insisting that these decisions be allowed to stand, Respondent is effectively asking this Court to codify a long-disproved myth—that victims of domestic violence can leave their relationships and end the abuse simply by moving out.

1. Research shows that violent relationships do not end merely because the victim moves out of the home she shares with her abuser. Indeed, when a victim attempts to leave the home and move on with her life, the abuse often becomes even more violent and debilitating as the abuser works to maintain control over the victim. The documented experience of abused women—consistent with Petitioner’s own experience—shows that domestic violence flows from the abuser’s need to exercise control in his relationship with the victim. That need to control—along with the control-laden relationship that results—necessarily prevents the victim from unilaterally ending the relationship. It is no surprise, then, that the vast majority of women who move out of abusive

homes report that their abusers continue to control them through stalking.

2. When an abuser and his partner no longer live under the same roof, the abuser will often find ways to ensure the couple's physical separation does not last. He will keep making contact with his victim at her workplace and new residence. He will turn his threats and violence toward third parties—including the victim's children and family members—as a way to maintain control in the relationship. Cartel membership may make this phenomenon worse, as the abuser's cartel ties may place additional force behind his threats and expand the reach of his power well beyond the four walls of a shared residence to include an entire town or community.

3. For years, Petitioner's abuser has tormented her through each of these stalking tactics. He has harassed her at work, has had armed men follow her, and has personally threatened to take and harm her children. In these ways he has maintained control over her despite their physical separation.

For all these reasons, there is no logical basis or evidence-based research supporting the assumption that a victim of domestic violence

can leave an abusive relationship and escape her abuser's control merely by moving out. In this case, the abuser's ongoing stalking reinforces that Petitioner is a "Mexican woman who cannot leave her relationship." Her membership in this social group is intimately tied up with her status as the "mother of a cartel member's child," because her abuser used his cartel proxies to further his stalking campaign against her. In this respect, the decisions by the IJ and Board are fatally flawed and should not be allowed to stand.

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 even 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) [hereinafter *Factors Associated with Separation*] (“Some people think women experiencing partner violence should ‘just leave.’ However, leaving does not always mean that the violence ends . . .”).

More specifically, studies indicate that domestic violence victims continue to suffer both physical and psychological abuse after they separate from their abusers: Indeed one study found that 95% of separated

victims—or in other words, nearly all separated victims—still experienced psychological abuse after they left their abusers, and that 39% still experienced physical abuse. *An Integrative Review of Separation, supra*, at 159. The assumption that a victim is able to end her abuser’s pattern of recurring abuse by simply leaving the abuser is thus inaccurate, but more importantly, it fails to appreciate that in many situations, a victim’s act of leaving can trigger new and even more severe abuse. *See Factors Associated with Separation, supra*, at 377. For example, one study found that victims “who are separating [are] 6.5 times more likely to experience violence by an intimate partner,” as compared to victims who stay in their abusive relationships. *An Integrative Review of Separation, supra*, at 158. Additionally, research has found that in emotionally abusive and controlling relationships, 39% of victims who experienced physical abuse after separating “reported [that] they were first assaulted *during* separation”—not before. *Id.* at 159 (emphasis added).

It is not surprising that “separation has been identified as a very high risk period for assault and lethal violence,” *see* TK Logan & Robert Walker, *Stalking: A Multidimensional Framework for Assessment and*

Safety Planning, 18 *Trauma, Violence, & Abuse* 200, 210 (2017) [hereinafter *Stalking: A Multidimensional Framework*], given that separation can threaten the abuser's control over the victim. See TK Logan, "If I Can't Have You Nobody Will": Explicit Threats in the Context of Coercive Control, 32 *Violence & Victims* 126, 126 (2017) [hereinafter *If I Can't Have You Nobody Will*] (explaining that "[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). And since the very essence of domestic violence is an abuser's control over the relationship, the abuser will use various control tactics, like stalking, during the separation period to reassert control over the victim. *An Integrative Review of Separation*, *supra*, at 158–59.

II. One of the most extreme ways for an abuser to maintain control over the victim after separation is through stalking.

Studies have confirmed that an abuser's stalking tactics are "a dimension of dominance and control." 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) [hereinafter *Partner Stalking*] (“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. According to survey results, stalking is often maintained for “a period of months or years,” and in some cases, it lasts for more than five years. Katrina Baum, et al., Bureau of Justice Statistics, U.S. Dep’t of Justice, *Stalking Victimization in the United States 2* (2009) (finding “11% of victims said they had been stalked for 5 years or more”).

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) [hereinafter *Impact of Stalking*]. Once found, some victims move again to get away from their stalkers, “but stalkers can find their new address and continue their campaign of terror in the new home.” *Id.* Furthermore, 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.

As detailed below, stalking encompasses a number of controlling behaviors, including: (1) workplace harassment, (2) proxy solicitation, (3) explicit and implicit threats, (4) weapon intimidation, and (5) third-party targeting. *See* McFarlane, et al., *supra*, at 58 (focusing on variations of these behaviors when examining partner femicide); *Stalking: A Multidimensional Framework, supra*, at 203 (indicating that each of these behaviors is a type of stalking tactic). An abuser’s use of these five specific tactics correlates strongly with the victim being in danger and

at an increased risk of suffering severe physical harm, especially when the abuser uses a number of these tactics in combination. *See id.* at 205 (discussing that an abuser’s more frequent and varied use of these tactics is “associated with [a] greater likelihood of severe violence”).

A. Workplace Harassment

First, it is well-documented that abusers stalk their victims at work once the victims move out of their abusive homes. *Id.* An abuser will intentionally engage in workplace harassment to derail any progress the victim has made towards separating from the abuser. *See* TK Logan, Lisa Shannon, Jennifer Cole & Jennifer Swanberg, *Partner Stalking and Implications for Women’s Employment*, 22 *J. Interpersonal Violence* 268, 286 (2007). And sadly, stalkers succeed in regaining physical access to their victims at work, since work “is a relatively easy point of access to the [victim].” *Id.*

While workplace stalking is certainly a way for the abuser to maintain physical contact with a victim, it is likewise a form of economic control. *See Impact of Stalking, supra*, at 81 (explaining that workplace harassment is an effective way in which stalkers “deliber-

ately, intentionally, and insidiously sabotage victims' economic security"). For one thing, workplace stalking can disrupt a victim's economic security by jeopardizing the victim's job, given the stalker interrupts the victim's work by showing up at the workplace and by harassing coworkers. *Id.* As a result, stalking victims are over four times more likely to experience employment problems than abuse victims who are not stalked. *Id.*; see *An Integrative Review of Separation, supra*, at 158 (stating that "women with lower incomes, less social support, children, and violent ex-partners" have a harder time achieving separation).

Workplace stalking is additionally concerning because it shows that a stalker can harm his victim in multiple locations. See *Stalking: A Multidimensional Framework, supra*, at 205 ("[S]talking victims are often harassed while at home, but it is rare for stalking to occur only in one location. Work is another place stalkers often harass and contact their target.") (citations omitted). And notably, the more times a stalker approaches a victim, the more likely it is that the victim will suffer severe violence at the stalker's hands. *Id.* (explaining that ex-partner stalkers are more likely to approach their targets than other stalkers).

B. Proxy Solicitation

Another stalking tactic that abusers commonly use against their victims is harassment through proxies. *Id.* at 203 (“Proxy stalking is a relatively common tactic especially for ex-partner stalkers”); *Partner Stalking, supra*, at 250 (noting that “[s]everal studies have indicated that about half of the women being stalked by a violent or ex-partner” were followed by proxies). Proxy stalking occurs when an abuser elicits the help of others to stalk his victim. *Id.* But proxy stalking can also involve questioning the victim’s family to gain information or access to the victim. *See Stalking: A Multidimensional Framework, supra*, at 203. And because an abuser is able to task others with following his victim through proxy stalking, this stalking tactic increases the frequency and extent of the victim’s abuse. *Id.* at 206. This extensive surveillance of the victim is a key reason research has found that proxy stalking “has been associated with severe violence.” *Id.*

C. Explicit and Implicit Threats

Next, social science literature explains that “when women separate from abusive partners, they often do so within the context of implicit and explicit threats of harm.” TK Logan & Kellie R. Lynch, *Dangerous Liaisons: Examining the Connection of Stalking and Gun*

Threats Among Partner Abuse Victims, 33 *Violence & Victims* 399, 399–400 (2018) [hereinafter *Dangerous Liaisons*]; see also *If I Can't Have You Nobody Will*, *supra*, at 127 (referring to implicit and explicit threats “as the do what I want ‘or else’ component of coercive control”).

This is particularly true for women who continue to be stalked by abusive partners after they move out. Although most stalkers do not ultimately carry out their threats, studies show that 50% of stalkers explicitly threaten their victims, and that 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 *Stalking: A Multidimensional Framework*, *supra*, at 206 (“Explicit threats of harm are more common in situations where stalkers and targets are acquainted with each other.”).

Prior-intimate-partner stalkers implicitly threaten their victims too, usually through fear-inducing behaviors like following, tracking, and watching their victims. *Id.* These behaviors are designed to emotionally distress victims by instilling in them a fear of future harm—which means that stalkers can “pose a threat without saying a word” to their victims. *Id.* (internal quotations omitted). “[R]esearch shows that

ex-partner stalkers are the most threatening, violent, and interfering” kinds of stalkers. *Id.* at 212. When victims attempting to flee abusive relationships do seek help from police, police officials often fail to act because they do not appreciate the seriousness of ex-partner stalking. *See An Integrative Review of Separation, supra*, at 159 (reporting that the police’s lack of stalking enforcement has led 98.2% of stalking victims to believe that police will not protect them); Patrick Q. Brady & Matt R. Nobles, *The Dark Figure of Stalking: Examining Law Enforcement Response*, 32 *J. Interpersonal Violence* 3149, 3155 (2017) (“In a review of 1,785 domestic violence reports . . . [researchers] found that one in six reports had evidence of stalking, while *only one out of the 1,785 reports* resulted in a stalking charge”) (emphasis added).

D. Weapon Intimidation

Another way an abuser can maintain control over the relationship is by intimidating the victim with a gun. *See Dangerous Liaisons, supra*, at 400, 412 (discussing that “guns are frequently used within the context of partner abuse to threaten, intimidate, and harass victims”); *see also Stalking: A Multidimensional Framework, supra*, at 204 (stating that intimate ex-partner stalkers are more likely to threaten victims

with weapons than non-intimate stalkers); *Dangerous Liaisons, supra*, at 404 (finding that almost half of a study’s stalking victims reported that their ex-partner carried guns in public).

Research shows that in a majority of domestic violence cases involving gun threats, the abuser’s mere access to a gun increased the victim’s perception of danger, even if the victim was not simultaneously stalked. *Id.* Moreover, in a study that examined police reports involving partner abuse, it was found that the police reports mentioning guns were “associated with increased victim fear.” *Id.* at 400. This suggests that an abuser’s use of guns is “an effective way to intimidate and control” a victim. *Id.*

Unfortunately, victims’ increased fear towards abusers with guns is not misplaced: Not only is “an abuser’s access to a firearm [] significantly associated with attempted and contemplated intimate partner homicide,” *see id.*, but “the majority of women killed by a partner are killed by a gun,” *see If I Can’t Have You Nobody Will, supra*, at 136. It is therefore clear that when domestic violence is coupled with a readily accessible firearm, abused victims are at an “especially high risk” of danger—specifically for homicide. *Id.*

E. Third-Party Targeting

Finally, 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. An abuser’s third-party stalking is a powerful control technique because “victims may be especially concerned or protective about friends and family being the target of harassment.” *If I Can’t Have You Nobody Will, supra*, at 136. Not surprisingly, then, abusers often stalk their victims’ family members after they 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 eleven 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. As discussed below, every one of these tactics was present in Petitioner's case.

III. In the instant case, the abuser continues to stalk Petitioner even though she has moved out.

This case is a prime example of how an abuser can use stalking tactics to maintain control over a victim despite physical separation. Petitioner moved out of the home she shared with her abuser in July 2012, before she gave birth to the couple's son—and ever since then, she has continually been stalked by the abuser and his cartel proxies. Petitioner's risk of harm is especially grave considering her abuser has stalked her not just frequently, but with a variety of differently stalking

tactics—including through workplace harassment, proxies, threats, weapons, and third-party targeting.

About a year after Petitioner moved out, her abuser began tormenting her through a campaign of intimidation and stalking, with the hope of scaring her into reuniting with him. *See* McFarlane, et al., *supra*, at 66 (showing that it is not uncommon for stalkers to reoffend after a twelve month break in abuse). He then used proxies like his cartel “cousins” to intensify his surveillance over Petitioner: the cartel “cousins” slowly drove by Petitioner’s mother’s house at all hours of the day, followed Petitioner to and from work at a local restaurant, and lurked outside her child’s school. Next, her abuser showed up at Petitioner’s work, demanding that she return to him and threatening to kidnap her children the “bad way” if she denied him.

Indeed, the abuser’s attempts to control Petitioner intensified precisely *because* she attempted to leave him. He continued to stalk Petitioner 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 yet again—this time to the outskirts of town. Despite her relocation, her abuser immediately found her and announced his presence by shining headlights into her apartment. All the while, he threatened Petitioner by visibly showing he had access to guns not only at home but through the cartel. All these stalking behaviors, taken together, had the cumulative effect of instilling in Petitioner a grave fear of harm—so much so that Petitioner felt her only chance at survival was through fleeing the country.

Petitioner continues to be stalked by her abuser today. He still seeks information about her whereabouts, still monitors her mother's home in Mexico, and still sends cartel "cousins" and other family-member proxies to intimidate her mother. *See* J. Reid Meloy & Mary Ellen O'Toole, *The Concept of Leakage in Threat Assessment*, 29 *Behav. Sci. & L.* 513, 514–15 (2011) (discussing that an abuser's "preoccupation with a person" is a warning sign for future violence). Further, the record demonstrates that the Mexican government is unable or unwilling to intercede. These facts are more than sufficient to establish a well-founded fear of severe and even lethal harm if Petitioner is forced to return to Mexico.

CONCLUSION

Amici urge 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 solely because she had physically moved out of the couple's shared home. That assumption is demonstrably incorrect, given the above research 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. Indeed, the victim's attempts to extract herself from the relationship may make the abuser's behavior even more threatening and violent.

Amici urge this Court to take this research into account and to vacate the flawed decisions below.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and 7th Cir. R. 29 because it contains 6,697 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Century 14-point font, a proportionally spaced typeface.

DATED: NOVEMBER 26, 2018

/s/ Linda T. Coberly
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