

No. A205-722-431

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United States Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

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In the matter of:

**SUYI VARQUERO-CUBIAS**

In removal proceedings

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***AMICI CURIAE* BRIEF OF  
CENTER FOR GENDER & REFUGEE STUDIES,  
NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT,  
AND TAHIRIH JUSTICE CENTER  
IN SUPPORT OF RESPONDENT**

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## INTRODUCTION

*Amici*, experts on gender-based asylum and domestic violence, submit this brief in support of Respondent Suyi Varquero-Cubias, urging the Board of Immigration Appeals (Board) to issue a precedential decision clarifying the legal principles established in its recent decision, *Matter of A-R-C-G-*, 26 I&N Dec. 388 (B.I.A. 2014).<sup>1</sup> In particular, confusion has emerged among adjudicators regarding the criteria for determining when a woman should be found unable to leave her domestic relationship such that she is a member of a particular social group defined by the immutable or fundamental characteristics of her gender, nationality, and relationship status—articulated in *A-R-C-G-* as “married women in Guatemala who are unable to leave their relationship.”<sup>2</sup> Judges have found that women are able to leave their partners, as in this case, even where their abusers refuse to accept their right to leave and continue to stalk, assault physically and sexually, or otherwise terrorize and control them for years after they no longer share a residence—in effect making it impossible for them to leave the relationship. Such findings are based on a flawed understanding of the dynamics of domestic violence and the often

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<sup>1</sup> More information regarding *amici* may be found in the accompanying Request to Appear.

<sup>2</sup> *Amici* focus on this formulation of the social group as it is the primary group at issue in this case. This is not, however, the only viable social group in domestic violence cases or the only viable protected ground. A social group defined by a woman’s gender and nationality would be appropriate; gender has repeatedly been accepted by the federal courts and the Board as a defining characteristic of a social group (*see* section I.A. *infra*) and extensive expert research shows that gender is “at least one central reason” for the infliction of domestic violence cross culturally (*see, e.g.*, Exh. 6, Tab H, Expert Declaration of Nancy K.D. Lemon; *see also* DEBORAH ANKER, LAW OF ASYLUM IN THE UNITED STATES (2015) § 5:49). *Amici* further support the cognizability of the other social group formulations raised by Ms. Cubias, which the immigration judge failed to consider, including (1) “Salvadoran women viewed as property by virtue of their status in a domestic relationship” and (2) “Salvadoran women unable to leave a relationship with a close gang affiliate.” Respondent’s Br. at 18 n20. In addition, a feminist political opinion may be applicable in domestic violence cases. *See* U.N. High Comm’r for Refugees, Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, U.N. Doc. HCR/GIP/02/01 ¶¶ 23, 26 (May 7, 2002) (recognizing that “[a gender-related] claim for refugee status based on transgression of social or religious norms may be analysed in terms of religion, political opinion or membership of a particular social group”); *Fatin v. INS*, 12 F.3d 1233, 1241-43 (3d Cir. 1993) (holding that an expression of women’s rights in violation of a law that imposes sanctions on women for not wearing a head covering in public is a cognizable political opinion).

heightened risk of violence that a woman faces after she attempts to leave, for example, by moving out of the home she shares with her abuser. This is especially so in patriarchal societies—like Ms. Cubias’s native El Salvador—where women are viewed as subordinate, and do not have the power to end relationships that exist on the terms of men who rape, batter, and kill them with shocking frequency and with virtual impunity. Lack of binding guidance from the Board on the precise meaning of the “unable to leave” inquiry further sows confusion, leading to arbitrary and inconsistent outcomes for women survivors of domestic violence.

The Board should issue clear and uniform guidance for adjudicators on the meaning of the legal principles first pronounced in *Matter of A-R-C-G-*, and also correct the legal and factual errors that are apparent in the immigration judge’s decision in this case. The correct standard for evaluating a woman’s inability to leave her relationship, as recognized by the Department of Homeland Security (DHS) in the highly publicized *Matter of L-R-* case (discussed in section I.A. *infra*), must consider not only whether a woman leaves the home she shares with her partner but also whether her abuser would view any such move as ending the relationship and his right to abuse and control her, taking into account the societal context that supports those views.

Pursuant to that standard, Ms. Cubias has established she is a member of a particular social group of Salvadoran women in domestic relationships they are unable to leave. The undisputed record also establishes that she suffered persecution on the basis of her membership in this group, entitling her to a presumption of well-founded fear of future persecution. After an exceptionally brutal beating, following seven years of enduring these attacks, Ms. Cubias attempted to leave her abuser by moving out of their home. But for the next two years until she left for the United States in fear for her life, her abuser stalked, harassed, and threatened her without cessation and with the help of his gang member affiliates. The underlying social



conditions in El Salvador that tolerate and encourage male dominance and battering of women did little to disabuse Ms. Cubias’s abuser of his views. His behavior is consistent with ample social science research that shows that when women attempt to leave, abusers often escalate abuse to maintain control; indeed, the risk of lethality to victims may be even greater when women attempt to escape the abuse (*see* section II.A. *infra*). In light of these circumstances, the immigration judge erroneously found Ms. Cubias was able to leave her relationship. However, it defies logic to conclude that she was “able to leave” the relationship when her persecutor did not accept her right to do so and continued to abuse her and exert control over her as he had throughout the relationship. *Amici* urge the Board to correct the immigration judge’s errors and find that Ms. Cubias is a member of a cognizable particular social group, and that she suffered past persecution on that ground. If the Board declines to make the nexus finding, at a minimum, it should find her to be a member of the asserted social group, and should remand for any unresolved issues.

## ARGUMENT

### **I. Significant Confusion Regarding the Scope and Application of *Matter of A-R-C-G-* in Subsequent Domestic Violence Asylum Cases Requires Clarification**

*Matter of A-R-C-G-* advanced the law for women survivors of violence. Since the 2014 ruling, however, significant confusion has arisen in the immigration courts regarding its scope and application in factually similar cases. The dearth of precedent from the Board to guide adjudications in this area has led to arbitrary and inconsistent decisionmaking. Most significantly, there have been divergent analyses of when a woman can be found to be unable to leave such that her relationship status is immutable for social group purposes. These inconsistencies result from a lack of clarity regarding the precise meaning of when a woman is unable to leave her relationship, which should take into account a number of factors including

whether the abuser recognizes divorce or other forms of separation as ending his right to abuse the victim. In addition, they result from a fundamental misunderstanding on the part of some adjudicators of the nature and cycles of domestic violence and the tactics of coercive control of perpetrators, which explain why and how men continue to control and harm women even after they no longer live together.

The inconsistencies in immigration judges' orders, upheld by the Board in many instances, would be resolved if the Board issued an additional precedential decision clarifying the Board's intended analysis of when a woman is unable to leave her abuser. The Board should clarify that the determination requires the adjudicator to factor in societal and cultural constraints, well documented domestic violence dynamics, up to date research on the use and effect on the victim of coercive control tactics as well as the abuser's beliefs, particularly whether the abuser recognizes divorce or other forms of separation as ending his right to abuse the victim. The Board, following its regulatory duty, must provide "clear and uniform" guidance to adjudicators to ensure fair and consistent application of the law for women.

**A. *Matter of A-R-C-G-* settled disagreement over whether domestic violence survivors merit asylum protection but lacks clarity in key respects**

In 1999, the Board overturned a grant of asylum to Rody Alvarado, a survivor of brutal and prolonged domestic violence at the hands of her husband, a former soldier in the Guatemalan army. *Matter of R-A-*, 22 I&N Dec. 906 (B.I.A. 1999). The Board held, among other things, that Ms. Alvarado was not a member of a particular social group, finding that the group defined by gender, nationality and status in a domestic relationship—"Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination"—was not cognizable under the law. *Id.* at 918-19. This decision, which signaled a retreat from recognition of gender-based violence as a basis for asylum by the Board

in *Matter of Kasinga*, 21 I&N Dec. 357 (B.I.A. 1996) (holding that female genital cutting, inflicted for reasons of gender-defined social group membership, may be a basis for asylum), provoked a firestorm of criticism. Attorney General Janet Reno vacated the decision, *Matter of R-A-*, 22 I&N Dec. 906 (A.G. 2001), the first step in a series of Executive interventions in the case that placed the cases of women fleeing domestic violence on hold pending binding guidance.

Ten years after the Board's *R-A-* decision, in 2009, Ms. Alvarado received asylum protection with the government's concession. The grant took the form of an unpublished immigration judge decision, so binding guidance remained absent. See Blaine Bookey, *Domestic Violence as a Basis for Asylum: An Analysis of 206 Case Outcomes in the United States from 1994 to 2012*, 24 HASTINGS WOMEN'S L.J. 107, 116 (2013) (discussing evolution of law on domestic violence asylum and the hundreds of women's cases that remained pending at the Board until clear precedent allowed their cases to move forward).

The same year Ms. Alvarado's case came to a close, DHS articulated its "official position" in domestic violence asylum cases in *Matter of L-R-*, a case involving a Mexican woman who endured two decades of physical, sexual, and psychological abuse by the father of her children. Ms. L-R- was not formally married to her abuser, a man many years her senior who forced her into the relationship by raping and kidnapping her when she was only nineteen years old. Respondent's Br., *Matter of L-R-* 7 (Immigration Ct. March 11, 2010).<sup>3</sup> Ms. L-R- attempted to leave her abuser on multiple occasions, but he pursued her relentlessly, breaking into her new home, attempting to rape her, attacking her on the street, spitting at her and calling her

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<sup>3</sup> Available at [http://cgrs.uchastings.edu/sites/default/files/L-R-\\_brief\\_immigration\\_court\\_03\\_10\\_2010.pdf](http://cgrs.uchastings.edu/sites/default/files/L-R-_brief_immigration_court_03_10_2010.pdf).

demeaning names. *Id.* at 12-15. He continued to call and threaten to kill her after she fled to the United States and made threats against her family in Mexico. *Id.* at 22.

The immigration judge found that the social group defined by gender, nationality, and domestic relationship status was not cognizable. The judge reached this conclusion, reasoning that Ms. L-R-'s relationship "does not appear to have the same characteristics of a marriage, which could under other circumstances have been an immutable characteristic because of cultural and societal constraints." *Matter of L-R-* (Immigration J. Dec. Oct. 15, 2007), at 15. On appeal, DHS argued that the applicable social group should be articulated as "Mexican women in domestic relationships who are unable to leave." DHS Supplemental Br., *Matter of L-R-* 14 (B.I.A. April 13, 2009) (hereinafter DHS *L-R-* Br.).<sup>4</sup> Relationship status, DHS argued can meet the immutability requirement "where economic, social, physical or other constraints made it impossible for the applicant to leave the relationship during the period when the persecution was inflicted." *Id.* at 16. In addition, as further argued by DHS, intimate relationship status can also be immutable "if the abuser would not recognize a divorce or separation as ending the abuser's right to abuse the victim," citing to "instances of repeated abuse" even after Ms. L-R- had left her abuser. *Id.* At the request of the parties, the Board remanded the case to the immigration court for further fact-finding on this and other points. But the Board did so in an unpublished, nonbinding decision. On remand, the immigration judge granted asylum to Ms. L-R- and her children.

In its landmark 2014 ruling *Matter of A-R-C-G-*, the Board recognized for the first time in a precedent decision that women who fear domestic violence may qualify for asylum. In that case, the asylum seeker Aminta Cifuentes suffered beatings, rape, and psychological torment at

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<sup>4</sup> Available at [http://cgrs.uchastings.edu/sites/default/files/Matter\\_of\\_LR\\_DHS\\_Brief\\_4\\_13\\_2009.pdf](http://cgrs.uchastings.edu/sites/default/files/Matter_of_LR_DHS_Brief_4_13_2009.pdf).

the hands of her husband for more than a decade. *Matter of A-R-C-G-*, 26 I&N Dec. at 389. She sought protection from Guatemalan authorities on multiple occasions, to no avail; the police dismissed her complaints as marital problems, telling her to go home to her husband where she was exposed to his escalating threats. *Id.* When she tried to leave, her husband followed. *Id.* In fear for her life, Ms. Cifuentes fled to the United States where her husband's threats renewed, unrelenting. The Board held that Ms. Cifuentes's proffered particular social group of "married women in Guatemala who are unable to leave their relationship" meets the Board's test for social group cognizability because it is composed of members who share a common immutable characteristic, defined with particularity, and socially distinct within the society in question. *Id.* at 392-93.

With respect to the immutability of the group (the focus of *amici's* brief), and whether the defining characteristics are such that they cannot be changed or that individuals should not be required to change them to avoid persecution, the Board held that gender is clearly immutable and that marital status can be immutable "where the individual is unable to leave the relationship." *Id.* at 393. The Board noted that a married woman's ability to leave the relationship may be informed by societal expectations about gender and subordination and can be determined by looking to a range of factors, including "whether dissolution of a marriage could be contrary to religious or other deeply held moral beliefs or if dissolution is possible when viewed in light of religious, cultural, or legal constraints." *Id.* In making an ability to leave determination, the Board directed that adjudicators "must consider [the asylum seeker's] own experiences, as well as more objective evidence, such as background country information." *Id.* Ultimately, the Board held that Ms. Cifuentes was a member of her gender-defined social group, based on the evidence in the record regarding her failed attempts to leave her husband and seek

protection as well as the high rates of violence against women in Guatemala. *Id.* at 395. The Board further held that she suffered persecution on account of her group membership and remanded the case to the immigration court to address other remaining issues including, among others, the ability and willingness of the Guatemalan government to control her persecutor. *Id.*

The Board's ruling presented a welcomed development in the law, as cases of domestic violence survivors had been held in legal limbo for over a decade. *See* Bookey, *Domestic Violence as a Basis for Asylum* at 115; DEBORAH ANKER, *LAW OF ASYLUM IN THE UNITED STATES* (2015) § 5:49. The general principle *A-R-C-G-* stands for—that domestic violence can be a basis for asylum in the United States—resolved a longstanding debate about the possibility of protection for women and girls fleeing violence at the hands of their husbands and partners, consistent with a growing body of precedent recognizing other forms of gender-based persecution. *See, e.g., Cece v. Holder*, 733 F.3d 662 (7th Cir. 2013) (en banc) (recognizing asylum for a woman fleeing sex trafficking); *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011) (“honor” killing); *Bi Xia Qu v. Holder*, 618 F.3d 602 (6th Cir. 2010) (forced marriage); *Ngengwe v. Mukasey*, 543 F.3d 1029 (8th Cir. 2009) (bride price customs); *Gomez-Zuluaga v. Att’y Gen.*, 527 F.3d 330 (3d Cir. 2008) (involuntary servitude, including rape and sexual abuse), *Yadegar Sargis v. INS*, 297 F.3d 596 (7th Cir. 2002) (repressive social mores); *Matter of Kasinga*, 21 I&N Dec. 357 (female genital cutting); *see also* Karen Musalo, *Personal Violence, Public Matter: Evolving Standards in Gender-Based Asylum Law*, 36 *Harvard Int’l R.* 45 (2015) (covering developments in asylum law for women fleeing gender-related persecution). However, the actual holding in *A-R-C-G-* on social group cognizability is a relatively narrow one, leaving many interpretive issues unanswered.

Specifically, the inquiry into whether a woman is unable to leave her relationship and thus able to establish membership in her proffered social group, has confounded adjudicators and led to divergent outcomes. As mentioned, the Board stressed in *A-R-C-G-* that the inability to leave inquiry is fact-specific, and that adjudicators should consider the asylum seeker's own experiences and country conditions evidence when considering whether dissolution of marriage is possible in light of religious, cultural, or legal constraints. But these general instructions provide limited direction and fail to explain that, as stressed by DHS in *Matter of L-R-*, the inquiry must look not only to whether a woman initiates legal termination of a relationship but to whether her husband or partner would recognize a woman's attempts to end the relationship as ending his right to continue ongoing relations on his terms.<sup>5</sup>

**B. The lack of clear and uniform guidance has resulted in inconsistent analyses of when a woman should be found “unable to leave” her domestic relationship**

Without adequate guidance from the Board, the law has been applied to cases with similar facts in an arbitrary and inconsistent manner. Some immigration judges recognize the dynamics of domestic violence and take into account an abuser's view of a woman's attempts to end the relationship, finding that a woman is unable to leave when the abuser does not accept her right to terminate the relationship because he sees her as his property and this view is supported

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<sup>5</sup> Additionally, immigration judges have distinguished *A-R-C-G-* on the ground that a woman is not a member of a social group because she was not formally married to her abuser, focusing myopically on the lack of a legal relationship rather than looking to whether a domestic partner exercises control over the victim and whether he would relinquish that control if the woman sought to leave, not merely looking to the ability to formally dissolve a legal relationship. The Board has repeatedly recognized that the principles enunciated in *Matter of A-R-C-G-* apply to cases where partners are in non-marital relationships in several unpublished opinions, reasoning that the nature of the relationship, whether marriage or some other domestic partnership, should be judged on the specific characteristics of the relationship at hand in a contextualized and individualized manner to determine if the woman is a member of a recognized social group. *See, e.g., Matter of P-C-*, CGRS Database Case, No. 11579 (B.I.A. Dec. 18, 2015); *Matter of D-M-R-*, CGRS Database Case, No. 11564 (B.I.A. June 9, 2015); *Matter of E-M-*, CGRS Database Case, No. 11541 (B.I.A. Feb. 18, 2015). The Board has declined to consider a request to designate as precedent these decisions to settle confusion among immigration judges regarding whether women who were not married to their abusers fall within *A-R-C-G-*'s ambit. Letter from the Board (March 16, 2016) (on file with CGRS).

by societal norms. See Blaine Bookey, *Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards and Fair Application of the Law*, 22 SOUTHWESTERN J. INT'L L. 1, 15 (2016). Other immigration judges, however, consider divorce or other forms of separation alone as dispositive of a woman's ability to leave instead of looking at whether an abuser considers the relationship over. The cases of Ms. Cubias and another Salvadoran woman who fled her abusive partner and whose case is described below, Ms. F-A-, illustrate this confusion and the need for guidance.

According to Ms. Cubias's uncontested credible testimony, she lived with her partner, the father of her daughter, for a period of seven years, during which time he verbally, physically, and sexually abused her on a regular basis. See Exh. 6, Tab A, Affidavit of Ms. Cubias (hereinafter Ms. Cubias Affidavit). Her partner Jorge isolated her from friends and family, controlled her finances, and threatened to kill her on multiple occasions. *Id.* at 72-73. The abuse culminated in one particularly brutal attack when Jorge punched Ms. Cubias in the face, causing temporary blindness in one eye. *Id.* at 80-81. After this incident, Ms. Cubias took their daughter and fled to her mother's home nearby, staying inside for several weeks while her face healed. *Id.* at 81. Jorge pursued her and when Ms. Cubias refused to return home with him, for the next two years, he began consistently harassing her, following her to work, forcibly hugging and kissing her on the street, calling her incessantly ten to twenty times a day, and physically attacking Ms. Cubias's coworker whom he mistakenly thought was her new boyfriend. *Id.* at 85. He used his affiliation with the Mara 18 gang, a powerful transnational criminal organization, to further intimidate her. After a gang member called and threatened to kill her if she did not return to Jorge, Ms. Cubias began planning her escape from the country, not believing she would be safe anywhere in El Salvador. *Id.* at 85-86.



The immigration judge found that Ms. Cubias is not a member of the social group “Salvadoran women who cannot leave a domestic relationship.” He reasoned that Ms. Cubias was able to leave because she “physically left the house” and “was not physically harmed for a period of roughly two years,” though the judge found that the record establishes Ms. Cubias “certainly was harassed” and “threatened” by Jorge during the period after she moved out of their home. I.J. at 9.<sup>6</sup> The immigration judge continued, “this is a close[] question as to whether [Jorge’s] control is such that she cannot leave the relationship.” *Id.* Ultimately, the judge found that “on balance” his control was not so great because she “went to work every day.” *Id.* Contrary to the judge’s conclusion, whether Ms. Cubias had the ability to end the relationship unilaterally is not a close question at all. According appropriate weight to Jorge’s relentless pursuit of Ms. Cubias and looking to country conditions evidence in the record regarding the status of women in El Salvador that support Jorge’s view that he has the right to control his woman leads to only one reasonable conclusion—she is unable to leave her relationship. Moreover, by appearing to require ongoing physical harm to establish inability to leave, the immigration judge inserts a finding of persecution into the social group definition, which would make the group impermissibly circular (*see* section II.B.).

Similarly, an immigration judge in another case held that a Salvadoran woman was not a member of a social group akin to the group argued in Ms. Cubias’s case because she had not shown she was “unable to leave” her abuser. CGRS Database Case, No. 11428 (Immigration J.

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<sup>6</sup> *Amici* direct the Board’s attention to Respondent’s brief, section II.a., which addresses how the immigration judge erroneously misconstrued the record in finding that she did not suffer any “physical harm” after fleeing their home in light of the repeated unwanted sexual touching she experienced multiple times per week.

Dec. July 15, 2015).<sup>7</sup> The asylum seeker, Ms. F-A-, began dating Marco and the physical, sexual, and emotional abuse began shortly after they moved in together. Marco beat her ferociously, and on one occasion he even knocked out a tooth. Marco also threatened to kill Ms. F-A-, using his connections with members of the MS-13 gang, another powerful transnational criminal organization in El Salvador, to intimidate her. Ms. F-A- fled to her parents' home on several occasions, but each time, Marco found her and took her home. He went so far as to inspect her vagina to ensure she had not been with any other men and threatened to harm her if he believed she had because she was still his "woman." Respondent's Br., *Matter of F-A-* (Immigration Ct. Feb. 23, 2015). The immigration judge denied protection, finding that Ms. F-A- was not a member of a social group of "Salvadoran women in domestic relationships who are unable to leave" because she "has not presented evidence indicating that dissolution of her relationship was contrary to religious or other deeply held moral beliefs." *Matter of F-A-*, at 6. In so finding, the immigration judge inappropriately focused on only one of a range of factors pertinent to the issue of ability to leave, and utterly disregarded the fact that Marco did not recognize Ms. F-A-'s attempts to end the relationship which was demonstrated by his express words as well as his actions. The immigration judge also failed to consider background information regarding the status of women in El Salvador as subordinate to and the property of men when evaluating Ms. F-A-'s ability to leave.<sup>8</sup>

The immigration judges in the cases of Ms. Cubias and Ms. F-A- gave undue weight to the women moving out of the homes they shared with their abusers with scant attention paid to

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<sup>7</sup> *Amicus* CGRS collects immigration judge decisions through its Technical Assistance program. All decisions from the CGRS database are on file with CGRS, which are available upon request.

<sup>8</sup> Ms. F-A- waived her right to appeal the adverse decision in the hopes of quicker release from detention.

the abusers' unwillingness to consider the moving out as terminating their relationship and their right to abuse. What is more, the judges in these cases did not heed the Board's direction in *A-R-C-G-* to consider ability to leave in the context of cultural, religious, and social norms that support male domination and tolerate and encourage violent control over women's lives.

While it should be fairly obvious that the fact that a domestic violence victim traveled to the United States cannot prevent a victim from establishing that she was "unable to leave" her relationship, some immigration judges have considered that fact when analyzing social group membership, ignoring evidence that an abuser would not recognize her leaving as stopping his right to control. For example, in a case following *Matter of A-R-C-G-*, an immigration judge expressed confusion regarding what it means for a woman to be able to leave a relationship because "by a very definition of her being here [the United States], [the applicant in *A-R-C-G-*] was able to leave the relationship." CGRS Database Case, No. 13570 (Immigration J. Dec. Nov. 9, 2015); *see also* CGRS Database Case, No. 7186 (Immigration J. Dec. May 20, 2010) (finding that the applicant was "able to leave" her relationship because she had left her husband before, including her flight to the United States); CGRS Database Case, No. 6649 (Immigration J. Dec. Sept. 15, 2009) (finding that the applicant's status in a domestic relationship with the father of her children was not immutable because she "did eventually leave [her abuser]" to flee to the United States, which "terminat[ed] the relationship"). Were this the case, no domestic violence survivor could be a member of the particular social group recognized in *A-R-C-G-*, including Ms. Cifuentes herself, the respondent in *A-R-C-G-*. This pattern is consistent with domestic violence research which has clearly found that domestic violence flows from the abuser's need to exercise control in his relationship with the victim. *See* Mary Ann Dutton & Lisa A. Goodman, *Coercion in Intimate Partner Violence: Towards a New Conceptualization*, 52 *SEX ROLES* 743, 743

(2005). This exercise of control necessarily prevents the victim from unilaterally ending the relationship.

The lack of clarity surrounding the meaning of the “unable to leave” standard set forth in *A-R-C-G-* and resultant inconsistent outcomes undermines the fairness and integrity of the asylum system as a whole, and notably for women.

**C. The Board has a duty to issue binding guidance to encourage consistent decisionmaking**

Regulations governing the Board’s powers provide that “the Board, through precedent decisions, *shall* provide clear and uniform guidance to the [U.S. Citizenship and Immigration Services], the immigration judges, and the general public on the proper interpretation and administration of the [Immigration and Nationality Act] and its implementing regulations.” 8 C.F.R. § 1003.1(d)(1) (2015) (emphasis added). Binding guidance from the Board in all areas of asylum law—often life or death matters—holds importance given that agency decisions are appealed to the federal Courts of Appeals in only a minority of cases. *See* BANKS MILLER, LINDA CAMP KEITH & JENNIFER S. HOLMES, IMMIGRATION JUDGES AND U.S. ASYLUM POLICY 41-44 (2014) (discussing rates of appeals beyond the immigration court level, which are on a downward trend).

The Board’s guidance holds particular importance in the area of domestic violence-based asylum claims, given the historical lack of precedent in this area. Following vacatur of the Board’s decision in *Matter of R-A-*, 22 I.& N. Dec. 906, successive Administrations have failed to finalize proposed asylum regulations that would provide guidance for handling gender cases. *See* Asylum and Withholding Definitions, 65 Fed. Reg. 76588 (proposed Dec. 7, 2000) (to be codified at 8 C.F.R. pt. 208) (hereinafter Proposed Regulations). During this thirteen-year period, after retraction of *R-A-* and before issuance of the *A-R-C-G-* decision, the absence of binding

jurisprudential and regulatory norms impeded fair and consistent outcomes for domestic violence survivors. For example, some immigration judges categorically rejected domestic violence as a basis for asylum in all instances while others granted on this basis. *See* Bookey, *Domestic Violence as a Basis for Asylum* at 132.<sup>9</sup>

The ruling in *A-R-C-G-* began to fill the void in the jurisprudence for those fleeing domestic violence, but adjudicators and the public alike are still in need of “clear and uniform guidance” from the Board interpreting various aspects of the *A-R-C-G-* decision. The criteria for determining whether a woman is able to leave her abuser, including in cases where she has moved out of the shared home or obtained a restraining order prohibiting her abuser’s return to the home but the abuser does not recognize these actions as ending his right to continue the relationship as he sees fit, has emerged as one such pressing issue. As an issue of significant public interest, a decision clarifying the *Matter of A-R-C-G-* standard meets the Board’s criteria for publication. *See* BIA Practice Manual 1.4(d)(i)(A). And Board guidance comes at a critical juncture, as the issue is pending before at least three federal Courts of Appeals. Without guidance, it will be difficult for courts to review the Board’s interpretation of the standard and a patchwork of appellate jurisprudence may result (just as a patchwork of jurisprudence has occurred in the immigration courts, as discussed in section I.B. *supra*).<sup>10</sup> *See, e.g., Marmolejo-*

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<sup>9</sup> This same pattern of inconsistent rulings by adjudicators has occurred as well in the two other areas of immigration law touching on domestic violence—Violence Against Women Act (VAWA) cancellation of removal and VAWA suspension of deportation cases. A review of Board decisions in these cases found a pattern of inconsistent rulings that reflected a lack of training and understanding of the legislative history and purpose of VAWA and the large body of social science evidence documenting the dynamics of violent relationships. *See* Rocio Molina, Leslye E. Orloff & Benish Anver, *Violence Against Women Act (VAWA) Board of Immigration Appeals Adjudications: A Call for Consistency and for Adjudications That Reflect VAWA’s Legislative Purpose and the Courts Best Practices in the Handling of Domestic Violence Adjudications* (Jan. 31, 2014), <http://niwaplibrary.wcl.american.edu/pubs/bia-vawa-cases-report-2014/>.

<sup>10</sup> *Amici* are aware that this issue is under consideration at the Fifth Circuit in *A-E- v. Lynch*, No. 15-60782; the Eighth Circuit in *F-E- v. Lynch*, No. 15-3149, and *S- v. Lynch*, No. 15-2102; and the Ninth Circuit in *A-G- v. Lynch*, No. 15-71138.

*Campos v. Holder*, 558 F.3d 903, 935 (9th Cir. 2009) (explaining that the Board’s refusal to provide clear and uniform guidance of its interpretation of the immigration statute makes it difficult for a court to tell whether it is reasonable and entitled to deference).<sup>11</sup>

## **II. The Board Should Clarify in a Precedential Decision the Criteria for Determining When a Domestic Relationship is Immutable for Asylum Purposes**

A determination that a woman is “able to leave” her relationship with an abusive partner requires consideration of the woman’s individual circumstances in addition to the underlying social conditions in her home country. A woman’s attempt to separate from her abuser by moving out of their shared home does not support a finding that she was able to leave where her abuser attempts to continue maintaining control over her life through ongoing physical and sexual violence as well as threats or intimidation or other forms of ongoing coercive control. The fact that the woman and her abuser share children in common and/or other family and societal pressures that normalize violence against women further impede a woman’s power to escape the grip of her abuser. If a woman establishes that she suffered persecution in the past based on her status as a woman in a domestic relationship, like in the case of Ms. Cubias, she is entitled to a presumption that she would suffer such persecution in the future.

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<sup>11</sup> Several studies have highlighted shocking disparities in asylum adjudication, demonstrating that there is a need for guidance or other interventions to ensure consistency, uniformity, and fairness in asylum decisionmaking by immigration judges in general. *See, e.g.*, JAYA RAMJI-NOGALES, ANDREW I. SCHOENHOLTZ & PHILIP G. SCHRAG, REFUGEE ROULETTE: DISPARITIES IN ASYLUM ADJUDICATION AND PROPOSALS FOR REFORM (2011).

**A. The Board should clarify that divorce or a woman's other attempts to separate are not dispositive of a woman's ability to leave where she lacks the power to end the domestic relationship**

1. *Moving out of the shared home says little of a woman's ability to leave and, instead, often increases the risk of violence*

A woman's attempt to leave her abuser by moving out of the shared residence in the home country does not *ipso facto* establish ability to leave where the abuser does not recognize the move as ending his right to be in her physical space, to follow her, and to abuse and otherwise control her. *See generally* Leslye E. Orloff et al., *Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases*, National Immigrant Women's Advocacy Project (Oct. 13, 2013) (reporting on the social science data on coercive control).<sup>12</sup> In fact, after attempting to leave and terminate the relationship, research shows that women are often at heightened risk for violence, even fatal (particularly in societies like El Salvador, *see* Exh. 6, Tabs D-H, O-W, Expert Submissions and Background Country Conditions Documentation). As previously proposed asylum regulations recognize, "domestic violence centers on power and control over the victim" and "[c]onsequently, when victims attempt to flee the abusive relationship, or otherwise assert their independence, abusers often pursue them and escalate the violence to regain or reassert control." Proposed Regulations at 76595. Studies have shown that "[t]he risk of lethality to the victim is typically greatest when she attempts to escape the abuse and, in contrast to other persecution cases where the persecutor's desire to harm the victim may wane if the victim leaves, the victim's attempt to leave typically increases the abuser's motivation to locate and harm her." *Id.* (citations omitted); *see also* Peter G. Jaffe et al., *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, JUVENILE

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<sup>12</sup> Available at <http://www.lsc.gov/sites/default/files/LSC/pdfs/4.%20%20Appendix%20III%20%20Battering%20or%20Extreme%20Cruelty%20SJI%2010%2014%2013.pdf>

& FAMILY CT. J. 57, 59 (2003) (“separation may be a signal to the perpetrator to escalate his behavior in an attempt to continue to control or punish his partner for leaving”); Jennifer L. Hardesty, *Separation Assault in the Context of Postdivorce Parenting: An Integrative Review of the Literature*, 8 VIOLENCE AGAINST WOMEN 597, 601 (2002) (“a woman’s risk of intimate femicide increases sixfold when she leaves an abusive partner”); Tina Hotton, *Spousal Violence After Marital Separation*, Statistics Canada, 21 Catalogue no. 85-002 6 (“Marital separation is a factor that elevates the rate of spousal homicide for women.”).

Violence, stalking, threats, intimidation and control, that are hallmarks of violent relationships while the couple is living together, can continue for lengthy periods following the end of their cohabitation. See Jane K. Stoever, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1025–26 (2014); Cathy Humphreys & Ravi K. Thiara, *Neither Justice nor Protection: Women’s Experiences of Post-Separation Violence*, 25 J. OF SOCIAL WELFARE & FAMILY L. 195, 199-201 (2003); see also Exh. 6, Tab H, Expert Declaration of Nancy K.D. Lemon 213, n18 (hereinafter Lemon Declaration) (describing the “power and control theory” that illustrates the abusive behaviors exhibited by male batterers). A term—“separation assault”—has even been coined “to describe the violence men used to prevent women from leaving the relationship, to force them to return, or to retaliate after they had left.” 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 and Control Tactics Experienced by Women, J. INTERPERSONAL VIOLENCE 1, 3 (2015) (internal quotation marks and citations omitted).

Because of the nature of intimate relationships, abusers are “likely to possess important information” about the whereabouts of the victim when she leaves and the ability to act on their



threats. Proposed Regulations at 76595. The expert materials in this case support that this is especially the case in a small country like El Salvador. *See, e.g.*, Exh. 6 Tab G, Expert Declaration of America Romualdo Carcamo 181 (hereinafter Carcamo Declaration) (“Even if a woman overcomes these barriers and leaves an abusive relationship, abusive men usually do not accept the woman’s ‘abandonment’ and can easily track her down.”).

2. *The presence of children may make it more difficult for a woman to leave*

The existence of children in common gives abusers the opportunity and the means to continue to abuse the victim after a woman attempts to end the relationship. Abusers use children to further control and harm the child’s mother, for example, taking or kidnapping children to force the woman to return. *See* Lemon Declaration at 213-14; *see also* Darrell Payne & Linda Wermeling, *Domestic Violence and the Female Victim: The Real Reason Women Stay!*, J. MULTICULTURAL GENDER & MINORITY STUDIES 4 (2009) (“child contact [is] a point of vulnerability for on-going post separation violence and abuse”). Such circumstances are present in this case; in an effort to control her activities, Jorge kidnapped their daughter when Ms. Cubias defied him by working outside of the home. Ms. Cubias Affidavit at 76-78. Moreover, abusers can use children to locate the victim through missing child alert systems or school enrollment records available in many countries.

*Amici* do not assert that an abusive relationship can never end, or that normal forms of contact including in the regular course of child custody arrangements, would necessarily entail a continuing, immutable relationship for asylum purposes. Indeed, in countries where there are consequences for batterers and protections for victims, a woman may have more power to end the relationship and maintain separation free of ongoing violence, abuse and coercive control with the support of the cultural and social norms affirming her autonomy. But in El Salvador

where impunity prevails, abusive relationships continue after a woman no longer lives with her abuser with the same lack of protection as before (*see* section II.A.3. *infra*). As such, when considering a woman's ability to leave, the dynamics of domestic violence and the opportunity for ongoing abuse that shared children present—situated in the country's social conditions—must provide context for the ongoing threats and control an abuser maintains.

3. *External societal pressures and lack of options prevent women from leaving their relationships*

Family and community pressures which further enable (and often exacerbate) an abuser's ongoing abuse and control are also constraints relevant to determining a woman's ability to leave her relationship in her society. *See A-R-C-G-*, 26 I&N Dec. at 393; DHS *L-R-* Br. at 16. A woman may be pressured, by her own family or her in-laws, to stay in an abusive relationship or maintain contact with her abuser for financial or social reasons, supported by cultural norms that normalize violence. The record shows such heightened pressures persist in El Salvador. *See, e.g.,* Exh. 6, Tab D, Expert Affidavit of Carol "Kelley" Ready, Ph.D. 117 (hereinafter Ready Declaration) ("Women in abusive relationships in El Salvador lack the social support networks and autonomy to leave their abusers. As women are considered to be the property of men, it is very difficult for them to find help among the community."); Carcomo Declaration at 181 ("A victim's family will usually pressure her to tolerate violence for financial security, especially if she has children. Women's financial constraints make it nearly impossible to sever ties with family and friends on whom they must rely for support."); Exh. 6, Tab P, UN Human Rights Council Report 307 (hereinafter HRC Report) ("The reasons behind underreporting [of domestic violence] are manifold: family and community pressure not to reveal domestic problems.").

A lack of effective protection on the part of the state diminishes a woman's ability to leave her relationship. Such protection for domestic violence victims is critically lacking in El

Salvador, where violence against women is entrenched and impunity is the norm. *See, e.g.*, Ready Declaration at 116 (“Laws penalizing domestic violence have been passed, but their implementation is extremely uneven and very problematic.”); *Id.* at 119 (“A significant barrier to combating domestic violence in El Salvador is the fact that the *machista* cultural norm continues to be prevalent among the police and the judiciary.”); Exh. 6, Tab F, Expert Declaration of Aracely Bautista Bayona 156 (hereinafter Bayona Declaration) (“Enforcement of domestic laws related to violence and international treaties which purport to protect women in El Salvador have been generally ineffective. Like Salvadoran society as a whole, law enforcement officials, prosecutors, and judges discriminate against women, reduce the priority of women’s claims and otherwise prevent women from accessing legal protections and justice.”); HRC Report at 315-16 (“The failure of authorities to investigate, prosecute and punish those responsible for gender-based violence contributed to an environment of impunity that resulted in little confidence in the justice system.”). The lack of state protection gives additional force to an abuser’s threats, even more so where the abuser—like in the instant case—has ties with gang or other organized criminal networks which extend the force and reach of his power. *See, e.g.*, Carcamo Declaration at 181 (“If a woman is in a violent relationship with a gang member, her chance of escaping safely is virtually nonexistent due to ubiquitous networks gangs maintain throughout [El Salvador].”); Bayona Declaration at 155 (“Gang members commit acts of domestic violence for the same reasons as non-gang members, yet violent acts are amplified because gang members have access to deadly weapons and vast criminal networks.”). Under the Board’s *A-R-C-G*-framework, country conditions documentation regarding the lack of protection for domestic violence survivors is critical to evaluating social group membership but was not considered in this case.

4. *The absence of ongoing physical harm does not mean a relationship has ended where the abuser continues to threaten and attempt to control the victim*

After a woman moves out of the shared home, abusers often employ direct threats, stalking, or harm to third parties—including new romantic partners—to intimidate and maintain control over the victim. Professor Lemon describes that “the batterer may monitor the woman to see if she is dating anyone else,” and in the most extreme cases the abuser may kill his partner, justifying the murder “on the grounds that she was seeing someone else.” Lemon Declaration at 217. Attempts to limit and control the woman are even more likely to escalate where a woman begins a new relationship, particularly in cultures with rigid gender roles where men hold the belief that their partners are their property. Mary Ann Dutton & Giselle A. Hass, *Expert Testimony Concerning Battering*, in MARY ANN DUTTON ET AL., AMERICAN BAR ASSOCIATION, DOMESTIC VIOLENCE & IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT, Appendix C 4 (Bette Garlow, et al., eds., 2000) (“Cultures which socialize individuals into rigid gender roles often make women responsible if other men perceives [sic] them as sexually desirable, a situation which breeds significant jealousy on her partner and a desire to control her.”).<sup>13</sup> The abuser in this case exhibited this all too common behavior; Jorge followed Ms. Cubias and hugged and kissed her against her will, called her multiple times a day, and attacked a male co-worker whom Jorge erroneously believed to be her new boyfriend (*see* section I.B. *supra*). Jealousy exhibited by abusers like this—in all of its manifestations including not only physical violence but also threats and intimidation—establishes that an abuser continues to believe the woman is his property and that the woman does not have the agency to leave the relationship. Such ongoing attempts to control “can have

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<sup>13</sup> Available at [http://iwp.legalmomentum.org/reference/additional-materials/research-reports-and-data/research-US-VAIW/RSRCH\\_JS\\_Espert\\_Testimony.pdf](http://iwp.legalmomentum.org/reference/additional-materials/research-reports-and-data/research-US-VAIW/RSRCH_JS_Espert_Testimony.pdf).

devastating effects on the woman,” Professor Lemon explains, including “severely limit[ing] the battered woman’s involvement with the world outside her home and family,” which makes the woman feel “helpless and powerless” and under her abuser’s “complete control.” Lemon Declaration at 217; *see also* Dutton, *Coercion in Intimate Partner Violence*, at 743-756. A woman in these circumstances, unable to begin a new romantic relationship or participate in public life, cannot be found to have left her relationship.

The immigration judge’s focus on whether Ms. Cubias suffered physical violence after she moved out of their shared home was misplaced because the immutability of relationship status must take into account whether the woman can terminate the relationship and whether the abuser accepts that she can do so unilaterally. It is clear that a man who persists in following, threatening, and attempting to control his partner has not accepted her right to leave, even if he does not beat or rape her at that time. In many instances, abusers may even refrain from physical abuse to persuade the woman to return to him. *See, e.g.,* Mary Ann Dutton, *Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (1993) (describing patterns of violent relationships which may include a contrition phase where a batterer expresses remorse and promises not to repeat abuse to manipulate a woman into returning). Furthermore, to the extent the immigration judge views ongoing physical harm as required for establishing “inability to leave,” this would insert persecution into the social group definition, rendering the group impermissibly circular.<sup>14</sup> *See Matter of M-E-V-G-*, 22 I&N Dec. 227, 242 (B.I.A. 2014) (reiterating that “a social group cannot

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<sup>14</sup> As explained in Respondent’s brief, *see supra* note 6, the immigration judge’s finding that she was not subject to physical violence following her moving out of their home is clearly erroneous given the unwanted sexual touching (kissing and hugging) Jorge inflicted on Ms. Cubias on multiple occasions.

be defined exclusively by the fact that its members have been subjected to harm” (internal quotation and citation omitted)).

For a relationship to in fact end, a woman’s partner and society more broadly must recognize the woman’s autonomy and independence. In other words, for a woman to be truly able to leave her relationship, the cycle and pattern of violence and control exerted by her partner must cease. Such circumstances do not present themselves here. Following Ms. Cubias’s move out of their shared home, until she left for the United States, Ms. Cubias’s partner of seven years with whom she shared a child, stalked and harassed her incessantly, and threatened to kill her himself or with the help of gang member affiliates. Underlying cultural and social norms in El Salvador did little to disabuse Jorge of his belief that he had a right to control his “woman” and if Ms. Cubias did not want to be with him, he would make sure that she could be with no one else. He preferred to see her dead than with a new partner, which would undermine his dominance over his property. Ms. Cubias did not need to wait until Jorge acted on his threats to kill her before attempting to find safety—at that point, it would have been too late. *See, e.g.*, Bayona Declaration at 154 (“In my professional opinion, approximately 40% of femicide victims were also victims of domestic violence who the system had failed to protect.”); Carcamo Declaration at 182 (“[I]t is my informed opinion that many, if not the majority, of murders of women in El Salvador are related to domestic violence.”). Indeed, many women facing domestic violence often decide to flee and, in many instances, make the agonizing decision to leave children behind at a moment when threats have escalated to the point they fear for their lives—a reasonable belief given the high rates of femicide as a result of unchecked partner violence. A woman is not required to wait until her persecutor acts on his threats to seek refuge.

**B. The Board should clarify that in cases involving past persecution, a woman's ability to leave her relationship must be considered at the time of persecution**

Where a domestic violence survivor raises a claim of past persecution, the adjudicator must consider whether the woman was a member of a particular social group at the time of persecution. If a woman is found to have suffered persecution in the past on account of that protected ground, she is entitled to a presumption of well-founded fear on that basis. *See* DHS *L-R- Br.* at 16 (“In a claim dealing with past persecution,” an applicant’s status in a domestic relationship is immutable “where economic, social, physical or other constraints made it impossible for the applicant to leave the relationship *during the period when the persecution was inflicted.*” (emphasis added)).

Immigration judges improperly conflate the two-step analysis clearly set forth in the asylum regulations by failing to consider group membership for purposes of past persecution as distinct from a claim for well-founded fear of persecution in the future. 8 C.F.R. § 1208.13(b). If a woman is entitled to a past persecution presumption, as described above, the burden then shifts to the government to rebut this presumption with evidence of a fundamental change in circumstances such that the applicant no longer has a well-founded fear or evidence that the applicant is able to safely and reasonably relocate in the country. 8 C.F.R. § 1208.13(b)(1)(i). In the case of a domestic violence survivor arguing membership in a group defined by inability to leave her relationship, the government may be able to show that the woman no longer has a well-founded fear “on the basis of the original claim” by demonstrating that a domestic relationship has ended. 8 C.F.R. § 1208.13(b)(1). For a relationship to end, not only must the abuser accept the separation as ending his right to abuse and control his partner, but society must also accept the woman’s autonomy to end the relationship. Such an interpretation comports with the Board’s view that, to avoid circularity, social group cognizability must be viewed from the perspective of

society as a whole and not merely persecutor's perception. *See Matter of M-E-V-G-*, 22 I&N Dec. at 242.

Unless and until the government meets its burden, the Board should reiterate that immigration judges must presume that well-founded fear on the basis of a woman's underlying claim continues and therefore presume that she continues to be a member of her particular social group defined by her immutable relationship status. And even if the government rebuts the presumption, and establishes she is no longer a member of the group, the woman may still be able to show an independent well-founded fear of persecution or successfully raise a claim for humanitarian asylum arising from the severity of her past harm or other serious harm she may face if returned to her country of origin. 8 C.F.R. § 1208.13(b)(1)(iii). Domestic violence will frequently meet the severe and atrocious standard. Survivors have often endured extreme physical, sexual, and psychological abuse and deprivation of their liberty over a prolonged period of time, which leaves permanent injuries and mental health conditions as a result of the trauma. *See* CAROLE WARSHAW, CHRIS M. SULLIVAN & ECHO A. RIVERA, A SYSTEMATIC REVIEW OF TRAUMA-FOCUSED INTERVENTIONS FOR DOMESTIC VIOLENCE SURVIVORS (2013).<sup>15</sup> Violence is particularly impactful when it begins during childhood; the severity of harm for humanitarian asylum purposes should be assessed from the perspective of a child. *See, e.g., Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042 (9th Cir. 2007) (finding error where agency failed to assess persecution from perspective of a child); *Matter of Chen*, 20 I&N Dec. 16 (B.I.A. 1989) (assessing humanitarian asylum claim taking into account that persecution occurred during childhood). Moreover, given the high rates of violence against women including femicide—and

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<sup>15</sup> Available at <http://www.nationalcenterdvtraumamh.org/publications-products/ncdvtmh-review-of-trauma-specific-treatment-in-the-context-of-domestic-violence/>.



in particular single women and mothers in countries like El Salvador with pervasive gender discrimination and organized criminal networks—domestic violence survivors may also be able to show that they would suffer other harms rising to the level of persecution if returned.

As set forth in Ms. Cubias’s brief to the Board and discussed above, based on the record in this case regarding her personal circumstances and country conditions in El Salvador, she was and still is “unable to leave” her relationship and suffered persecution in the past as a member of her social group. The government made no attempt to rebut the presumption of well-founded fear to which Ms. Cubias is entitled. Even if sufficient evidence supports a finding that Ms. Cubias is no longer a member of her social group, and thus the presumption has been rebutted, the record supports a finding of humanitarian asylum that the immigration judge should have evaluated. The severe trauma Ms. Cubias suffered for nearly a decade, which began when she was a minor, had a significant negative and long-lasting impact on her mental health. As the psychological evaluation presented in this case provides, Ms. Cubias’s “symptoms are of sufficient intensity to fulfill the criteria for anxiety disorder,” and “are more than sufficient to meet criteria for the diagnosis of [Post Traumatic Stress Disorder].” Exh. 6, Tab C, Evaluation of Giselle A. Hass, Clinical Psychologist 106, 109. The record also supports a finding of a likelihood of “other serious harm” at the hands of the M-18 gang both as a result of Ms. Cubias’s relationship to her abuser, a close M-18 affiliate, as well as her knowledge of her uncle’s murder by the gang.

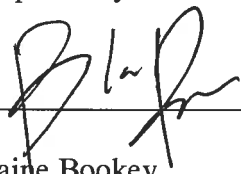
The Board should reiterate that the burden shifting framework for asylum eligibility demands sequenced, analytical clarity on the part of adjudicators. *See Matter of D-I-M-*, 24 I&N Dec. 448, 451 (B.I.A. 2008) (“Because the regulations set forth varying burdens of proof depending on whether an applicant suffered past persecution, it is of paramount importance that

Immigration Judges make a specific finding that an applicant either has or has not suffered past persecution.”).

### CONCLUSION

*Amici* urge the Board to issue a precedential opinion holding that a woman’s ability to leave her domestic relationship must inquire into whether her abuser would recognize her attempt to leave by moving out of their shared home as ending his right to abuse and control her, and overturn the immigration judge’s fundamentally flawed analysis of Ms. Cubias’s ability to leave her relationship in this case.

Respectfully submitted,

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Dated: April 5, 2016

## PROOF OF SERVICE

On April 5, 2016, I, Claire Clayton, certify that I served two copies of this brief on each of the following by USPS priority mail service:

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