

17-60753

In the
United States Court of Appeals
for the Fifth Circuit

W.M.V.C.; A.P.V.
Petitioners,

v.

JEFFERSON B. SESSIONS, III, Attorney General,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 17-60753

Short Caption: W.M.V.C.; A.P.V. v. Sessions

- (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 the item #3): The NIWAP Inc., The National Immigrant Women's Advocacy Project, and American Gateways
- (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: Baker & McKenzie LLP
- (3) If the party or amicus is a corporation:
 - (i) Identify all its parent corporations, if any: not applicable
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Attorney's Signature: /s/ Douglas A. Darch

Date: 2/28/18

Attorney's Printed Name: Douglas A. Darch

Please indicate if you are *Counsel of Record* for the above listed party pursuant to Circuit Rule 3(d). Yes

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Pursuant to Federal Rules of Appellate Procedure 27 and 29, *amici* respectfully move this Court for leave to file the attached brief *amici curiae* in support of Petitioner. While *amici* recognize that there are two petitioners in this case, the interests of the amici parties lead them to focus on one petitioner (W.M.V.C.). Petitioner has consented to the filing of this brief, whereas Respondent Jefferson B. Sessions has taken no position.

Amici are advocacy groups. NIWAP, Inc., the National Immigrant Women's Advocacy Project ("NIWAP") is a law and policy center with a special interest in the rights of immigrant women and, in particular, survivors of domestic violence. American Gateways serves the indigent immigrant population in central Texas, through legal representation and advocacy for thousands of indigent and low income immigrants before the Department of Homeland Security and the Immigration Courts.

Amici have a keen interest in ensuring the proper application and development of U.S. immigration law, so that individuals seeking asylum and related relief receive fair and proper consideration under standards consistent with U.S. laws and treaties.

Amici believe the decisions of the Immigration Judge and the Board of Immigration Appeals (“BIA” or “Board”) in this case 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 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 the control of their abusive partners.

Amici submit this brief to offer insight into the relationship between an abuser and a victim seeking to escape her partner’s clutches. A proper understanding of this relationship is critical to the outcome of this case. In its precedential decision in *Matter of A-R-C-G*, the BIA held that a female victim of domestic violence 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. The Immigration Judge and the single Board member who decided this case distinguished it from *Matter of A-R-C-G* on the grounds, among others,

that Petitioner was able to move out of the home shared with her abuser-partner, thus allegedly demonstrating that she was able to “leave the relationship” before coming to the United States. This decision incorrectly assumes that by, moving out, Petitioner could and did unilaterally end the abuse, end the risk of ongoing abuse, and end the relationship with an abusive partner determined to continue to exert power and control over her.

Amici will present research showing that an abusive domestic relationship does not end when the victim moves out of a shared residence. *Amici* believe this information will aid the Court in making its determination whether Petitioner’s status as a woman unable to escape a relationship is an immutable characteristic giving rise to an asylum claim based on membership in a cognizable particular social group.

For the foregoing reasons, *amici* hereby ask that the Court grant it leave to file a brief in support of Petitioner.

Respectfully submitted,

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February 28, 2018

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2018, I caused the foregoing MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE and the accompanying brief to be filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by email.

All participants in the case were served by email because the case is under seal.

DATED February 28, 2018 /s/ Douglas A. Darch

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BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONERS

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Please indicate if you are *Counsel of Record* for the above listed party pursuant to Circuit Rule 3(d). Yes

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INTRODUCTION AND STATEMENT OF AMICI CURIAE

Amici submit this brief to correct a false premise underlying the decisions in this case: that because the victim returned to reside with the perpetrator, she was able to leave the relationship, and her staying was not a product of societal expectations or legal constraints. In its precedential decision in *Matter of A-R-C-G-*, 26 I. & N. Dec. 388 (B.I.A. 2014), the BIA held that a female victim of domestic violence may establish her membership in a “particular social group” by showing that, for religious, societal, cultural, legal, or other reasons, she was “unable to leave the relationship” with her abuser.¹ The Immigration Judge and the single BIA member who decided this case distinguished it from *Matter of A-R-C-G-* on the ground that, since Petitioner W.M.V.C.² was ultimately successful in fleeing the abusive home she shared with her now-former partner, the court concluded that she was therefore able to leave the abusive relationship before coming to the United States.³ This analysis reflects a fundamental misunderstanding about the nature of domestic violence, coercive control in abusive relationships, and the increased

¹ *Id.* at 389.

² While we recognize that there are two petitioners in this case, the interests of the amici parties lead them to focus on one petitioner (“W.M.V.C.”).

³ *Id.* at 389–90.

dangers facing victims who attempt to terminate their relationships with their abusers.

As discussed below, research shows that an abusive relationship does not end when the victim moves out. Indeed, when a victim attempts to leave a shared residence and move on with her life, the abuse can become even more violent and disempowering as the abuser strives to maintain control of the relationship. Further, the victim's exit from the shared residence may cause the abuser to sharpen the threats and violence toward third parties—including the victim's children or family members as a way to continue the relationship and maintain control in the relationship. The facts of this case and the failed attempts the victim made to leave the abusive relationship fit the pattern of abuse documented in the social-science research. For all these reasons, there is no logical basis and no evidence-based research support for the assumption that a domestic-violence victim is able to end her relationship with her abuser simply by moving out.

Amici are well suited to provide the Court with the necessary context and research on these issues. *Amici* have a keen interest in ensuring the proper application and development of U.S. immigration law, so that individuals seeking asylum and related relief receive fair and

proper consideration under standards consistent with U.S. laws and treaty obligations.

The National Immigrant Women’s Advocacy Project Inc. (“NIWAP Inc.”) is a nonprofit 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 level who work with and/or whose work affects immigrant crime victims. NIWAP provides direct technical assistance and training for attorneys, advocates, immigration judges, the BIA judges and staff, state court judges, police, sheriffs, prosecutors, Department of Homeland Security adjudication and enforcement staff, and other professionals. NIWAP Director Leslye E. Orloff was closely involved with the enactment of the Violence Against Women Act (“VAWA”) legislation, including the VA WA self-petition in 1994 and the T and U visas in 2000, as well as the 1996, 2000, 2005, and 2013 VAWA confidentiality protections. She has also published legal and

social-science research articles on domestic violence experienced by immigrant women and children.

American Gateways (formerly the Political Asylum Project of Austin) in Austin, Texas was founded in 1987. It serves the indigent immigrant population in central Texas through legal representation and advocacy for thousands of indigent and low income immigrants before the Department of Homeland Security and the Immigration Courts. American Gateway's mission is to champion the dignity and human rights of immigrants, refugees, and survivors of persecution, torture, conflict, and human trafficking through exceptional immigration legal services at no or low cost, education, and advocacy. American Gateways represents hundreds of immigrant survivors of domestic violence applying for asylum and other forms of relief under the immigration laws.

Amici write to provide this Court with critical information and perspective on rulings of the Immigration Judge and the single-judge Board panel in this case. If the same misunderstanding that infects these decisions were repeated by this Court, it could adversely impact the lives of many abused women who have suffered persecution because they found themselves trapped in violent, abusive, and controlling relationships.

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 the preparation of this brief. No one other than *amici* and the undersigned firm contributed money to the preparation and filing of this brief.

STATEMENT

The story of Petitioner is one of a forced, abusive same-sex relationship. She suffered severe physical, emotional, and mental abuse by her same-sex abuser and was unable to escape that abuse or the threat of further abuse even upon leaving her abuser's home. The Immigration Judge rejected Petitioner's request for asylum, finding that she had not established her membership in a particular social group. The BIA affirmed.

SUMMARY OF ARGUMENT

Both the Immigration Judge's decision and the BIA's decision discounted the dangerous of the Petitioner's abuser and reflect a fundamental misunderstanding of the nature, dangers, dynamics, 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 by simply escaping the abusive home.

Research shows that abusive domestic 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, dangerous, lethal, and disempowering as the abuser actively strives 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 the relationship with the victim. That need to control, and the control-laden relationship that results, necessarily robs the victim of the ability to end the relationship unilaterally. It is no surprise, then, that the vast majority of women who move out of abusive homes report that their abusers stalk them, find them, and continue to control them through, ongoing abuse, threats and violence.

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 of the house. In this respect, the decisions by the Immigration Judge and BIA are fatally flawed and should not be allowed to stand.

ARGUMENT

In *Matter of A-R-C-G*,⁴ the BIA recognized a particular social group of “married women in Guatemala who are unable to leave their relationship.”⁵ In that case, the BIA noted that “marital status can be an immutable characteristic where the individual is unable to leave the relationship.”⁶ Although marriage can be legally ended by divorce, the BIA held that marriage could become an immutable characteristic due to a spouse’s inability to leave an abusive relationship. Therefore, the individualized conditions which exist in a relationship determine whether the relationship is immutable.

Matter of A-R-C-G should not be read as applying only in the marital context. Rather, the case stands more broadly for the proposition that it is the inability to leave an abusive relationship (regardless of whether the relationship has judicial sanction) that causes the relationship status to become immutable. In *Matter of A-R-C-G*, the BIA identified relevant factors for determining whether dissolution of a particular relationship is possible. Such factors include “religious,

⁴ 26 I. & N. Dec. 388 (BIA 2014).

⁵ *Id.* at 392.

⁶ *Id.* at 392–93.

cultural, or legal constraints” evaluated subjectively in light of the victim’s own experiences and objectively in the context of broader evidence, such as country conditions.⁷

A. Domestic violence is about power and control.

Amici request that the Court clearly require the BIA to give substantial weight in the subjective analysis to the power dynamics which precipitate and perpetuate an environment of recurring domestic violence. These dynamics are relevant whether the relationship is heterosexual, or same-sex relationship.⁸ Studies by social scientists and others confirm that conditions of domestic violence arise and are maintained via power dynamics which can arise in the context of any human relationships.⁹ In fact, “it is widely accepted that the central element of domestic violence is not the type of relationship, but *power*.”¹⁰ As such, domestic violence can

⁷ *Id.* at 393.

⁸ *See, e.g.*, Dep’t of Homeland Security, *Implementation of the Supreme Court Ruling on the Defense of Marriage Act* (July 21, 2015)

<http://niwaplibrary.wcl.american.edu/pubs/implementation-of-the-supreme-court-ruling-on-the-defense-of-marriage-act/>.

⁹ *See* NETWORK/LA RED, OPEN MINDS, OPEN DOORS: TRANSFORMING DOMESTIC VIOLENCE PROGRAMS TO INCLUDE LGBTQ SURVIVORS 5 (2010).

¹⁰ Leonard D. Pertnoy, *Same Violence, Same Sex, Different Standard: An Examination of Same-Sex Domestic Violence and the Use of Expert Testimony on Battered Woman’s Syndrome in Same-Sex Domestic Violence Cases*, 24 ST. THOMAS L. REV. 544, 548 (2012). *See also* Caroline Morin, *Re-Traumatized: How Gendered Laws Exacerbate the Harm for Same-Sex Victims of Intimate Partner Violence*, 40 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 477, 482 (2014); NAT’L COAL. OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, AND TRANSGENDER DOMESTIC VIOLENCE IN 2000, at 3 (2001), available at <http://www.ncavp>

be defined broadly as “a set of behaviors used by one person in a relationship to control the other.”¹¹

Amici submit that the BIA should consider the following hallmarks of domestic violence when making the assessment as to whether an individual is able to leave an abusive relationship: (1) the abuser’s use of psychological control tactics, (2) the victim’s practical dependence on the abuser, (3) the victim’s fear of physical harm befalling the victim or a loved one, and (4) lack of external protections from the abuse.

First, a victim may be unable to leave an abusive relationship due to the abuser’s use of psychological mechanisms to control the victim.¹² The abuser “may choose to psychologically torment and debase the victim” through “continual ridicule” and “humiliation.”¹³ Such control mechanisms involve “an ongoing process in which one individual

(characterizing intimate partner violence as “a power struggle without the inclusion of, or reliance on, gender norms or stereotypes”).

¹¹ See NAT’L COALITION OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL AND TRANSGENDER DOMESTIC VIOLENCE IN 2000 1 (Prelim. ed. 2001).

¹² See Pertnoy, *supra* note 10 at 548 (“In fact, a cursory review of the empirical data on domestic violence makes clear that ‘the goal of the batterer is to maintain his or her domination and control over the victim.’”), *citing* Carla M. Da Luz, *A Legal and Social Comparison of Heterosexual and Same-Sex Violence: Similar Inadequacies in Legal Recognition and Response*, 4 S. CA. REV. L. & WOMEN’S STUD. 251, 256 (1994-1995). Domestic violence results from the abuser’s need to exercise control in his or her relationship with the victim. Mary Ann Dutton & Lisa A. Goodman, *Coercion in Intimate Partner Violence: Towards a New Conceptualization*, 52 SEX ROLES 743, 743 (2005).

¹³ Pertnoy, *supra* note 10 at 548.

systematically diminishes and destroys the inner self of another” by constantly belittling “[t]he essential ideas, feelings, perceptions, and personality characteristics of the victim.”¹⁴

Additional control mechanisms include excessive surveillance and monitoring of the victim’s activities and communications, exploitation of the victim’s vulnerabilities (such as immigration status, disability, or undisclosed sexual orientation), and gaslighting or mind games, in which the abuser lies in an attempt to cause the victim to doubt his or her own perception.¹⁵

These tactics of psychological control are particularly potent against “victims who are emotionally vulnerable, as it can further rupture their sense of self and foster feelings of low self-esteem, self-blame, guilt, rejection, and depression.”¹⁶ Thus, psychological control may become increasingly effective over the course of a relationship, as the victim’s emotional stamina is worn down. As a result, the abuser obtains more power as the relationship continues, making it increasingly difficult for the victim to leave the relationship.

¹⁴ *Id.*

¹⁵ MJ Breiding, KC Basile, SG Smith, MC Black, & RR Mahendr, *Intimate Partner Violence Surveillance: Uniform Definitions & Recommended Data Elements, Version 2.0*, Nat’l Ctr. for Injury Prev, & Control, Ctrs. for Disease Control & Prev. (2015).

¹⁶ Pertnoy, *supra* note 10 at 548. *see also* Morin, *supra* note 10 at 481;

Second, a victim may be unable to leave an abusive relationship due to the victim's dependence on the abuser for practical needs such as money, economic support, shelter, food, clothing, and medication.¹⁷ The abuser typically manipulates the victim's dependence by threatening to withhold such necessities if the victim does not comply with the abuser's demands and/or by offering such benefits as a reward for compliant behavior. The abuser may also block the victim's independent access to these resources by exercising control over the victim's property or employment opportunities.¹⁸ As a result of the victim's practical dependence on the abuser, the victim may feel compelled to maintain and/or unable to leave the relationship. In fact, "[e]conomic dependence is the primary reason victims give for not leaving a batterer."¹⁹

Third, a victim may be unable to leave an abusive relationship due to the abuser's acts or threats of violence against the victim and/or the victim's loved ones.²⁰ This prototypical element of domestic violence can have an enormous contribution to the power dynamic between an abuser and his or her victim, especially when the victim refuses to reciprocate the

NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, *supra* note 10 at 3.

¹⁸ Morin, *supra* note 10 at 481; NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, *supra* note 10 at 3.

¹⁹ Morin, *supra* note 10 at 488; NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, *supra* note 10 at 3.

²⁰ Morin, *supra* note 10 at 481; NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, *supra* note 10 at 3.

physical violence in retaliation or defense. Left with a “choice” between a significant risk of serious physical harm or death upon leaving (referred to typically as an escape attempt) or suffering ongoing abuse in the relationship, the victim rationally determines there is no real alternative to continuing the relationship with his or her abuser.

Finally, a victim’s inability to leave an abusive relationship is often reinforced by a lack of externally available protection. Several factors can exacerbate this problem. First, the abuser can be connected to local police or gangs. In this case, the abuser was a former police officer. Second, there may be bias against certain characteristics of the victim. The victim here was a female and, because of the abuse against her, would have also been discriminated against for sexual orientation. Third, victims face their society’s unwillingness or inability to enforce domestic-violence laws and prosecute the perpetrators. When the victim does not believe that external actors are willing or able to offer protection against abuse, particularly when based on her prior experiences when she attempted to leave, the effects of the power dynamics are exponentially multiplied, making it impossible for the victim to safely leave an abusive relationship.

B. The same power dynamics that precipitate domestic violence in heterosexual marital relationships apply and are exacerbated in are present in same-sex homosexual and non-extramarital relationships.

The four power dynamics described above are not dependent on the gender or sexual orientation of the abuser or victim or whether the relationship is a marriage, dating or co-habiting relationship.²¹ These dynamics can arise in all forms of abusive domestic and intimate partner relationships. Whether it begins by force or choice, a relationship constitutes domestic violence when there is a 16-year sexual relationship in which one party involuntarily suffers violence, abuse, power, and coercive control.

Same-sex relationships are no exception. Empirical and anecdotal evidence have confirmed that abusive same-sex relationships involve the same cycle of violence existing in heterosexual relationships.²²

“[P]ower/control remains the central element in domestic abuse, irrespective of the contours of the relationships; indeed, the abusive partner in a same-sex relationship relies heavily on the use of violence-

²¹ Morin, *supra* note 10 at 482 (“This violence can happen to anyone of any race, age, sexual orientation, religion, or gender. It affects people of all socioeconomic backgrounds, income brackets, and education levels. It can occur when people are married, living together, or dating.”).

²² Pertnoy, *supra* note 10 at 550–51. *See also* Morin, *supra* note 10 at 481 .

physical, emotional, or otherwise ‘as an effective means of attaining power and control in the relationship.’”²³

Heterosexual and homosexual abuse has similar effect on victims and cause similar reactions.²⁴ “Like heterosexual victims, same-sex domestic violence victims feel responsible for the violent outbreaks and believe that their only options are to try to change and to please their abusive partners.”²⁵ Moreover, studies have shown that the prevalence of domestic violence in same-sex relationships is at least as great as in heterosexual relationships.²⁶

Simply put, domestic violence is caused by an abuser’s manipulation of a power imbalance in the perpetrators close relationship with a victim. When these power dynamics are present, a victim is unable to leave an abusive relationship and the relationship therefore becomes an immutable characteristic of the victim. In *Matter of A-R-C-G*, the court applied this logic to recognize a particular social group of “married women in Guatemala who are unable to leave their relationship.” The logic, however, applies with equal force to any form of abusive sexual

²³ Pertnoy, *supra* note 10 at 553. *See also* Morin, *supra* note 10 at 481 (citing Da Luz, *supra* note 9 at 272).

²⁴ Pertnoy, *supra* note 10 at 553. *See also* Morin, *supra* note 10 at 481.

²⁵ Kathleen Finley Duthu, *Why Doesn’t Anyone Talk About Gay & Lesbian Domestic Violence?* 18 THOMAS JEFFERSON L. REV. 23, 24 (1996).

²⁶ Pertnoy, *supra* note 10 at 554. *See also* Morin, *supra* note 10 at 481.

relationship. Thus, limiting the holding of *Matter of A-R-C-G* to the context of spousal or heterosexual abuse would be manifestly inconsistent with the underlying principles of that case.

C. A victim of domestic violence cannot end the abusive relationship by simply moving out.

Physical separation from an abuser rarely means that the victim has successfully left the relationship and ended the cycle of violence. Indeed, the very essence of an abusive relationship is that the abuser is in control and the victim does not have the power to end the relationship unilaterally.²⁷

It is therefore not surprising that violence, stalking, threats, and other kinds of coercive control that characterize abusive relationships often continue well after the partners no longer live together.²⁸ In fact, studies have consistently shown that separation heightens the risk for abusive behavior.²⁹ Post-separation acts of violence and abuse permit the

²⁷ Peter G. Jaffee, et al., *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, JUVENILE & FAMILY CT. J. 57, 59–60 (2003) (“[S]eparation may be a signal to the perpetrator to escalate his behavior in an attempt to continue to control or punish his partner for leaving.”).

²⁸ 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); Jane K. Stoeber, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1025–26 (2014) (finding that an increased risk of violence continues for years after separation).

²⁹ Jennifer L. Hardesty & Grace H. Chung, *Intimate Partner Violence, Parental Divorce, & Child Custody: Directions for Intervention & Future Research*, 55 FAMILY RELATIONS 200, 201 (2006) (“[S]eparation is a time of heightened risk for abused

abuser to continue his or her control over the victim, making it emotionally and physically impossible for the victim to find a place of safety that would enable him or her to leave the relationship.

Finally, a victim's inability to leave an abusive relationship following separation is increased where there is a lack of police enforcement and inadequate prosecution of domestic violence. Studies have shown that lack of effective intervention compounds the abuser's sense of control and the victim's entrapment.³⁰

Here, Petitioner could not end the abusive relationship by moving out of the abuser's household. Petitioner tried to leave on several occasions but was coerced back into the relationship when the abuser escalated her violent behavior toward Petitioner and threatened to kill her. In light of this retaliation, Petitioner was not able to end the relationship by leaving the house. Petitioner's escape within Honduras was made impossible given the general lack of available governmental

women. Studies indicate that violence often continues after women leave and sometimes escalates.”). Other studies reaffirm that women are at greatest risk of homicide at the point of separation or after leaving a violent partner, and that violence against women who have attempted to leave a relationship can escalate over time. Jennifer L. Hardesty, *Separation Assault in the Context of Postdivorce Parenting: An Integrative Review of the Literature*, 8 VIOLENCE AGAINST WOMEN 597, 601 (2002) (risk of intimate femicide increases sixfold when a woman leaves an abusive partner).

³⁰ Humphreys, *supra* note 28 at 197.

protection, the abuser’s connections to police as a former police officer, and the abuser’s connection to gangs.

D. Honduras does not adequately protect domestic violence victims.

Although Honduras has formal laws and institutions that recognize the problem of domestic violence against women,³¹ access to meaningful protections for victims trying to escape abusive relationship is underfunded, rarely available,³² and less available to victims of same-sex domestic violence.

Honduras’ Domestic Violence Law is a “special law,” held separate from the criminal or civil codes.³³ Theoretically, it allows an abused woman to obtain a protective order.³⁴ In practice, the law requires that an abuser must be caught in the act—a typically impossible standard,

³¹ See Cecilia Menjívar & Shannon Drysdale Walsh, *The Architecture of Femicide: The State, Inequalities, and Everyday Gender Violence in Honduras*, LATIN AM. RES. REV. at 223, 230; The Advocates for Human Rights, *Honduras’ Compliance with the Convention Against Torture: Parallel Report Relating To Violence Against Women*, at 2–3 (July 1, 2016), http://www.theadvocatesforhumanrights.org/uploads/honduras_tahr_cat_shadow_report_july_2016.pdf; Inter-Am. Comm’n on Human Rights, *Situation of Human Rights in Honduras* 56 (2015), <http://www.oas.org/en/iachr/reports/pdfs/honduras-en-2015.pdf>.

³² Inter-Am. Comm’n on Human Rights, *supra* note 31 at 56 (discussing CAPRODEM, a state initiative to involve civil society in coordinating aid to female victims of violence, and discussing the Public Prosecutor’s creation of Comprehensive Specialized Assistance Modules designed to “create access to justice” for women who are harmed by gender-related violence).

³³ Menjívar, *supra* note 31 at 230.

³⁴ *Id.* (citing Claudia Hermannsdorfer, Univ. of Cal. Hastings College of the Law, Decl. on Women’s Rights in Honduras (Nov. 2012)).

particularly in a country known for police corruption—and a first offense is only punished by community service and a 24-hour preventative detention.³⁵ Yet even if domestic-violence victims are able to secure injunctive protection, the people who inflict abuse “seldom abide by those provisions.”³⁶

While the Domestic Violence Law theoretically protects abuse victims’ confidentiality, its practical impact is to prevent service providers from accessing the information they would need to help domestic-violence victims.³⁷ No protection is offered to witnesses who are endangered—and “even when women wish to file complaints, they are often encouraged to withdraw the case.”³⁸ Without a responsive justice system, and without economic independence, many victims therefore have no option other than remaining in domestic situations where they are repeatedly subject to violent crimes.³⁹

³⁵ *See id.*

³⁶ UN Gen. Assembly, *Mission to Honduras: Report of the Special Rapporteur on violence against women, its causes and consequences*, A/HRC/29/27/Add. at 10 (Mar. 31, 2015), www.ohchr.org%2FEN%2FHRCBodies%2FHRC%2FRegularSessions%2FSession29%2FDocuments%2FA_HRC_29_27_Add_1_ENG.DOCX&usg=AOvVaw3HCFzTBVssHfl1wovAOfVW.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *See id.*

Domestic violence is also structurally sidelined by the Honduran justice system.⁴⁰ Police consider other crimes, such as drug offenses, to be “more serious” and therefore more worthy of investigation resources.⁴¹ Even if the government wanted to investigate domestic violence, the resources would not be there: funding is lacking for investigating violent crimes against women; there are typically no rape kits to confirm sexual violence.⁴² Further, domestic-violence murders are often deemed “crimes of passion”—and, too often, prosecutors will not prosecute and judges will not adjudicate these crimes. For crimes of passion, “judges often blame female victims, assuming that the woman may have instigated the murder, and use this as an additional reason not to consider the murder or to dismiss the case.”⁴³ The Office of the Special Prosecutor for Women was also created with “little power” for prosecuting the perpetrators of domestic violence, despite the fact that violent crimes make up the largest share of this office’s caseload⁴⁴ and few prosecutors in Honduras are assigned to domestic-violence cases.⁴⁵

⁴⁰ See Menjívar, *supra* note 31 at 231.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Menjívar, *supra* note 31 at 231–32.

⁴⁴ *Id.* at 230 (quoting UN Population Fund, *Programming to Address Violence against Women: 8 Case Studies, Volume No. 2* (2009)); see Inter-Am. Comm’n on Human Rights, *supra* note 31 at 56.

⁴⁵ See Inter-Am. Comm’n on Human Rights, *supra* note 31 at 56.

Honduras is filled with “brown areas,” where “the legal state is absent, resulting in a compromised rule of law.”⁴⁶ In these brown areas, “whatever formally sanctioned law exists is applied intermittently, if at all by subnational systems of power (e.g., patrimonial or even gangster-like), with informal legal systems that coexist with national regimes that have formal legal systems and are nominally democratic.”⁴⁷ The problems that domestic violence victims have seeking help and protection from the Honduran government are even more onerous when the domestic violence relationship is a same-sex relationship.⁴⁸ In short, Honduran laws and institutions recognize a domestic-violence problem against women, but fail to effectively address the problem.

⁴⁶ Menjívar, *supra* note 31 at 223 (citing Guillermo O’Donnell, *Why the Rule of Law Matters*, 15 J. OF DEMOCRACY 4, at 32–46).

⁴⁷ *Id.* (internal marks omitted).

⁴⁸ Amnesty Int’l, *No Safe Place: Salvadorans, Guatemalans, and Hondurans Seeking Asylum in Mexico Based on Their Sexual Orientation and/or Gender Identity* 21 (Nov. 2017), <https://www.amnesty.org/download/Documents/AMR0172582017ENGLISH.PDF>.

CONCLUSION

Amici respectfully support Petitioners' brief. They request that the Court grant Petitioners' request to vacate and remand the BIA decision that denied Petitioners' applications for asylum, withholding of removal, and protection under the Convention Against Torture.

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) because it contains 4,376 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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.

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