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**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
AURORA, COLORADO**

**DETAINED**

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DEPARTMENT OF JUSTICE  
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EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW  
OFFICE OF IMMIGRATION JUDGE  
AURORA, COLORADO

In the Matter of: \_\_\_\_\_ )  
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\_\_\_\_\_ )

File No. A-\_\_\_\_\_

Immigration Judge \_\_\_\_\_

Individual Hearing: \_\_\_\_\_, 2018  
8:30 a.m.

**RESPONDENT'S PRE-HEARING BRIEF**

\_\_\_\_\_ is an asylum seeker fleeing from Guatemala after being the  
victim of attempted rape, attempted murder, and credible death threats. Ms. \_\_\_\_\_ was

violently assaulted at knifepoint by a member of a gang underwritten by a Mexican drug cartel.<sup>1</sup> He attempted to rape her, and told her he was going to kill her, before she was able to escape.<sup>2</sup> Later, Ms. [REDACTED] was subpoenaed and testified three times in a Guatemalan court against her attacker, [REDACTED] (“[REDACTED]”).<sup>3</sup> Despite Ms. [REDACTED] testimony and similar allegations against [REDACTED] from another woman, the case against him was dismissed under suspicious circumstances, and after [REDACTED] and his gang were able to exert influence over the judge, part of the endemic corruption within the Guatemalan judicial system.<sup>4</sup> Immediately following the dismissal, [REDACTED] accosted Ms. [REDACTED] outside the courthouse and threatened to kill her and her family in retaliation for her testimony against him.<sup>5</sup> Ms. [REDACTED] promptly fled Guatemala with her teenage [REDACTED] [REDACTED] who has been under Ms. [REDACTED]’s care since she was [REDACTED].<sup>6</sup>

Ms. [REDACTED] merits a grant of asylum. She is a member of a particular social group—namely, testifying prosecutorial witnesses—that courts have uniformly held to be legally cognizable. Ms. [REDACTED] has already received a credible death threat from the same man who attempted to rape and murder her and has a well-founded fear of persecution if she is returned to Guatemala, as those who challenge the authority of cartel-associated criminal gangs by testifying against their members are routinely targeted for murder. Indeed, since Ms. [REDACTED] fled, her family has reported seeing individuals likely associated with the cartel surveilling her village and looking for “a woman” (almost certainly, Ms. [REDACTED])—presumably, to carry out [REDACTED]’s

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1 [REDACTED] h of [REDACTED] (“[REDACTED] Decl.”) ¶ 2; Ex. F, Affidavit of Dr. [REDACTED]  
2 [REDACTED] Aff.”) ¶ 14.  
3 [REDACTED] Decl. ¶ 15.  
4 [REDACTED] Decl. ¶¶ 30-43.  
5 [REDACTED] Decl. ¶¶ 42-49; Ex. F, [REDACTED] ¶¶ 21-25.  
6 [REDACTED] Decl. ¶¶ 42-49; Ex. F, [REDACTED] ¶¶ 21-25.  
7 [REDACTED] Decl. ¶¶ 9; 49-54.

death threat.<sup>7</sup> In the opinion of Dr. [REDACTED], an expert in Guatemalan organized crime, “for her to be returned to Guatemala . . . is a death sentence.”<sup>8</sup>

Ms. [REDACTED] also merits a grant of asylum due to her past persecution and well-founded fear of future persecution on account of her status as a Guatemalan woman. Guatemala is one of the most dangerous countries in the world to be a woman. Sexual violence, rape, and femicide (the intentional murder of women on account of their gender) are rampant, and fewer than 2% of gender-based violent crimes are successfully prosecuted. As detailed in the expert declarations of two experts in gender-based violence in Guatemala, Dr. [REDACTED] and [REDACTED], gender-based sexual violence and femicide is so pervasive in Guatemala as to be deemed a normal, natural, or even positive feature of a society in which male domination is absolute.<sup>9</sup> Ms. [REDACTED] has already survived an attempted rape and murder on account of her gender and has a well-founded fear of again being subjected to gender-based physical or sexual violence or femicide if she is returned to Guatemala.

Ms. [REDACTED] merits a favorable exercise of discretion. She is a woman of upstanding moral character with no history of criminal activity or illegal drug use.<sup>10</sup> She has devoted her life to caring for others, particularly by raising her [REDACTED] for the past [REDACTED] years.<sup>11</sup> And she did everything by-the-book in seeking asylum, presenting herself lawfully at a port of entry rather than entering the country illegally.<sup>12</sup>

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<sup>7</sup> Ex. A, Decl.”)

<sup>8</sup> Ex. F,

<sup>9</sup> Ex. Q,

<sup>10</sup> Ex. A

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* ¶ 55.

In the alternative, Ms. [REDACTED] is entitled to withholding of removal and/or protection under the Convention Against Torture due to the likelihood that she will experience severe harm, including sexual violence or murder if she is returned to Guatemala.

**I. STATEMENT OF FACTS**

**A. Attempted rape and attempted murder of Ms. [REDACTED]**

Ms. [REDACTED] is a [REDACTED]-year-old native of Guatemala who grew up in the small town of [REDACTED], Guatemala.<sup>13</sup> On [REDACTED] 201[REDACTED], Ms. [REDACTED] was the victim of a violent sexual assault.<sup>14</sup> That afternoon, she walked from her family’s home to the local store to buy [REDACTED] for a [REDACTED].<sup>15</sup> By the time she left the store to return home it was dark, and Ms. [REDACTED] used a flashlight to navigate the path home.<sup>16</sup> As she walked up the path, she saw a man standing by himself under a [REDACTED] tree on the side of the gravel path.<sup>17</sup> She had seen this man around town but did not know him, which was strange because she lived in a small town.<sup>18</sup> She said “good night” to him as she passed, but he did not respond.<sup>19</sup> Suddenly the man grabbed Ms. [REDACTED] by her hair from behind and jerked her backwards.<sup>20</sup> He hit her on the head and forced her to the ground.<sup>21</sup> She landed hard on the bed of rocks below.<sup>22</sup> The man laid on top of her, unsheathed a knife, and pushed it against her stomach.<sup>23</sup> He told her she was worth nothing and said, “I will kill you, but only after I’ve done

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<sup>13</sup> Ex. A, [REDACTED]

<sup>14</sup> *Id.* ¶¶ 13–18; Ex. K, [REDACTED]

<sup>15</sup> *Id.* ¶ 14.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* ¶ 15.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

what I want with you first.”<sup>24</sup> He tore apart her blouse and bra and attempted to rape her.<sup>25</sup> She screamed for help, but the man pushed her harder against the bed of rocks as he groped her.<sup>26</sup> He called her a “bitch” and a “whore” as he assaulted her, telling her that today was the day she would die.<sup>27</sup>

Ms. [REDACTED] stretched out her hands, searching for anything she could reach to fight the man off.<sup>28</sup> She found a plastic bottle on the ground, and hit him with it repeatedly, as she continued to yell and scream for help. But each time she screamed he pushed his knife harder into her stomach.<sup>29</sup> Suddenly, a light appeared a little ways up the path in the direction of Ms. [REDACTED]’s home.<sup>30</sup> Her attacker was startled by the light and in this moment of distraction, Ms. [REDACTED] escaped from his grip and fled toward her home, running and shaking in terror.<sup>31</sup>

As she reached the light, she realized it was her nephew, [REDACTED], who was coming down the path using the flashlight on his cellphone.<sup>32</sup> Ms. [REDACTED] explained that she had been attacked.<sup>33</sup> Mr. [REDACTED] could see how terrified and distraught his aunt was, and he told Ms. [REDACTED] to go home and he continued down the path. When he reached the site of the assault, the attacker was still there. He told Mr. [REDACTED] [REDACTED] to put his light on his face, so he would know his identity.<sup>34</sup> The attacker, showing no remorse or fear of persecution for his actions told Mr. [REDACTED] “You won’t be able to

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* ¶ 16.

<sup>29</sup> *Id.* ¶ 15.

<sup>30</sup> *Id.* ¶ 16.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* ¶ 17; [REDACTED] 4.

<sup>33</sup> Ex. A, F

<sup>34</sup> Ex. L, L

do anything to me anyways, I'll just kill you."<sup>35</sup> Mr. [REDACTED] knew immediately who this man was, [REDACTED] because he had seen him at the [REDACTED], congregating with other gang members.<sup>36</sup>

Mr. [REDACTED] returned to the family home.<sup>37</sup> By then Ms. [REDACTED] was calm enough to explain the details of the attack to her family.<sup>38</sup> She had just become the latest in a long list of women in Guatemala who suffer violence and sexual violence.<sup>39</sup> But unlike the vast majority of Guatemalan women, Ms. [REDACTED] decided that she would speak out and confront [REDACTED] the man who attacked her. She decided she could not live in a country where [REDACTED] walked away without punishment, and she would cooperate with police and prosecutors to see that he was brought to justice.

That night, Ms. [REDACTED] and her mother [REDACTED] went to the Community Council (COCODE) in [REDACTED] to report the crime.<sup>40</sup> COCODE is the community level branch of Guatemala's system of development councils who serve the wellbeing of their local jurisdiction.<sup>41</sup> They told Ms. [REDACTED] to report the attack to the police because attempted rape and murder was a serious crime.<sup>42</sup>

Taking the advice of COCODE, Ms. [REDACTED] and her mother [REDACTED] traveled to [REDACTED] the next day, [REDACTED] to make a formal report of the attack to the police.<sup>43</sup> The police in [REDACTED] were dismissive of her claims and did not take her or the

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<sup>35</sup> *Id.* ¶ 6-7.

<sup>36</sup> *Id.* ¶ 7.

<sup>37</sup> Ex. A, [REDACTED]

<sup>38</sup> Ex. A, [REDACTED]

<sup>39</sup> *See inj*

<sup>40</sup> *Id.* ¶ 2

<sup>41</sup> *Id.*

<sup>42</sup> Ex. A, [REDACTED]

<sup>43</sup> Ex. A, [REDACTED]

attack seriously.<sup>44</sup> They told her that if she wanted to make a report, she would have to do it through the Public Ministry.<sup>45</sup> Undeterred, Ms. [REDACTED] and her mother went to the Public Ministry office in [REDACTED] and made a report that afternoon.<sup>46</sup> She was told that there would be an arrest warrant issued for [REDACTED].<sup>47</sup> However, nothing ever seemed to happen after her report.<sup>48</sup>

Ms. [REDACTED] returned home where she lived in extreme fear and depression.<sup>49</sup> She did not leave her home for months, cried often, and reports strong thoughts of suicide during this time.<sup>50</sup>

Sometime after the attack, Ms. [REDACTED] went back to the small store in her town.<sup>51</sup> The store was owned by a woman who knew everyone in the village.<sup>52</sup> The store owner asked Ms. [REDACTED] if she was the woman who reported [REDACTED] to the police and the Public Ministry.<sup>53</sup> Ms. [REDACTED] confirmed she had made the report.<sup>54</sup> The store owner told Ms. [REDACTED] she was stupid and should drop the report.<sup>55</sup> The store owner explained that [REDACTED] was her [REDACTED], and her family had connections with the police to make sure no one would ever follow up on Ms. [REDACTED] report.<sup>56</sup>

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<sup>44</sup> Ex. A,

<sup>45</sup> Ex. A,

<sup>46</sup> Ex. A,

<sup>47</sup> Ex. A,

<sup>48</sup> Ex. A,

<sup>49</sup> Ex. A,

<sup>50</sup> *Id.*; Ex

<sup>51</sup> Ex. A,

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

**B. Death threats against Ms. [REDACTED] and her family after she testified against her attacker**

Ms. [REDACTED] heard nothing about her case from the police or Public Ministry for [REDACTED] years.<sup>57</sup> Then, in [REDACTED], officials from the Public Ministry came to Ms. [REDACTED]'s home because they had arrested [REDACTED] for a similar attack he committed against another woman.<sup>58</sup> [REDACTED], a Public Ministry attorney, told Ms. [REDACTED] that the Public Ministry had "lost" her report from [REDACTED].<sup>59</sup> She also informed Ms. [REDACTED] that many other reports had also been "lost" and several officials were undergoing corruption investigations due to intentionally losing reports.<sup>60</sup> But now Ms. [REDACTED]'s report had been unearthed and the Public Ministry wanted Ms. [REDACTED]'s help.<sup>61</sup>

Ms. [REDACTED] told Ms. [REDACTED] that there would be a trial against [REDACTED] and she would be expected to testify.<sup>62</sup> Ms. [REDACTED] was first called to testify later in [REDACTED]. Ultimately, she would go to court in [REDACTED] times.<sup>63</sup> During her first appearance in [REDACTED] and his attorney were present, but the judge was not there, so the hearing was postponed.<sup>64</sup> In [REDACTED] Ms. [REDACTED] again made the long [REDACTED]-hour trip and gave testimony for the first time.<sup>65</sup> During this hearing, Ms. [REDACTED] was asked to state her full name for the record and confirm that the statement she made to the Public Ministry was accurate.<sup>66</sup> Ms. [REDACTED] did so, and explained in more detail how [REDACTED] had tried to rape and

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<sup>57</sup> Ex. A [REDACTED]

<sup>58</sup> Ex. A [REDACTED]

<sup>59</sup> *Id.* ¶ 3 [REDACTED]

<sup>60</sup> *Id.* [REDACTED]

<sup>61</sup> *Id.* [REDACTED]

<sup>62</sup> *Id.* ¶ 3 [REDACTED]

<sup>63</sup> *Id.* ¶ 3 [REDACTED]

<sup>64</sup> Ex. A [REDACTED]

<sup>65</sup> *Id.* ¶ 3 [REDACTED]

<sup>66</sup> *Id.* [REDACTED]



kill her.<sup>67</sup> Being in the same room as her attacker and having to re-tell and relive the attack was an extremely difficult and retraumatizing experience for Ms. [REDACTED].<sup>68</sup> She was visibly upset, shivering and crying as she explained to the court what [REDACTED] had done to her.<sup>69</sup> After the hearing, Ms. [REDACTED] met with a court social worker named [REDACTED].<sup>70</sup> He explained that the judge had scheduled a new hearing, and that this was very good news because it meant the judge believed Ms. [REDACTED]'s testimony, and the judge was not dropping the charges.<sup>71</sup>

In [REDACTED] when Ms. [REDACTED] returned to court to testify once again, there was a new judge presiding over the hearing.<sup>72</sup> This was strange because the court social worker had previously told her she would see the same judge at this hearing.<sup>73</sup> She was again asked to state her name and retell the story of her attack.<sup>74</sup> However, it became increasingly clear that the new judge did not have any interest in hearing Ms. [REDACTED]'s testimony.<sup>75</sup> She was continually interrupted, antagonized, and discredited by the judge and defense attorney, who both claimed [REDACTED] was actually [REDACTED]'s live-in girlfriend.<sup>76</sup>

The court summoned Ms. [REDACTED] to testify again on [REDACTED].<sup>77</sup> This time, [REDACTED] was accompanied by four accomplices.<sup>78</sup> These men were members of the same gang and waited for him outside the courthouse.<sup>79</sup> Ms. [REDACTED] again attempted to explain to the judge

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* ¶ 37.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* ¶ 38

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* ¶ 39.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* 40 [REDACTED]

<sup>78</sup> *Id.* ¶ 41.

<sup>79</sup> *Id.*

what [REDACTED] had done.<sup>80</sup> However, the same judge from before refused to give Ms. [REDACTED] or the prosecution the opportunity to present their case.<sup>81</sup> Instead, the judge again asked about Ms. [REDACTED]'s relationship with [REDACTED].<sup>82</sup> Again, Ms. [REDACTED] denied any relationship.<sup>83</sup> [REDACTED]'s attorney then argued that [REDACTED] must be innocent if Ms. [REDACTED] did not know him or have a relationship with him.<sup>84</sup>

After leaving the courtroom, Ms. [REDACTED] learned that [REDACTED] would not be punished. She was completely devastated at the lack of justice carried out by the Guatemalan government.<sup>85</sup> Due to his gang affiliations, [REDACTED] had the money and connections needed to influence the decision in his case.<sup>86</sup> A new judge had been appointed to the case, one that worked with [REDACTED] to discredit Ms. [REDACTED]'s testimony, and to set [REDACTED] free, not based on his innocence, but because of his gang affiliations and connections.<sup>87</sup>

As Ms. [REDACTED] left the courthouse she encountered [REDACTED] on the street.<sup>88</sup> He was on the phone and she heard him say "They changed the judge. I won. Now go get in touch with the judge."<sup>89</sup> When he saw Ms. [REDACTED] [REDACTED] hung up the phone and confronted her. "You see, I won," he told her, "[n]ow I am going to kill you and your family."<sup>90</sup>

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<sup>80</sup> *Id.* ¶ 42.

<sup>81</sup> *Id.* ¶¶ 42–43.

<sup>82</sup> *Id.* ¶¶ 42–43.

<sup>83</sup> *Id.* ¶¶ 42–43.

<sup>84</sup> *Id.* ¶¶ 42–43.

<sup>85</sup> *Id.* ¶ 44.

<sup>86</sup> *Id.*

<sup>87</sup> Ex.

<sup>88</sup> *Id.* ¶ 46.

<sup>89</sup> *Id.* ¶ 47.

<sup>90</sup> *Id.* ¶ 48.

**C. Ms. [REDACTED] and her [REDACTED] flee to the United States**

Ms. [REDACTED] knew her life was in imminent danger, and that the Guatemalan government would not protect her from [REDACTED] and his gang.<sup>91</sup> She knew she had no choice but to flee to the United States.<sup>92</sup> After a few weeks of working to save money, she left Guatemala with [REDACTED] on [REDACTED] to seek asylum in the United States.<sup>93</sup> Together they traveled through Mexico for nine days, never staying in one location any longer than necessary.<sup>94</sup>

They arrived at the border of [REDACTED] at the [REDACTED] point of entry in [REDACTED]. Ms. [REDACTED] lawfully presented herself and requested asylum, explaining to a border agent that she was fleeing Guatemala because her life was in danger.<sup>95</sup> Ms. [REDACTED] was detained and placed in ICE custody.<sup>96</sup> Ms. [REDACTED] was sent to Aurora, Colorado, while her [REDACTED] [REDACTED] remained in [REDACTED].<sup>97</sup> Ms. [REDACTED] has been detained for over 150 days.

**D. [REDACTED]s gang search for Ms. [REDACTED] in Guatemala**

Since Ms. [REDACTED] has fled her home in Guatemala, her family reports that new men have visited her small village.<sup>98</sup> These men drive large gray foreign trucks with Mexican license plates and are looking for a “woman.”<sup>99</sup> Ms. [REDACTED] and her family believe that these men are connected with [REDACTED] and looking for Ms. [REDACTED] to find her and kill her.<sup>100</sup> And, according to Dr. [REDACTED] an expert in Guatemalan organized crime, there is “no doubt” that

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<sup>91</sup> *Id.* ¶ 49.

<sup>92</sup> *Id.* ¶ 51.

<sup>93</sup> *Id.* ¶ 54.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* ¶¶ 55–58.

<sup>96</sup> *Id.* ¶ 59.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* ¶ 60; Ex. K [REDACTED] ¶ 11.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

these men are Cartel members associated with [REDACTED]'s gang, and that Ms. [REDACTED] is the "woman" they are looking for.<sup>101</sup>

**E. The ongoing effects of the attack and threats on Ms. [REDACTED]**

After her testimony against [REDACTED] Ms. [REDACTED] received a referral from Mr. [REDACTED] the court social worker, to seek psychological care to help her heal from the trauma she had experienced as a victim of attempted femicide.<sup>102</sup> But because Ms. [REDACTED]'s family has limited financial resources, she was unable to see a psychologist in Guatemala.<sup>103</sup>

Ms. [REDACTED] was seen on [REDACTED] by Dr. [REDACTED], a licensed psychiatrist from [REDACTED] Medical Center.<sup>104</sup> Based on his evaluation, Dr. [REDACTED] diagnosed Ms. [REDACTED] with "Posttraumatic Stress Disorder (PTSD), Major Depressive Disorder, Recurrent, Moderately Severe, and Generalized Anxiety Disorder."<sup>105</sup> He reports that Ms. [REDACTED] continues to believe that if she were to return to Guatemala, she and her family would be killed.<sup>106</sup> Dr. [REDACTED] concluded that Ms. [REDACTED]'s story was credible and the symptoms presented by Ms. [REDACTED] were the results of the traumatic experiences of her attack and the failure of the Guatemalan judicial system to protect her.<sup>107</sup> Based on his evaluation, Dr. [REDACTED] offered the opinion that "to require Ms. [REDACTED] to return to Guatemala would pose a serious threat to her mental health" and may be physically dangerous for her as well given [the] death threats."<sup>108</sup>

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101 [REDACTED]  
102 [REDACTED]  
103 [REDACTED]  
104 [REDACTED]

105 *Id.* at 4.

106 *Id.* at 2.

107 *Id.* at 4.

108 *Id.* at 3.

On [REDACTED] M [REDACTED] was seen by Dr [REDACTED] a licensed doctor from [REDACTED] Medical Center, board certified in Obstetrics and Gynecology.<sup>109</sup> Since 20 [REDACTED], Dr. [REDACTED] has conducted asylum exams, including evaluation of sexual injuries related to violence and torture against women.<sup>110</sup> She has also worked in Guatemala since 20 [REDACTED], and has direct experience with the societal norms in Guatemala that tolerate sexual harassment and violence against women.<sup>111</sup> Dr. [REDACTED] states that “Ms. [REDACTED]’s history and exam are consistent with a woman who has been a victim of a physical assault many years ago, and is still suffering the psychological consequences of ongoing threats to her life.”<sup>112</sup> Dr. [REDACTED] concluded that Ms. [REDACTED]’s “allegations of violent sexual assault and ongoing death threats are credible and supported by my current and firsthand knowledge of legal and societal norms in Guatemala.”<sup>113</sup>

## II. STATEMENT OF COUNTRY CONDITIONS

Guatemala is one of the most dangerous countries in the world, particularly for women. Gangs routinely commit horrifying acts of violence, yet widespread corruption in the police and judiciary ensures nearly total impunity for crimes committed by gang members. Women are targeted for murdered every day because of their gender. Rape, sexual assault and physical abuse is rampant. Those who dare to testify against their assailants, particularly if their attackers are associated with criminal organizations, are at an extreme risk of violent retaliation for daring to resort to the courts for justice.

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<sup>109</sup> Ex. D, Affidavit of Dr. [REDACTED] at ¶ 1.

<sup>110</sup> *Id.* at ¶ 2.

<sup>111</sup> *Id.* at ¶ 4.

<sup>112</sup> *Id.* at ¶ 32.

<sup>113</sup> *Id.* ¶ 34.

### A. Gang violence is endemic and largely unchecked in Guatemala

Due to the deeply-rooted presence of powerful gangs, Guatemala has become one of the most violent countries in the world.<sup>114</sup> Several major transnational gangs operate within Guatemala, including MS-13 and the 18<sup>th</sup> Street Gang.<sup>115</sup> In addition, many local street gangs have begun partnering with powerful Mexican drug cartels, acting as the local enforcement arm for the cartels.<sup>116</sup> In the region ██████████, where ██████████'s town is located, the powerful Sinaloa Cartel has emerged victorious in a power struggle over the competing Zeta Cartel, and now has a stranglehold over the region.<sup>117</sup> The Sinaloa Cartel uses the lush, sparsely-populated region as a staging point for drug trafficking operations smuggling cocaine from Colombia to the United States.<sup>118</sup>

These street gangs and cartels have partnered with Illegal Clandestine Security Apparatuses (“CIACs”), which are composed of current and former Guatemalan security, intelligence, and police officers.<sup>119</sup> The CIACs and the gangs form “a kind of Sicilian-style mafia” which “thrive[s] off the weakness of state institutions” in Guatemala.<sup>120</sup> These criminal

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<sup>114</sup> Ex. HH, OSAC, Bureau of Diplomatic Security, U.S. Department of State, Guatemala 2018 Crime and Safety Report (May 9, 2018), <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=24030> (“Guatemala 2018 Crime and Safety Report”); Ex. NN, Ruth Elizabeth Prado Perez, Better Governance to Fight Displacement by Gang Violence in the Central American Triangle (Sept. 13, 2017), <https://bettercarenetwork.org/sites/default/files/Displacement.pdf> (“Better Governance to Fight Displacement by Gang Violence in Central American Triangle”).

<sup>115</sup> *Ibid.*

<sup>116</sup> Ex. F, ██████████, ¶ 11; *see also* Ex. LL, Esteban Arratia Sandoval, The New Hideout of Cockroaches? The Expansion of the Mexican Organized Crime In the Northern Triangle of Central America, *Revista del Relaciones Internacionales, Estrategia y Seguridad* (2016), [http://www.scielo.org.co/scielo.php?script=sci\\_arttext&pid=S1909-30632016000200008](http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S1909-30632016000200008) (“The New Hideout of Cockroaches? The Expansion of the Mexican Organized Crime in the Northern Triangle of Central America”); Ex.MM, Henry Morales, Drug lords in Guatemala are burning down forests the size of Manhattan for cocaine-smuggling planes, *Business Insider* (June 7, 2016), <https://www.businessinsider.com/afp-guatemalan-drug-lords-burning-down-forests-to-land-planes-2016-6> (“Drug Lords in Guatemala Are Burning Down Forests the Size of Manhattan for Cocaine-Smuggling Planes”).

<sup>117</sup> Ex. F, Schirmer Aff. ¶ 10.

<sup>118</sup> *Id.* ¶ 9.

<sup>119</sup> *Id.* ¶¶ 6-7.

<sup>120</sup> *Id.* ¶ 7.

organizations have pervasively infiltrated the government, with ties to the police, politicians and the judiciary.<sup>121</sup> They routinely threaten to kill anyone (witnesses, judges, police officers or politicians) who takes any action contrary to the criminal objectives of the group.<sup>122</sup>

In many parts of Guatemala, “the Government has lost effective control to gangs and other organized criminal groups and is unable to provide protection to inhabitants.”<sup>123</sup> Criminal organizations within Guatemala are regularly able to bribe, extort and threaten their way to near total impunity for crimes committed by their members.<sup>124</sup>

### **B. Gender-based sexual violence and femicide is rampant in Guatemala**

The U.S. State Department recognizes that “violence against women, including sexual and domestic violence,” are “serious problems” in Guatemala, as is “femicide”—namely, the “killing of women because of their gender.”<sup>125</sup> In fact, this observation is a significant understatement: Guatemala has the third-highest rate of femicide in the world.<sup>126</sup> Since 2000, there have been over 9,000 reported murders of women in Guatemala, although the true number is likely much higher because many such cases are never reported.<sup>127</sup> Nor have these numbers meaningfully declined in recent years—for instance, in 2015, there were more than 760 reported cases of violent deaths of women.<sup>128</sup> Women in Guatemala are frequently murdered in

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.* ¶¶ 11-12.

<sup>123</sup> *See, e.g.*, Ex. U, U.N. High Commissioner for Refugees (UNHCR), Eligibility Guidelines for Assessing International Protection Needs of Asylum-Seekers from Guatemala (Jan. 2018), at 34, <http://www.refworld.org/docid/5a5e03e96.html> (“UNHCR Eligibility Guidelines”).

<sup>124</sup> *Id.*

<sup>125</sup> Ex. T, Country Reports on Human Rights Practices for 2017: Guatemala, U.S. Department of State at 1, 16-17 (updated 7/23/2018) (emphasis added) (“Country Reports on Human Rights Practices for 2017: Guatemala”).

<sup>126</sup> Ex. BB, Karen Musalo and Blaine Bookey, “Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala,” 10 *Hastings Race & Poverty L.J.* 265 (Summer 2013) (“Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala”); *see also* Ex. OO, *The Guardian*, “Can health workers stop thousands of women being killed in Guatemala?”, 3/7/2018 (“Can Health Workers Stop Thousands of Women Being Killed in Guatemala?”).

<sup>127</sup> Ex. R. [REDACTED] 28.

<sup>128</sup> Ex. Q. [REDACTED] l. ¶ 8.

particularly brutal ways (involving rape, torture, or dismemberment of sexual organs), further suggesting that these killings are motivated by a hatred and disregard of women.<sup>129</sup>

In addition, many thousands more women have been raped or physically abused.<sup>130</sup> From April 2015 to March 2016, there were roughly 45,000 reported cases of criminal violence against women.<sup>131</sup> Because of systematic under-reporting of such crimes, these figures are likely the tip of the iceberg.<sup>132</sup>

The current epidemic of gender-based violence in Guatemala has its roots in Guatemala's decades-long civil war. "[D]uring the war, the State trained members of the Army to rape, mutilate and murder women in the most terrifying and brutal means possible, to terrorize not only individuals but entire communities."<sup>133</sup> Because the perpetrators of these systemic atrocities were never brought to justice, "these sadistic practices became 'normal' to thousands of men who were asked to carry out these orders."<sup>134</sup>

These patterns of gender-based violence have carried forward into the post-conflict period, fueled by an entrenched culture of sexism. Patriarchal attitudes have deep roots within Guatemalan society, in which women are deemed to fall within the dominion of their fathers and/or their husbands.<sup>135</sup> The pervasive violence against women is rooted "in the unequal power relationships between men and women" in Guatemala, "which can be seen in the solidly established idea that women are inferior beings who may be subject to sexual harassment, rape,

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<sup>129</sup> *Id.* ¶¶ 8-11, 18; Ex. AA, Karen Musalo, Elisabeth Pellegrin, S. Shawn Roberts, "Crimes Without Punishment: Violence Against Women in Guatemala," 21 *Hastings Women's L.J.* 161, 181-82 (Summer 2010) ("Crimes Without Punishment: Violence Against Women in Guatemala").

<sup>130</sup> Ex. Q,

<sup>131</sup> Ex. R,

<sup>132</sup> *Id.*

<sup>133</sup> Ex. Q,

<sup>134</sup> *Id.*

<sup>135</sup> Ex. R,



and even murder.”<sup>136</sup> Moreover, Guatemala’s culture of “machismo” celebrates a particularly tough, aggressive, even violent form of masculinity.<sup>137</sup> “Within this milieu, violence against women is socially accepted, and is seen as normal or even as a ‘positive’ attribute of the machismo culture[.]”<sup>138</sup>

The ascendancy of gangs in Guatemala has exacerbated the insecurity faced by women.<sup>139</sup> “[T]he strongly macho ethos of the Guatemalan gangs expresses itself . . . in the widespread sexual and gender-based violence experienced by women and girls living in the gang’s territories.”<sup>140</sup> Thus, violence against women is particularly common in areas—like the [REDACTED] region—where gang control is strong.<sup>141</sup>

### **C. The Guatemalan government is unable and unwilling to protect women from gender-based violence**

Despite the ubiquity of gender-based violence in Guatemala, “corruption and inadequate investigation made prosecution difficult, and impunity continue[s] to be widespread.”<sup>142</sup> “Police had minimal training or capacity to investigate sexual crimes or assist survivors of such crimes, and the government did not enforce the law effectively.”<sup>143</sup> Moreover, sexist attitudes are commonplace among law enforcement and judicial officers, rendering it nearly impossible for

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<sup>136</sup> Ex. Q, [REDACTED], ¶ 11.

<sup>137</sup> Ex. AA, Crimes Without Punishment: Violence Against Women in Guatemala.

<sup>138</sup> Ex. AA, Crimes Without Punishment: Violence Against Women in Guatemala.

<sup>139</sup> Ex. Q, Paz y Paz Decl. ¶ 20.

<sup>140</sup> Ex. U, UNHCR Eligibility Guidelines.

<sup>141</sup> Ex. EE, KIND, “Neither Security nor Justice: Sexual and Gender-based Violence and Gang Violence in El Salvador, Honduras, and Guatemala,” at 3 (May 2017) (“Neither Security nor Justice: Sexual and Gender-based Violence”).

<sup>142</sup> Ex. T, Country Reports on Human Rights Practices for 2017: Guatemala at 1.

<sup>143</sup> Ex. T, Country Reports on Human Rights Practices for 2017: Guatemala at 16.

victims of gender-based violence to obtain redress through the courts.<sup>144</sup> As a result, impunity for these crimes is nearly absolute, with only 2% of such cases resulting in conviction.<sup>145</sup>

The Government of Guatemala has taken some nominal steps to address pervasive gender-based violence, but these efforts have been largely ineffective. In 2008, the Guatemalan legislative assembly passed the Law Against Femicide and Other Forms of Violence Against Women.<sup>146</sup> The law created specialized courts for prosecuting femicide cases, reflecting the government's acknowledgement that gender-based violence had reached epidemic levels.

However, due to failures of implementation the law has not significantly reduced the rates of femicide and sexual violence, or on the rates of impunity for those crimes.<sup>147</sup> For one, specialized femicide courts do not exist in rural areas.<sup>148</sup> Even where they do operate, sexist attitudes among judges and law enforcement has rendered enforcement of those laws nearly non-existent.<sup>149</sup> Police and prosecutors have "displayed a persistent tendency to blame the victims of gender-based crimes," assuming the victims "deserved the violence ... because of where they were found, because of how they were dressed, because of how they behaved, or simply 'for being a woman.'"<sup>150</sup> Judges, too, are frequently predisposed to disbelieve a woman's testimony, to treat her own word as insufficient to support a conviction in the absence of corroborating

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<sup>144</sup> See, e.g., Ex. R, [REDACTED] Decl. ¶¶ 37-38, 42-45, 48-53, Ex. Q, Paz y Paz Decl. ¶¶ 21-24; Ex. BB, Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala; Ex. X Cecilia Menjivar and Shannon Drysdale Walsh, "Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala." Laws 2016, 5(3) at 13 (July 2016) ("Subverting Justice: Socio-Legal Determinants of Impunity for Violence Against Women in Guatemala").

<sup>145</sup> Ex. R, [REDACTED] ¶ 30.

<sup>146</sup> Ex. Q, [REDACTED] ¶ 5.

<sup>147</sup> Ex. Q, [REDACTED] ¶¶ 5, 8; Ex. BB, Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala.

<sup>148</sup> Ex. Q, [REDACTED] ¶ 22.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*; see also Ex. R, [REDACTED] cl. ¶ 49; Ex. BB, Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala.

evidence, or to blame the victim for the violence she suffered.<sup>151</sup> Due to a cultural context where “prosecutors and judges view violence against women as normal” and acceptable, there has been a “persistent lack of implementation” of the 2008 Femicide law.<sup>152</sup>

Victims of sexual violence by gangs face even greater obstacles to obtaining protection by the Guatemalan government.<sup>153</sup> Due to rampant corruption and gang infiltration within the Guatemalan police, victims of gender-based crimes perpetrated by gangs are especially unlikely to obtain justice, and are particularly vulnerable to retaliation for reporting the crime.<sup>154</sup>

#### **D. Violent retaliation against prosecutorial witnesses in Guatemala is common**

Guatemala law contains provisions for protecting witnesses in criminal processes, reflecting the pervasiveness of violence and intimidation targeted towards testifying witnesses.<sup>155</sup> However, such protections are often woefully inadequate, and it is “not uncommon for such witnesses to be threatened, attacked, and even murdered.”<sup>156</sup> The State Department confirms the government’s “failure to fully protect . . . witnesses . . . from intimidation and threats.”<sup>157</sup>

Those who testify against members of gangs face a particularly significant risk of violent retaliation.<sup>158</sup> Gangs “exercise strict control and constant surveillance over the communities in which they operate,” imposing strict “rules of conduct” prohibiting community members from reporting crimes, “and violently harm[ing] those who do not comply.”<sup>159</sup> The “act of resistance

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<sup>151</sup> Ex. R, [REDACTED] Decl. ¶ 53; Ex. BB, Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala.

<sup>152</sup> Ex. X, Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala

<sup>153</sup> See, e.g. Ex., EE, Neither Security nor Justice: Sexual and Gender-based Violence.

<sup>154</sup> *Id.*

<sup>155</sup> See Ex. U, UNHCR Eligibility Guidelines, at 35.

<sup>156</sup> *Id.*; see also Ex. Z, Freedom House, Freedom in the World 2016 - Guatemala, <https://freedomhouse.org/report/freedom-world/2016/guatemala> (“Freedom in the World 2016 – Guatemala”).

<sup>157</sup> Ex. S, Country Reports on Human Rights Practices for 2016: Guatemala at 1.

<sup>158</sup> Ex. T, Country Reports on Human Rights Practices for 2017: Guatemala (Testifying witnesses in Guatemala “report threats, intimidation, and surveillance, most often from drug trafficking organizations.”).

<sup>159</sup> Ex. EE, Neither Security nor Justice: Sexual and Gender-based Violence at 8; Ex. II, Steven Dudley, Homicides in Guatemala: Analyzing the Data, InSight Crime (April 20, 2017),

in testifying as a key prosecutorial witness against a gang member” positions the witness “as a member of a distinct group likely to be particularly persecuted and murdered by the gang/Cartel/CIACs.”<sup>160</sup> Individuals who resist the authority of gangs, particularly by testifying against their members, are so frequently targeted for retaliation in Guatemala that the UNHCR has recognized such individuals as a “particular social group” entitled to refugee status.<sup>161</sup>

Individuals who are targeted for assassination by criminal organizations for testifying against their members cannot escape merely by relocating within Guatemala.<sup>162</sup> The CIACs have access to extensive governmental computer databases of the identity, location and family relationships of individuals throughout Guatemala.<sup>163</sup> Gangs and cartel members can pay for information from these databases, allowing them track down those deemed “troublemakers” (such as testifying witnesses) and target them for “kidnapping, torture, and assassination.”<sup>164</sup>

The risk of reprisal is also acute for women who have testified against male perpetrators of gender-based violence.<sup>165</sup> Women who report gender-based violence “are routinely threatened with death or they’re disappeared.”<sup>166</sup> The absence of effective witness protection programs leave women who testify “vulnerable to severe retaliation, in including additional violence or death, should they come forward to pursue justice.”<sup>167</sup> Because the government “typically do[es]

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<https://www.insightcrime.org/investigations/homicides-in-guatemala-analyzing-the-data/> (“Homicides in Guatemala, Analyzing the Data”) (describing example of a Ministerio Público de Guatemala analyst who “had to leave the country and request asylum in another country due to the threats the person received from gang members after testifying in court” and who reported that “this case is not an exception”).

<sup>160</sup> Ex. F, ██████████ Aff. ¶ 24.

<sup>161</sup> Ex. U, UNHCR Eligibility Guidelines at 39-40.

<sup>162</sup> Ex. F, ██████████ Aff. ¶¶ 26-28.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 8.

<sup>165</sup> See Ex. U, UNHCR Eligibility Guidelines at 39-40, (noting that “Rape survivors frequently did not report crimes due to lack of confidence in the justice system, social stigma, and fear of reprisal.”); Ex. Q, Paz y Paz Decl. ¶ 9.

<sup>166</sup> Ex. FF, Nicole Akoukou Thompson, The War on Guatemalan Women: Gangs Murder with Impunity, Latin Post, July 9, 2014, <http://www.latinpost.com/articles/16751/20140709/war-guatemalan-womengangs-murder-impunity.htm> (“The War on Guatemalan Women: Gangs Murder with Impunity”).

<sup>167</sup> Ex. AA, Crimes Without Punishment: Violence Against Women in Guatemala at 161, 187.

not effectively protect victims from further violence and retaliation by their abusers during the judicial process,” victims of gender-based violence “are made even more vulnerable by reporting, and may even be killed.”<sup>168</sup>

Women who report or testify about gender-based violence also suffer additional discrimination and victimization. They can face “stigmatization by family and community members.”<sup>169</sup> And police, prosecutors, and judges often make things worse.<sup>170</sup> In fact, authorities often “commit acts of gender-based discrimination during their investigations and throughout the legal process.”<sup>171</sup> Due to ingrained “sexist stereotypes,” many police, prosecutors and judges believe women “provoke or are to blame for the violence.”<sup>172</sup> Due to the prevalence of victim-blaming, the legal system often serves to “reinforce women’s subordination” by re-victimizing those who seek redress for the crimes committed against them.<sup>173</sup>

### III. MS. [REDACTED] IS ELIGIBLE FOR ASYLUM

Ms. [REDACTED] should receive asylum in the United States. Asylum is available for individuals who meet the statutory definition of a “refugee,” by proving they are a person outside their home country, who is unable or unwilling to return to or avail themselves of the protection of their home country, “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.”<sup>174</sup>

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<sup>168</sup> Ex. EE, *Neither Security nor Justice: Sexual and Gender-based Violence and Gang Violence* at 8.

<sup>169</sup> Ex. AA, *Crimes Without Punishment: Violence Against Women in Guatemala* at 161, 175.

<sup>170</sup> Ex. Q, [REDACTED] Decl. ¶ 22.

<sup>171</sup> *Id.*

<sup>172</sup> Ex. GG, Organization of American States, Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, December 9, 2011, <http://www.oas.org/en/iachr/women/docs/pdf/WOMEN%20MESOAMERICA%20ENG.pdf> (“Access to Justice for Women Victims of Sexual Violence in Mesoamerica”).

<sup>173</sup> Ex. X, Cecilia Menjivar and Shannon Drysdale Walsh, “Subverting Justice: Socio -Legal Determinants of Impunity for Violence against Women in Guatemala.” *Laws* 2016, 5(3) at 16 (July 2016) (“Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala”).

<sup>174</sup> INA § 208(b)(1)(A); INA § 101(a)(42)(A); *see also Arevalo-Lara v. Sessions*, 728 F. App’x 872, 875 (10th Cir. 2018).

“[A]t least one central reason” motivating the persecution the individual has experienced or may experience in the future must be the individual’s “race, religion, nationality, membership in a particular social group, or political opinion.”<sup>175</sup>

Ms. [REDACTED] meets this definition of “refugee.” She cannot return to Guatemala for fear of retaliation, rape, and murder. Her fears are based on her past persecution: she was the victim of a sexual assault and attempted murder by a gang member and was threatened in retaliation for her testimony against him. “[A]t least one central reason” for this persecution was her membership in particular social groups, including Ms. [REDACTED]’s status as a Guatemalan prosecutorial witness and as a Guatemalan woman. Ms. [REDACTED] can also demonstrate she has a well-founded fear of future persecution. She cannot return to Guatemala for fear of death by the gang she spoke against. Moreover, she would again be subject to the same systematic gender-based violence that persists unchecked in Guatemala.

**A. The attack and death threat against Ms. [REDACTED] constitute persecution**

Ms. [REDACTED] was the victim of a violent sexual assault by a gang member who attempted to rape and kill her. She sought justice by testifying against her attacker, but he was released and threatened her again with murder in retaliation for her testimony. These events establish Ms. [REDACTED] suffered past persecution in Guatemala. Persecution is “the infliction of suffering or harm . . . in a way regarded as offensive” and “encompasses more than just restrictions or threats to life and liberty.”<sup>176</sup> Persecution includes suffering perpetrated by non-governmental groups “that the government is unwilling or unable to control”<sup>177</sup> A single

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<sup>175</sup> INA § 208(b)(1)(B)(i).

<sup>176</sup> *Niang v. Gonzales*, 442 F.3d 1871, 1197 (10th Cir. 2005) (internal quotations omitted).

<sup>177</sup> See *Estrada-Escobar v. Ashcroft*, 376 F.3d 1042, 1046 (10th Cir. 2004).

offensive incident can rise to the level of persecution.<sup>178</sup> But an IJ also “does not look at each incident in isolation, but instead consider[s] them collectively, because the cumulative effects of multiple incidents may constitute persecution.”<sup>179</sup>

Serious actual or attempted physical or sexual violence qualifies as persecution.<sup>180</sup> Ms. [REDACTED] suffered actual serious violence in [REDACTED] when a gang member sexually assaulted her.<sup>181</sup> [REDACTED] hit her on the head, threw her to the ground, tore apart her shirt and bra, and pressed a knife against her stomach.<sup>182</sup> [REDACTED] forced himself on top of her and told her “today you are going to die” and “I will kill you, but only after I’ve done what I want with you first.”<sup>183</sup> Sexual violence is a particularly vile and offensive form of persecution.<sup>184</sup> And here, her assailant attacked Ms. [REDACTED] with full knowledge that he enjoyed impunity from government control. [REDACTED] told Mr. [REDACTED] to look him in the face after the attack because nothing would be done about the attack—or [REDACTED] would kill anyone who tried to report his crime.<sup>185</sup> Ultimately, [REDACTED] attempt to rape and kill [REDACTED] was thwarted. But Ms. [REDACTED] escape from [REDACTED] does not diminish the seriousness of the persecution. In *Karki v. Holder*, 715 F.3d 792 (10th Cir. 2013), the Tenth Circuit held that persecution is not diminished because the victim *survives* an attempt on her life.<sup>186</sup> “Put simply, attempted murder is persecution.”<sup>187</sup>

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<sup>178</sup> See *Corado v. Ashcroft*, 384 F.3d 945 (8th Cir. 2004).

<sup>179</sup> *Ritonga v. Holder*, 633 F.3d 971, 975 (10th Cir. 2011).

<sup>180</sup> See *Karki v. Holder*, 715 F.3d 792, 804–05 (10th Cir. 2013).

<sup>181</sup> Ex. A, [REDACTED] Decl. ¶ 13–29.

<sup>182</sup> *Id.* ¶ 15.

<sup>183</sup> *Id.*

<sup>184</sup> See *Shoafra v. INS*, 228 F.3d 1070, 1074 (9th Cir. 2000) (“It is clear that rape or sexual assault may constitute persecution.”).

<sup>185</sup> *Id.* ¶ 19; Ex. L, [REDACTED] Decl. ¶ 6–7.

<sup>186</sup> *Karki*, 715 F.3d at 805.

<sup>187</sup> *Sanchez Jimenez v. U.S. Att’y Gen.*, 492 F.3d 1223, 1233 (11th Cir. 2007).

Additionally, [REDACTED]'s threat to kill Ms. [REDACTED] in retaliation for her testimony against him rises to this form of persecution. Death threats qualify as persecution when "they are so immediate and menacing to cause significant suffering or harm" and when there is a "concrete connection between" the threats and "any overt violence or mistreatment."<sup>188</sup> Immediately after using his gang connections to secure his acquittal, [REDACTED] accosted Ms. [REDACTED] on the court house steps and told her he was going to kill her and her family.<sup>189</sup> His threat was legitimate and menacing, and was supported by his past actions and membership in a violent gang underwritten by a violent transnational drug cartel. [REDACTED] had personally sexually assaulted Ms. [REDACTED] and attempted to rape and kill her in [REDACTED].<sup>190</sup> Ms. [REDACTED] knew [REDACTED] carried a gun.<sup>191</sup> She knew he had connections with police and could manipulate the Guatemalan court system.<sup>192</sup> She also knew he was part of a gang that regularly retaliated against those who opposed it.<sup>193</sup> Retaliation with death is the *modus operandi* for these gangs, not only to eliminate the witness, but to signal to the rest of the community the gang's continued impunity from government control.<sup>194</sup>

Events since Ms. [REDACTED] fled Guatemala have further demonstrated the credibility of [REDACTED]'s death threat. Cartel members in foreign vehicles with Mexican license plates have visited Ms. [REDACTED]'s village asking about and looking for a "woman."<sup>195</sup> Under the circumstances, the "woman" these foreign men are looking for in this small, remote village is almost certainly

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<sup>188</sup> *Vatulev v. Ashcroft*, 354 F.3d 1207, 1210 (10th Cir. 2003); see also *Matter of Villalta*, 20 I&N Dec. 142, 147 (BIA 1990) (finding persecution where respondent credibly testified "that he and his immediate family members were singled out and threatened with death").

<sup>189</sup> Ex. A, Hernández Decl. ¶ 48.

<sup>190</sup> *Id.* ¶ 13–21.

<sup>191</sup> *Id.* ¶ 20.

<sup>192</sup> *Id.* ¶¶ 27; 32; 44.

<sup>193</sup> *Id.* ¶ 10–11.

<sup>194</sup> Ex. F, [REDACTED]

<sup>195</sup> Ex. A, [REDACTED]



Ms. [REDACTED]<sup>196</sup> [REDACTED]'s threat was highly credible, and carried with it a concrete connection to past and future violence.

The severity of Ms. [REDACTED]'s persecution is evidenced by the significant emotional and psychological trauma she continues to suffer. After she was attacked in [REDACTED] she refused to leave her home, had difficult eating and sleeping, suffered from panic attacks and suicidal thoughts.<sup>197</sup> After several years, she tried to forget what had happened.<sup>198</sup> However, the memory of the attack has always remained in her mind.<sup>199</sup> She has fears of standing too close to men, which triggers memories of the attack.<sup>200</sup> After testifying in court, the court social worker recognized her continued trauma and referred her for psychological treatment.<sup>201</sup> After [REDACTED] threatened her outside the court, she was afraid to leave her home or attend her church.<sup>202</sup> She made immediate plans to flee Guatemala and to seek the protection of the United States.<sup>203</sup> Today, Ms. [REDACTED] has been diagnosed with "very significant" posttraumatic stress disorder, major depressive disorder, and recurrent, moderately severe and generalized anxiety disorder.<sup>204</sup> The primary source of these mental health issues are her attack in [REDACTED] and the threat of retaliation she received in [REDACTED].<sup>205</sup> Ms. [REDACTED] believes she would be better off dead, but she is motivated to continue life for her desire to care for her [REDACTED].<sup>206</sup>

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<sup>197</sup> Ex. A,

<sup>198</sup> *Id.* ¶ 2

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* ¶ 4

<sup>202</sup> *Id.* ¶ 5

<sup>203</sup> *Id.* ¶ 4

<sup>204</sup> Ex. E,

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at 3.

**B. Ms. [REDACTED] is a member of more than one particular social group**

To establish membership in a “particular social group,” an asylum applicant must show that she is a member of a group of person that share a common immutable characteristic that she either cannot change or should not be required to change because it is fundamental to her individual identity or conscience.<sup>207</sup> The group must have particular and well-defined boundaries and a recognized level of social distinctiveness.<sup>208</sup> Social groups must be assessed on a case-by-case basis.<sup>209</sup> The IJ’s judgment must consider the record evidence as a whole.<sup>210</sup>

**1. Guatemalan prosecutorial witnesses**

Ms. [REDACTED] is the member of a particular social group of “Guatemalan prosecutorial witnesses.” Courts around the country have recognized that persons who testify in court cases for the prosecution constitute a cognizable particular social group under the INA. In *Garcia v. U.S. Attorney General*, 665 F.3d 496 (3d Cir. 2011), the Third Circuit held that a Guatemalan woman who testified against members of a gang was a member of a particular social group because she shared “a ‘common, immutable characteristic’ with other civilian witnesses who have the ‘shared past experience’ of assisting law enforcement against violent gangs that threaten communities in Guatemala.”<sup>211</sup> In *Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011), the Fourth Circuit held that family members of citizens who opposed gangs by serving as

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<sup>207</sup> *Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985); see also *Niang v. Gonzales*, 422 F.3d 1187, 1198-99 (10th Cir. 2005) (discussing and adopting *Acosta*’s definition on “particular social group”).

<sup>208</sup> *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 234-38, 240-43, 247 (B.I.A. 2014); *Matter of W-G-R-*, 26 I. & N. Dec. 208, 211-12, 215-18 (B.I.A. 2014); *In re A-M-E & J-G-U-*, 24 I. & N. Dec. 69, 76 (B.I.A. 2007); *Matter of C-A-*, 23 I. & N. Dec. 951, 959 (B.I.A. 2006); see also *Rodas-Orellana v. Holder*, 780 F.3d 982, 990-91 (10th Cir. 2015).

<sup>209</sup> *Matter of M-E-V-G-*, 26 I. & N. Dec. at 251 (“Social group determinations are made on a case-by-case-basis”); see also INA § 240(c)(4)(B), 8 U.S.C. § 1229a(c)(4)(B); 8 C.F.R. § 1003.1(d)(1)(ii) (statute and regulations require IJs and the BIA to exercise their judgment in analyzing each case before them).

<sup>210</sup> See *Olivia v. Lynch*, 807 F.3d 53, 61 (4th Cir. 2015).

<sup>211</sup> *Garcia v. U.S. Att’y Gen.*, 665 F.3d 496, 504 (3d Cir. 2011).

prosecutorial witnesses constituted a particular social group.<sup>212</sup> In *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (en banc), the court held that individuals who testified in open court against gang members were socially visible and particular and remanded the case to the BIA.<sup>213</sup>

While not binding, the BIA has likewise signaled its willingness to recognize prosecutorial witnesses as a cognizable particular social group. In *J-V-B-G-*, the IJ granted asylum in light of the applicant’s fear of persecution on account of membership in the particular social group of “Honduran prosecutorial witnesses.”<sup>214</sup> On appeal, the BIA found it unnecessary to reach the particular social group question but noted that, “[i]f we were to address the DHS’s challenges . . . we would note that, unlike government informants or mere witnesses to criminal activity, individuals like the respondent who actually testify for the government in public trials against criminal defendants are both socially distinct and defined with particularity in the society in question.”<sup>215</sup>

First, because the shared characteristic is based on past conduct—the affirmative step of testifying in court against a criminal defendant—it is necessarily immutable.<sup>216</sup> It is not

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<sup>212</sup> *Crespin-Valladares v. Holder*, 632 F.3d 117, 124-26 (4th Cir. 2011). While the respondent in *Crespin* was the family member of a prosecutorial witness, the Fourth Circuit has since clarified that its holding as to family members “a fortiori” applies to the even smaller, more particular, and more socially visible group of prosecutorial witnesses themselves. *Zelaya v. Holder*, 668 F.3d 159, 169 (4th Cir. 2012) (Floyd, J., concurring); *Solomon-Membreno v. Holder*, 578 F. App’x 300, 305-06 (4th Cir. 2014).

<sup>213</sup> *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1091-93 (9th Cir. 2013) (en banc).

<sup>214</sup> Ex. CC, *Matter of J-V-B-G-*, Memorandum of Decision and Order by Immigration Judge, 22-24 (May 9, 2018).

<sup>215</sup> Ex. DD, *Matter of J-V-B-G-*, Decision of the Board of Immigration Appeals, 3 n.4 (May 11, 2018).

<sup>216</sup> *Garcia*, 665 F.3d at 504 (holding that the past experience of testifying “was a characteristic that members [could not] change because it [was] based on past conduct that [could not] be undone”); see also *Gashi v. Holder*, 702 F.3d 130, 137 (2d Cir. 2012) (holding that past experience of “having witnessed war crimes” and “having cooperated with investigators on the subject of such war crimes” satisfied the requirement of immutability because it “cannot be undone” and is “by [its] very nature, immutable”).

something that the individual can change or should be required to change.<sup>217</sup> Second, membership in the group is easily delimited, verifiable, and visible, making it sufficiently particular and socially distinct. It is a public act that not many people do or would be willing to do.<sup>218</sup> There are court records to confirm.<sup>219</sup> Some countries have even created witness protection programs or laws, confirming that society views prosecutorial witnesses as a particular social group.<sup>220</sup> These unique features have caused numerous courts (and the BIA), to distinguish cases involving prosecutorial witnesses from cases involving informants or witnesses to criminal acts—or from general opposition to gangs, such as resisting recruitment or refusing to pay a bribe.<sup>221</sup>

Moreover, country conditions evidence confirms that prosecutorial witnesses are socially distinct and viewed and treated as a group in Guatemala—frequently exposed to surveillance from criminal organizations, death threats, and even murder.<sup>222</sup> Recognizing that prosecutorial witnesses are an identifiable and uniquely vulnerable group, Guatemala has passed laws and created a special witness protection program.<sup>223</sup> Although the witness protection program is

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<sup>217</sup> *Garcia*, 665 F.3d at 504 (“To the extent that members of this group can recant their testimony, they ‘should not be required to’ do so.”); see also *Niang*, 422 F.3d at 1200 (quoting *In re Fauziya Kasinga*, 21 I. & N. Dec. 357, 365-66 (B.I.A. 1996)).

<sup>218</sup> Ex. CC, *Matter of J-V-B-G-* at 23.

<sup>219</sup> *Henriquez-Rivas*, 707 F.3d at 1093 (“Membership in Henriquez-Rivas’ proposed group [of persons who testified against gang members] can be easily verified—and thus delimited—through court records documenting group members’ testimony.”).

<sup>220</sup> *Id.* at 1092 (“It is difficult to imagine better evidence that a society recognizes a particular class of individuals as uniquely vulnerable, because of their group perception by gang members, than that a special witness protection law has been tailored to its characteristics.”).

<sup>221</sup> Ex. CC, *Matter of J-V-B-G-* at 3 n.4, 23-24; *Garcia*, 665 F.3d at 504 n.5 (distinguishing prosecutorial witnesses from “noncriminal informants” because the aid provided by confidential informants is not public, where the identity of an individual testifying in court is known to her alleged persecutors); *Henriquez-Rivas*, 707 F.3d at 1092-93 (distinguishing other cases involving “those opposed to gangs” because “[t]hose cases did not involve the very specific situation of testifying against gang members in court, and considered only generalized opposition to gangs”).

<sup>222</sup> *Supra* § II.D.

<sup>223</sup> *Supra* § II.D.

small and largely ineffective, its existence is direct evidence that “Guatemalan prosecutorial witnesses” are a cognizable particular social group in Guatemala.

In addition to “Guatemalan prosecutorial witnesses,” several even narrower groups also qualify as cognizable particular social groups in Guatemala. The first alternative group is “Guatemalan prosecutorial witnesses who testify against gang members.” Because gangs exercise such strict control and surveillance over their communities and are quick to violently retaliate against those who resist their authority, prosecutorial testimony against gang members is even less common, more dangerous, and more socially visible than other types of testimony.<sup>224</sup> The UNHCR has recognized that individuals perceived as resisting gang authority are a “particular social group” within Guatemala.<sup>225</sup> Dr. [REDACTED] likewise states that, in her expert opinion, those who “testify as a key prosecutorial witness against a gang member” are “part of a distinct group likely to be particularly persecuted and murdered by the gang/Cartel/CIACs.”<sup>226</sup> Under the logic of Guatemalan gangs, prosecutorial testimony against a gang member is “anathema”—a challenge to the entire gang’s impunity that demands violent retaliation.<sup>227</sup> In fact, courts have expressly noted that testifying *against members of a gang* supports a finding of a cognizable social group, particularly in Guatemala.<sup>228</sup>

A second alternative group is “female victims of sexual or gender-based violence who testify against their attackers.” While particular social groups cannot be defined solely by the persecution suffered, this group is defined by the members’ affirmative act of testifying against

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<sup>224</sup> *Supra* § II.D; see also Ex F, [REDACTED] ecl. ¶¶ 7, 11, 22, 24-25.

<sup>225</sup> Ex. U, UNHCR Eligibility Guidelines at 39-40.

<sup>226</sup> Ex. F, [REDACTED] ¶ 29.

<sup>227</sup> Ex. F, [REDACTED] ¶ 22; see also *id.* ¶¶ 7, 11, 24-25.

<sup>228</sup> *Garcia*, 665 F.3d at 504 (finding a particular social group based on prosecutorial testimony “against violent gangs . . . in Guatemala”); see also *Henriquez-Rivas*, 707 F.3d at 1092 (citing “significant evidence that Salvadoran society recognizes the unique vulnerability of people who testify against gang members in criminal proceedings, because gang members are likely to target these individuals as a group”).

their attackers. The country conditions evidence reveals systematic discrimination and retaliation against women who choose to testify against male perpetrators of violence against women.<sup>229</sup> They are targeted for threats, violence, and death, and often face social stigmatization by their communities.<sup>230</sup> They are also frequently subject to further victimization throughout the process by police, prosecutors, and judges.<sup>231</sup> All of which confirms that women who have testified in court against their male attackers are an immutable, discrete, and distinctive group within Guatemalan society.

Ms. [REDACTED] clearly qualifies as a member of each of the three particular social groups identified above. She repeatedly appeared at court and testified publicly against [REDACTED]—a gang member who sexually attacked her—on behalf of the prosecution. She cannot change that fact and should not be required to retract her testimony (nor would doing so do anything to change her prior conduct). Her testimony is confirmable and corroborated by court records, including the subpoena to appear and testify on [REDACTED].<sup>232</sup> Her words and actions were observed by the judges, the lawyers for [REDACTED] and the government, her family, and the other individuals present.<sup>233</sup> Thus, Ms. [REDACTED]'s membership in the group of prosecutorial witnesses is both undeniable and plainly visible to society, including to [REDACTED] and his gang.

## 2. Guatemalan women

Ms. [REDACTED] independently qualifies for asylum based on persecution on account of her membership in the particular social group of “Guatemalan women.”

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<sup>229</sup> See *supra* § II.D; Ex. F, [REDACTED] Aff. ¶ 7.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> Ex. A, [REDACTED] Ex. 1.

<sup>233</sup> Ex. A, [REDACTED] 30–48.

Since 1985, the BIA has recognized that gender is an immutable and shared characteristic for purposes of defining a particular social group.<sup>234</sup> That conclusion is faithful to the text of the INA and has been accepted by courts around the country. In *Niang v. Gonzalez*, 422 F.3d 1187 (10th Cir. 2005), the Tenth Circuit applied the *Acosta* definition to find that “the female members of a tribe” qualified as a particular social group, observing that “[b]oth gender and tribal membership are immutable characteristics.”<sup>235</sup> In *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010), the Ninth Circuit affirmed that gender is an innate characteristic that is fundamental to one’s identity and remanded to the BIA for determination whether the particular social group of “women in Guatemala” was cognizable.<sup>236</sup> Other courts have held similarly.<sup>237</sup> The UNHCR

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<sup>234</sup> *Acosta*, 19 I. & N. Dec. at 233.

<sup>235</sup> *Niang v. Gonzalez*, 422 F.3d at 1199; see also *Lopez v. Sessions*, No. 17-9517, 2018 WL 3730137 at\*6 (10th Cir. Aug. 6, 2018) (McKay, J., dissenting) (addressing issue deemed waived by the majority and concluding that asylum seeker was a “member of a particular and socially distinct social group defined by the immutable characteristic of gender”). In a later case, the Tenth Circuit suggested in passing that “gender alone is not a sufficiently distinct ‘social group’ on which to base a ‘refugee’ finding.” *Maatougui v. Holder*, 738 F.3d 1230, 1241 (10th Cir. 2013). *Maatougui* does not control. First, the court did not (and could not) overrule *Niang*. The earlier case controls. *Haynes v. Williams*, 88 F.3d 898, 900 n.4 (10th Cir. 1996) (“A published decision of one panel of this court constitutes binding circuit precedent constraining subsequent panels absent en banc reconsideration or a superseding contrary decision by the Supreme Court. A pertinent corollary to this principle is that when faced with an intra-circuit conflict, a panel should follow earlier, settled precedent over a subsequent deviation therefrom.”). Second, *Maatougui*’s passing statement arose in a very different posture—a discretionary decision whether to reopen removal proceedings based on a social group of “divorced single mothers” in Morocco. *Id.* at 1241. Third, and most importantly, social groups must be evaluated on a case-by-case basis. *Matter of M–E–V–G–*, 26 I. & N. Dec. at 251. The court in *Maatougui* had no occasion to consider the arguments or evidence advanced by Ms. Hernández here about the country conditions in *Guatemala*, including the ubiquitous gender-based violence against women and the Guatemalan government’s creation of specialized femicide courts. *Supra* § II.C.

<sup>236</sup> *Perdomo v. Holder*, 611 F.3d 662, 667–69 (9th Cir. 2010).

<sup>237</sup> In *Fatin v. INS*, 12 F.3d 1233, 1240 (3d Cir. 1993), then-Judge Alito also cited *Acosta* with approval for the proposition that gender alone could constitute a particular social group. Because *Acosta* “specifically mentioned ‘sex’ as an innate characteristic that could link the members of a ‘particular social group,’” the Third Circuit found that the petitioner satisfied the requirement “to the extent that . . . [she] suggest[ed] that she would be persecuted . . . simply because she is a woman.” See also *Ahmed v. Holder*, 611 F.3d 90, 96 (1st Cir. 2010) (“[G]ender—a common, immutable characteristic—can be a component of a viable ‘social group’ definition.”); *Cece v. Holder*, 733 F.3d 662, 677 (7th Cir. 2013) (applicant “established that she belongs to a cognizable social group” of “young women living alone in Albania” because “the attributes are immutable or fundamental”).

has likewise recognized that “women may constitute a particular social group under certain circumstances based on the common characteristic of sex.”<sup>238</sup>

While gender is an innate and immutable characteristic, gender will not meet all of the requirements for a particular social group in every case. That is because the operative question is whether women in a given society are viewed and subjected to persecution as a discrete social group.<sup>239</sup> That is unmistakably true in Guatemala. As the country conditions evidence shows, women in Guatemala are routinely targeted for extreme discrimination, subjugation, and violence—all with total impunity.<sup>240</sup> The ubiquity of this violence, the grotesque manner in which much of it is carried out, and the cultural context of extreme patriarchy and machismo, all establish that women are targeted specifically because of their gender.<sup>241</sup> Some of the strongest evidence that women in Guatemala are properly considered a particular social group is the creation of specialized laws and courts specifically for gender-motivated crimes, including femicide—the killing of women because they are women.<sup>242</sup> In *Silvestre-Mendoza v. Sessions*, 729 F. App’x 597 (9th Cir. 2018), the Ninth Circuit granted a petition and remanded to the BIA to consider whether “Guatemalan women” is a particular social group in light of evidence of “pervasive femicide in Guatemala” and the Guatemalan government’s “attempts to combat it through specialized courts for femicide victims to seek justice.”<sup>243</sup> The court reasoned that “[t]his evidence provides some support for the social group ‘Guatemalan women’ being socially

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<sup>238</sup> Ex. PP, UNHCR, *Guidelines on International Protection: Membership of a Particular Social Group*, at 4 (HCR/GIP/02/02, May 7, 2002) (“UNHCR Guidelines on International Protection”).

<sup>239</sup> See *Niang*, 422 F.3d at 1199-1200 (“[T]he focus with respect to [claims using gender as a group-defining characteristic] should be not on whether either gender constitutes a social group (which both certainly do) but on whether the members of that group are sufficiently likely to be persecuted that one could say that they are persecuted ‘on account of’ their membership.”)

<sup>240</sup> See *supra* § II.B–C.

<sup>241</sup> See *supra* § II.B.

<sup>242</sup> See *supra* § II.C (Ex. T, Country Reports on Human Rights Practices for 2017).

<sup>243</sup> *Silvestre-Mendoza v. Sessions*, 729 F. App’x 597, 598-99 (9th Cir. 2018)



distinct” because “legislation passed to protect a specific group can be evidence that the society in question views members of that group as distinct.”<sup>244</sup>

**C. Ms. [REDACTED] was persecuted on account of her membership in particular social groups**

There is no question that both Ms. [REDACTED]'s gender and her testimony were central reasons for the initial attack by [REDACTED] and the subsequent credible threats to her life. To qualify for asylum, the protected ground must be “at least one central reason” for the persecution.<sup>245</sup> It need not be the only or the most important reason.<sup>246</sup> This nexus can be established by either direct or circumstantial evidence, including documentation about patterns of violence in the society.<sup>247</sup> Whether nexus exists depends on “the views and motives of the persecutor.”<sup>248</sup>

**1. Prosecutorial witness**

Ms. [REDACTED]'s testimony against [REDACTED] is “at least one central reason” for the death threat she received immediately following her testimony and the continued threat to her life from [REDACTED] and other members of his gang. Her identity and participation were visible and unmistakably known to her chief persecutor [REDACTED]—and, through [REDACTED] his gang.<sup>249</sup> [REDACTED] and his lawyer were present each time Ms. [REDACTED] came to testify against him.<sup>250</sup> [REDACTED] saw her in the courtroom, heard her testify against him, and was visibly angry.<sup>251</sup> As soon as [REDACTED] saw her outside the courthouse after the trial, he confronted her and told her that he had won—despite

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<sup>244</sup> *Id.* at 598 (citing *Henriquez-Rivas*, 707 F.3d at 1092).

<sup>245</sup> INA § 208(b)(1)(B)(i), 8 U.S.C. § 1158(b)(1)(B)(i).

<sup>246</sup> *Dallakoti v. Holder*, 619 F.3d 1264, 1268 (10th Cir. 2010); *see also, e.g., Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073 (9th Cir. 2017) (en banc) (holding that even if sexual offenders are motivated by “perverse desire,” this does not preclude finding of the protected ground as one central reason).

<sup>247</sup> Ex. V, USCIS, Asylum Officer Basic Training Course, *Female Asylum Applicants and Gender-Related Claims* at 26 (Mar. 12, 2009).

<sup>248</sup> *Matter of W-G-R-*, 26 I. & N. Dec. 208, 223 (B.I.A. 2014).

<sup>249</sup> Ex. A, [REDACTED], ¶¶ 35-42, 46-48, 60.

<sup>250</sup> *Id.* ¶ 35 (first time); *id.* ¶ 36 (second time); *id.* ¶¶ 38-39 (third time); *id.* ¶ 42 (fourth time).

<sup>251</sup> *Id.* ¶ 36 ([REDACTED])

her testimony against him—and now he would kill her and her family.<sup>252</sup> After Ms. [REDACTED] fled Guatemala, her family reports that men who meet the description of cartel members affiliated with [REDACTED] gang—driving large foreign trucks with Mexican license plates—have been looking for her, clearly seeking to punish her for her decision to testify.<sup>253</sup> [REDACTED] words and actions, and those of his associates, demonstrate that the persecution Ms. [REDACTED] has experienced is on account of her testimony.

While the specific facts of Ms. [REDACTED] story are more than sufficient to show nexus, the country conditions evidence again supports that conclusion. Reprisal against prosecutorial witnesses is commonplace in Guatemala.<sup>254</sup> These threats are even more pronounced when, as here, the witness testifies against a gang member.<sup>255</sup> As Dr. [REDACTED] explains, testimony against individual gang members is “seen as a challenge to the continued impunity of a much larger network whose logic promises retaliation for acts of resistance.”<sup>256</sup> “Once [REDACTED] was identified and subpoenaed as a key prosecutorial witness, she became extremely vulnerable, and . . . became a target for elimination within the logic of the Cartel/CIACs/local gangs.”<sup>257</sup>

Likewise, as noted above, the country conditions evidence specifically reveals systematic discrimination and retaliation against women in Guatemala who choose to testify against their sexual attackers.<sup>258</sup> Ms. [REDACTED] has experienced many of these forms of discrimination and persecution on account of her testimony against her attacker, [REDACTED]—including disbelief and

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<sup>252</sup> *Id.* ¶¶ 47-48.

<sup>253</sup> *Id.* ¶ 60; Ex. K, [REDACTED], ¶ 11; *see also* Ex. F, [REDACTED], ¶ 24 (“There is no doubt [REDACTED] is the ‘woman’ they are looking for, and who they are trying to kill. The message is crystal clear: the Cartel/CIACs/gang take care of their own, and anyone who dares to try to bring any of their operatives to justice is to be killed.”).

<sup>254</sup> *Supra* § II.D.

<sup>255</sup> *See supra* § II.D; *see also* Ex. F, [REDACTED], ff. ¶¶ 7, 11, 22, 24-25.

<sup>256</sup> Ex. F, [REDACTED], Aff. ¶ 22.

<sup>257</sup> *Id.*

<sup>258</sup> *See supra* § II.D.

ridicule from both the police and the judge, ostracization in her community for making the report against [REDACTED] and the continued and serious threat to her life from [REDACTED] and his gang.<sup>259</sup>

## 2. Guatemalan women

[REDACTED] did not target Ms. [REDACTED] for rape and murder indiscriminately but specifically *because* she was a woman. Rape itself is a tool of gender-based subjugation. There is no reason to think [REDACTED] would have targeted a man for rape. On the contrary, [REDACTED]'s statements during the attack explicitly reveal his views and motives, calling Ms. [REDACTED] a “bitch” and “whore,” terms with inherently misogynistic implications.<sup>260</sup> As the Tenth Circuit has observed in the Title VII context, the use of words like “bitch” or “slut” to woman is “harassment *based on her sex*.”<sup>261</sup> As he attacked her and held a knife to her stomach, [REDACTED] told Ms. [REDACTED] she was “not worth anything” and that he would do what wanted with her before he killed her.<sup>262</sup>

[REDACTED]'s statements reflect the same views of women described in the voluminous evidence about life in Guatemala for women. As described by Dr. [REDACTED] women in Guatemala are viewed as worthless and disposable, and violence against women is accepted and even celebrated as a demonstration of *machismo*.<sup>263</sup> This is especially true in areas controlled by gangs, where the gangs’ “macho ethos” results in “widespread sexual and gender-based violence.”<sup>264</sup> As a result, Guatemala has the third highest rate of femicide in the world.<sup>265</sup>

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<sup>259</sup> See *supra* § II.D; see also Ex. F, [REDACTED] Aff. ¶ 7 (“In cases of crimes of sexual violence perpetrated by Cartel/CIACs/gang members, if the female victim has the courage to serve as a prosecutorial witness, threats are made, and money provided, to public officials involved in the case to block prosecution and ensure impunity. This logic of threat mentality also presumes the elimination of the female witness for acting against their authority.”).

<sup>260</sup> Ex. A, [REDACTED] Decl. ¶ 15.

<sup>261</sup> *Winsor v. Hinckley Dodge, Inc.*, 79 F.3d 996, 1000 (10th Cir. 1996) (citing *Burns v. McGregor Electronic Indus., Inc.*, 989 F.2d 959, 964 (8th Cir. 1988)).

<sup>262</sup> Ex. A, [REDACTED] Decl. ¶ 15.

<sup>263</sup> *Supra* § II.B.

<sup>264</sup> *Supra* § II.B; (citing Ex. Q, [REDACTED] Decl. ¶ 11).

<sup>265</sup> See *supra* § II.A (citing U.S. State Department, Guatemala 2017 Human Rights Report at 1, 16-17).

Both the prosecutor and the government social worker, Mr. [REDACTED] understood that Ms. [REDACTED] was targeted because she was a woman. The case in which she testified took place in one of Guatemala's specialized femicide courts.<sup>266</sup> And Mr. [REDACTED] referred her for psychological care as a victim of "attempted Femicide."<sup>267</sup>

**D. Guatemalan officials are unable or unwilling to control Ms. [REDACTED] attacker**

In order to be eligible for asylum, Ms. [REDACTED] must show that her persecution was perpetrated "by the government or by groups which the government is unable or unwilling to control."<sup>268</sup> Country condition evidence, and Ms. [REDACTED]'s own experience, confirms that the Guatemalan government is unwilling to protect testifying witnesses or victims of sexual violence.<sup>269</sup>

Due to corruption, the stranglehold that gangs have over much of the country, and inadequate government resources, the Guatemalan government has been unable to protect testifying witnesses like Ms. [REDACTED] "from intimidation and threats," particularly when they testify against gang members.<sup>270</sup> As explained by Dr. [REDACTED] cartel-affiliated gangs have powerful surveillance networks and extensive infiltration of the police and judicial system in

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<sup>266</sup> Ex. B, [REDACTED] Decl. Ex. 1 [REDACTED] Country of Public Subpoena of Ms. [REDACTED]

<sup>267</sup> *Id.*; Ex. C, [REDACTED] Decl. Ex. 2 ([REDACTED]'s Referral for Psychological Care for Ms. [REDACTED] from the Defense of Indigenous Women).

<sup>268</sup> *Niang v. Gonzales*, 422 F.3d 1187, 1194 (2005).

<sup>269</sup> *In re AB*, 27 I&N Dec. 316 (A.G. 2018), changes neither the governing legal standard nor the conclusion in this case. See *id.* at 319 (asylum-seeker must "establish that the government was unable or unwilling to protect her."). That opinion states that "[t]he fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime[.]" *Id.* at 337. However, the fact that Ms. [REDACTED]'s case was dismissed under circumstances highly indicative of foul play, combined with country condition evidence suggesting nearly complete impunity for such crimes, is more than sufficient to establish the government's unwillingness or inability to protect.

<sup>270</sup> Ex. S, Country Reports on Human Rights Practices for 2016: Guatemala at 1; see also, e.g., Ex. U, UNHCR Eligibility Guidelines at 39-40; Ex. EE, Neither Security nor Justice: Sexual and Gender-based Violence and Gang Violence at 3.

Guatemala.<sup>271</sup> This ensures that they can track down and murder individuals like Ms. [REDACTED] who testify against them, with near total impunity.<sup>272</sup> Because of endemic corruption and the weakness of state institutions, testifying against members of powerful gangs or cartels constitutes “a death sentence” for victims in Guatemala.<sup>273</sup>

Nor is the Guatemalan government able or willing to protect victims of gender-based violence. As detailed above, corruption, inadequate investigation, and sexist attitudes among police, prosecutors and judges are rampant in Guatemala.<sup>274</sup> Government officials are predisposed to disbelieve female victims, discount the severity of the crime, or blame the victim for what happened to them.<sup>275</sup> As a result, only about 2% of gender-based violent crimes are successfully prosecuted, resulting in a climate of near-total impunity for perpetrators.<sup>276</sup> Guatemala has the third highest rate of femicide in the world, providing stark confirmation of the government’s inability and unwillingness to protect female victims.<sup>277</sup> Instead, victims of gender-based crimes, who are often re-victimized, discriminated against, or even sexually harassed again by government officials when they seek redress.<sup>278</sup>

Ms. [REDACTED] own experience demonstrates the government’s inability to protect her. After she reported her attack in [REDACTED] it took [REDACTED] years for the government to arrest her perpetrator.<sup>279</sup> When she eventually testified against [REDACTED], the judge discounted her testimony

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<sup>271</sup> Ex. F, [REDACTED] Aff. ¶¶ 20-23.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.* ¶ 25.

<sup>274</sup> *See supra* § II.C.; see also, e.g., Ex. T, Country Reports on Human Rights Practices for 2017: Guatemala at 1.

<sup>275</sup> *See, e.g.*, Ex. R, Najera Decl. ¶¶ 37-38, 42-45, 48-53, Ex. Q, Paz y Paz Decl. ¶¶ 21-24; Ex. BB, Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala, at 10; Ex. X, Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala at 13.

<sup>276</sup> Ex. R, [REDACTED], ¶ 30.

<sup>277</sup> *See supra* § II.B.

<sup>278</sup> *See supra* §§ II.C. II.D.

<sup>279</sup> Ex. A, [REDACTED] ¶¶ 25, 30.

and that of the other women he had attacked, and set her attacker free to threaten her again.<sup>280</sup> Her attacker was able to use his criminal ties within the Guatemalan government to remove the original judge in her case and replace him with a more sympathetic judge who would set him free.<sup>281</sup> Ms. [REDACTED] case is emblematic of the nearly total impunity that exists today in Guatemala for gang-related and gender-based crimes. Thus, even though the government belatedly investigated Ms. [REDACTED]'s attack, its failure to effectively prosecute the case demonstrates its “inability” to protect her from persecution.<sup>282</sup>

**E. Ms. [REDACTED] is entitled to a presumption of future persecution**

Ms. [REDACTED]'s past persecution “establishes a presumption of a well-founded fear of future persecution on the same basis as established for the original persecution.”<sup>283</sup> The government may rebut this presumption by showing either: (1) “there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant’s country of nationality” on account of a protected ground; or (2) that the applicant “could avoid future persecution by relocating to another part of the applicant’s country of nationality ... and under all the circumstances it would be reasonable to expect the applicant to do so.”<sup>284</sup> Neither conclusion is supported by the record in this case.

**1. Conditions in Guatemala have not changed**

The government cannot show that country conditions have changed since [REDACTED] when Ms. [REDACTED]'s attacker was released and threatened to kill her and her family. A nation

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<sup>280</sup> *Id.* ¶¶ 43-44.

<sup>281</sup> *Id.* ¶¶ 47-49; Ex. F, [REDACTED] Aff. ¶¶ 19, 21.

<sup>282</sup> *See Rosales Justo v. Sessions*, 895 F.3d 154, 163–64 (1st Cir. 2018); *see also Garcia v. Att’y Gen.*, 665 F.3d 496, 503 (3d Cir. 2011) (even if government has “displayed great willingness to protect,” this willingness “sheds no light on [the government’s] ability to protect”).

<sup>283</sup> *Niang*, 422 F.3d at 1195; *see* 8 C.F.R. § 1208.13(b)(1).

<sup>284</sup> *Id.*

with a decades-long history of brutal and systemic violence against women, and the world's third highest rate of femicide does not transform within a matter of months. The U.S. State Department report, which was updated in July of this year, recognizes that "violence against women, including sexual and domestic violence," as well as femicide, remain "serious problems" in Guatemala.<sup>285</sup> That same report also recognizes that violence against testifying witnesses remains endemic, a fact which is confirmed by Dr. [REDACTED] expert declaration.<sup>286</sup>

Moreover, drug trafficking—the source of the deadly violence in Guatemala—is *increasing*, and the estimated volume of cocaine smuggled through Guatemala increased nearly by 50% in 2017 alone.<sup>287</sup> A U.S. State Department report published earlier this year confirms that Guatemala continues to be "a major transit country for illicit drugs destined for the United States."<sup>288</sup> Although Guatemala is attempting to end drug trafficking and the associated violence, the report concludes that persistent and endemic corruption in Guatemala's police and criminal justice system makes this goal impossible: "Guatemala's fight against criminal organizations continues to be hindered by endemic corruption, weak public institutions, and inadequate budget resources."<sup>289</sup>

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<sup>285</sup> Ex. T, Country Reports on Human Rights Practices for 2017: Guatemala at 1, 16-17 (updated 7/23/2018) (emphasis added).

<sup>286</sup> *Id.* at 18; *see also* Ex. F, [REDACTED] Aff. ¶ 23

<sup>287</sup> Ex. KK, *Compare* U.S. State Department: Bureau of International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report at 167 (March 2, 2017) <<https://www.state.gov/j/inl/rls/nrcrpt/2017/index.htm>> ("2017 International Narcotics Control Strategy Report") (estimating that 1,000 metric tons of cocaine was smuggled through Guatemala in 2016) *with* Ex. JJ, U.S. State Department: Bureau of International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report at 170 (March 2018) ("2018 International Narcotics Control Strategy Report") (estimating that 1,400 metric tons of cocaine was smuggled through Guatemala in 2017).

<sup>288</sup> Ex. JJ, 2018 International Narcotics Control Strategy Report at 170.

<sup>289</sup> *Id.*

2. Ms. ██████████ cannot reasonably relocate within Guatemala

The government cannot show that relocation within Guatemala would allow Ms. ██████████ to avoid future persecution. As an initial matter, her attacker is still at large and has threatened to kill her and her family. Members of gangs, particularly those (like ██████████) who have ties to transnational drug cartels, can easily use their extensive criminal networks and ties to corrupt law enforcement officers to locate anyone who might try to flee to a different part of Guatemala.<sup>290</sup> Such organizations rely on their illicit ties to Guatemalan security forces to obtain access to extensive databases of the movement of individuals within the country, and then use that information to target testifying witnesses like Ms. ██████████ for assassination.<sup>291</sup> In fact, if she were deported to Guatemala, Ms. ██████████ “could be tracked as soon as she leaves the airport,” and thus her return to Guatemala would be “a death sentence.”<sup>292</sup>

Moreover, pervasive violence against women and the failure of government to protect female victims “is not limited geographically and extends to the entire country,” so Ms. ██████████ would be at significant risk of gender-based violence by others even if she could escape ██████████ and his criminal associates.<sup>293</sup> For female victims, “[f]leeing internally within Guatemala is not a solution to escaping violence.”<sup>294</sup>

Moreover, the government cannot show that relocation would be a “reasonable” expectation under the circumstances. In making the reasonableness determination, courts look to a number of factors, including “other serious harm in the place of suggested relocation; any ongoing strife within the country; administrative, economic, or judicial infrastructure;

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<sup>290</sup> Ex. I, ██████████ Aff. ¶¶ 19-23; *see also* Ex. R, ██████████ ¶ 62 (perpetrators of sexual violence “can often ask a police officer, judge, or other official they know personally to help them find a woman who has fled”).

<sup>291</sup> Ex. F, ██████████ ¶¶ 19-23.

<sup>292</sup> Ex. F, ██████████ ¶¶ 25, 28.

<sup>293</sup> Ex. R, ██████████ ¶ 62.

<sup>294</sup> *Id.*



geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties.”<sup>295</sup> As Ms. [REDACTED] explains in her expert report, because women lack meaningful economic opportunity in the absence of male support, “it is virtually impossible for a woman to gather the economic resources to move to another location . . . even if she could manage to hide from her abuser.”<sup>296</sup> And “single women who move to a new community on their own, especially with children, are less likely to be able to find employment or a place to live and do not have access to family and community structures needed for child care while working.”<sup>297</sup> As a single woman, relocating to another part of Guatemala where she has no economic opportunity or family support would not be a feasible option.

**F. Even without a presumption, Ms. [REDACTED] can independently establish the likelihood of future persecution**

Ms. [REDACTED]’s fear of future persecution can serve as an independent basis for asylum. A well-founded fear of future persecution must be based both on a genuine subjective fear of persecution and an objective fear demonstrated through “credible, direct, and specific evidence in the record.”<sup>298</sup> [REDACTED] only needs to establish the objective situation is a “reasonable possibility” and not that persecution is more likely than not.<sup>299</sup> A “reasonable possibility” may be as small as a 10% chance of persecution.<sup>300</sup> Ms. [REDACTED]’s subjective fear is demonstrated in her declaration and will be confirmed by her in-court testimony.

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<sup>295</sup> See 8 C.F.R. § 1208.13(b)(3).

<sup>296</sup> *Id.* ¶ 63; See also Ex. W, Immigration and Refugee Board of Canada, Guatemala: Domestic violence, including legislation, state protection, and services available to victims, May 14, 2012, <http://www.refworld.org/docid/4fc4aa872.html> (“Canada: Immigration and Refugee Board of Canada”) (noting that “it is ‘very difficult’ for victims of domestic violence to escape a situation by relocating to other areas of Guatemala due to a lack of housing, insufficient income, a lack of education and a dearth of employment opportunities.”).

<sup>297</sup> Ex. R [REDACTED] Decl. ¶ 63.

<sup>298</sup> *Karki*, 715 F.3d at 801.

<sup>299</sup> *Uanreroro v. Gonzalez*, 443 F.3d 1197, 1202 (10th Cir. 2006) (quoting *INS v. Stevic*, 467 U.S. 407, 424–25, 104 S. Ct. 2489, 81 L.Ed.2d 321 (1984)).

<sup>300</sup> See *INS v. Cardoza*, 480 U.S. 421, 440 (1987).

Ms. [REDACTED]'s future fear is also established by credible and objective evidence. First and foremost, her attacker [REDACTED] told her directly he would kill Ms. [REDACTED] in retaliation for her testimony.<sup>301</sup> Since she fled, men in foreign trucks with Mexican license plates have been seen surveilling her home village and looking for a “woman.”<sup>302</sup> Ms. [REDACTED] comes from a very small town, and, as Dr. [REDACTED] explains in her affidavit, it is nearly certain that these individuals are members of the Mexican drug cartel affiliated with [REDACTED]'s gang who are attempting to exact retribution for her testimony.<sup>303</sup> These facts serve as strong objective evidence of a “reasonable possibility” of future persecution.

Ms. [REDACTED]'s objective fear of future persecution can also be established through evidence that individuals like Ms. [REDACTED] face persecution as a “pattern of practice,” even if she has never been singled out for harm.<sup>304</sup> To succeed on “pattern or practice” evidence, Ms. [REDACTED] must demonstrate she is a member of a particular social group that is targeted for “systemic or pervasive persecution.”<sup>305</sup>

Ms. [REDACTED] has provided ample evidence that Guatemalan prosecutorial witnesses face systemic and pervasive persecution from the gangs they testify against. Dr. [REDACTED]'s expert affidavit establishes that the *modus operandi* for criminal organizations in Guatemala is to target those who testify against them with death.<sup>306</sup> Based on her 30-years of research in the conditions of Guatemala, Dr. [REDACTED] believes Ms. [REDACTED]'s removal would be the

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<sup>301</sup> Ex. A, [REDACTED] Decl. ¶ 48.

<sup>302</sup> *Id.* ¶ 60; Ex. K, [REDACTED] Decl. ¶ 11.

<sup>303</sup> Ex. F, [REDACTED] Aff. ¶ 24 (“There is no doubt Mercedes is the ‘woman’ they are looking for, and who they are trying to kill. The message is crystal clear: the Cartel/CIACs/gang take care of their own, and anyone who dares to try to bring any of their operatives to justice is to be killed.”).

<sup>304</sup> See 8 C.F.R. § 208.13(b)(2)(iii)(A)-(B); *Woldemeskel v. I.N.S.*, 257 F.3d 1185, 1191 (10 Cir. 2001).

<sup>305</sup> *Id.* at 1191.

<sup>306</sup> *Id.* ¶¶ 22–26.

equivalent of a “death sentence.”<sup>307</sup> Moreover, Ms. [REDACTED]’s public testimony likely makes her a target for the rest of her life. Criminal organizations and former Guatemalan military officers maintain a computer database of the personal information of “troublemakers.”<sup>308</sup> The information can be accessed even decades later, and past actions can be used against the “troublemaker” to make them and their family prime targets for torture and killings.<sup>309</sup>

Ms. [REDACTED] has also shown that Guatemalan women face systemic and pervasive persecution as a pattern of practice. Violence against women in Guatemala is endemic, and has been normalized in Guatemala as an entrenched cultural attitude based on gender stereotypes.<sup>310</sup> Guatemala’s “machismo” culture has made violence against women a celebrated and socially accepted practice.<sup>311</sup> The existence of these cultural attitudes can be seen in the statistical evidence, which demonstrates that women in Guatemala are abused and murdered at one of the highest rates in the world.<sup>312</sup>

Even if Ms. [REDACTED] cannot establish fear of future persecution based on a particular social group, she is entitled to humanitarian asylum because there is a reasonable possibility that she may suffer other serious harm upon removal to Guatemala.<sup>313</sup> The extremely credible threat on Ms. [REDACTED]’s life, made by a member of a well-connected gang who had attacked her in the past and reinforced by threatening activity by Mexican cartel members, establishes a near certainty that Ms. [REDACTED] will be killed if she is returned to Guatemala. Thus, even if the

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<sup>307</sup> *Id.* ¶ 25.

<sup>308</sup> *Id.* ¶¶ 27–28.

<sup>309</sup> *Id.*

<sup>310</sup> *Supra* § II.B.

<sup>311</sup> *Supra* § II.B.

<sup>312</sup> *Supra* § II.B.

<sup>313</sup> 8 C.F.R. § 1208.13(b)(1)(iii); *see also, e.g., Matter of Chen*, 20 I&N Dec. 16 (BIA 1989); *Matter of S-A-K- and H-A-H-*, 24 I&N Dec. 464 (BIA 2008).

facts were somehow insufficient to satisfy all the elements of a traditional asylum claim, Ms. ██████████ would be entitled to humanitarian asylum.

**G. Ms. ██████████ merits a favorable exercise of discretion**

Not only is Ms. ██████████ eligible for asylum, she merits asylum as favorable exercise of discretion.<sup>314</sup> Ms. ██████████ is a woman of great courage and moral fiber. She has no criminal history or record of illegal drug use.<sup>315</sup> She has devoted her life to caring for others, including her ██████████ who she has raised as her own ██████████.<sup>316</sup> After being the victim of attempted rape and murder, she was willing to put her life in danger again to testify against her attacker three different times. She fled to the United States only after it became clear that the Guatemalan court proceeding was irredeemably corrupt, and after ██████████ directly threatened to kill her in retaliation for her testimony.

Ms. ██████████'s travel through Mexico was brief and necessary to reach the United States. She only spent nine days in Mexico and never intended to stay.<sup>317</sup> She traveled from place to place in Mexico and only stayed long enough to earn money for the next bus fare on her journey to the United States. Given ██████████'s connections to a transnational drug cartel headquartered in Mexico, Mexico was also no safer than Guatemala for Ms. ██████████.<sup>318</sup> She seeks the protection only the United States can provide.

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<sup>314</sup> The discretionary factors an IJ may consider are not fully defined, but they include such factors as the circumvention of orderly refugee procedures; whether the alien passed through any other countries or arrived in the United States directly from her country; whether orderly refugee procedures were in fact available to help her in any country she passed through; whether she made any attempts to seek asylum before coming to the United States; the length of time the alien remained in a third country; and her living conditions, safety, and potential for long-term residency there. *See Matter of Pula*, 19 I&N Dec. 467, 473–74 (BIA 1987).

<sup>315</sup> Ex. A, ██████████ Decl. ¶ 64.

<sup>316</sup> *Id.* ¶¶ 8–9.

<sup>317</sup> *Id.* ¶¶ 54–55.

<sup>318</sup> *Id.* ¶ 51; Ex. F, ██████████ Aff. ¶ 10 (describing the Sinaloa Cartel as the “powerhouse in the region, with its own network of drug traffickers in Colombia, Mexico, and most of Central America.”)

Ms. [REDACTED] has followed the correct procedure for seeking asylum in the United States. She legally presented for asylum at the [REDACTED] port of entry.<sup>319</sup> At no point has she violated any U.S. law. When Ms. [REDACTED] persisted in her asylum claim, border officials separated Ms. [REDACTED] from her [REDACTED].<sup>320</sup> Discretion is warranted so that Ms. [REDACTED] may be reunited with and take responsibility for her [REDACTED].

Additionally, Ms. [REDACTED] should receive favorable discretion so she can receive the medical treatment she desperately needs to finally cope with her attack. Ms. [REDACTED] has never received medical treatment because her family in Guatemala was too poor.<sup>321</sup> She was recently seen by a licensed psychologist from [REDACTED] Medical Center who diagnosed Ms. [REDACTED] with “very significant” posttraumatic stress disorder, major depressive disorder, and recurrent, moderately severe and generalized anxiety disorder.<sup>322</sup> The psychologist explained that Ms. [REDACTED] continued detention had “exacerbated” these disorders.<sup>323</sup> He concluded that a return to Guatemala “would pose a serious threat to her mental health” and her symptoms would likely improve if she was released from detention.<sup>324</sup>

Finally, Ms. [REDACTED] has a strong support system available in the United States. Ms. [REDACTED] sister [REDACTED] lives in [REDACTED].<sup>325</sup> [REDACTED] states that her sister [REDACTED] is “a young, respectful, nice, responsible, and above all else, hardworking woman.”<sup>326</sup> [REDACTED] has pledged to help her sister [REDACTED] in every way possible.<sup>327</sup> Ms.

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<sup>319</sup> Ex. A, [REDACTED] Decl. ¶ 55.

<sup>320</sup> *Id.* ¶ 59.

<sup>321</sup> *Id.* ¶ 28.

<sup>322</sup> Ex. E, [REDACTED] at 4.

<sup>323</sup> *Id.* at 2–3.

<sup>324</sup> *Id.* at 4.

<sup>325</sup> Ex. M, [REDACTED].

<sup>326</sup> *Id.*

<sup>327</sup> *Id.*

states that she “has known [redacted] since [she] was a baby.”<sup>328</sup> She has been the [redacted] at the same time. . . . She has taken care of me, protected me, she has given me love, tenderness, and affection.”<sup>329</sup>

#### IV. MS. [redacted] IS ALSO ENTITLED TO WITHHOLDING OF REMOVAL

The Attorney General “may not” remove an alien when she demonstrates that it is more likely than not her life or freedom would be threatened “because of the alien’s race, religion, nationality, membership in a particular social group or political opinion.”<sup>330</sup> [redacted] has shown she is more likely than not to face death if she is forced to return to Guatemala. This conclusion is supported by multiple pieces of evidence, including (1) [redacted]’s direct threat to kill [redacted]<sup>331</sup> (2) reports from [redacted]’s family that men have visited her village looking to kill [redacted]<sup>332</sup> (3) expert evidence that people like [redacted] who testify against gang members are targeted for retribution in Guatemala,<sup>333</sup> and (4) evidence of country conditions that show violence against women in Guatemala is pervasive and endemic.<sup>334</sup>

Ms. [redacted]’s membership in a particular social group is one central reason her life would be threatened in Guatemala.<sup>335</sup> However, withholding of removal’s nexus requirement is even less demanding, and Ms. [redacted] only needs to show that her membership in a particular social group was “a reason,” and not the central reason, her life would be threatened if she was

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<sup>328</sup> Ex. M, [redacted]

<sup>329</sup> *Id.*

<sup>330</sup> INA § 241(d)(2)(A)

<sup>331</sup> Ex. A, [redacted]

<sup>332</sup> *Id.*

<sup>333</sup> *Id.* ¶ 60; Ex. K, [redacted] There is no doubt [redacted] is the ‘woman’ they are looking for, and who they are trying to kill. The message is crystal clear: the Cartel/CIACs/gang take care of their own, and anyone who dares to try to bring any of their operatives to justice is to be killed.”).

<sup>334</sup> *Supra* II.B.

<sup>335</sup> *Supra* III.C.

removed.<sup>336</sup> Here, that conclusion is not in doubt. “[A] reason” M ██████ life would be threatened if she was removed to Guatemala is her membership in the social groups of Guatemalan prosecutorial witnesses and as a Guatemalan woman.

**V. MS. ██████ IS ALSO ENTITLED TO PROTECTION UNDER THE CONVENTION AGAINST TORTURE**

Ms. ██████ removal to Guatemala also must be deferred under The Convention Against Torture (“CAT”). The United States is a party to CAT, an international convention that forbids the return of “a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”<sup>337</sup> Courts have interpreted federal regulations to require a person invoking CAT to demonstrate there is a “substantial risk” of torture.<sup>338</sup> The torture must be “by a public official, or at the instigation or with the acquiescence of such an official”<sup>339</sup> “[W]illfull blindness suffices to prove acquiescence.”<sup>340</sup>

Common forms of gender-based violence have been found to constitute torture, including rape and sexual violence.<sup>341</sup> Even a single, isolated act may suffice to constitute torture.<sup>342</sup>

Ms. ██████ as shown she faces a “substantial risk” of torture if she is removed to Guatemala. ██████ sexually assaulted Ms. ██████<sup>343</sup> In ██████ she threatened her in retaliation for her testimony, subjecting Ms. ██████ a “substantial risk” of future rape and

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<sup>336</sup> See *Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017).  
<sup>337</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, Senate Treaty Doc. No. 100–20, p. 20, 1465 U.N.T.S. 85, Art. 3(1).  
<sup>338</sup> *Rodriguez-Molinero v. Lynch*, 808 F.3d 1134 (7th Cir. 2015).  
<sup>339</sup> *Karki*, 715 F.3d at 806.  
<sup>340</sup> *Id.*  
<sup>341</sup> See, e.g., *Avendano Hernandez v. Lynch*, 800 F.3d 1072 (9th Cir. 2015); *Gomez-Zuluaga v. U.S. Att’y Gen.*, 527 F.3d 330 (3d Cir. 2008); *Zubeda v. Ashcroft*, 333 F.3d 463 (3d Cir. 2003); see also U.N. Committee Against Torture, General Comment No. 2, CAT/C/GC/2, ¶ 18 (Jan. 24, 2008).  
<sup>342</sup> See 8 C.F.R. § 1208.18(a)(1).  
<sup>343</sup> Ex. A, ██████

sexual violence. But Ms. [REDACTED] could face a “substantial risk” of torture regardless of

[REDACTED] The country conditions establish that violence against women is rampant in Guatemala, and the country is full of other men who would likely subject Ms. [REDACTED] to sexual violence and torture.

Willful blindness on the part of Guatemalan officials is more than documented by Ms. [REDACTED]’s own experience and the evidence on country conditions in Guatemala. Even assuming, for sake of argument, that some officials in the government have taken partial steps to combat the kind of gender-based violence suffered by Ms. [REDACTED] many others are willing to turn a blind eye toward violent men like Mr. [REDACTED] who has family members in the police and who can afford to pay bribes.<sup>344</sup>

## VI. CONCLUSION

Based on the detailed and credible facts in her affidavit, as well as the expert and country condition evidence cited in this brief, Ms. [REDACTED] is entitled to asylum. In the alternative, Ms. [REDACTED] is entitled to withholding of removal and/or protection under the Convention Against Torture.

Respectfully Submitted,



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<sup>344</sup> See, e.g., *De La Rosa v. Holder*, 598 F.3d 103, 110 (2d Cir. 2010).



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**CERTIFICATE OF SERVICE**


I, Elizabeth Shobe, hereby certify that a true and correct copy of the following specifically described document(s):

- Respondent's Pre-Hearing Brief

were properly served on the Department of Homeland Security by courier:

US Immigration and Customs Enforcement  
Office of Chief Counsel  
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on 11/14/18.

  
Signature