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STUDIES

**Brief Filed by CGRS in *L-R***

**Overview of the Attached Brief**

The attached brief was filed by the Center for Gender & Refugee Studies (CGRS or Center) at the immigration court on March 10, 2010, following remand by the Board of Immigration Appeals (BIA) in the matter of *L-R*. Identifying information has been redacted in accordance with the wishes of the applicant. The brief addresses intimate partner domestic violence and child abuse as bases for asylum. It argues that the lead applicant was persecuted on account of membership in the social group of “Mexican women in domestic relationships who are unable to leave,” and that her children were persecuted on account of membership in the group of “Mexican children in families.”

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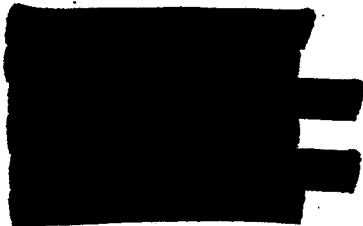
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UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE OF IMMIGRATION REVIEW  
SAN FRANCISCO IMMIGRATION COURT



In Removal Proceedings

BRIEF OF RESPONDENTS IN  
SUPPORT OF APPLICATIONS FOR  
ASYLUM, WITHHOLDING OF  
REMOVAL AND CAT RELIEF

Status Conference Date: 3/29/10  
Immigration Judge Robert Yeargin

**BRIEF OF RESPONDENTS IN SUPPORT OF APPLICATIONS FOR ASYLUM,  
WITHHOLDING OF REMOVAL AND CAT RELIEF**

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## STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondents, [REDACTED] [REDACTED] and [REDACTED]

[REDACTED], submit this Brief and the accompanying documents in support of their applications for asylum, withholding of removal and relief under the Convention Against Torture ("CAT relief").

As discussed in further detail below, Respondent [REDACTED] ("[REDACTED]") suffered nearly two decades of unrelenting physical, sexual and emotional torment at the hands of her common law husband, [REDACTED] ("[REDACTED]"). [REDACTED] abducted [REDACTED] at gunpoint and forced her to live with him, never letting her out of the house except to work. He violently abused [REDACTED] on a daily basis, beating her, raping her, threatening her with weapons and attempting to burn her alive. [REDACTED] beat [REDACTED] in public and dragged her through the streets while calling her degrading names such as "whore" and "prostitute."

[REDACTED] also abused his and [REDACTED]'s sons, [REDACTED] and [REDACTED], beating them from when they were seven and five years old, including in public. [REDACTED]'s thrashings left [REDACTED] covered in bruises and forced [REDACTED] to wear long sweaters even in the summer to hide the evidence of [REDACTED]'s beating. After years of physical and emotional mistreatment at the hands of [REDACTED], and numerous futile attempts to seek protection from the police and the courts, [REDACTED] fled to the United States with her children.

On December 21, 2005, [REDACTED] filed an application for asylum, withholding of removal and CAT relief with the [REDACTED], [REDACTED] asylum office.<sup>1</sup> [REDACTED]

[REDACTED]'s sons are derivative beneficiaries of [REDACTED]'s asylum application. On August 3, 2006, [REDACTED]'s sons each filed individual applications for withholding of (continued...)

appeared for an affirmative asylum interview on January 24, 2006, and the interviewing officer referred her case to an Immigration Judge. The Respondents then appeared at several hearings before this Court over the course of approximately one year. They presented the direct testimony of [REDACTED] of [REDACTED] and of country conditions and psychological expert witness Dr. Yvette Flores, Ph. D. On October 15, 2007, this Court denied Respondents' applications for relief, except for their request for voluntary departure, and ordered the Respondents to depart by December 14, 2007. Respondents appealed this Court's decision to the Board of Immigration Appeals (the "BIA").

On December 23, 2008, after the completion of initial briefing, the BIA requested supplemental briefing from the parties "in view of" the Attorney General's decision in *Matter of R-A-*, 24 I&N Dec. 629 (A.G. 2008), noting that, like *Matter of R-A-*, this case involves asylum claims based on domestic violence. BIA Supplemental Briefing Notice (Dec. 23, 2008). The BIA specifically requested that the parties address the following issue in light of pertinent case law developments: "Whether the respondents are members of a particular social group within the meaning of the Immigration and Nationality Act, and can otherwise establish eligibility for asylum." *Id.*

On April 3, 2009, Respondents and the Department of Homeland Security ("DHS") filed a Joint Motion to Remand this matter to this Court "so that the evidentiary record can be appropriately updated." Joint Motion to Remand Proceedings to the Immigration Judge ("Joint Motion") at 1. The Joint Motion provided:

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(... continued)  
removal and CAT relief.

As noted by the Attorney General in *Matter of R-A-*, 24 I&N Dec. 629 (A.G. 2008), which, like the instant case, involved a persecution claim based on domestic violence, “[g]iven the passage of time, the Board may choose to request additional briefing in the pending case or to remand cases to Immigration Judges for further factual development.” 24 I&N Dec. at 631 (emphasis added). In this regard, the parties note that [the] factual record before the Immigration Judge closed in this case on October 15, 2007, Tr. 346, prior to the issuance of a number of important Board precedent decisions that “may have relevance to the issues presented with respect to asylum claims based on domestic violence,” including *Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008), and *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008). See *Matter of R-A-*, 24 I&N Dec. at 630. (Joint Motion at 1)

Shortly thereafter, on April 13, 2009, the DHS filed a Supplemental Brief to the BIA in this case (the “DHS Supplemental Brief”) that “represents the Department’s current position as to whether victims of domestic violence, in circumstances like those faced by the respondents, are members of a particular social group within the meaning of the [Immigration and Nationality] Act, and can otherwise establish eligibility for asylum.” DHS Supplemental Brief at 4. In its Supplemental Brief, the DHS explained:

[A]pplication of the provisions for asylum and withholding of removal in the domestic violence setting raises difficult issues and presents significant challenges, as reflected in the delay of over nine years in producing either regulations or an authoritative administrative precedent governing the issues first addressed by the Board in its vacated decision in *Matter of R-A-*, despite direct involvement by a series of Attorneys General. . . . Although ordinarily a respondent is solely responsible for defining the contours of his or her asylum claim, some uncertainty in that endeavor in domestic violence cases has not been surprising, given the long-unsettled state of U.S. law as it applies to such claims. Therefore, in response to the Board’s specific request for supplemental briefing, and in order to contribute to a process leading to the creation of better guidance to both adjudicators and litigants, the Department will offer here alternative formulations of “particular social group” that could, in appropriate cases, qualify aliens for asylum or withholding of removal. (DHS Supplemental Brief at 4-5. (footnotes omitted))

Accordingly, this Brief applies the factual background of this case to the legal

framework articulated by the DHS.<sup>2</sup>

## STATEMENT OF FACTS

### I. FACTS PARTICULAR TO THE RESPONDENTS' CLAIMS.

#### A. ██████████ Was Born Into An Abusive Family.

██████████ was born on ██████████ in ██████████, in the Mexican state of ██████████ as the youngest of seven children. Transcript of Proceedings before the Immigration Court ("Tr.") 80. Her family—which consisted of her parents, her four older sisters and her two older brothers—was poor and from a low social class. Amended Declaration of ██████████ in Support of Application for Asylum ("Amended Dec."),<sup>3</sup> filed as Ex. A to Respondent's Amended Brief on September 12, 2006, Tab QQ at 2, ¶¶1, 4. During ██████████'s childhood, her father was absent often. Amended Dec., Tab QQ at 2, ¶4. When he was around, he hit and yelled at ██████████ and her sisters. Amended Dec., Tab QQ at 3, ¶4. ██████████'s older brother also was abusive to her and

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<sup>2</sup>The DHS Supplemental Brief proposed two alternative groups that could meet controlling social group criteria—"Mexican women in domestic relationships who are unable to leave" and "Mexican women who are viewed as property by virtue of their positions within a domestic relationship." DHS Supplemental Brief at 14. Evidence that group members are not "accorded protection from harm inflicted by a domestic partner" is relevant to establishing the cognizability of the social group, and also provides circumstantial evidence regarding the persecutor's motivation. DHS Supplemental Brief at 15-21.

DHS identified three other issues relevant to establishing ██████████'s eligibility for relief: the existence of extraordinary circumstances which waive the one year bar, the Mexican government's inability and unwillingness to protect, and the absence of a reasonable internal relocation alternative. DHS Supplemental Brief at 24-27.

As discussed herein, ██████████ is able to establish each of the factual predicates relevant to eligibility, including those identified in the DHS Supplemental Brief.

<sup>3</sup>The Amended Declaration of ██████████ dated December 30, 2005, was previously filed with this Court as Exhibit A to the Respondents' Brief filed on September 12, 2006. As a courtesy to the Court and for ease of reference, it is attached hereto as Tab QQ.

her sisters. Amended Dec., Tab QQ at 3, ¶4. ██████ was close to her mother, but ██████ did not have a particularly close relationship with the rest of her family. Amended Dec., Tab QQ at 3, ¶4. ██████'s sister, ██████, left home in 1974 when she was fourteen years old, and eventually moved to the United States in 1980. Amended Dec., Tab QQ at 3, ¶5. The same year, ██████'s oldest sister, ██████ (██████), left home for ██████. Amended Dec., Tab QQ at 3, ¶5.

After struggling for approximately three years with cancer, ██████'s mother passed away in January 1983, when ██████ was fifteen years old. Amended Dec., Tab QQ at 3, ¶6. By then, ██████ was the only girl in her household, and she felt abandoned. Amended Dec., Tab QQ at 3, ¶6. ██████ finished her secondary schooling that year, but thereafter was not allowed to stay in ██████ with her father because he had a girlfriend. Amended Dec., Tab QQ at 3, ¶6. That summer, ██████ went to her sister ██████'s house in ██████, but ██████'s husband was abusive towards both ██████ and her sister and ██████ was told that she could not stay there permanently. Amended Dec., Tab QQ at 3, ¶6.

██████ had worked hard in school and won a scholarship to attend a post-secondary provincial teacher-training school called ██████ (██████) in ██████, in the region of ██████, beginning in the fall of 1983. Amended Dec., Tab QQ at 3, ¶6. ██████ is a small, rural town. Amended Dec., Tab QQ at 4, ¶7. Its current population is approximately 5,000 people, but in 1983 it was approximately 3,000 people. Amended Dec., Tab QQ at 4, ¶7. ██████ moved into the dorm at ██████ but stayed with her sister ██████ during holidays and school breaks because the dorms closed. Amended Dec., Tab QQ at 3, ¶6. ██████'s husband

allowed [REDACTED] to stay with them only because her visits were short and temporary. Amended Dec., Tab QQ at 3, ¶6. [REDACTED] was not allowed to stay with her sister for longer periods and she had to pay her sister to stay with her. Amended Dec., Tab QQ at 3, ¶6.

**B. [REDACTED] Forced [REDACTED] To Become His Common Law Wife, Held Her Captive, And Subjected [REDACTED] To Years Of Unrelenting Beatings, Rapes, Threats And Verbal Abuse.**

In 1986, when [REDACTED] was nineteen years old and still enrolled at [REDACTED], she met [REDACTED]. Tr. 84. [REDACTED] was thirty-three years old at the time and was the physical education coach at [REDACTED]. Tr. 84; Amended Dec., Tab QQ at 4, ¶8. [REDACTED]'s family was wealthy and had significant influence in [REDACTED]. Amended Dec., Tab QQ at 4, ¶8. They owned a local restaurant, as well as several other properties, and were well connected with public officials, including police and government officials in the State of [REDACTED] and in other parts of Mexico. Amended Dec., Tab QQ at 4, ¶9; Tr. 163. Various local police officers were close friends of [REDACTED]'s. Amended Declaration of [REDACTED] (" [REDACTED] Dec."), filed January 22, 2007, Tab VV at 3, ¶7. The police often came to [REDACTED]'s house to watch soccer tournaments with him, and they visited the family restaurant to eat and drink with [REDACTED]. [REDACTED] Dec., Tab VV at 2, ¶7.

In addition, [REDACTED] was, and is, an associate of [REDACTED] (" [REDACTED]"), a powerful and notorious Mexican politician and a leader of the [REDACTED] ([REDACTED]), which was the party in power in Mexico for nearly 70 years. Supplemental Declaration of [REDACTED] ("Supplemental Dec."), Tab A at 1, ¶3; Declaration of Mexico Expert Jimena Avalos Capin ("Avalos Dec."), Tab C at 5, ¶17. [REDACTED] also was the leader of the [REDACTED] ([REDACTED])—one of the largest,



wealthiest and most powerful workers' unions in Mexico. Avalos Dec., Tab C at 6, ¶18; see also *The Economist, Mexico's Powerful Teacher's Boss*, Tab PP. ██████ knew ██████ personally and was a member of ██████'s circle. Supplemental Dec., Tab A at 1, ¶3. Over the years, ██████ has done a number of favors for ██████ involving placing people in teaching positions and/or giving people special consideration for teaching positions in exchange for money or gifts. Supplemental Dec., Tab A at 1, ¶4.

Within a week of meeting ██████, ██████ began abusing her. Tr. 84. He dragged her to his house, closed the door and kept her captive. Tr. 84. He told her that he wanted her as his girlfriend. Tr. 84. When ██████ told ██████ that she did not want to be his girlfriend, he said that he did not care and that he was in control of her. Tr. 84-85. He began to touch ██████'s body and forced her to perform oral sex on him. Tr. 85. When ██████ protested, he beat her, and he told her that from that moment on she should do whatever he said. Tr. 85.

Over the course of the following months, ██████ repeatedly forced ██████ to go to his house so that he could touch her, kiss her and make unwanted sexual advances at her. Amended Dec., Tab QQ at 5-6, ¶¶10-14. When ██████ told ██████ that she would tell the school administration that he was terrorizing her, he threatened to have her kicked out of school. Amended Dec., Tab QQ at 5, ¶12. ██████ continually threatened ██████'s family, saying that if ██████ did not acquiesce to his sexual demands, he knew where her family lived. Amended Dec., Tab QQ at 6, ¶14.

During the Christmas break from school in 1986, ██████ went to stay with her sister ██████. Amended Dec., Tab QQ at 6, ¶13. ██████ did not want to return to school and finish her last semester because she did not want to endure further abuse from

██████████ Amended Dec., Tab QQ at 6, ¶13. ██████████ showed up at ██████████'s house and threatened to kill ██████████'s family if ██████████ did not return to school. Amended Dec., Tab QQ at 6, ¶13.

Several months later, on June 21, 1987, ██████████ graduated from her teaching program. Tr. 85. ██████████ had been sexually assaulting ██████████ since the fall of 1986, and on the night of the graduation he raped her at gunpoint. Tr. 85. ██████████'s sister ██████████ had traveled to ██████████ for the graduation with her husband and her two young children. Tr. 85. ██████████'s family was supposed to stay in ██████████'s dorm, but when ██████████ went to meet the family at the designated place, the family was not there. Tr. 85; Amended Dec., Tab QQ at 7, ¶15. It turned out that ██████████ had found ██████████'s family, put them up in his house, and told them that he and ██████████ were engaged to be married. Tr. 86; Amended Dec., Tab QQ at 7, ¶15. That night, ██████████ did not attend her own graduation party—which ██████████ and ██████████'s husband attended—because she was afraid that ██████████ would grope her and make unwanted sexual advances towards her. Tr. 86; Amended Dec., Tab QQ at 7, ¶15. When ██████████ returned home from the graduation party, he drugged ██████████'s husband so that he could be alone with ██████████. Amended Dec., Tab QQ at 7, ¶16. ██████████ forced ██████████ into a room with him by threatening her with a gun. Amended Dec., Tab QQ at 7, ¶16. When ██████████ had ██████████ alone, he pointed his gun at her and told her that he would kill her if she did not have sex with him. Tr. 86; Amended Dec., Tab QQ at 7, ¶16. ██████████ threatened to scream. Tr. 86; Amended Dec., Tab QQ at 7, ¶16. ██████████ told ██████████ that if she did not have sex with him, he would kill ██████████'s baby while her family watched and then would kill ██████████ and her three-year old child. Tr. 86; Amended Dec., Tab QQ at 7, ¶16.

Then he raped [REDACTED]. Tr. 86; Amended Dec., Tab QQ at 7, ¶16.

The next day, [REDACTED] had to move out of the dorm because the school year had ended. Amended Dec., Tab QQ at 7, ¶17. After finalizing her paperwork, she went to the bus stop to wait for the bus to [REDACTED], where she was going to go to stay with her sister. Tr. 87; Amended Dec., Tab QQ at 7, ¶17. [REDACTED] found [REDACTED] grabbed her from the bus line, pointed to his gun and dragged her at gunpoint to a nearby payphone where he forced [REDACTED] to call [REDACTED] and say that she loved [REDACTED] and was staying with him. Tr. 87; Amended Dec., Tab QQ at 7-8, ¶17.

[REDACTED] took [REDACTED] to his house and held her captive there for several years. Tr. 88; Amended Dec., Tab QQ at 8, ¶17. He abused her every day. Tr. 88. He continually forced [REDACTED] to perform oral sex on him. Amended Dec., Tab QQ at 8, ¶18. He raped her regularly. Amended Dec., Tab QQ at 8, ¶18. He hit her. Amended Dec., Tab QQ at 8, ¶18. He tormented her mentally and verbally. Amended Dec., Tab QQ at 8, ¶18. He threatened to kill [REDACTED] her sister [REDACTED] and [REDACTED]'s small children if [REDACTED] refused his demands or tried to seek protection from his abuse. Amended Dec., Tab QQ at 8, ¶18. When [REDACTED] protested [REDACTED]'s abuse, he responded that she was nobody and that he could do whatever he wanted to her because she belonged to him. Tr. 89. When [REDACTED] tried to fight back, [REDACTED]'s beatings got worse. Tr. 89.

[REDACTED] forbade [REDACTED] from finishing specialized training in science as she had planned and forced her to work as a teacher. Amended Dec., Tab QQ at 8, ¶19. He did not let [REDACTED] leave the house unattended, except to work. Amended Dec., Tab QQ at 8, ¶19; Tr. 94. When [REDACTED] came home late from work one day because she had no

transportation, [REDACTED] beat her, raped her with a bar, and told her that he was punishing her for disrespecting him and coming home late. Tr. 89, 91. [REDACTED] bribed an employee at [REDACTED]'s school to send him [REDACTED]'s paychecks and controlled all of her money. Amended Dec., Tab QQ at 8, ¶19. In short, he dominated every aspect of [REDACTED]'s life. Amended Dec., Tab QQ at 8, ¶18.

As a result of one of [REDACTED]'s rapes of [REDACTED], she became pregnant in 1987. Amended Dec., Tab QQ at 8, ¶20. When [REDACTED] was two months pregnant, she decided to flee [REDACTED]'s captivity. Amended Dec., Tab QQ at 8, ¶20; Tr. 88. She escaped through the window and made it to a nearby bus stop, but [REDACTED] found her, beat her, dragged her to his home by her hair and locked her in the bedroom. Amended Dec., Tab QQ at 8, ¶20; Tr. 88, 95. Later that night, when [REDACTED] fell asleep, [REDACTED] attempted to kill her by burning her alive. Amended Dec., Tab QQ at 8, ¶20; Tr. 88. He poured flammable liquid all over her bed and set it on fire with [REDACTED] and her unborn child still in the bed. Amended Dec., Tab QQ at 8, ¶20; Tr. 88. When [REDACTED] tried to escape the house, she found that the door to the house was locked from the outside and that [REDACTED] was gone. Amended Dec., Tab QQ at 8, ¶20; Tr. 88. She saved her life and her baby's life by putting out the fire with wet towels. Amended Dec., Tab QQ at 8, ¶20.

[REDACTED] continued to abuse [REDACTED] throughout her pregnancy. He hit her, yelled at her, called her a whore and raped her repeatedly. Amended Dec., Tab QQ at 8, ¶21. He refused to allow her to wear maternity clothes, so her clothes always dug into her skin. Amended Dec., Tab QQ at 8-9, ¶21. [REDACTED] gave birth to her first son, [REDACTED] [REDACTED] (" [REDACTED] ") on [REDACTED]. Amended Dec., Tab QQ at 9, ¶22. After [REDACTED]'s birth, [REDACTED] continued to rape [REDACTED]. Amended Dec., Tab QQ at 9,

¶22. The rapes were always violent and extremely painful. Amended Dec., Tab QQ at 9, ¶22. [REDACTED] began using an IUD for birth control, but the rapes caused the IUD to cut her and to bleed painfully. Amended Dec., Tab QQ at 9, ¶22. [REDACTED] had to stop using the IUD, and, as a result of [REDACTED]'s repeated rapes, soon became pregnant with another child. Amended Dec., Tab QQ at 9, ¶22.

[REDACTED] continued to beat and threaten to kill [REDACTED] during her second pregnancy. Amended Dec., Tab QQ at 9, ¶22. He abused her both at home and in public. Amended Dec., Tab QQ at 9, ¶23. He once grabbed [REDACTED] by the hair and beat her in the [REDACTED] town square when she was eight or nine months pregnant. Amended Dec., Tab QQ at 9, ¶23. When [REDACTED] was nine months pregnant, [REDACTED] went into a rage because his sports footwear was not clean. Amended Dec., Tab QQ at 9, ¶23; Tr. 97. He forced [REDACTED] to wash the footwear while pointing a gun to her head. [REDACTED] was terrified and went into premature labor. Tr. 97. The next day, on [REDACTED] she gave birth to her second son, [REDACTED] ("[REDACTED]"). Amended Dec., Tab QQ at 9, ¶22; Tr. 97.

It was nearly impossible for [REDACTED] to complain to the police of [REDACTED]'s abuses because [REDACTED] never allowed her to leave the house unsupervised, except to go straight to work and come straight home. Tr. 97. On about eight occasions, however, [REDACTED] managed to sneak away and go to the police. Tr. 99. [REDACTED] told the police that [REDACTED] locked her up and abused her, and showed the police her bruises and injuries, but the police would not help her. Tr. 98-99; Amended Dec., Tab QQ at 9, ¶24. In fact, one time when [REDACTED] went to the police, the officer in charge made her show him her bruises, and touched her, before telling [REDACTED] that there was nothing the police could

do because [REDACTED]'s abuse was a private matter and her life was not in danger. Tr. 98; Amended Dec., Tab QQ at 9, ¶24. On another occasion, [REDACTED] accompanied [REDACTED] to the police station. Tr. 243. The police officers, whom [REDACTED] recognized because they came over to the house to watch soccer tournaments with [REDACTED], closed the doors and did not allow [REDACTED] to speak with them. Tr. 243.

Every time that [REDACTED] went to the police, [REDACTED] learned she had gone because his police officer friends called him immediately to tell him. Tr. 100. [REDACTED]'s beatings of [REDACTED] worsened as "punishment" for her attempts to seek police protection. Tr. 100.

C. [REDACTED] Fled To [REDACTED] And [REDACTED] Forced Her To Return To Mexico.

In 1991, [REDACTED] became pregnant with her third child as a result of [REDACTED]'s violent rapes. Amended Dec., Tab QQ at 9, ¶24. She felt desperate and knew she had to escape to a place far away from [REDACTED]. Amended Dec., Tab QQ at 9, ¶24. [REDACTED] traveled to [REDACTED] to stay with her sister, [REDACTED]. Amended Dec., Tab QQ at 10, ¶25. [REDACTED] tracked down [REDACTED] at [REDACTED]'s house and called to threaten her. Amended Dec., Tab QQ at 10, ¶26. He told [REDACTED] that if she did not send him money, he would hurt her family. Amended Dec., Tab QQ at 10, ¶26. [REDACTED]'s sister sent [REDACTED] \$600. Amended Dec., Tab QQ at 10, ¶26. Soon thereafter, [REDACTED] came to the United States in search of [REDACTED]. Amended Dec., Tab QQ at 10, ¶27. He located [REDACTED] because he had letters [REDACTED] had sent [REDACTED] with [REDACTED]'s [REDACTED] return address. Tr. 101. He stayed with [REDACTED] and [REDACTED] for six months, and during that time, on [REDACTED], [REDACTED]'s daughter [REDACTED] ("[REDACTED]") was born. While [REDACTED] was staying with [REDACTED] at [REDACTED]'s house, he was less abusive

towards [REDACTED] because he knew he could not get away with severe abuse in the United States. Amended Dec., Tab QQ at 10, ¶27.

In May 1992, [REDACTED]'s mother became ill and [REDACTED] returned to Mexico. Amended Dec., Tab QQ at 10, ¶27. He told [REDACTED] that if she did not follow him in July, he would take away her children and kill her and her family. Tr. 102. When [REDACTED] did not return to Mexico, [REDACTED] came back to the United States in search of her. Amended Dec., Tab QQ at 11, ¶28. He again threatened to kill [REDACTED]'s family. Amended Dec., Tab QQ at 11, ¶28; Tr. 105. Afraid for her and her family's lives, [REDACTED] returned to [REDACTED] in July 1993. Amended Dec., Tab QQ at 11, ¶28.

**D. [REDACTED]'s Abuse Of [REDACTED] Escalated In Retaliation For Her Attempt To Leave Him.**

When [REDACTED] returned to Mexico, [REDACTED]'s beatings and abuse escalated. Amended Dec., Tab QQ at 11, ¶29; Tr. 106. [REDACTED] told [REDACTED] that he was abusing her to punish her for disobeying him by fleeing to the United States. Tr. 106. [REDACTED] frequently punched [REDACTED] in the face, kicked her and called her a whore. Amended Dec., Tab QQ at 12, ¶32. [REDACTED] had bruises all over her body. Amended Dec., Tab QQ at 12, ¶32. On one occasion, when [REDACTED] said she would report [REDACTED]'s abuse to the authorities, [REDACTED] threatened her with a machete and told her that he would kill her if she went to the police. Amended Dec., Tab QQ at 12, ¶30. During that time, [REDACTED] worked from 5 a.m. to 7 p.m. teaching in a town about an hour and a half by bus from [REDACTED]. Amended Dec., Tab QQ at 12, ¶33. [REDACTED] did not work, and he controlled all of the money [REDACTED] earned. Amended Dec., Tab QQ at 12, ¶32.

[REDACTED] continued to control [REDACTED]'s every move, including keeping close watch over [REDACTED]'s whereabouts. On one occasion, when [REDACTED] was returning from

work, [REDACTED] found her walking home from the bus stop, accused her of seeing other men, and beat her in the street. Amended Dec., Tab QQ at 11-12, ¶30. He dislocated [REDACTED]'s nose, and she began bleeding heavily. Amended Dec., Tab QQ at 12, ¶30. [REDACTED] refused to let [REDACTED] go to the hospital. Amended Dec., Tab QQ at 12, ¶30. Since then, [REDACTED] has suffered from numbness and paralysis on her face and from sinus problems. Amended Dec., Tab QQ at 12, ¶31.

**E. [REDACTED] Took [REDACTED]'s Children And Belongings, Leaving Her With Nothing, And Severely Abused The Children.**

One day in April 1995, [REDACTED] returned from work to an empty house. Amended Dec., Tab QQ at 12, ¶33. Her furniture, clothes and important papers were gone and her children were missing. Amended Dec., Tab QQ at 12-13, ¶33. [REDACTED] found out from her babysitter that [REDACTED] had come to the house with a city official and the police and had taken everything, including the children. Amended Dec., Tab QQ at 13, ¶33. [REDACTED] found the children at [REDACTED]'s mother's house and confronted [REDACTED], who told her that she could never see her children again. Amended Dec., Tab QQ at 13, ¶33. [REDACTED] said that he had the children's birth certificates, and that [REDACTED] would never be able to prove that she was their mother. Amended Dec., Tab QQ at 13, ¶33.

[REDACTED] severely abused [REDACTED] and [REDACTED] when they lived with him. He constantly punched, kicked, slapped and whipped [REDACTED], leaving him covered in bruises. [REDACTED] Dec., Tab VV at 2, ¶4; Tr. 238. [REDACTED] had to wear long sweaters, even in the summer when it was hot, to hide the bruises. [REDACTED] Dec., Tab VV at 2-3, ¶4. [REDACTED] taught his sons to abuse and yell at [REDACTED], and frequently beat [REDACTED] when he refused to abuse [REDACTED]. [REDACTED] Dec., Tab VV at 3, ¶6. [REDACTED] isolated his sons, prohibiting them from leaving the house except to go to school. [REDACTED] Dec., Tab VV at 2, ¶3. When



secretly visited her sons, always found out and beat afterwards.  
Dec., Tab VV at 2, ¶3.

As he did with , abused and in public. Applications for Withholding of Removal of and filed on August 3, 2006 at B4. People who worked in the family restaurant and lived in parts of 's family's house knew about the abuse. Amended Dec., Tab QQ at 15, ¶41. abused his sons with the full acquiescence of the police. Applications for Withholding of Removal of and filed on August 3, 2006 at B4. In "the entire community knew" that and were being abused, and no one ever stopped . Applications for Withholding of Removal of and filed on August 3, 2006 at B4.

**F. The Authorities Failed To Protect And Her Children From 's Abuse.**

As part of her quest to get back her children, went to the public records building in to get copies of her children's birth certificates. Amended Dec., Tab QQ at 13, ¶33. A good friend of 's mother, who was the mayor of the Municipality of , prevented from entering the building and told her that she would not be able to get back her children. Amended Dec., Tab QQ at 13, ¶33. then sought help from the Desarrollo Integral de la Familia, or DIF, a Mexican governmental organization that provides assistance in domestic and family violence cases. Tr. 106, 109; Amended Dec., Tab QQ at 15, ¶42. Because 's sister was the president of DIF in , traveled to the DIF offices of a nearby town to see an attorney. Amended Dec., Tab QQ at 15-16, ¶42. told the DIF attorney that had taken away her children and was abusing them, but the attorney would not

help [REDACTED] because of [REDACTED]'s sister's position. Tr. 106; Amended Dec., Tab QQ at 15-16, ¶42.

After [REDACTED] took away her children and her belongings, [REDACTED] was left with nothing. She slept on the floor on a blanket that she borrowed from her landlord. Amended Dec., Tab QQ at 13, ¶34. [REDACTED] came to her house when she was not there, broke her glass door, and stole money from her. Amended Dec., Tab QQ at 13, ¶34; Tr. 115. He stole [REDACTED]'s official student files and then blackmailed her, forcing her to pay him to get back the files. Amended Dec., Tab QQ at 15, ¶40. He demanded that [REDACTED] pay him money to support the children, even though he would not let her see them or care for them herself. Amended Dec., Tab QQ at 13, ¶34. He continued to threaten [REDACTED], telling her that he would hurt the children and she could do nothing about it. Amended Dec., Tab QQ at 13, ¶34. [REDACTED] lived across the street from the police station, and when [REDACTED] tried to go to [REDACTED]'s house to see the children, a police officer warned her away and prevented her from entering the house. Amended Dec., Tab QQ at 13, ¶34; Tr. 107.

In February 1996, [REDACTED] consulted with several lawyers in order to get back her children. Amended Dec., Tab QQ at 14, ¶36. [REDACTED] bribed the lawyers [REDACTED] spoke with, and they refused to help her. Amended Dec., Tab QQ at 14, ¶36. In an effort to escape [REDACTED]'s influence, [REDACTED] traveled to the nearby town of [REDACTED] to seek custody of her children. Amended Dec., Tab QQ at 14, ¶36. The judge, whose name was Aguas, awarded custody to [REDACTED] even though the judge knew [REDACTED] was abusing the children. Amended Dec., Tab QQ at 14, ¶36; Tr. 110; Supplemental Dec., Tab A at 1-2, ¶5. Shortly thereafter, Judge Aguas retired, and [REDACTED] went back to the

██████████ courthouse and appeared before a new judge, Ricardo Reyes Montesinos. Amended Dec., Tab QQ at 14, ¶37. Judge Montesinos told ██████████ that he was willing to award ██████████ custody of the children if she had sex with him, but she refused. Amended Dec., Tab QQ at 14, ¶37. The judge told ██████████ that she was not a good mother, because a good mother would do anything to get back her children. Tr. 112. Judge Montesinos allowed ██████████ and ██████████ to remain in the custody of ██████████, even though the judge knew that ██████████ was abusing his sons. Supplemental Dec., Tab A at 1-2, ¶5. ██████████ later discovered that ██████████ and his family had bribed Judge Montesinos. Amended Dec., Tab QQ at 14, ¶37.

██████████ was extremely depressed after her second court hearing. Tr. 112. The same day, she took eight sleeping pills that she had gotten from her neighbor. Amended Dec., Tab QQ at 14, ¶38; Tr. 112. ██████████ swallowed one pill after the other "without noticing" and became very light-headed. Tr. 112. She eventually collapsed from the medication and was sent to the hospital. Amended Dec., Tab QQ at 14, ¶38; Tr. 113.

**G. ██████████ Finally Obtained Custody Of Her Children And Attempted To No Avail To Flee ██████████.**

██████████ went to court in ██████████ for the third time in 1996, seeking custody of her children and complaining of ██████████'s abuse of his children. Amended Dec., Tab QQ at 16, ¶43. She appeared before a third judge, Gilberto Molina Bermudez, who said that he would award ██████████ custody of her children because they were young and because she would take better care of them. Amended Dec., Tab QQ at 16, ¶45; Tr. 115. Although the judge knew that ██████████ was beating his children, he told ██████████ that if her oldest son wanted to live with his father, he was free to do so. Amended Dec., Tab QQ at 15-16, ¶45; Tr. 116-17. ██████████ wanted to live with his father, and after the

hearing lived with him for almost a year. Tr. 117. [REDACTED] and [REDACTED] lived with [REDACTED]. Tr. 117.

The judge also ordered [REDACTED] to stay away from [REDACTED]. Amended Dec., Tab QQ at 17, ¶45. [REDACTED] did not obey this order, and instead continued to beat and threaten [REDACTED] even in public streets. Tr. 118-19; Amended Dec., Tab QQ at 18, ¶49. On one occasion, [REDACTED] pulled [REDACTED] by the hair when she was in a music store, beat her and slashed her jacket with a knife. Tr. 122-23. None of the people who witnessed this incident or [REDACTED]'s other public beatings and abuses of [REDACTED] did anything to help her or to reprimand [REDACTED]. Tr. 123; Amended Dec., Tab QQ at 18, ¶49.

After the custody hearing, [REDACTED] told [REDACTED] that if she tried to move away he would kill her or take away her children. Tr. 119. [REDACTED] tried to get a teaching job in a public school in a different part of Mexico, but each time she submitted an application it was denied. Tr. 119. The last time [REDACTED] tried to submit a job transfer application, the person handling the paperwork told her that she should give up because [REDACTED] had ensured that her applications would not be reviewed. Tr. 120.

[REDACTED] continued to abuse his children even after [REDACTED] left his house and all three children lived with [REDACTED]. Amended Dec., Tab QQ at 18, ¶¶50-51; 20, ¶57. By August 2000, [REDACTED]'s constant verbal and physical abuse was taking its toll on the children. Amended Dec., Tab QQ at 18, ¶50. [REDACTED] and [REDACTED] both were sick very often, and [REDACTED] incurred very large medical bills, while receiving no financial support from [REDACTED]. Amended Dec., Tab QQ at 18, ¶50; Tr. 140. [REDACTED] also had significant debts remaining from her custody battle with [REDACTED]. Amended Dec., Tab QQ at 17. She decided to travel to the United States to earn money so that she could

pay her bills and other debts. Amended Dec., Tab QQ at 18, ¶50. [REDACTED] left all three of her children in the care of her sister [REDACTED] who was living in [REDACTED]. Amended Dec., Tab QQ at 18, ¶50; Tr. 139. [REDACTED] called [REDACTED] in the United States on multiple occasions, threatening that he could do whatever he wanted to her and that he knew how to make her return to Mexico. Tr. 140-41. [REDACTED] returned to Mexico after nine months primarily because of [REDACTED]'s threats that he would kill [REDACTED] and harm her children if she did not return. Amended Dec., Tab QQ at 18, ¶51; Tr. 141-42.

When [REDACTED] returned to Mexico in early 2001, [REDACTED]'s abuse worsened. Tr. 142. He "punished" [REDACTED] for defying him by leaving for the United States. Tr. 142. He continued to beat and threaten her. Tr. 142-43. He stalked her so that he could beat her in public. Amended Dec., Tab QQ at 19, ¶52. He hit her in front of his friends to show that he had power over her. Tr. 142-43. He insulted her in the streets, calling her a prostitute and a whore in front of others and in front of her children. Tr. 142-43; Amended Dec., Tab QQ at 19, ¶52. [REDACTED] even attempted to "sell" [REDACTED] into prostitution, taking money from a convicted murderer who then stalked [REDACTED]. Amended Dec., Tab QQ at 19, ¶54. When [REDACTED] told [REDACTED] that she did not want him to insult her, and that she wanted him to leave her alone, [REDACTED] told her that it would never happen because [REDACTED] belonged to him. Tr. 143. When [REDACTED] confronted [REDACTED] about his abuse, he hit her even more. Tr. 143.

#### H. [REDACTED] Sought Child Support, But Instead Of Helping [REDACTED], The Court Sent Her Back Into The Hands Of [REDACTED]

In 2002, the debts for [REDACTED]'s medical care were piling up, and [REDACTED], who could no longer support her children, had no choice but to seek support from [REDACTED]. Tr. 144; Amended Dec., Tab QQ at 19-20, ¶55. She returned to court in [REDACTED] for

a child support hearing. Tr. 145. [REDACTED] needed witnesses on her behalf to testify at the hearing, but [REDACTED] threatened to kill the individuals who were scheduled to testify and only one, named [REDACTED], showed up. Amended Dec., Tab QQ at 20, ¶55; Tr. 146-47. After the hearing, [REDACTED] asked his friends in the police station to arrest [REDACTED] in retaliation. Amended Dec., Tab QQ at 20, ¶55. The police accidentally arrested [REDACTED]'s brother, thinking that he was [REDACTED], and jailed him for several days to intimidate him. Amended Dec., Tab QQ at 20, ¶55.

The judge did not award [REDACTED] child support, but he told her she could live in a part of [REDACTED]'s family's house, next door to where [REDACTED] lived and in the same building as [REDACTED] and his family. Amended Dec., Tab QQ at 20, ¶56; Tr. 147.<sup>4</sup> [REDACTED] did not want to live in close proximity to [REDACTED], but her financial situation gave her no choice. Amended Dec., Tab QQ at 20, ¶56. After [REDACTED] and the children moved in, [REDACTED] continued to beat all of them violently. Amended Dec., Tab QQ at 20, ¶57. He verbally abused and humiliated [REDACTED] and the children regularly. Amended Dec., Tab QQ at 20, ¶57. [REDACTED] asked [REDACTED] to beg for money in public and made [REDACTED] extort money from [REDACTED] so that [REDACTED] could gamble with it. Amended Dec., Tab QQ at 20, ¶57. On one occasion, [REDACTED] locked [REDACTED] in the house from the outside while [REDACTED] and her friend were inside to prevent them from attending a rosary ceremony for a friend's funeral. Amended Dec., Tab QQ at 21, ¶59; Tr. 148. He then beat [REDACTED], as well as her friend when she came to [REDACTED]'s defense. Tr. 148.

In February 2004, [REDACTED] broke into [REDACTED]'s house and tried once again to rape

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[REDACTED]'s family's house was once a hotel building and consists of several contiguous areas. Amended Dec., Tab QQ at 4, ¶9.

her while she was home alone. Amended Dec., Tab QQ at 20, ¶58. He entered her bedroom, covered her mouth and took her clothes off. Amended Dec., Tab QQ at 20-21, ¶58. He kicked [REDACTED]'s dog, who began to bark and alerted a neighbor. Amended Dec., Tab QQ at 20-21, ¶58. The neighbor, who also worked in [REDACTED]'s family's restaurant, came into the bedroom and interrupted [REDACTED]. Amended Dec., Tab QQ at 21, ¶58. [REDACTED] threatened to kill the neighbor's daughter if the neighbor told anyone what she saw, and later had the neighbor fired from his family's restaurant. Amended Dec., Tab QQ at 21, ¶58.

**I. [REDACTED] Fled To [REDACTED] And [REDACTED] Continued To Threaten And Harass Her.**

[REDACTED] could no longer stand [REDACTED]'s daily abuse of her and the children. Amended Dec., Tab QQ at 21, ¶60; Tr. 147. She realized that [REDACTED] would not stop until he killed her and that the police would do nothing to protect her. Amended Dec., Tab QQ at 21, ¶60. Desperate, she gave up her job of ten years and fled [REDACTED] once and for all. Amended Dec., Tab QQ at 21-22, ¶61; Tr. 147. She knew that [REDACTED] would find her if she was in Mexico and within his reach, so, on May 19, 2004, she entered the United States with [REDACTED] and [REDACTED]. Her daughter [REDACTED], who is a U.S. citizen, entered separately, traveling by plane. Amended Dec., Tab QQ at 22, ¶62; Tr. 147-49. [REDACTED] and her children went to live with [REDACTED]'s sister [REDACTED] in [REDACTED], [REDACTED]. Amended Dec., Tab QQ at 22, ¶62; Tr. 147-49. [REDACTED] did not tell [REDACTED] that she was leaving or where she was going. Tr. 147-49.

[REDACTED] was extremely depressed when she arrived in the United States. She tried to avoid thinking about her past because it was so painful. Tr. 149. She suffered from insomnia, nightmares and headaches. Tr. 149. [REDACTED] lost the desire to do anything

and focused on living "one day at a time," working over 60 hours a week as a janitor to support her children. Amended Dec., Tab QQ at 22, ¶64; Tr. 149.

After [REDACTED] moved to the United States, [REDACTED] tracked her down at her sister [REDACTED]'s house and called her there multiple times, threatening her. Supplemental Dec., Tab A at 2, ¶6. Approximately five months later, in or around October 2004, [REDACTED] and the children moved out of [REDACTED]'s house and into their own apartment in [REDACTED]. Supplemental Dec., Tab A at 2, ¶7. [REDACTED] signed up for telephone service and obtained her own landline telephone number. Supplemental Dec., Tab A at 2, ¶7. After [REDACTED] moved, [REDACTED] continued to call [REDACTED]'s house in search of her, demanding to speak with [REDACTED] and threatening her family. Supplemental Dec., Tab A at 2, ¶8.

In June 2005, [REDACTED] who was very concerned about his mother's emotional health, went to his teacher for help. Tr. 245. [REDACTED]'s teacher suggested that the family contact the Lawyers' Committee for Civil Rights regarding applying for asylum. Tr. 153. [REDACTED] talked to [REDACTED] about his teacher's suggestion, but [REDACTED] was too depressed and emotionally stressed to consider applying for asylum. Tr. 153, 246. She did not want to think about her past or remember all of the abuse she endured in Mexico. Tr. 153, 246. As a result, [REDACTED] did not immediately contact the Lawyers' Committee or apply for asylum. Tr. 153. Finally, in September 2005, [REDACTED], with the help and encouragement of [REDACTED], went to see the Lawyers' Committee about filing an asylum application. Amended Dec., Tab QQ at 23, ¶69; Tr. 246. She filed her application for asylum, withholding of removal and CAT relief on December 21, 2005.

In the meantime, [REDACTED] continued to call [REDACTED]'s house in search of [REDACTED]. Supplemental Dec., Tab A at 2, ¶8. On one occasion, [REDACTED] told [REDACTED] that [REDACTED]'s



daughters would be in serious danger if [REDACTED] did not call him back immediately. Supplemental Dec., Tab A at 2, ¶8. [REDACTED] was extremely scared and worried that [REDACTED] was going to harm her family, so she called him. Supplemental Dec., Tab A at 2, ¶8. He bullied and threatened [REDACTED] into giving him her new telephone number. Supplemental Dec., Tab A at 2, ¶8.

After [REDACTED] obtained [REDACTED]'s new telephone number, he called her directly and continued to threaten her. Supplemental Dec., Tab A at 2, ¶9. [REDACTED] became increasingly scared of [REDACTED]'s threats and disconnected her telephone after a particularly intimidating telephone call from [REDACTED] in or around February 2006. Supplemental Dec., Tab A at 2, ¶9. [REDACTED] obtained a second landline number of her own and was extremely careful not to give it out to anyone who might have contact with [REDACTED] because she did not want him to find her and harm her. Supplemental Dec., Tab A at 2, ¶10.

In or around September 2009, [REDACTED] received a telephone call from a woman named [REDACTED], who is from [REDACTED] and who is a friend of [REDACTED]'s. Supplemental Dec., Tab A at 2, ¶11. [REDACTED] was very surprised to hear from [REDACTED]—she had no idea how [REDACTED] could have gotten [REDACTED]'s second landline number, because [REDACTED] did not give it to anyone in Mexico. Supplemental Dec., Tab A at 3, ¶11. [REDACTED] told [REDACTED] that she wanted to come visit her and that she had heard that [REDACTED] is beautiful. Supplemental Dec., Tab A at 3, ¶11. When [REDACTED] said that she lived far from [REDACTED], [REDACTED] responded that she knew [REDACTED] lived near [REDACTED]. Supplemental Dec., Tab A at 3, ¶11. [REDACTED] told [REDACTED] that she was moving to [REDACTED] which was not true, and got off the telephone as quickly as possible. Supplemental Dec.,

Tab A at 3, ¶11. [REDACTED] was worried that [REDACTED] had asked [REDACTED] to locate her, and very soon after [REDACTED] called, [REDACTED] disconnected her second personal landline number because she did not want [REDACTED] to find her. Supplemental Dec., Tab A at 3, ¶¶11-12.

**J. [REDACTED]'s Abuse Emotionally Destroyed [REDACTED] And Her Sons.**

[REDACTED] suffered, and continues to suffer, from anxiety, depression and nightmares. Tr. 149; Amended Dec., Tab QQ at 24, ¶70. Certain colors and smells remind her of [REDACTED] and trigger memories of his abuse. Amended Dec., Tab QQ at 24, ¶70. She often feels scared and overwhelmed, and she continues to endure facial paralysis from [REDACTED]'s dislocation of her nose. Amended Dec., Tab QQ at 24, ¶70; Tr. 150. Psychological expert witness Dr. Yvette Flores, Ph.D. diagnosed [REDACTED] with depression, post-traumatic stress disorder ("PTSD") and suicidal ideation. Yvette G. Flores, Ph.D. Psychological Evaluation of [REDACTED] ("[REDACTED] Evaluation"), filed as Ex. I to Respondent's Amended Brief on September 12, 2006, Tab RR at 84-86. Psychological expert witness Linda Sikes, LCSW, also diagnosed [REDACTED] with PTSD. Linda R. Sikes Psychological Asylum Evaluation of [REDACTED] ("Sikes [REDACTED] Evaluation"), filed as Ex. F to Respondent's Amended Brief on September 12, 2006, Tab UU at 4-9.

As expert witness Dr. Stuart Lustig explained, patients suffering from PTSD, such as [REDACTED], experience a "foreshortened sense of future" and have, as their focus, their immediate survival. Declaration of Dr. Stuart L. Lustig in Support of Application by [REDACTED] for Political Asylum and Withholding of Deportation ("Lustig Declaration"), Tab B at 2, ¶3. They avoid people, places and activities that remind them of the traumas they have endured. Lustig Declaration, Tab B at 2, ¶4. They have difficulty concentrating. Lustig Declaration, Tab B at 3, ¶5. Dr. Lustig concluded that

the PTSD that [REDACTED] suffered as a result of [REDACTED]'s abuse likely prevented her from timely filing for asylum because it required a degree of concentration and future-oriented thinking of which she was not capable, and because it required her to recall and recount painful and traumatic events. Lustig Declaration, Tab B at 2-3.

Like his mother, [REDACTED] suffers from severe depression; without continuing psychological intervention, [REDACTED] faces a very high risk of suicide. Yvette G. Flores, Ph.D. Confidential Psychological Evaluation of [REDACTED] ("[REDACTED] Evaluation"), filed as Ex. K to Respondent's Amended Brief on September 12, 2006, Tab TT at 106. [REDACTED]

[REDACTED] has severe emotional problems because of the abuse he suffered at [REDACTED]'s hands. Amended Dec., Tab QQ at 23, ¶68. He is so traumatized by the abuse he suffered as a child that he maintains that he "do[es] not have a father." Yvette G. Flores, Ph.D. Confidential Psychological Evaluation of [REDACTED] ("[REDACTED] Evaluation"), filed as Ex. J to Respondent's Amended Brief on September 12, 2006, Tab SS at 88. He is emotionally closed, suffers from isolation, and "is at extremely high risk." [REDACTED] Evaluation, Tab SS at 97.

[REDACTED] fears that [REDACTED] will violently abuse or kill her if she returns to Mexico, and that his abuse will be even worse than in the past as punishment for her flight. Tr. 155; Amended Dec., Tab QQ at 24, ¶71. She also fears for her children's lives. Amended Dec., Tab QQ at 25, ¶73. [REDACTED] similarly fears that [REDACTED] will kill him and his mother if they return to Mexico. [REDACTED] Evaluation, Tab TT at 106. [REDACTED] does not believe that the authorities will protect him or his mother. [REDACTED] Evaluation, Tab TT at 106. Because of [REDACTED]'s influence and connections, [REDACTED] believes that [REDACTED] would be able to locate [REDACTED] even if she left [REDACTED] and moved to another region of

Mexico. Amended Dec., Tab QQ at 24, ¶71.

**K. ██████████ Would Be Able To Locate ██████████ And Her Sons If They Returned To Mexico.**

Jimena Avalos Capin, an expert in Mexican transparency laws and access to information, opined that if ██████████ returned to Mexico and continued to teach in a public school, anyone with access to the Internet could learn her location of employment through publicly available databases. Declaration of Mexico Expert Jimena Avalos Capin (“Avalos Dec.”), Tab C at 3, ¶10. If ██████████ returned to Mexico and used her teaching license to work in the private school system, anyone with access to her teaching license number—including ██████████—could obtain information regarding her current place of work. Avalos Dec., Tab C at 3-4, ¶11. Accordingly, ██████████’s profession, which is her only livelihood, “places her in an extremely vulnerable position” of being located under current Mexican transparency standards. Avalos Dec., Tab C at 2, ¶7.

Even if ██████████ were never to work as a teacher again, she and her sons would be required to submit their addresses to a number of public databases in order to live legally in any part of Mexico, and it would be easy for ██████████ to locate them through those databases. Avalos Dec., Tab C at 2-4, ¶¶7, 11. For example, ██████████ and her sons would have to register with the Federal Electoral Institute and obtain a voter identification card (*Credencial para votar con fotografía*, or IFE card), which is widely used for identification in Mexico. Avalos Dec., Tab C at 4, ¶13; Declaration of Mexico Expert Dr. Alicia Elena Pérez Duarte y Noroña (“Pérez Dec.”), Tab D at 16, ¶32. ██████████ and her sons also would be required to register their current address with the Population Registry (*Cédula Única de Registro de Población*) and the Taxpayers Registry (*Registro Federal de Causantes*) of the Ministry of Finance. Avalos Dec.,

Tab C at 4, ¶13.

Ms. Avalos opined that in her experience, third parties can obtain an individual's address from these two databases, and/or from the Federal Electoral Institute, by contacting a mid- or low-level employee at the office of each registry. Avalos Dec., Tab C at 1, 4-5, ¶¶2, 14-16. This is particularly true when the third party is male and purports to be the registered individual's husband. Avalos Dec., Tab C at 5, ¶15. In addition, both Ms. Avalos and Dr. Pérez explained that a third party could easily bribe a Mexican government official in exchange for an individual's private information. Pérez Dec., Tab D at 15-16, ¶¶32, 35; Avalos Dec., Tab C at 5, ¶16. According to Ms. Avalos, "it is very common for public officials to give out personal data" in exchange for bribes. Avalos Dec., Tab C at 5, ¶16.

Finally, ██████████ and those in her circle are in a position to influence Mexican government officials in every public entity. *See supra*, pp.6-7; Avalos Dec., Tab C at 6, ¶19. Accordingly, through ██████████'s connections to ██████████, it would be particularly easy for ██████████ to locate ██████████ no matter where she lived in Mexico. *See supra*, pp.6-7; Avalos Dec., Tab C at 6, ¶19. Indeed, through his connection to ██████████ ██████████ "is almost certain to find [██████████], especially if she were to work as a teacher again but even if she did not, through his almost guaranteed access to her personal data by means of the registries" mentioned *supra*, pp.26-27. Avalos Dec., Tab C at 6, ¶19.

## II. VIOLENCE AGAINST WOMEN IN MEXICO.

### A. Violence Against Women, Including Domestic Violence, Is Pervasive, Considered Normal, And Has Been Broadly Accepted Within The Mexican Society And Government.

Violence against women in Mexico is pervasive and committed with impunity. Widespread cultural beliefs that women are inferior to men—and therefore subject to

their demands, decisions, and control—perpetuate violence against women by accepting it as “normal and tolerable.” Adriana Beltrán and Laurie Freeman, *Hidden in Plain Sight, Violence Against Women in Mexico and Guatemala*, A WOLA Special Report (March 2007) (“*Hidden in Plain Sight*”), Tab G at 3. As Dr. Alicia Elena Pérez Duarte y Noroña, an internationally-recognized expert on women’s rights and violence against women in Mexico (“Dr. Pérez”), whose declaration is submitted with this brief, has observed, “deep and persistent insensitivity to gender issues, as well as generalized discrimination against women in social and governmental structures, are the cause of widespread gender-based violence throughout society, as well as in domestic relationships.” Pérez Dec., Tab D at 2, ¶2. This violence against women “and the attitudes which perpetuate it, is like a social cancer which appears generation after generation. It is learned in the family, is reinforced by a culture of subjugation, and is reflected in the society and its structures.” Pérez Dec., Tab D at 10, ¶18.

The most recent official survey on the subject of domestic violence, published in 2005 on the basis of information gathered by the National Survey on the Dynamic of Relations in the Home (*Encuesta Nacional sobre la Dinámica de las Relaciones de los Hogares, ENDIREH*), found that 49% of women over the age of 15 living with a partner or spouse reported some form of violence by their partner during the previous year. Amnesty International, *Mexico: Briefing to the Committee on the Elimination of Discrimination against Women* (June 2006), Tab F at 13; *Hidden in Plain Sight*, Tab G at 6.

Despite widespread recognition of the prevalence of violence against women in Mexico, the official statistics are skewed due to under-reporting. The *ENDIREH* survey

quoted above found that “82 per cent of women who said they had experienced physical or sexual violence had not reported this to an official body, such as the police or prosecutor’s office.” Amnesty International, *Women’s Struggle for Justice and Safety, Violence in the Family in Mexico* (August 2008) (“*Women’s Struggle*”), Tab H at 16. Many survivors indicate that they encountered reluctance or refusal by police officials to register their cases and initiate an investigation; “[t]hese responses . . . deter them from pursuing complaints.” *Women’s Struggle*, Tab H at 21.

**B. In Mexico, Women Occupy A Subordinate Position In Society, And Suffer Discrimination And Exclusion In All Aspects Of Life.**

Gender inequality in Mexico is not a recent phenomenon; women historically have been oppressed, and cultural norms persist that conceive of women as subordinate to men. As Dr. Pérez explained, “[v]iolence against women and the impunity which accompanies it, has its origins in a culture of *machismo*, which both promotes the subjugation of women and celebrates male domination.” Pérez Dec., Tab D at 9, ¶15. The conditions faced by women in Mexico are among the worst in Latin America and have caused the country to become the subject of close scrutiny by the United Nations, the Organization of American States, and other entities concerned about “the pervasiveness of patriarchal attitudes which impede the enjoyment by women of their human rights and constitute a root cause of violence against women” throughout Mexico. U.N. CEDAW, *Concluding Comments From the Committee for the Elimination of Discrimination against Women: Mexico* (August 25, 2006), Tab I at 3.

As a United Nations report on the subject explains: “[v]iolence against women in Mexico typically resembles only the tip of an iceberg with more systemic and complex problems lurking below the surface, which can only be understood in the context of

*socially entrenched gender inequality on the one hand and a multilayered governance and legal system that does not effectively respond to violent crime, including gender-based violence, on the other hand.*” U.N. Commission on Human Rights, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Mission to Mexico*, U.N. Doc. E/CN.4/2006/61/Add.4 (January 13, 2006), Tab J at 5 (emphasis added).

The Mexican government itself has acknowledged the depth of discrimination against women. The government attributes challenges created by bias against women in Mexico to a “culture deeply rooted in stereotypes, based on the underlying assumption that women are inferior.” Pérez Dec., Tab. D at 9, ¶14 (quoting U.N. CEDAW, *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico*, U.N. Doc. CEDAW/C/2005/OP.8/MEXICO (January 27, 2005), at 55).

**C. Violence Against Women Has Reached The Extreme End Of The Continuum Of Violence, Resulting In The Phenomenon Of “Femicides” Or Gender-Motivated Killings.**

Mexico is internationally infamous for its growing “femicide” epidemic—that is, for the violent gender-motivated killings of women, marked by extreme brutality and impunity. *Hidden in Plain Sight*, Tab G at 10; *see also* Pérez Dec., Tab D at 11, ¶17 (the femicides are “the product of a patriarchal and misogynistic culture which sends a message to those responsible for this violence that they will not be prosecuted for their acts”). Although much press coverage has focused on femicides in Ciudad Juárez and Chihuahua, Mexico, gender-motivated killings occur throughout Mexico. According to a study of femicides commissioned by the Chamber of Deputies of Mexico’s Congress,



between 2006 and 2007 “[v]iolence against women claimed 2,232 lives” across Mexico. *Brief Deputies More Than 2,000 Women Killed in Two Years*, THE FINANCIAL TIMES LIMITED (Global News Wire), March 5, 2009, Tab L at 1. Seventy percent of women homicide victims in Mexico were killed by their intimate partners (Pérez Dec., Tab D at 8, ¶13), but fewer than one in ten gender-based killings is ever prosecuted under the law. Pérez Dec., Tab D at 11, ¶17.

According to the United Nations Special Rapporteur on Violence Against Women, “[t]he situation in Ciudad Juárez, which occupies a central focus . . . should be perceived as an exemplary case since similar patterns of violence against women are observed in other parts of Mexico. Ciudad Juárez has simply become visible due to the national and international attention it has attracted. This selective attention to the problem may allow the violence in other parts of Mexico . . . to continue out of sight with impunity.” U.N. Commission on Human Rights, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Mission to Mexico*, U.N. Doc. E/CN.4/2006/61/Add.4 (January 13, 2006), Tab J at 4. Although “[s]ome officials have attempted to claim that these killings are not part of an endemic phenomenon, or that they are limited to certain areas of the country such as Ciudad Juárez . . . the Mexican Congress, as well as civil society organizations have documented femicides as occurring throughout the country.” Pérez Dec., Tab D at 11, ¶17.

As Amnesty International has emphasized, “[a]lthough murders of women can be attributed to many different motives and perpetrators, many cases share common features that indicate gender-based violence; that is to say, the gender of the victim seems to have been a significant factor in the crime, influencing both the motive and the context as well

as the type of violence suffered by the woman and the way in which the authorities responded to it . . . . The fact that the state authorities recognized family violence as a specific offence only three years ago illustrates the resistance there is to acknowledging the seriousness of this phenomenon and its relationship to other female murders.” Amnesty International, *Developments as of September 2003—Mexico: Intolerable Killings: 10 years of abductions and murder of women in Ciudad Juárez and Chihuahua* (September 2003), Tab M at 25-26.

**D. The Mexican Government Fails To Take Violence Against Women Seriously, And To Put An End To Impunity For Such Violence, In Part Because Of Long-Standing Societal Attitudes.**

Violence against women is committed with impunity in Mexico, and neither the police nor the courts provide effective protection to women. “This failure of protection, and its resulting impunity for abusers, is a result of discriminatory laws, as well as biased attitudes on the part of the police, prosecutors or judges.” Pérez Dec., Tab D at 7, ¶10. When victims of domestic violence seek criminal prosecution of their abusers, police and prosecutors frequently indicate that such violence is a “private matter,” such that protection is inadequate and prosecution is unlikely. Pérez Dec., Tab D at 8, ¶13. Indeed, local officials such as police and prosecutors play a significant role in “detering women from reporting violence.” Amnesty International, *Women’s Struggle for Justice and Safety, Violence in the Family in Mexico* (1 August 2008), Tab H at 6. Amnesty International reported that when women attempt to report domestic violence, officials refuse to accept their complaints “because they consider it a private family matter, or because they assume women will withdraw the complaint later, or because, in their view, the violence is not serious enough to merit attention.” Amnesty International, *Women’s Struggle for Justice and Safety, Violence in the Family in Mexico* (1 August 2008), Tab H

at 6.

In addition, although women are frequently the victims of brutal assault, they often are blamed for the abuses they suffer by government authorities who do not take their fear or injuries seriously. Violence against women is met with indifference by the authorities whose responsibility it is to take action. "If a woman courageously attempts to report her abuser to the police, for example, a common response is for them not to take her fear or her injuries seriously . . . . Most police, prosecutors and judges in Mexico do not take seriously the risks that these women run, regardless of whether they have reported abuse in the past or when they have visible injuries . . . . Beliefs that a woman is responsible for being abused because she failed to obey her partner are prevalent among both the general population and the authorities." Pérez Dec., Tab D at 13, ¶21.

As a result, impunity for crimes involving violence against women is the norm. "[I]mpunity for human rights violations and all forms of violence against women remains widespread in many parts of Mexico." Amnesty International, *Mexico: Briefing to the Committee on the Elimination of Discrimination against Women* (June 2006), Tab F at 5.

As the U.N. Special Rapporteur on Violence Against Women explains:

Impunity for sexual violence against women is extensive and perpetrators of such crimes are rarely brought to justice . . . The victims' distrust in the justice system and the lack of protection for the women who report that they have been victims of violence also contribute to the high rate of impunity. . . . The subordinate position of women in the family and in the community and the lack of information and resources at their disposal contribute to the perpetuation of violence and constrain their access to justice. I would also like to make note of the lack of responsiveness of the police or the prosecutors when receiving a complaint and their reluctance to take action and to follow-up to the complaints related to violence against women. Such behavior not only maintains a system of impunity but also prevents women from exercising their rights at equal footing to men, thus perpetuating their vulnerability.

United Nations, March 2, 2005, Press Release, *Special Rapporteur on Violence Against*

*Women Ends Visit to Mexico*, Tab N at 1.

**E. Mexican Laws Do Not Protect Women From Gender-Based Violence.**

In February 2007, in response to demands of Mexican organizations and to international outcry regarding the lack of protection from, and punishment for, violence against women, Mexico's Congress approved the General Law on Women's Access to a Life Free of Violence (*Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*), a federal law aimed at preventing, punishing and eradicating violence against women throughout the country.<sup>5</sup> This purely aspirational law encourages states to review and reform their civil and criminal laws to eliminate discriminatory provisions and to address gender violence issues. The 2007 law defines violence against women as including psychological, physical, economic, and sexual violence. It also includes plans for the establishment of "implementation mechanisms."

In order for the 2007 law to have any practical effect, it must be enacted by each of Mexico's thirty-two states through local laws and regulations. Immigration and Refugee Board of Canada, *Mexico: Implementation of the General Law on Women's Access to a Life Free of Violence (June 2008–April 2009)* (26 May 2009), Tab O at 1-2. And it must actually be enforced at the local level. Three years after the law's passage, there is general consensus that it has yet to have any discernable impact. As Dr. Pérez observed, despite the passage of the 2007 law, "[t]here has not yet been a reduction of violence against women, nor the impunity enjoyed by those responsible for violence." Pérez Dec.,

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<sup>5</sup>The *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia* (General Law on Women's Access to a Life Free From Violence) was published in the *Diario Oficial de la Federación Mexicana* (Official Journal of the Mexican Federation) on February 1, 2007.

Tab D at 18, ¶36; *see also* Amnesty International, *Mexico: Two Years On: The Law to Protect Women has had no Impact at State Level* (29 January 2009), Tab P at 1; Immigration and Refugee Board of Canada, *Mexico: Implementation of the General Law on Women's Access to a Life Free of Violence (June 2008–April 2009)*, (26 May 2009), Tab O at 1-2.

Although the 2007 law was a “symbolic” victory, “for women who are victims of gender-based violence, the situation has not changed.” Pérez Dec., Tab D at 12, ¶20. As Human Rights Watch emphasized in a 2009 report, Mexican laws still fail to provide sufficient protections against domestic violence and sexual abuse:

Some laws on violence against women run directly counter to international standards, including provisions of Mexican law that define sanctions for some sexual offenses with reference to the ‘chastity’ of the victim, and penalize domestic violence only when the victim has been battered repeatedly. Legal protections that do exist are often not enforced vigorously. Girls and women who report rape or violence to the authorities are generally met with suspicion, apathy, and disrespect. As a result, victims are often reluctant to report crimes and such underreporting in turn undercuts pressure for necessary legal reforms. The net effect is that sexual and domestic violence against women and girls continues to be rampant and shrouded in impunity.

Human Rights Watch (HRW), *World Report 2009–Mexico* (January 14, 2009), Tab K at 2.

### **III. VIOLENCE AGAINST CHILDREN IN MEXICO.**

#### **A. Child Abuse Is Widespread And Under-Reported In Mexican Society.**

Child abuse is rampant in Mexico—one study found that it occurs in seven of every ten families in Mexico City. Ruth Rodriguez, *Child abuse in 7 of 10 families*, EL UNIVERSAL (July 14, 2003), Tab BB at 1; *see also* United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties to Article 44 of the Convention, Concluding Observations: Mexico* (8 June 2006) (“CRC Concluding

*Observations: Mexico*”), Tab CC at 10 (noting the high number of reported cases of child abuse in Mexico). The Clinic for Care of Abused Children of the Mexican National Pediatrics Institute (INP) has proclaimed that child abuse in Mexico is a public health problem. Rodriguez, *Child abuse in 7 of 10 families*, Tab BB at 1. Mexican children are abused more frequently in the home than anywhere else. *Parents: who mistreats children more*, NOTIMEX (June 24, 2003) (only 5% of child abuse happens outside the family), Tab DD at 1; Andrea Marquez, *Child abuse: a continuing practice*, EL PERIÓDICO DE MEXICO (May 10, 2007) (“the most frequent [type] of child abuse” in Mexico is within the family and by parents), Tab EE at 1. Indeed, 70% of infant deaths in Mexico are caused by violent family members. Minnesota Advocates for Human Rights, *Full Rights, Whole Children: A Case Study of Child Survival and Human Rights in Mexico* (July 2001), Tab FF at 70. The Mexican Secretary of Health reports that child abuse is pervasive in Mexico across all ethnic groups and socioeconomic classes. *Extracto del informe nacional sobre violencia y salud*, Mexico Secretary of Health, Tab GG at 21 (2006). Despite the recent emergence of governmental institutions to address the abuse of children in Mexico, the problem is growing instead of improving. Center of Social Studies and Public Opinion, *Violence and Abuse of Minors in Mexico* (February 1, 2005) (“*Violence and Abuse of Minors in Mexico*”), Tab HH at 3.

Despite widespread recognition of the occurrence of child abuse in Mexican homes, the statistics available are skewed due to under-reporting. *CRC Concluding Observations: Mexico*, Tab CC at 10 (expressing concern about the lack of adequate reporting of, and data concerning, child abuse and family violence by local DIF offices). Studies estimate that only 20% of child abuse cases in Mexico are reported. *Parents:*

*who mistreats children more*, Tab DD at 1. Because states adhere to varying definitions of abuse and do not always maintain complete records, data that do exist are almost certainly inaccurate and underestimate the true extent of the problem. Martha Frías-Armenta and Bruce D. Sales, *Discretion in the Enforcement of Child Protection Laws in Mexico*, 34 CAL. W.L. REV. 203, 205 (1997), Tab II; *CRC Concluding Observations: Mexico*, Tab CC at 4 (noting concern about the lack of “up-to-date and disaggregated data” on abuse of children); *CRC Concluding Observations: Mexico*, Tab CC at 7 (noting concern that cases of torture and cruel and degrading treatment against children “are not reported”).

**B. Mexican Law Does Not, On Its Face, Adequately Prevent Or Protect Against Child Abuse.**

Until recent years, child abuse was largely unaddressed in Mexican law. In 2000, the Mexican Legislature made a primarily symbolic attempt to safeguard children by passing the Federal Law on the Protection of the Rights of Girls, Boys and Adolescents. But the federal law contains only aspirational language.<sup>6</sup> *Ley para la protección de los derechos de niños, niñas y adolescentes*, 2000 (quoted in *Full Rights, Whole Children*, Tab FF at 116-30). The federal law provides that states *may* enact laws and regulations to implement its aspirational language, but it does not require states to do so. *Ley para la protección de los derechos de niños, niñas y adolescentes* (2000) (quoted in *Full Rights, Whole Children*, Tab FF at 116-30). International human rights organizations have expressed concern that federal legislation in Mexico does not adequately protect children. See *CRC Concluding Observations: Mexico*, Tab CC at 2 (8 June 2006) (“not all national

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<sup>6</sup>For a discussion of the federal and state systems of laws, *see supra*, p.34.

legislation is in full conformity with the Convention” for the Rights of the Child).

Moreover, the Federal Act on the Protection of the Rights of Children of 2000 has yet to be fully integrated into state laws. *CRC Concluding Observations: Mexico*, Tab CC at 2-3. The United Nations Committee on the Rights of the Child has expressed alarm regarding state child abuse laws:

The Committee is deeply concerned about the fact that corporal punishment is still lawful in the home, and is not explicitly prohibited in the schools, in penal institutions and in alternative care settings. It is further concerned that children have limited protection from violence and abuse under the law, and consequently that corporal punishment is widely used within the family, and in schools and other institutions.

*CRC Concluding Observations: Mexico*, Tab CC at 8; see also Silvia Garduño, *Minimize Equality; International Day for the Elimination of Violence against Women: States have failed to approve codes that guarantee the defense of women*, EL NORTE (November 25, 2007) (discussing individual state failures to adequately implement laws intended to protect children from violence in the home and sexual violence), Tab JJ. To the extent that they do purport to protect children, the laws of different Mexican states are not consistent with each other. Michael Futterman, *Seeking A Standard: Reconciling Child Abuse and Condoned Child Rearing Practices Among Different Cultures*, 34 U. MIAMI INTER-AM L. REV. 491, 502 (2003) (“At the heart of Mexico’s problem is the lack of consistency between the federal government and the states”), Tab KK at \*502; Garduño, *Minimize Equality*, Tab JJ at 2.

**C. Mexican Laws That Purport To Protect Children Are Inadequately Implemented.**

Aside from their facial deficiencies, Mexican laws that purport to protect children have not been implemented adequately. *CRC Concluding Observations: Mexico*, Tab CC at 2-3 (new legislation regarding violence against children has not been fully



implemented in practice); *CRC Concluding Observations: Mexico*, Tab CC at 7 (cases of torture and cruel and degrading treatment against children are not prosecuted “due to the lack of appropriate instances and procedures to register and process complaints”). The government “has not allocated sufficient resources” to address the problem of violence against children. *Full Rights, Whole Children*, Tab FF at 96; United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations: Mexico* (9 June 2006), Tab LL at 6 (urging the Mexican government to strengthen and upgrade shelters for abused children). Finally, laws protecting children are enforced arbitrarily. Frías-Armenta and Sales, *Discretion in the Enforcement of Child Protection Laws in Mexico*, Tab II at 209 (laws are enforced with extensive discretion and imprecision).

**D. Mexican Society Tolerates And Condones Abuse Of Children And Marginalizes Children.**

Perhaps the most alarming indicator of Mexican social norms regarding child abuse is the fact that corporal punishment of children is legal in the home, in schools, in penal institutions and in alternative care facilities. *CRC Concluding Observations: Mexico*, Tab CC at 8. The current state of Mexican legislation, and the lack of enforcement thereof, indicates that Mexican society normalizes and condones abuse of children. *See supra*, pp.37-39. Indeed, even Mexican judges “play a role in the tolerance given to persons guilty of child abuse. Many of the judges hearing [child abuse] cases adhere to, and strongly believe in, the way of doing things in Mexico: the belief that physical punishment is a necessary disciplinary measure to raise obedient children.” Futterman, *Seeking A Standard*, Tab KK at 503. Even professionals working in the field of children’s rights in Mexico are often unaware of international human rights norms for the protection of children, with which Mexican laws fail to comply. *CRC Concluding*

*Observations: Mexico*, Tab CC at 5 (both professionals working with and for children and the general public have limited awareness of the Convention for the Rights of the Child); United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations: Mexico* (9 June 2006), Tab LL at 6-7 (urging the Mexican government to intensify its awareness-raising campaigns and training of judges, prosecutors, police and medical personnel regarding violence against women and children).

The widespread acquiescence to violence against children in Mexico reflects a greater social marginalization of children. Children are widely perceived as the property of their parents. *Violence and Abuse of Minors in Mexico*, Tab HH at 6. This and other traditional attitudes in Mexico “limit children’s right to participate [in society] and to express their views.” *CRC Concluding Observations: Mexico*, Tab CC at 6; *see also* United Nations High Commission for Human Rights, *Grupos en situación de vulnerabilidad y discriminación: Niños, niñas y adolescents*, in *DIAGNÓSTICO SOBRE LA SITUACIÓN DE LOS DERECHOS HUMANOS EN MÉXICO* (2002), Tab MM at 8, §7.4 (noting that culturally, the rights of children are considered a special privilege and not the norm, and discussing children’s rights in the context of relationships based on social hierarchy and subordination of children); Cicely Marston, *Child Sexual Abuse in Mexico City: A Descriptive, Qualitative Study*, Department of Social Science and Medicine, Imperial College London (2005), Tab NN at 2 (noting that social and family relationships, and notions of respectability, impede disclosure of child abuse in Mexico); 9 (survivors of child abuse connect their experience to the status of children in society). Because of this social marginalization, even victims of violence against children have learned to normalize their abusers’ behavior:

Communities and families maintain sexual abuse of children. Children in Mexico City are socialized to defer to adults and they learn that disobedience is punished. They are not taught to distinguish between permissible and non-permissible adult behavior and so are not in a position to defy the abuser. It is not surprising, then, that children may not recognize abuse as such. Children's status also means that adults frequently do not attempt to listen to their opinions, and may disregard their disclosures of abuse.

Marston, *Child Sexual Abuse in Mexico City*, Tab NN at 17-18. As a result of the marginalization of children in general, and of child victims of abuse in particular, children are a markedly vulnerable group in Mexican society. *Grupos en situación de vulnerabilidad y discriminación: Niños, niñas y adolescents*, Tab MM at 8, §7.4 (identifying children and adolescents as member of a particular group in Mexican society that is particularly vulnerable and in need of governmental protection).

## ARGUMENT

### I. [REDACTED] IS ENTITLED TO ASYLUM.

The evidence in this case establishes that [REDACTED] is entitled to asylum because she has been persecuted, and has a well-founded fear of persecution, on account of her membership in the particular social group of Mexican women in domestic relationships who are unable to leave.<sup>7</sup> For nearly two decades, her common law husband tormented her, and neither the police nor the courts were able or willing to protect her. Although [REDACTED] did not file for asylum within a year of arrival in the United States, the extraordinary circumstances of her psychological trauma waive the application of the one-year bar.

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<sup>7</sup> [REDACTED]'s and [REDACTED]'s asylum claims are derivative of [REDACTED]'s. [REDACTED] and [REDACTED] have separate and independent claims for withholding of removal and CAT relief. See *infra*, pp.69-81.

**A. ██████████ Is Not Barred From Asylum Because Her Severe Trauma Was An Extraordinary Circumstance That Prevented Her From Applying Within A Year Of Arrival.**

The one year deadline, enacted in 1996, was intended to weed out fraudulent applications for asylum.<sup>8</sup> Congress did not intend to preclude bona fide asylum claims,<sup>9</sup> and therefore included exceptions to the filing deadline for changed or extraordinary circumstances. 8 U.S.C. §1158(a)(2)(D); 8 C.F.R. §208.4(a)(4)&(5). Extraordinary circumstances “include but are not limited to . . . serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past, during the 1-year period after arrival[.]” 8 C.F.R. §208.4(a)(5). ██████████ entered the United States on May 19, 2004, and applied for asylum on December 21, 2005, a little more than a year and a half after her entry. However, because her failure to file within a year was the result of mental disability resulting from her past persecution, she is not barred from asylum.

**1. ██████████ Was Suffering From A Mental Disability.**

██████████ suffered almost two decades of brutal physical and psychological abuse at the hands of her common law husband, ██████████. She was evaluated by two mental health

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<sup>8</sup>See 142 Cong. Rec. S4467-68 (daily ed. May 1, 1996) (Former Senator Alan K. Simpson (R-WY), one of the sponsors of the deadline, explaining “What you are seeing is, when you have a country that is your leading source of illegal immigration, they are picking them up, and they have been here 2, 3 years, and they say, ‘I am seeking asylum’ because they know that these procedures are interminable. That is what we are trying to get at. We are not after the person from Iraq, or the Kurd, or those people. We are after the people gimmicking the system”); see also Philip G. Schrag, *A Well Founded Fear: The Congressional Battle to Save Political Asylum in America* 47-48, Routledge Press (New York 2000) (describing origins of deadline); Khandwala et al., *The One-Year Bar: Denying Protection to Bona Fide Refugees, Contrary to Congressional Intent and Violative of International Law*, Immigration Briefings (2005), at 4.

<sup>9</sup>See statement by Senator Simpson, *supra*, note 8.

professionals, Linda Sikes, LCSW, a Licensed Clinical Social Worker, and Dr. Yvette Flores, Ph.D, in January and August 2006, respectively. Sikes [REDACTED] Evaluation, Tab UU at 50-52; [REDACTED] Evaluation, Tab RR at 82-83. Both mental health professionals diagnosed [REDACTED] as suffering from severe Post-Traumatic Stress Disorder ("PTSD"). They described her symptoms as including depression, anxiety attacks, significant memory impairment, suicidal thoughts, and nearly daily flashbacks and nightmares. [REDACTED] Evaluation, Tab RR at 85-86; Sikes [REDACTED] Evaluation, Tab UU at 53-54. Ms. Sikes and Dr. Flores stated in their reports that [REDACTED]'s PTSD and associated mental disabilities were a result of the vicious abuse she suffered in her domestic relationship with [REDACTED]. [REDACTED] Evaluation, Tab RR at 86; Sikes [REDACTED] Evaluation, Tab UU at 56.

**2. [REDACTED]'s Failure To Timely File Was A Result Of Her Mental Disability.**

Dr. Flores testified that [REDACTED]'s PTSD affected her ability to file within one year of arrival. Tr. 287-88. In their reports, Dr. Flores and Ms. Sikes identified two aspects of PTSD that would have impacted [REDACTED]'s ability to file for asylum. *First*, [REDACTED] had a "sense of foreshortened future" that prevented her from thinking ahead or of doing anything more than surviving in the present. Sikes [REDACTED] Evaluation, Tab UU at 57. Dr. Flores noted that [REDACTED] was "emotionally overburdened and living one day at a time" and that "[s]he live[d] in the moment, focusing on survival." [REDACTED] Evaluation, Tab RR at 87. This preoccupation with surviving in the present impacted [REDACTED]'s ability to think pro-actively about seeking asylum. *Second*, [REDACTED] "recounted how every single day she struggle[d] to avoid remembering" [REDACTED]'s abuse. [REDACTED] Evaluation, Tab RR at 85; Sikes [REDACTED] Evaluation, Tab UU at 57 (noting that

██████████ suffered from “persistent avoidance of stimuli associated with trauma”). The process of applying for asylum requires just what the PTSD sufferer desires to avoid—the need to delve into the details of these most horrific events. Tr. 287 (noting that individuals suffering from PTSD “avoid situations” that make them recall the past trauma they suffered).

██████████’s testimony regarding her mental state and how it impacted her ability to apply for asylum reflected the “sense of foreshortened future” identified by Dr. Flores and Ms. Sikes. ██████████ testified that her nightmares and depression prevented her from thinking about “things related to the future” and that she tried to just “live one day at a time.” Tr. 149. She didn’t pursue asylum in the summer of 2005, because she couldn’t think beyond the present day, and she “didn’t have the ability to make a decision.” Tr. 153. Her “stress and depression” didn’t allow her to “think about the future” and she only could do the things she “needed to do in order to be able to survive” and to provide for her children. Tr. 186.

██████████’s testimony also reflected the desire to avoid thinking about, or having to speak about, her painful past. She “tried to avoid thinking about” her past because it did her a “lot of harm.” Tr. 149. “[S]mells, colors, or noises” that remind her “of things from the past” make her feel “awful.” Tr. 149. She did not want to “have to remember” the “very painful moments” that she had suffered with ██████████. Tr. 202. Those “difficult times” with ██████████ were “very painful” and ██████████ was not in “the state of mind to be able to remember and to go ahead” in order to apply for asylum. Tr. 221-22.

Stuart Lustig, M.D., M.P.H., a widely respected expert<sup>10</sup> whose declaration is submitted with this filing, reviewed the reports and diagnoses by Ms. Sikes and Dr. Flores. Dr. Lustig's purpose was to render a second opinion and to evaluate Ms. Sikes's and Dr. Flores's forensic assessment of [REDACTED]. He agreed with their interpretation of the symptoms they documented, and concluded that [REDACTED]'s PTSD contributed to her late filing. He explained:

A key to understanding the way PTSD manifests itself in this asylum applicant is the symptom listed in the standard reference of psychiatric illnesses, the diagnostic and Statistical Manual Fourth Edition (DSM-IV), as "foreshortened sense of future." Patients with this symptom do "not expect to have a career, marriage, children, or a normal life span." Indeed, they typically have very little ability to imagine what is in store for them in the years, months, or even weeks ahead. These patients have, as their focus, their immediate survival, and only problems confronting them in the moment . . . . In conclusion, in my review of the previous psychological evaluations, I found evidence of foreshortened sense of future, difficulty concentrating, and avoidance of stimuli associated with the trauma, all of which have likely contributed to [REDACTED]'s delayed filing of an asylum application. (Lustig Declaration, Tab B at 2-3)

**3. [REDACTED]'s Ability To Work Full-Time And Support Her Family Is Not Inconsistent With Her Claim That Her Mental Disability Prevented Her From Timely Filing.**

There is a common misperception that if an individual suffering from PTSD is able to function reasonably well in their daily life—working or going to school—he or she should have been able to apply for asylum. This Court applied just such a rationale to its October 15, 2007 decision in this case, refusing to waive the one year bar. The Court

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<sup>10</sup>Dr. Lustig, whose curriculum vitae accompanies his declaration (*see* Lustig Dec., Tab B), has published a number of articles on refugees and trauma. Dr. Lustig was an invited speaker at the 2007 annual meeting of the National Association of Immigration Judges (NAIJ), and has trained Asylum Officers on issues related to diagnosing trauma in asylum seekers. He is an invited speaker at the upcoming 2010 annual meeting of the NAIJ.

noted [REDACTED]'s ability to "work as a janitor to support her family" and found that this undercut her claim that her mental disability prevented her from filing for asylum. Decision of the Immigration Judge, dated October 15, 2007 ("IJ Dec.") at 13. This conclusion represents a fundamental misunderstanding of PTSD.

In his declaration, Dr. Lustig directly addresses this Court's misunderstandings regarding PTSD:

Immigration Judge Yeargin's decision focused on [REDACTED]'s ability to work despite her diagnosis of PTSD. I infer from his comment that he concluded that because [REDACTED] was able to care for her family by working, she should have been able to look out for the interest of her family by filing for asylum. However, the conclusion that PTSD affects overall functioning, commonly assumed by non-psychiatric clinicians, is not borne out by the medical evidence. As explained above, PTSD may cause an individual to avoid those things that remind her of the trauma, or lose the ability to engage in activities not pertaining to immediate survival (e.g., applying for political asylum), while leaving intact their ability to function and survive on a day-to-day basis. (Lustig Declaration, Tab B at 2-3)

**4. [REDACTED] Filed An Asylum Application Within A Reasonable Time, Given Her Extraordinary Circumstances.**

A delay in filing as a result of "extraordinary" circumstances must be "reasonable under the circumstances." 8 C.F.R. §208.4(a)(5). [REDACTED] filed in December 2005, seven months after her one year deadline. At the time she filed, she was still suffering from PTSD; diagnoses by Linda Sikes in January 2006 and Dr. Flores in August 2006 document the ongoing existence of the condition. [REDACTED] Evaluation, Tab RR at 56-59; Sikes [REDACTED] Evaluation, Tab UU at 56-59.

Dr. Flores testified that individuals suffering from PTSD often experience more severe symptoms *after* the traumatic event. Tr. 287. She explained that during the trauma the individual may "disassociate" with his or her symptoms, but that later when in a "safe situation" he or she may more fully experience the trauma. Tr. 286. Dr. Flores



testified that this was the case with [REDACTED], and that her symptoms were more intense once she left [REDACTED]. Tr. 287.

In light of the length of time [REDACTED] suffered physical and psychological abuse, and the severity of her trauma, a seven month delay in filing, certainly is reasonable. Congressional intent to eliminate fraud is not served by denying protection in a case of uncontroverted abuse and of indisputable resulting trauma and depression.

**B. [REDACTED] Is Entitled To Asylum Based On Past Persecution.**

**1. The Harm [REDACTED] Suffered Indisputably Rises To The Level Of Persecution.**

For almost two decades—from 1986, when [REDACTED] first raped [REDACTED] at gunpoint in 1987, to 2004, when she managed to finally escape him—[REDACTED] made [REDACTED]'s existence a hell on earth. He kept her as a virtual prisoner, only allowing her out of the house alone to go to work. Amended Dec., Tab QQ at 8, ¶19. He bribed a school official to deliver [REDACTED]'s checks to him, so that she would have no independent source of income. Amended Dec., Tab QQ at 8, ¶19. He raped, battered, and terrorized [REDACTED]. Amended Dec., Tab QQ at 8, ¶18; Tr. 95. One particularly vicious attack left [REDACTED] with a dislocated nose, as well as numbness and facial paralysis that persist to this day. Amended Dec., Tab QQ at 24, ¶70; Tr. 150.

[REDACTED]'s brutalities did not abate when [REDACTED] became pregnant as a result of his rapes. During her first pregnancy, he tried to burn her to death. Amended Dec., Tab QQ at 8, ¶20; Tr. 88. During her second pregnancy, he beat her so violently that she went into premature labor. Amended Dec., Tab QQ at 9, ¶22; Tr. 97.

[REDACTED] not only brutalized [REDACTED] physically, he tormented her psychologically by repeated and credible threats to kill her or her family members. Amended Dec.,

Tab QQ at 7, ¶¶16-17; 10, ¶¶25-27; 11, ¶¶28, 30; Tr. 86, 142, 154. He also caused her incalculable anguish by taking their young children away, and forbidding them to have any contact with her. Amended Dec., Tab QQ, at 12-13, ¶¶33-34; Tr. 107-108, 238-239. He separated [REDACTED] from the children for many months before she could find a judge who ordered her two younger children returned to her. Amended Dec., Tab QQ at 14-17, ¶¶36-45.

The harm [REDACTED] suffered at [REDACTED]'s hands indisputably rises to the level of persecution. *See Chand v. INS*, 222 F.3d 1066, 1073-74 (9th Cir. 2000) (physical harm constitutes persecution); *Shoafra v. INS*, 228 F.3d 1070, 1074 (9th Cir. 2000) (rape is persecution); *Ndom v. Ashcroft*, 384 F.3d 743, 752 (9th Cir. 2004), superseded by statute on other grounds as stated by *Parussimova v. Mukasey*, 555 F.3d 734 (9th Cir. 2009) (prolonged detention may be persecution); *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004) (emotional harm can rise to the level of persecution).

2. [REDACTED] **Is A Member Of The Particular Social Group Of Mexican Women In Domestic Relationships Who Are Unable To Leave.**

[REDACTED] is a member of the particular social group of "Mexican women in domestic relationships who are unable to leave." This social group, which was suggested by DHS in its Supplemental Brief, meets the requirements of controlling jurisprudence. DHS Supplemental Brief at 14. It is defined by immutable characteristics. *Matter of Acosta*, 19 I&N Dec. 211, 234 (BIA 1985). Furthermore, within the context of Mexico, this group is socially visible, and described with sufficient particularity. DHS Supplemental Brief at 8-10; *Matter of C-A-*, 23 I&N Dec. 951, 958-59 (BIA 2006); *Matter of S-E-G*, 24 I&N Dec. 579, 584 (BIA 2008), *remanded*, *S-E-G-* (BIA July 28, 2009).

a. ██████'s Social Group Is Based On Immutable Characteristics.

█████'s social group is defined by the characteristics of gender, nationality and intimate relationship. Gender and nationality are clearly immutable. See *Matter of Kasinga*, 21 I & N Dec. 357 (BIA 1996); *Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005). Intimate relationship status can be immutable "where economic, social, physical or other constraints made it impossible" for the individual to leave the relationship during the time the persecution was inflicted. DHS Supplemental Brief at 16. Relationship status can also be immutable "if the abuser would not recognize a divorce or separation as ending the abuser's right to abuse the victim." DHS Supplemental Brief at 16. In this case, both of these conditions are present; ██████ used constraint to keep ██████ from leaving during the many years he persecuted her, and he refused to accept their separation as ending his right to abuse her.

The constraints ██████ used against ██████ were physical, as well as economic and social. He forced her to begin living with him in 1987 by threatening her with his gun. Amended Dec., Tab QQ at 7-8, ¶17; Tr. 87. He forbade her from leaving the house alone, except to go to work, and he enforced this rule with beatings. Amended Dec., Tab QQ at 8-9, ¶¶19-21. ██████ stole all of ██████'s paychecks so that she had no means to live on her own. Amended Dec., Tab QQ at 8, ¶19; Tr. 94, 107. On the few occasions when ██████ tried to leave ██████, he viciously beat her, with the "punishments getting worse and worse." Tr. 101. ██████ fled to the United States in August of 1991, and remained here until July 1993. Amended Dec., Tab QQ at 10-11, ¶¶25-28. During that time period, ██████ twice came to the United States to "intimidate" ██████ and tell her she had to return to Mexico. Amended Dec., Tab QQ at 11, ¶28.

After [REDACTED] returned to Mexico, he called [REDACTED], terrorizing her with threats to kill her or her family if she did not come back. Amended Dec., Tab QQ at 10-11, ¶¶26-27.

[REDACTED] did not accept that his right to abuse [REDACTED] ended when they separated in 1995. He continued to abuse her, breaking into her home, attempting to rape her, attacking her on the street, spitting at her, and calling her demeaning names. Amended Dec., Tab QQ at 18, ¶49; at 20-21, ¶58; Tr. 118-19; 122-23. When [REDACTED] fled to the United States a second time, from August 2000 to April 2001, [REDACTED] called her three to four times a month, threatening to kill her, and harm their children who she had left behind, if she did not return. Tr. 140-42. Even after [REDACTED] left [REDACTED] for the final time in May 2004, he continued to pursue her, calling repeatedly and making threats to harm her and her family in [REDACTED]. Amended Dec., Tab QQ at 24, ¶71.

Because [REDACTED] forced [REDACTED] to enter into and remain in a domestic relationship with him, and because [REDACTED] clearly does not accept that his right to abuse her has ended with their separation, the relationship meets the requirement of immutability.

**b. [REDACTED]'s Social Group Is Socially Visible.**

Social visibility requires a showing that the “attributes of a particular social group . . . [are] recognizable and discrete.” *Matter of S-E-G-*, 24 I&N Dec. at 586. In its Supplemental Brief, DHS suggests that in cases involving domestic violence, social visibility could be established by showing that the individual belongs to a “segment of society that will not be accorded protection from harm.” DHS Supplemental Brief at 18. [REDACTED]'s own experience, as well as the country conditions evidence, clearly and unequivocally demonstrate that, in Mexico, women in domestic relationships are not accorded governmental protection.

[REDACTED] suffered violent, life-threatening abuse from [REDACTED] for almost two

decades. As difficult as it was for her to escape [REDACTED]'s control to go to the police, she did so on at least eight occasions. Tr. 99. The response of the police was to refuse to make a police report or to record her complaints, to tell her that it was a "private matter" in which they would not get involved, and to put her at more risk by calling [REDACTED] to let him know that she had tried to report him. Amended Dec., Tab QQ at 9, ¶24; Tr. 98-100. One police officer, who asked to see [REDACTED]'s bruises, and then touched them, told her that there was "nothing to be done" because her life wasn't in danger as a result of [REDACTED]'s abuse. Tr. 98.

This refusal to take any action occurred not only when [REDACTED] went to the police station near her house in [REDACTED] but also when she went to the town of [REDACTED].<sup>11</sup> Tr. 99. When [REDACTED] ultimately prevailed in her efforts to win back custody of her two younger children, the judge who presided over the case ordered [REDACTED] to stay away from her. Amended Dec., Tab QQ at 16, ¶45. [REDACTED] flouted this order with total impunity and continued to repeatedly assault and threaten [REDACTED]. During this time period, he even broke into her home and attempted to rape her. Amended Dec., Tab QQ at 18, ¶49; 20-21, ¶¶57-58.

The lack of protection afforded [REDACTED] was not an aberration, nor was it related to the unique circumstances of [REDACTED]'s influence in his small town. The country conditions documentation clearly demonstrates that violence against women is committed with impunity in Mexico. *Hidden in Plain Sight*, Tab G at 3; see also *In The Hot Seat: Mexico Goes Before U.N. Human Rights Council*, States News Service, March 16, 2009,

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<sup>11</sup>The hearing transcript incorrectly identifies this town as [REDACTED], the correct full spelling of the town is [REDACTED]. Amended Dec., Tab QQ at 16, ¶43.

Tab V (authorities are “indifferent to violence against women” resulting in “real impunity” for such crimes). It is widely accepted that men have the right to “punish” their domestic partners, and the “resulting impunity for abusers, is a result of discriminatory laws, as well as biased attitudes on the part of the police, prosecutors or judges.” Pérez Dec., Tab D at 7, ¶10.

Family violence is considered to be a private matter in Mexico, even when “serious levels of violence have occurred which would in any other context be considered a criminal offence.” *Women’s Struggle*, Tab H at 6, 19. One woman who had suffered broken bones, a fractured nose, and dislocated collarbone, had made “as many as 10 direct complaints” to the public prosecutor’s office. She was told it “was not a crime and they could do nothing.” *Women’s Struggle*, Tab H at 15-16. Another woman who had suffered a miscarriage as a result of her partner’s assault tried to report it to an official of the prosecutor’s office based in the hospital where she was receiving treatment. He told her that “for him to do anything ‘you have to arrive like that’ pointing at a person lying on a stretcher in the corridor.” *Women’s Struggle*, Tab H at 26.

Mexican President Felipe Calderon lamented the broad cultural acceptance of violence against women, commenting on the fact that “more than 80 percent of women who were murdered were killed in their own homes.” *Machismo still dominant in Mexican Culture*, EL PASO TIMES, Nov. 26, 2007, Tab Z. Within this context, it is clear that women in domestic relationships are a “segment of society that will not be accorded protection from harm” and must be seen as “socially visible.”

**c. [REDACTED]’s Social Group Can Be Described With The  
Requisite Particularity.**

Particularity requires proof that the social group is not amorphous and diffuse, but

that it is “sufficiently distinct” to be recognized “in the society in question, as a discrete class of persons.” *Matter of S-E-G-*, 24 I&N Dec. at 584. The defining characteristic of ██████’s social group is the “domestic relationship” that she has with the abuser. In its Brief, DHS suggests that a “domestic relationship” is susceptible to being defined “in a manner that entails considerable particularity.” DHS Supplemental Brief at 19. It points to U.S. immigration law, which lays out a framework for “conceptualizing domestic relationships,”<sup>12</sup> and notes that the term could be defined to a “similar level of specificity, albeit tailored to the unique situation of an asylum applicant’s own society.” *Id.*

██████’s relationship with ██████ included cohabitation over a number of years, as well as having three children together. These characteristics define the relationship to the similar level of specificity in United States immigration law. See INA §237(a)(2)(E)(i). Furthermore, the characteristics of ██████’s and ██████’s relationship are meaningful within Mexican society. Under Mexican law, if partners reside together for a number of years—as ██████ and ██████ did—and if they have children together, their domestic relationship is recognized as a “common law marriage.”<sup>13</sup> There is no question who is inside or outside this group; it is defined with

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<sup>12</sup>The DHS Supplemental Brief cites to the Immigration and Nationality Act’s definition of a “crime of domestic violence” which includes offenses “against a person committed by a former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs.” INA §237(a)(2)(E)(i); DHS Supplemental Brief at 19.

<sup>13</sup>Partners who have lived together for a period of two to five years (depending on the Mexican state of residence) and/or who have had a child *together* are legally recognized as having a common-law relationship, referred to in Spanish as a *concubinato*. In her declaration, Dr. Pérez explains that such common law marriages have been recognized in Mexico “since the time that the first civil codes were promulgated in the (continued . . . )

sufficient specificity to clearly outline its parameters, and to meet the requirement of particularity.

3. ██████ Persecuted ██████ On Account Of Her Social Group Membership.

The record is replete with evidence that ██████ was motivated to harm ██████ because of her status in the domestic relationship. He expressed his belief that by virtue of their relationship, she had become his “property,” and he was therefore entitled to control and abuse her. The timing of the abuse—which began at the onset of the relationship—as well as the remarks which accompanied it, provide direct and circumstantial evidence of this nexus. See *INS v. Elias-Zacarias*, 502 U.S. 478, 481-82 (1992).

On countless occasions ██████ told ██████ that she “belonged to him” and that he could do with her “whatever he wished.” Tr. 89, 141, 175. He controlled her freedom of movement, by prohibiting her from leaving the house unaccompanied, except to go to work. Amended Dec., Tab QQ at 8, ¶19. He controlled her finances, by appropriating her salary. Tr. 107. He repeatedly and violently forced himself on her sexually. Amended Dec., Tab QQ at 7-8, ¶¶16-20. He made her watch pornographic films and ordered her to carry out the sexual acts in them. Tr. 80. ██████ told her that she had to obey him, and he beat and raped her as “punishment” if she failed to execute his every demand. Tr. 89-91. There is no doubt that ██████ abused ██████ because he believed their relationship gave him the right to do so.

Evidence that legal and social norms accept and tolerate domestic violence

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(... continued)  
twentieth century.” Pérez Dec., Tab D at 9 n.4.



provides additional strong circumstantial evidence of [REDACTED]'s motivations. See DHS Supplemental Brief at 14-15. [REDACTED] targeted [REDACTED] because he knew that once she entered the relationship, he could abuse her with impunity. As discussed in detail, *supra* pp.27-29, violence against women in Mexico is accepted as "normal and tolerable." *Hidden in Plain Sight*, Tab G at 3. The "enormous social and cultural tolerance of this abuse, [results] in the virtual complicity of authorities who should prevent and punish these violent acts." Pérez Dec., Tab D at 7, ¶12. Notwithstanding the 2007 enactment of the General Law on a Women's Access to a Life Free of Violence, "the situation has not changed" and "men can continue to terrorize their partners, and the authorities responsible . . . are indifferent to their plight." Pérez Dec., Tab D at 12, ¶¶20-21. These legal and social norms "reinforce [REDACTED]'s confidence" that he can abuse [REDACTED] "without interference or reprisal" and provide further evidence that he persecuted her because of her status in the domestic relationship. DHS Supplemental Brief at 15.

**4. [REDACTED] Is Entitled To The Presumption Of A Well-Founded Fear On The Basis Of Her Past Persecution.**

An applicant who has established past persecution on account of a statutory ground is entitled to the presumption of a well-founded fear of persecution on the basis of the original claim. 8 C.F.R. §1208.13. To rebut the presumption, the government must prove, by a preponderance of the evidence, that (1) there has been a fundamental change in circumstances such that the applicant's fear is no longer well-founded, or (2) the applicant could avoid future persecution through internal relocation within the country of feared persecution, and that—considering the totality of the circumstances—such relocation would be reasonable. 8 C.F.R. §1208.13(b)(1)(A) & (B).

[REDACTED] has established past persecution on account of her membership in the

particular social group of Mexican women in domestic relationships who are unable to leave. *See supra*, pp.47-55. Because the government cannot meet its burden of proving either changed circumstances or a reasonable internal relocation alternative, [REDACTED] is entitled to a presumption of a well-founded fear of persecution.

a. **The Government Cannot Meet Its Burden Of Proving Changed Circumstances.**

In order to meet its burden, the government is "obligated to introduce evidence that, on an individualized basis, rebuts a particular applicant's specific grounds" for her well-founded fear of persecution. *Popova v. INS*, 273 F.3d 1251, 1259 (9th Cir. 2001) (internal citation and quotation marks omitted). There is simply no evidence pertaining to [REDACTED]'s individual situation, nor to country conditions in Mexico, sufficient to rebut the presumption to which she is entitled.

First, there is no basis for concluding that [REDACTED]'s individual circumstances relative to her persecutor, [REDACTED] have changed. After [REDACTED] fled [REDACTED] and came to the United States, [REDACTED] remained "obsessed" with her, calling her repeatedly at her sister [REDACTED]'s house, where she lived, and threatening to make her return to Mexico "any time he wanted" her to. Tr. 214; Supplemental Dec., Tab A at 2, ¶8. When [REDACTED] moved to her own apartment and obtained a new telephone number, [REDACTED] continued to call [REDACTED]'s house in search of [REDACTED] and threatened to harm [REDACTED]'s family. Tr. 222-24; Supplemental Dec., Tab A at 2, ¶8. [REDACTED] forced [REDACTED] to give him her new telephone number and continued to call and threaten [REDACTED]. Supplemental Dec., Tab A at 2, ¶8. [REDACTED] last spoke with [REDACTED] in February 2006, when he called her and made thinly veiled threats that he would kill [REDACTED]'s sister [REDACTED] and [REDACTED]'s daughters. Tr. 222-24; Supplemental Dec., Tab A at 2, ¶9. [REDACTED] told [REDACTED] that he

knew where her sister and niece lived, he knew her sister's work schedule, and knew where her niece attended school. Tr. 222-24. As a result of that conversation, [REDACTED] changed her telephone number for the second time, disconnecting the landline on which [REDACTED] had called her, and arranging for a new, unlisted number. Supplemental Dec., Tab A at 2, ¶¶9-10.

After [REDACTED] changed her telephone number for the second time, in September 2009, she received a suspicious telephone call from a friend of [REDACTED]'s named [REDACTED], who asked to visit [REDACTED] and who told [REDACTED] that she knew [REDACTED] lived near [REDACTED]. Supplemental Dec., Tab A at 2-3, ¶11. [REDACTED] did not want to talk to [REDACTED], and told her that she was moving to [REDACTED]. Supplemental Dec., Tab A at 3, ¶11. Because [REDACTED] was worried that [REDACTED] had asked [REDACTED] to locate her, she promptly disconnected her landline in an attempt to once again throw [REDACTED] off her trail. Supplemental Dec., Tab A at 2-3, ¶¶11-12.

Although [REDACTED] has been able to avoid contact with [REDACTED] by living as surreptitiously as possible, he has not abandoned his attempts to locate her. Between 1986—when [REDACTED] first sexually assaulted [REDACTED] and forced her into virtual captivity—and 2004—when she finally escaped him to come to the United States—[REDACTED]'s assertion of his right to control [REDACTED] did not wane. It continued notwithstanding repeated periods of separation, which began with [REDACTED]'s first trip to the United States in 1991. And it continued despite a court order requiring [REDACTED] to stay away from [REDACTED], which he ignored and violated. Amended Dec., Tab QQ at 17, ¶45. Each time [REDACTED] has fled [REDACTED], he has continued to pursue and threaten her. Amended Dec., Tab QQ at 6, ¶13, 8, ¶20, 10-11, ¶¶25-28, 18, ¶49; Supplemental Dec.,

Tab A at 2-3, ¶¶6-12. ██████'s February 2006 telephone call to ██████, and the recent suspicious telephone call ██████ received from one of ██████'s friends, indicate that ██████'s obsession with her continues unabated.

*Second*, there is no basis for concluding that circumstances in Mexico have changed with respect to violence against women and the high level of impunity accorded to men who batter their intimate partners. As shown *supra*, pp.34-35, despite the passage of new laws in Mexico, there has yet to be any indication of changed societal attitudes, a reduction in violence, or an increase in effective prosecutions or punishment of those responsible for domestic violence or other crimes against women in the country. In the absence of any evidence of changed circumstances, the government is utterly unable to rebut ██████'s presumption of a well-founded fear.

**b. The Government Cannot Meet Its Burden Of Proving An Internal Relocation Alternative.**

The government also may rebut the presumption of a well-founded fear if it proves by a preponderance of the evidence that ██████ and her family could relocate within Mexico. 8 C.F.R. §1208.13(b)(1)(i)(B). Relocation must not only be safe; it must be reasonable under all of the circumstances. *Id.* In order to meet its burden, the government must do more than assert a relocation alternative; it must point to record evidence, including country conditions evidence. *Wakkary v. Holder*, 558 F.3d 1049, 1063, n.10 (9th Cir. 2009); *Cardenas v. INS*, 294 F.3d 1062, 1067 (9th Cir. 2002) (holding that State Department Report was inadequate to prove that petitioner could safely relocate internally). If the government has not carried its burden, ██████ is deemed to have established eligibility. *Nuru v. Gonzales*, 404 F.3d 1207, 1227 (9th Cir. 2005).

On the basis of this record, which includes evidence submitted in prior proceedings, as well as the documentation accompanying this brief, the government cannot prove that [REDACTED] and her children have a safe and reasonable relocation alternative.

(1) [REDACTED] Cannot Safely Relocate Anywhere Within Mexico.

As discussed above, there is absolutely no basis for concluding that [REDACTED] has lost interest in pursuing [REDACTED]. To the contrary, his interest in possessing her has spanned more than two decades and has continued throughout long periods when she managed to escape his reach. Therefore, the government can only meet its burden of proving a safe relocation alternative by proving that, despite his efforts, [REDACTED] would be unable to track down [REDACTED] anywhere in Mexico.

The overwhelming weight of the evidence is to the contrary. If [REDACTED] continued working as a teacher in either public or private schools in Mexico, [REDACTED] easily could find [REDACTED]'s work address through teacher registration databases available to anyone with Internet access. Avalos Dec., Tab C at 2, ¶7; at 3, ¶¶10-11. Even if [REDACTED] did not work as a teacher, she, [REDACTED] and [REDACTED] would be required to submit their addresses to a number of public databases—including the Population Registry, Taxpayers Registry and Federal Electoral Institute—in order to live legally in any part of Mexico. Avalos Dec., Tab C at 2, ¶7; at 3, ¶11; Pérez Dec., Tab D at 16, ¶32. There would be a number of ways for [REDACTED] to locate [REDACTED] and her sons through those databases. Avalos Dec., Tab C at 2, ¶7, at 3, ¶11. *First*, [REDACTED] could obtain their addresses by filing an information request with the Federal Electoral Institute. Pérez Dec., Tab D at 16, ¶33. *Second*, he could obtain their addresses by contacting a mid- or low-level

employee at the office of each of the three registries mentioned above and stating that he is [REDACTED]'s husband. Avalos Dec., Tab C at 4-5, ¶¶14-16. *Third*, [REDACTED] could bribe a Mexican government official in exchange for [REDACTED]'s address and/or the addresses of [REDACTED] and [REDACTED]. Pérez Dec., Tab D at 16-17, ¶33; Avalos Dec., Tab C at 5, ¶16. It would be easy, and not unusual, for [REDACTED] to obtain [REDACTED]'s address in any of the manners described above. Avalos Dec., Tab C at 15, ¶¶15-16; Pérez Dec., Tab D at 16-17, ¶¶33-34.

Finally, it would be particularly easy for [REDACTED] to locate [REDACTED] no matter where she lived in Mexico because of [REDACTED]'s ties to [REDACTED]. *See supra*, pp.6-7, 27; Avalos Dec., Tab C at 6, ¶19. Indeed, through his connection to [REDACTED], [REDACTED] "is almost certain to find [REDACTED], especially if she were to work as a teacher again but even if she did not, through his almost guaranteed access to her personal data by means of the registries" mentioned above. Avalos Dec., Tab C at 6, ¶19.

**(2) Relocation Within Mexico Would Be Unreasonable.**

[REDACTED]'s relocation alternative must not only be safe, it must also be reasonable. *Melkonian v. Ashcroft*, 320 F.3d 1061, 1069 (9th Cir. 2003); *Knezevic v. Ashcroft*, 367 F.3d 1206, 1214 (9th Cir. 2004). Reasonableness of relocation depends on a number of factors, including conditions in Mexico and [REDACTED]'s own circumstances. *See* 8 C.F.R. §1208.13(b)(3) (listing non-exclusive list of factors, including whether the individual would face "other serious harm"; ongoing civil strife in the country; administrative, economic and judicial infrastructure; and social and cultural constraints, such as the applicant's age, gender, health and social and family ties). Here, the government cannot establish that it would be reasonable to expect [REDACTED] to relocate within Mexico.

Assuming *arguendo* that [REDACTED] could not find [REDACTED] were she to relocate from

██████████ where they lived together, it would not be reasonable to expect her to do so. She has long been estranged from her siblings, leaving her with no social or family ties in other regions of Mexico. The only exception is her sister, ██████████, who lives in ██████████ ██████████, but relocating to be near her is not an option because ██████████ knows where ██████████ lives, and has indeed shown up at ██████████'s house in the past to track down ██████████. Amended Dec., Tab QQ at 6, 13; Tr. 222-24.

Relocation would require ██████████ to establish herself in a region of Mexico where she has never lived before, and where she has no safety net to ease her return. She would be going back without employment, or the contacts to help her secure work, but with the responsibility of being the sole support of her three children. Relocation under these circumstances is simply not reasonable. *Knezevic*, 367 F.3d at 1214 (finding it unreasonable to expect a family to start their lives over in a new town with no property, or home, and with the prospect of great difficulty in finding employment).

The likelihood of ██████████ facing "other serious harm" upon her return also makes relocation unreasonable. The level of violence against women in Mexico is among the highest in Latin America, and gender-motivated killings have been documented throughout the country. See U.N. CEDAW, *Concluding Comments From the Committee for the Elimination of Discrimination against Women: Mexico* (August 25, 2006), Tab CC at 3.; U.N. Commission on Human Rights, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Mission to Mexico*, U.N. Doc. E/CN.4/2006/61/Add.4 (January 13, 2006), Tab J at 4. A single woman returning to Mexico, without any family contacts or other support network is in a particularly vulnerable situation in light of the epidemic of killings of women in Mexico. For all of

these reasons, the government is unable to meet its burden of establishing that relocation would be reasonable.

**C. ██████████ Is Entitled To Asylum Because Of The Severity Of Her Past Persecution And Because There Is A Reasonable Possibility Of Other Serious Harm Upon Removal.**

In cases of severe past persecution, an applicant may obtain asylum even if she has no well-founded fear of future persecution, providing that she has “compelling reasons” for being unwilling to return, based on the severity of the past persecution. 8 C.F.R. §1208.13(b)(i)(A) and (iii)(A). Thus, even if the government were able to establish changed circumstances or reasonable relocation—which it cannot on the record in this case—██████████ would be entitled to asylum.

The record documents the egregious physical persecution ██████████ inflicted on ██████████ throughout their relationship. Over the course of almost twenty years, ██████████ was imprisoned, beaten, raped, dragged by her hair, and nearly burned to death by ██████████. Amended Decl., Tab QQ at 6-8, ¶¶12-21; at 11-12, ¶¶30-32; Tr. 84-88, 97, 106. When ██████████ was not physically assaulting ██████████, he was threatening her, or her family members, with death or severe physical maiming. ██████████ was terrorized, living in a situation in which her home had become a virtual prison and torture chamber.

Although ongoing disability is not required, ██████████ does continue to suffer lasting injuries as a result of this violent abuse. *Lal v. INS*, 255 F.3d 998, 1004 (9th Cir. 2001), *amended by* 268 F.3d 1148 (9th Cir. 2001). She has been diagnosed with chronic and severe PTSD, and major depression. ██████████ Evaluation, Tab RR at 86. She is anxious and fearful, has suicidal thoughts, and experiences flashbacks and nightmares. Sikes ██████████ Evaluation, Tab UU at 54; ██████████ Evaluation, Tab RR at 83. Certain “colors and smells” remind ██████████ of ██████████ and make her physically ill. Amended



Dec., Tab QQ at 24, ¶70 (describing that the smell of [REDACTED]'s cologne reminds her of the many times he would make her "perform oral sex on him" and that to this day when she smells the scent of his cologne, she becomes so sick that she throws up). After so many years of brutal abuse, [REDACTED] is unable to have a "normal relationship with a man." Amended Dec., Tab QQ at 24, ¶70. She also continues to experience physical injuries, suffering from facial numbness and paralysis which was initially brought on when [REDACTED] beat her in the face, dislocating her nose. Amended Dec., Tab QQ at 23.

Based on the controlling jurisprudence, the harm [REDACTED] suffered is more than sufficient to meet the standard of severe and atrocious past persecution. *See, e.g., Lopez-Galarza v. INS*, 99 F.3d 954, 960-63 (9th Cir. 1996) (finding severe past persecution where Nicaraguan applicant was imprisoned for 15 days, raped and physically abused repeatedly); *Matter of Chen*, 20 I&N Dec. 16, 20-21 (BIA 1989) (finding severe past persecution where son of minister held under house arrest, beaten, and deprived of food suffered from permanent hearing loss, anxiety and fear because of the abuse).

**D. [REDACTED] Is Entitled To Asylum Because She Has A Well-Founded Fear Of Persecution.**

Even without the benefit of the past persecution presumption, [REDACTED] can demonstrate a well-founded fear. Persecution at [REDACTED]'s hands is clearly a "reasonable possibility." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987). [REDACTED] has never abandoned his claim that [REDACTED] belongs to him, and [REDACTED] has every reason to fear that he will track her down and inflict extreme violence on her if she were to return to Mexico. The persecution would be on account of her membership in the social group of Mexican women in domestic relationships who are unable to leave.

1. ██████████ Reasonably Fears Persecution.

As discussed *supra*, pp.47-49, 54-55, because of their domestic relationship, ██████████ believes ██████████ is his property, and has remained "obsessed" with her, even after she left Mexico in 2004. Tr. 214; Supplemental Dec., Tab A at 2, ¶8. His phone calls to the United States, and his intimidating threats aimed towards getting ██████████ to return to Mexico, continued until 2006. ██████████'s calls only ceased when ██████████ disconnected her phone and arranged for a new unlisted telephone number. Supplemental Dec., Tab A at 2, ¶¶9-10.

In the past, whenever ██████████ thought that ██████████ defied him, his punishment was brutal. Tr. 87-88, 101-04. He was particularly vicious in response to her attempts to leave him. Tr. 88, 93, 95-96. On one occasion he dragged her by the hair all the way back to the house, beating her along the way, and battering her even "worse" once they were inside the house. Tr. 95. When ██████████ was two months pregnant and attempted to escape, he threw flammable liquid on her bed and tried to burn her alive. Tr. 88. He told her that this was what she deserved for disobeying him. Tr. 87-88.

As discussed, *supra*, p.26-27, 59-60, if ██████████ were to return to Mexico, ██████████ could easily locate her and the children through various public databases, or through the intervention of his powerful and corrupt friend, ██████████. See *supra*, pp.26-27, 59-60; Avalos Dec. at 19.

Given ██████████'s history of rage and violence at being defied by ██████████, a reasonable person would certainly fear persecution upon return.

2. ██████████ Fears Persecution On Account Of Her Membership In The Particular Social Group Of Mexican Women In Domestic Relationships Who Are Unable To Leave.

As discussed *supra*, pp.48-55, ██████████ persecuted ██████████ in the past because of

her membership in the particular social group of Mexican women in domestic relationships who are unable to leave. [REDACTED] would persecute [REDACTED] in the future on account of this same social group membership. As the DHS points out in its brief, there are men who do not recognize that “divorce or separation” ends their right to abuse the victim. DHS Supplemental Brief at 16. As a result, women in relationships with such men are “unable to leave.” This refusal to recognize the end of the relationship aptly describes [REDACTED]. He still believes that [REDACTED] belongs to him, and he does not accept that [REDACTED] has the right to leave him. Thus, any future persecution will be on account of [REDACTED]’s membership in the social group of Mexican women in domestic relationships who are unable to leave.

### 3. The Risk Of Persecution Exists Countrywide.

As discussed *supra*, pp.26-27, 59-60, because [REDACTED] could easily track down [REDACTED] and her children no matter where she relocated to in Mexico, the risk of persecution exists countrywide.

### 4. The Mexican Government Is Unable And/Or Unwilling To Protect [REDACTED].

When persecution is inflicted by a non-governmental group, the applicant must prove that the government is unable or unwilling to protect her. *Mgoian v. INS*, 184 F.3d 1029, 1036 (9th Cir. 1999). Courts have consistently held that an applicant can establish the government’s inability or unwillingness by showing that threats or attacks were reported to the authorities, and they failed to take action. *Singh v. INS*, 94 F.3d 1353, 1360 (9th Cir. 1996) (Indo-Fijian reported threats and attacks to the police, identified assailants by name and police took no action); *Faruk v. Ashcroft*, 378 F.3d 940, 944 (9th Cir. 2004) (repeated requests for police assistance denied, and police refused to

investigate reports of attacks). Courts have also held that the reason for the government's inability or unwillingness is irrelevant; what is relevant is the failure to take action. *Avetova-Elisseva v. INS*, 213 F.3d 1192, 1197-98 (9th Cir. 2000) (irrelevant that financial considerations may explain failure of Russian police to respond to complaints by Armenian applicant who suffered attacks and threats).

The record evidence overwhelmingly demonstrates that the Mexican government is unable and/or unwilling to protect [REDACTED]. As discussed *supra*, pp.11-12, on at least eight occasions, [REDACTED] reported [REDACTED]'s violent attacks on her to the police, and each and every time the police refused to take any action. In addition, they often informed [REDACTED] that she had reported him, resulting in even more brutal retaliation when she returned home. Amended Dec., Tab QQ at 8, ¶24; Tr. 98-100.

There was only one occasion throughout the almost twenty years of abuse when a governmental authority took any action in relation to the abuse: the judge who awarded [REDACTED] custody of her two young children ordered [REDACTED] to stay away from her. Amended Dec., Tab UU at 16-17, ¶45. [REDACTED] refused to obey the judge's order and repeatedly threatened and attacked [REDACTED], even attempting to rape her. Amended Dec., Tab UU at 18, ¶49, at 20-21, ¶¶56-58. There were absolutely no consequences. Amended Dec., Tab UU at 18, ¶49, at 20-21, ¶¶56-58.

As discussed *supra*, pp.27-34, [REDACTED]'s experience was not unique to the small town of [REDACTED]. The documentation in the record clearly establishes that impunity for violence against women, including domestic violence, is a nationwide phenomenon. *See, e.g.,* Dept. of State, 2008 *Human Rights Report: Mexico*, Tab Q at 7; U.N. Comm. On Human Rights, *Report of the Special Rapporteur on Violence against Women, its Causes*

*and Consequences: Mission to Mexico*, Tab J, at 4; Human Rights Watch, *World Report 2009—Mexico* (January 14, 2009), Tab K, at 1. Authorities fail to “take adequate steps to prevent or punish” violence against women, including family violence. Amnesty International, *Women’s Struggle for Justice and Safety; Violence in the Family in Mexico*, Tab H, at 5-6.

In recognition of the dire situation as regards violence against women, Mexico’s Congress enacted the General Law on Women’s Access to a Life Free of Violence. However, as discussed *supra*, pp.34-35, this law has yet to have any identifiable impact on either the level of violence against women, or the prevailing impunity for the commission of crimes of gender violence.

On this record, no reasonable person could find that ██████ failed to meet her burden of establishing that the Mexican government is unable and/or unwilling to protect her.

**E. ██████ Qualifies For Asylum In The Exercise Of Discretion.**

██████ clearly qualifies for asylum in the exercise of discretion. She has lived an exemplary life in the United States since her arrival with her children in 2004. ██████ has an unblemished record, with no criminal or other adverse factors of any kind against her.

Although ██████ suffers from PTSD and depression as a consequence of the brutality she suffered throughout her relationship with ██████, she has demonstrated great stability. ██████ has consistently worked over sixty hours a week to provide food and shelter for her family. Furthermore, she has done everything possible to encourage the educational achievements of her children. Although her long work schedule leaves little free time, she attends the local Catholic Church, and hopes to expand her

involvement in church activities.

In the weighing of both favorable and unfavorable factors, there simply are no adverse factors in [REDACTED]'s record. Furthermore, even if there were to be adverse factors, they would have to be of a most compelling nature. As the Ninth Circuit stated in *Hernandez-Ortiz v. INS*, 777 F.2d 509 (9th Cir. 1985), because discretion is only exercised after an individual has been found to meet its refugee standard, a denial in the exercise of discretion results in returning a *bona fide* refugee to the country of persecution. Therefore, only the most genuine and compelling factors may justify a denial in the exercise of discretion. *Id.* at 519.

## II. ALL OF THE RESPONDENTS ARE ENTITLED TO WITHHOLDING OF REMOVAL.

### A. [REDACTED] Qualifies For Withholding Of Removal For The Same Reasons That She Qualifies For Asylum.

Even if she is not eligible for asylum, [REDACTED] is eligible for withholding of removal. "[T]he Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. §1231(b)(3)(A). [REDACTED] is entitled to withholding of removal if she can demonstrate that it is "more likely than not that [she] would be subject to persecution on one of the specified grounds." *Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001) (internal citation and quotation marks omitted).

Because [REDACTED] has suffered past persecution (*see supra*, pp.47-55), she is entitled to a presumption that she is eligible for withholding of removal. 8 C.F.R. §1208.16(b)(1)(i) (if an applicant has suffered past persecution, "it shall be presumed that the applicant's life or freedom would be threatened in the future in the country of

removal on the basis of the original claim”); *Ali v. Ashcroft*, 394 F.3d 780, 791 (9th Cir. 2005). To rebut this presumption, the government must establish by a preponderance of the evidence either that (a) there has been a fundamental change in circumstances; or (b) ██████ could reasonably relocate internally to avoid future threat to life or freedom. 8 C.F.R. §1208.16(b)(1)(i) & (ii). As discussed *supra*, pp.56-62, the government cannot successfully make either showing. Therefore, ██████ is eligible for withholding of removal.

Regardless of the applicable presumption, ██████ is eligible for withholding of removal because she has demonstrated that it is more likely than not that she will be persecuted if she is returned to Mexico. 8 C.F.R. §208.16(b)(2); *INS v. Stevic*, 467 U.S. 407, 424 (1984). As discussed *supra*, pp.56-58, ██████ has provided ample evidence that ██████ will continue to harm her, and is likely to kill her, if she is returned to Mexico. Indeed, each time ██████ fled ██████ in the past, his abuse escalated. See *supra*, pp.11, 13-14, 19, 57-58. Country conditions evidence confirms that ██████ will likely suffer retaliation at the hands of ██████ for having left him. See *supra*, pp.27-35. ██████ therefore is entitled to withholding of removal on the basis of the likelihood of future harm.

**B. ██████ And ██████ Qualify For Withholding Of Removal On The Basis Of Past Persecution.**

**1. The Harm ██████ And ██████ Suffered Unquestionably Rises To The Level Of Persecution.**

There is no question that the harm ██████ and ██████ suffered at the hands of ██████ rises to the level of persecution. As discussed *supra*, pp.47-48, “[p]hysical harm has consistently been treated as persecution,” especially where its occurrence extends beyond a single, isolated incident. *Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000).

“Where an asylum applicant suffers [physical harm] on more than one occasion, and . . . is victimized at different times over a period of years, the cumulative effect of the harms is severe enough that no reasonable fact-finder could conclude that it did not rise to the level of persecution.” *Ahmed v. Keisler*, 504 F.3d 1183, 1194 (9th Cir. 2007).

█████ physically abused █████ and █████ over the course of their childhood years, beginning when the boys were seven and five years old. █████ Dec., Tab VV at 2-3, ¶¶2-4.; Amended Dec., Tab QQ at 12, ¶32; 15, ¶41; 18, ¶51; 20, ¶¶56-57. When █████ was only five years old, █████ brutally punched, kicked, slapped and whipped him. █████ Dec., Tab VV at 2, ¶¶3-4. He covered █████’s body in bruises. █████ Dec., Tab VV at 2-3, ¶4. He forced █████ and █████ to abuse their own mother, yelling at them and degrading them if they refused. █████ Dec., Tab VV at 3, ¶6. He beat them in public; indeed, the “entire community” knew that █████ was beating his children. Applications for Withholding of Removal of █████ and █████ at Part B.4. █████’s frequent beatings and emotional torment of the children continued unabated until they fled to the United States with █████. Amended Dec., Tab QQ at 18-19, ¶51; 20, ¶¶56-57. █████’s abuse unquestionably constituted persecution, *a fortiori* because it occurred repeatedly over the course of years. *See Ahmed*, 504 F.3d at 1194.

The harm to █████ and █████ is particularly atrocious because it was inflicted on them at such a young age. *See Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1046 (9th Cir. 2007) (injuries to a family “must be considered in an asylum case where the events that form the basis of the past persecution claim were perceived when the petitioner was a child”). The Ninth Circuit has explained that:



[A]ge . . . may bear heavily on the question of whether an applicant was persecuted or whether she holds a well-founded fear of future persecution. . . . A child's reaction to injuries to his family is different from an adult's. The child is part of the family, the wound to the family is personal, the trauma apt to be lasting. (*Id.* at 1045)

The severe and long-lasting trauma that [REDACTED] and [REDACTED] suffered as a result of the pervasive abuse in their household, including the abuse of their mother, strengthens their claim of past persecution. [REDACTED] Evaluation, Tab SS at 88-98; [REDACTED] Evaluation, Tab TT at 100-06; *Hernandez-Ortiz*, 496 F.3d at 1045-46.

**2. [REDACTED] And [REDACTED] Are Members Of The Particular Social Group Of Mexican Children Within A Family.**

[REDACTED] and [REDACTED] belong to the particular social group of Mexican children within a family. Their social group, which is defined by their status within their family and within society, meets all of the requirements of a "particular social group" identified in the DHS's Supplemental Brief in this matter. *See supra*, pp.48-54. *First*, it is based on an immutable or fundamental characteristic. DHS Supplemental Brief at 7-8; *Matter of Acosta*, 19 I&N Dec. at 232. *Second*, it is recognizable and visible in society. DHS Supplemental Brief at 8-9; *Matter of C-A-*, 23 I&N Dec. at 958-59. *Third*, it is described with sufficient particularity. DHS Supplemental Brief at 9; *Matter of S-E-G*, 24 I&N Dec. at 584.

**a. [REDACTED] And [REDACTED]'s Social Group Is Based On An Immutable Characteristic.**

[REDACTED]'s and [REDACTED]'s status as children within a family is immutable. It is a characteristic that they cannot change. Although [REDACTED] and [REDACTED] will eventually grow out of childhood, they always will remain the biological offspring of their parents and they cannot alter their status in the family. *See Gebremichael v. INS*, 10 F.3d 28, 36 (1st Cir. 1993) ("[t]here can, in fact, be no plainer example of a social group based on

common, identifiable and immutable characteristics than that of the nuclear family”); DHS Supplemental Brief at 16 (“an applicant’s status within a domestic relationship [may be] immutable . . . where economic, social, physical or other constraints make it impossible for the applicant to leave the relationship”).

**b. ██████████ And ██████████’s Social Group Meets The Requirement Of Social Visibility.**

██████████ and ██████████’s social group meets the requirement of social visibility. ██████████ and ██████████ were, and are, socially visible as children within a family because they belong to “a segment of society that will not be accorded protection from harm” inflicted by their parent. DHS Supplemental Brief at 18. ██████████ repeatedly sought in vain to protect her sons from ██████████’s child abuse:

- When ██████████ visited the public records building in ██████████ to obtain her sons’ birth certificates, the Mayor prevented ██████████ from entering the building and told ██████████ that she would not be able to get back her children. Amended Dec., Tab QQ at 13, ¶33.
- When ██████████ sought assistance from the DIF—the governmental agency that purports to protect children from family violence—the DIF attorney refused to help ██████████. Tr. 106; Amended Dec., Tab QQ at 15, ¶42.
- The lawyers with whom ██████████ consulted accepted bribes from ██████████ and refused to help her. Amended Dec., Tab QQ at 14, ¶36.
- The first two judges before whom ██████████ appeared for custody hearings accepted bribes from ██████████ and refused to award ██████████ custody of the children, even though they knew ██████████ was abusing his children. Amended Dec., Tab QQ at 14, ¶¶36-37; Supplemental Dec., Tab A at ¶5. The second judge told ██████████ that he would award her custody of the children only if she had sex with him. When ██████████ refused, he told her that a good mother would have done anything to get back her children. Tr. 112. He did not help ██████████.
- The third judge before whom ██████████ appeared knew that ██████████ was beating his children, but nonetheless allowed ██████████ to live with his father. Amended Dec., Tab QQ at 16-17, ¶45; Tr. 116-17.

- Rather than awarding [REDACTED] child support, the fourth judge before whom she appeared sent her children back into the hands of her abuser by “awarding” her the right to live in [REDACTED]’s family’s house. Amended Dec., Tab QQ at 20, ¶56; Tr. 147.

These efforts to seek protection for [REDACTED] and [REDACTED], which fell on deaf ears, demonstrate that [REDACTED] and [REDACTED] belong to a category of individuals—Mexican children—who will not “receive protection from serious physical harm.” DHS Supplemental Brief at 18. This is especially true because the entire [REDACTED] community, including the police, knew that [REDACTED] was abusing his sons. *See supra*, p.15. No one did anything to help.

In addition, country conditions evidence in the record overwhelmingly demonstrates that Mexican society in general accepts abuse of children, especially by the children’s parents, and reinforces the abuser’s beliefs in his right to abuse. *See* DHS Supplemental Brief at 17 (“a cognizable particular social group must reflect social perceptions or distinctions”). Violence against children in Mexico is rampant and occurs across all segments of society. *See supra*, pp.35-37; *Extracto del informe nacional sobre violencia y salud*, Tab GG at 21 (child abuse in Mexico is pervasive across all ethnic groups and socioeconomic classes). One study indicates that children are more likely than not to suffer family violence. Rodriguez, *Child abuse in 7 of 10 families*, Tab BB at 1. These statistics are not surprising in light of the fact that corporal punishment of children is *legal* in the home. *CRC Concluding Observations: Mexico*, Tab CC at 8. “[P]hysical punishment and harsh discipline” of children “are viewed as necessary methods to produce obedient children.” Futterman, *Seeking A Standard: Reconciling Child Abuse*, Tab KK at 504. Mexican children themselves are taught to normalize the abuse that is inflicted on them. Marston, *Child sexual abuse in Mexico City*, Tab NN at

18.

The Mexican government enables and acquiesces to societal norms regarding violence against children within families. *See supra*, pp.39-41. The Legislature has failed to pass laws that adequately protect children from abuse. *CRC Concluding Observations: Mexico*, Tab CC at 2-3, 7, 8. The government has not allocated sufficient resources to address the problem of family violence. *Full Rights, Whole Children*, Tab F at 96. Laws purporting to protect children, to the extent that they do exist, are poorly implemented. *CRC Concluding Observations: Mexico*, Tab CC at 2-3, 7-8. Indeed, even Mexican judges are complicit in the normalization of child abuse, and “play a role in the tolerance given to persons guilty of child abuse.” Futterman, *Seeking A Standard*, Tab KK at 503.

Accordingly, the social group “Mexican children within a family” describes a group of individuals that is subjected to socially accepted violence and that is largely unprotected from that violence. This social group is recognizable not only because Mexican society accepts and acquiesces to violence against children within families, but also because, more broadly, “[s]ocial groups based on innate characteristics such a . . . family relationship are generally easily recognizable and understood by others to constitute social groups.” *Matter of C-A-*, 23 I&N Dec. at 959; *see also* DHS Brief, *Matter of Thomas*, Tab OO at 11-12 (families are, in virtually every society, defined by “socially visible and significant relationships”).

c. **██████████ And ██████████’s Social Group Can Be Described With The Requisite Particularity.**

The social group “Mexican children within families” is defined with sufficient particularity because the characteristic of childhood is a concrete “benchmark” that

clearly defines group membership. DHS Supplemental Brief at 9. Children are recognized, in Mexican society, as a “discrete class of persons.” See *Matter of S-E-G-*, 24 I&N at 584. Indeed, it is difficult to imagine *any* society in which children do not constitute a socially identifiable category of individuals. Mexican children, in particular, have been recognized as a specific and vulnerable class of citizens by both the Mexican government and international human rights groups. *Grupos en situación de vulnerabilidad y discriminación: Niños, niñas y adolescents*, Tab MM at §7.4 (identifying children and adolescents as member of a specific group in Mexican society that is particularly vulnerable and in need of governmental protection).

Moreover, “a detailed framework exists” for conceptualizing the parent-child relationship, which is central to the social group formulation “Mexican children within families.” See DHS Supplemental Brief at 19 (noting that a social group cannot be “amorphous,” but must be defined within a “detailed framework” that clearly delineates who is and is not a member of the group). Just as children are socially categorized at birth as either male or female, children are identified at birth as the offspring of their parents and as members of families. The birth certificates of both [REDACTED] and [REDACTED] indicate that they are the children of [REDACTED] and [REDACTED]. Birth Certificate of [REDACTED]; Birth Certificate of [REDACTED], filed as Exhibit 8 to [REDACTED]’s Asylum Application. Their domestic status within their families is clearly delineated and socially visible.

**3. [REDACTED] Persecuted [REDACTED] And [REDACTED] On Account Of Their Social Group Membership.**

[REDACTED] made clear that his abuse of his sons was on account of their status as children within his family unit. See *Elias-Zacarias*, 502 U.S. at 481-82 (an applicant for

asylum must prove that he was persecuted, at least in part, "on account of" his membership in that group); *Silaya v. Mukasey*, 524 F.3d 1066, 1070 (9th Cir. 2008). [REDACTED] seized custody of [REDACTED] and [REDACTED] without [REDACTED]'s consent and repeatedly opposed her attempts to regain custody of them. Amended Dec., Tab QQ at 12-13, ¶33. He took their birth certificates and told [REDACTED] that she could never prove that the children were hers. Amended Dec., Tab QQ at 13, ¶33. These statements reflect [REDACTED]'s view that his children were his property, that he could simply take them whenever he wished, and that he had sole control over them. [REDACTED] asserted this perceived authority over his children by beating them, and worsened his abuse whenever his authority was undermined. When [REDACTED] sought custody of her children, [REDACTED] beat the children in retaliation, telling [REDACTED] that he deserved to be beaten because his mother was creating trouble. [REDACTED] Dec., Tab VV at 3, ¶4. When [REDACTED] secretly visited with [REDACTED] and [REDACTED], [REDACTED] beat them. [REDACTED] Dec., Tab VV at 2, ¶3. Finally, when [REDACTED] and [REDACTED] refused to abuse their mother, [REDACTED] responded with violent thrashings. [REDACTED] Dec., Tab VV at 3, ¶6.

Both the Supreme Court and the BIA have held that an applicant need not provide direct evidence of a persecutor's motives; rather, motivation may be inferred from circumstantial evidence, including the socio-cultural purpose of the harm at issue. See *Elias-Zacarias*, 502 U.S. at 483 (proof of motive can be "direct or circumstantial"); *Matter of S-P-*, 21 I&N Dec. 486, 489 (BIA 1996) (examining circumstantial evidence of the social and political context of persecution in order to determine motive).

Aside from the direct evidence of [REDACTED]'s motive discussed *supra*, pp.75-76, the record contains ample circumstantial evidence of his reasons for persecuting [REDACTED]

and [REDACTED] As discussed *supra*, pp.35-40, Mexican children are widely perceived as the property of their parents, and violence against children within families is both widespread and socially tolerated in Mexico. Rodriguez, *Child abuse in 7 of 10 families*, Tab BB at 1; *Concluding Observations: Mexico*, Tab CC at 10; *Violencia y Maltrato a menores en Mexico*, at 6. Violence within families is commonly accepted in Mexican society as a means of controlling children. Futterman, *Seeking A Standard*, Tab KK at 502-03; Marston, *Child sexual abuse in Mexico City*, Tab NN at 18 (“Communities and families maintain sexual abuse of children”). The socio-cultural purpose of child abuse—to ensure parental domination over, and subordination of, children—is additional evidence that [REDACTED] persecuted his sons on account of their status as Mexican children. See *Matter of S-P-*, 21 I&N Dec. at 489.

**4. The Government Cannot Rebut The Presumption That [REDACTED] And [REDACTED] Are Entitled To Withholding Of Removal Based On Past Persecution.**

To rebut the presumption that [REDACTED] and [REDACTED] are entitled to withholding of removal, the government must establish by a preponderance of the evidence that either (a) there has been a fundamental change in circumstances; or (b) [REDACTED] and [REDACTED] could reasonably relocate internally to avoid future threat to life or freedom. 8 C.F.R. §1208.16(b)(1)(i) & (ii). The government cannot successfully make either showing.

**a. The Government Cannot Meet Its Burden Of Proving Changed Circumstances.**

The government cannot demonstrate that there has been “a fundamental change in circumstances” that rebuts the presumption that [REDACTED] and [REDACTED] are entitled to withholding of removal. 8 C.F.R. §1208.16(b)(1)(i). *First*, the country conditions evidence demonstrates that intra-family abuse remains a severe and pervasive problem in

Mexican society. *See supra*, pp.35-40; *Mousa v. Mukasey*, 530 F.3d 1025, 1030 (9th Cir. 2008) (government failed to show fundamental change in circumstances for the purposes of withholding of removal when country conditions had not changed). Despite the passage of the primarily symbolic *Ley para la protección de los derechos de niños, niñas y adolescentes* in 2000, and the creation of governmental institutions to address child abuse in Mexico, the problem is *growing* instead of improving. *Violence and Abuse of Minors in Mexico*, Tab HH at 3. *Second*, there is no evidence that [REDACTED] will stop abusing [REDACTED] and [REDACTED] if they are returned to Mexico. The evidence is to the contrary. [REDACTED] Evaluation, Tab TT at 106 ([REDACTED] fears being killed by his father if he returns to Mexico); Amended Dec., Tab QQ at 24, ¶¶72-73 ([REDACTED] fears for her children's lives if they are returned to Mexico).

**b. The Government Cannot Meet Its Burden Of Proving A Reasonable Relocation Alternative.**

As discussed *supra*, pp.26-27, 59-60, the record evidence shows that [REDACTED] could easily obtain [REDACTED]'s address and the addresses of her children if they returned to Mexico and relocated anywhere in the country. Because [REDACTED] could locate [REDACTED] and [REDACTED] through various Mexican databases—whether they lived with [REDACTED] or on their own—the government cannot prove that [REDACTED] and [REDACTED] can safely relocate within Mexico. *See supra*, pp.26-27, 59-60.

**C. [REDACTED] And [REDACTED] Qualify For Withholding Of Removal Because It Is More Likely Than Not That They Will Be Persecuted If They Are Returned To Mexico.**

**1. [REDACTED] Is More Likely Than Not To Persecute [REDACTED] And [REDACTED] On Account Of Their Membership In The Particular Social Group Of Mexican Children.**

In addition, [REDACTED] and [REDACTED] are eligible for withholding of removal because



they have demonstrated that it is more likely than not that they will be persecuted if returned to Mexico. 8 C.F.R. §208.16(b)(2); *Stevic*, 467 U.S. at 424. As discussed *supra*, pp.69-71, there is no question that the violent beatings to which [REDACTED] subjected his children constitute persecution. [REDACTED] continuously abused [REDACTED] and [REDACTED] from a very young age. *See supra*, pp.14-15, 69-71; [REDACTED] Dec., Tab VV at 2-3, ¶¶3-4, 5, 6; Amended Dec., Tab QQ at 18-19, ¶51; 20, ¶57; 21, ¶59. He did not stop abusing them until they fled Mexico. Amended Dec., Tab QQ at 18-19, ¶¶50-51; [REDACTED] Dec., Tab VV at 3, ¶¶5, 7. He will continue to beat them violently if they return to Mexico. [REDACTED] Evaluation at 106; Amended Dec., Tab QQ at 25, ¶73. Indeed, his abuse is likely to worsen because [REDACTED] and [REDACTED] participated in their mother's flight. *See* Amended Dec., Tab QQ at 25, ¶73 ("I also know that his abuse will continue to get worse . . . I cannot return to my country because my life and health and that of my children are at severe risk and in danger"). Like [REDACTED]'s past abuse of his sons, the future harm to [REDACTED] and [REDACTED] will be on account of their status as Mexican children within a family. *See supra*, pp.71-77.

2. **The Mexican Government Is Unable And Unwilling To Protect [REDACTED] And [REDACTED]**

As discussed *supra*, pp.72-74, Mexican courts and police have failed to protect [REDACTED] and [REDACTED] from [REDACTED]'s abuse. Mexican police assisted [REDACTED] in removing his children from [REDACTED]'s home and putting them in the hands of a publicly-known abuser. Amended Dec., Tab QQ at 13-14, ¶33; Applications for Withholding of Removal of [REDACTED] and [REDACTED], at Part B.1. [REDACTED] sought help from the authorities multiple times, complaining of [REDACTED]'s child abuse. *See supra*, pp.72-74. Rather than protect [REDACTED] and [REDACTED], both the courts and the DIF allowed the children

to live with [REDACTED]. Amended Dec., Tab QQ at 14-16, ¶¶36-38, 42-44. Although one judge finally awarded custody of [REDACTED] to [REDACTED], he allowed [REDACTED] to continue living with his abusive father. Amended Dec., Tab QQ at 16-17, ¶45. Even when [REDACTED] and [REDACTED] moved out of [REDACTED]'s house, [REDACTED] continued to beat his sons with impunity, including in public. Amended Dec., Tab QQ at 20, ¶57; [REDACTED] Dec., Tab VV at 3, ¶6. Despite the fact that “the entire community in [REDACTED]” knew of [REDACTED]'s abuse—including [REDACTED]'s police officer friends—no one did anything to intervene. *See supra*, p.15; Applications for Withholding of Removal of [REDACTED] and [REDACTED] at Part B.1; [REDACTED] Dec., Tab VV at 3, ¶7. [REDACTED] and [REDACTED] are utterly without governmental protection from their father's abuse.

### III. ALL OF THE RESPONDENTS ARE ENTITLED TO PROTECTION UNDER THE CONVENTION AGAINST TORTURE.

An applicant is entitled to CAT relief if she shows that she “is more likely than not . . . to be tortured if removed to the proposed country of removal.” 8 C.F.R. §208.16(c)(2), (4). If the agent inflicting the torture is nongovernmental, the applicant must prove government acquiescence to the torture. 8 C.F.R. §208.18(a)(1).

First, the harm that Respondents fear if returned to Mexico—beatings, murder, and, in the case of [REDACTED], rape—meet the definition of torture. *See id.* (torture is “any act by which severe pain or suffering . . . is intentionally inflicted on a person”); *Zubeda v. Ashcroft*, 333 F.3d 463, 472 (3d Cir. 2003) (“[r]ape can constitute torture”); *see also Lopez-Galarza v. INS*, 99 F.3d 954, 962-64 (9th Cir. 1996) (equating the effects of rape with other forms of torture).

Second, Respondents have demonstrated that they are more likely than not to suffer torture if returned to Mexico. The record contains significant evidence of their past

torture at ██████'s hands. *See supra*, pp.47-48, 69-71; *Mohammed v. Gonzales*, 400 F.3d 785, 802 (9th Cir. 2005) (quoting 8 C.F.R. §1208.16(c)(3)); *see also Kamalthas v. INS*, 251 F.3d 1279, 1282 (9th Cir. 2001) (evidence of past torture is relevant to a determination of eligibility for CAT relief). The record also contains ample evidence of Respondents' fear of similar, and worse, future harm at ██████'s hands. *See supra*, pp.64, 79.

Country conditions evidence confirms the likelihood that Respondents will be subject to severe pain or suffering if returned to Mexico. *See supra*, pp.35-40 (discussing the frequent and widespread abuse of children in Mexico); *supra*, pp.27-35 (discussing frequent and widespread violence against women in Mexico); 8 C.F.R. §208.16(c)(3)(iii), (iv) (instructing courts to consider “[o]ther relevant information regarding conditions in the country of removal” in CAT claims).

Finally, the Mexican government will acquiesce to the torture Respondents suffer at ██████'s hands. *See* 8 C.F.R. §208.18(a)(1). As discussed *supra*, pp.65-67, 72-74, government officials knowingly failed on multiple occasions to protect Respondents from ██████'s abuses when Respondents sought assistance. Country conditions evidence confirms that Mexican officials largely condone, and fail to take measures against, domestic violence and violence against children. *See supra*, pp.27-40. Accordingly, Respondents have demonstrated that they are utterly without protection from the torture they will suffer if returned to Mexico. *See Zheng v. Ashcroft*, 332 F.3d 1186, 1188 (9th Cir. 2003) (“acquiescence” by government officials does not require actual knowledge or willful acceptance, but can be demonstrated by showing awareness and willful blindness by governmental officials); *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1060 (9th Cir.

2006) ("It is enough that public officials could have inferred the alleged torture was taking place, remained willfully blind to it, or simply stood by because of their inability or unwillingness to oppose it").

Because Respondents are more likely than not to be tortured if returned to Mexico, they are eligible for CAT relief.

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Respectfully,



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