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UNITED STATES DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

OFFICE OF THE IMMIGRATION JUDGE

SAN FRANCISCO, CALIFORNIA

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| In the Matter of:NAME  Respondent,In Removal Proceedings |  | A Number: XXXXXXXX Hearing Date: Hearing Time: 8:30amBefore Hon.: Hearing Type: Merits |

**respondent’s brief in support of applications for asylum, withholding of removal, and relief under the convention against torture**

Respondent, X (“Ms. X”), through counsel, respectfully submits this Brief in support of her application for asylum pursuant to § 208 of the Immigration and Nationality Act (“INA”), or in the alternative, withholding of removal under INA § 241(b)(3), alternatively, withholding of removal or deferral of removal under the Convention Against Torture (“CAT”). 8 C.F.R. §§ 208.16(c)(3); 208.17.

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# STATEMENT OF FACTS AND PROCEDURAL HISTORY[[1]](#footnote-2)

Ms. X was born on DOB in CITY, Guatemala. Declaration of (“Ms. X Declaration”). Ms. X met and married her husband, Y, when she was 15 years old and he was 20 years old. *Id.*  After Ms. X moved in with Y, he became violent and abusive towards her. *Id.* They are the parents of two young sons. *Id*.

Mr. Y was extremely violent and controlling with Ms. X. Id. He beat her, raped her and threatened to kill her, himself, the children and her mother and her sister when Ms. X tried to leave him. Id. Ms. X tried to report her husband’s abuse to the authorities, but this only resulted in a more severe beating from her husband and he told her that if she tried to report his behavior again, she would be further harmed. *Id*. Her husband’s family treated Ms. X as the family maid, accused her of not being a proper wife and her father-in-law sexually assaulted her as well. *Id*. Ms. X’s husband beat her with his hands and with objects such as a machete – often his beatings resulted in Ms. X being covered in her own blood while being threatened that if she tried to seek assistance, she and her family would be killed by her husband. *Id.* When Ms. X attempted to leave her husband, he was violent towards her mother and came to find Ms. X who was hiding in another relative’s home.  *Id*. The police told Ms. X that she had to return to her husband and once she was back in his house, Mr. Y brutally beat Ms. X and told her that she would have to now pay for trying to leave him. *Id.* In addition to the physical beatings and psychological abuse that Ms. X endured from her husband, her husband also raped her regularly. *Id.* Despite Ms. X stating that she did not want to be with him, her husband would demand that as his woman she had to do what he wanted. *Id*.

Even once her husband came to the United States, he continued to threaten Ms. X by phone and had his family keep watch on her every movement. *Id.* When she did state that she wanted to leave the relationship, he came back to Guatemala within a few days and beat her. *Id.* Once Ms. X came to the United States, her husband again beat Ms. X. *Id.* Her husband has continued to threaten Ms. X and he has stated that once she is back in Guatemala, he will harm and likely kill her. *Id.* Ms. X lives with the constant fear that her husband will find a way to force her to return to Guatemala and will then harm her, her sons and mother and sister as he has in the past and continues to threaten them. *Id.*

On DATE, Ms. X was arrested by border patrol agents while trying to enter the United States and taken into the custody of Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”). Ms. X was found to have a credible fear of persecution on February 14, 2012. *See* Record of Proceedings (“ROP”). Ms. X was issued a Notice to Appear with this Court and placed in removal proceedings. Ms. Xwas released on bond on DATE. *Id.* On DATE, Ms. X attended her master calendar hearing, requested an expedited hearing date and the Court scheduled her individual hearing for DATE at 8:30am.

# statement of Country conditions

The United States Department of State, Human Right Watch, Amnesty International, and country experts are just a few of the many groups that have conducted studies and published reports about domestic violence, femicides, and the widespread incidence of gender inequality throughout Guatemala. There are three main themes in the published information regarding the conditions in Guatemala, which are discussed in greater detail below. First, many discuss the historical conditions that have lead to the normalization of the violence against women, including rape and femicides. Second, there is a widespread belief in Guatemalan society that women are subordinate to men and that domestic and gender violence is a private matter in which the government should not intervene. Third, laws prohibiting violence against women and punishing perpetrators are weak, enforcement of such laws is inconsistent and social support for the victims of domestic and gender-based violence is woefully inadequate.

1. **Historical Conditions of Military Violence Against Women Continues to make Women Vulnerable to Many Types of Abuse**

Guatemala has had a long history of war, genocide, and torture. Between 1960 and 1996 more than 100,000 women were victims of mass rape in the Guatemalan civil war, between CIA-backed rightwing generals and leftwing insurgents that eventually left 200,000 dead.” Exh. V. In Guatemala, the tactics used by the military to carry out the genocide during the conflict were sexual violence and rape of women. *See* Exh. F, H, V, W, R, U. Throughout many decades, girls and women were systematically raped and killed. *Id.*

 Many have theorized that the years of brutality is a major contributor to the abuse and murder of women in Guatemala and to the impunity in which those crimes are carried. *Id.* The military’s strategies of targeting women can be seen in many of the femicide cases, in which torture tactics are used to attack the victim’s femininity and reproductive capacity. Exh. R. In the cases of murdered men in Guatemala, most are killed with no intimate contact between the victim and the attacker, however, for women; the majority of their murders were marked by rape, torture, and mutilation. Exh. T. This residual effect has greatly contributed to the violence against women that exists today in Guatemala. Guatemala has suffered decades of this widespread violence against women, which has in the societal context, normalized rape and abuse against women. Exh. R.

1. **The Machista Culture And The Scope Of The Domestic Violence Problem: Femicides, Sexual Violence, and Gender Inequality Fuel Abuse Against Women**

Given the historical background, Guatemalan culture has created strict gender roles for women where “violence is used as a means of social control to ensure that the women remain in their private sphere of the home and not enter the masculine public sphere outside the home.” Exh. S. In Guatemala, the *machista* culture remains dominant, reinforcing the view that women are subordinate to men within the family and society as a whole. *See* Exhs. F-H, J, L, P, T. As a result, there is also a widespread belief that abuse against women may be tolerated.

According to the Geneva Declaration on Armed Violence and Development, Guatemala has one of the highest rates of femicide, or gender motivated killing of women, in the world. Exh. H. It is estimated that more than 6,500 women have been the victims of violent killings since 2000, and thousands more raped and battered.” *Id.* The statistics on femicides and gender-based violence have been so concerning that the Guatemala Office of the United Nations High Commissioner for Human Rights has stated that that the cruelty in which these crimes have been perpetuated prove how deeply rooted patterns of discrimination are in society and reveal the lack of institutional measures that exist to tackle them. *Id.* Because of these cultural standards and the social stigma that attaches to a victim of physical and sexual abuse, authorities view domestic violence as a private matter and not as a serious crime. *See* Exhs. P and T.

According to Elisa Portillo Najera, expert on gender discrimination in Guatemala, the *machismo* and patriarchal culture in Guatemala has contributed to the alarming rates of violence women are suffering today. Exh. G. She declares that “[i]n Guatemalan culture, it is widely accepted that a man has the right to abuse his partner. *Id.* And further describes how the “abuse stems from a culture that places a man at the tip of a hierarchy granting him control over all aspects of a woman’s life, from her economic situation, to her politics, to her sexuality.” *Id.* Ms. Portillo Najera goes on to explain that “Because the police, prosecutors, and judges believe that men have the right to use violence against their partners to control them, they do not take cases of violence against women seriously. “ *Id*.

All these cultural and societal norms and standards have contributed to the widespread discrimination and violence against women in today’s Guatemala.

1. **Laws Prohibiting Gender and Domestic Violence In Guatemala Are Weak, Enforcement Is Lacking And Support For Victims and Those Who Report Violence Is Woefully Inadequate**

Reputable sources, such as Amnesty International, Freedom House, Human Rights Watch, and the U.S. Department of State, have recognized that although Guatemala in 2008 enacted a law against femicides and other forms of violence against women, domestic violence, femicides, and rape remained a serious problem in Guatemala and perpetrators continue to act with widespread impunity. *See* Exhs. F, G, Q-S. The authorities put the lives of women at risk by systematically failing to protect them and by ensuring those responsible do not face justice. Exh. O. As a result, relocation within Guatemala is not a viable option for these victims, as the Guatemalan authorities do not adequately protect women against abuse. Exh. G.

The U.S. Department of State in its Country Report of Guatemala found that the Guatemalan government did not enforce the 2008 law effectively since police have minimal training or capacity to investigate sexual crimes. Exh. F. Amnesty International agreed that the law had very little impact on either reducing violence against women or holding those responsible accountable. Exh. P. Additionally, the State Department found that lack of confidence in the justice system, stigma around sexual abuse, and fear of reprisal continued to exist in Guatemalan society. Exh. F.

Although the enactment of the law was a positive step in the right direction, many organizations and experts agree that it has done nothing to cure the injustices women in Guatemala are suffering on a daily basis. Women continue to fall victim to physical and sexual violence and their perpetrators continue to act with great impunity.

# Argument

To qualify for asylum and withholding of removal, an applicant must show that he is a “refugee” within the meaning of INA § 101(a)(42)(A), defined as:

Any person who is outside any country of such person’s nationality… who is unable or unwilling to avail himself of the protection of that country because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

INA § 101(a)(42)(A); 8 U.S.C. § 1101(a)(42)(A).

The applicant’s well-founded fear must be both subjectively genuine and objectively reasonable. *Mgoian v. I.N.S.,* 184 F.3d 1029, 1035 (9th Cir. 1999). Race, religion, nationality, membership in a particular social group, or political opinion must be at least one central reason for persecuting the applicant. INA § 208(b)(1)(B)(i). Furthermore, the source of the persecution must be the government, a quasi-official group, or persons or groups that the government is unwilling or unable to control. *See Avetovo-Elisseva v. INS*, 213 F.3d 1192, 1196 (9th Cir. 2000). Lastly, an applicant must demonstrate that she could not reasonably relocate within her country of origin to avoid persecution. 8 C.F.R. § 208.13(b)(2)(ii).

In this case, Ms. X qualifies as a refugee due to the past persecution she has suffered at the hands of her husband, Juan Y. She also has a well-founded fear of future persecution by him if returned to Guatemala. Additionally, even if the Court were to find that she does not have an objectively reasonable well-founded fear, Ms. X remains eligible for asylum under 8 C.F.R. § 208.13(b)(1)(iii)(B) as a victim of past persecution who can establish a reasonable possibility that she may suffer other serious harm upon removal to that country. *Belishta v. Ashcroft*, 378 F.3d 1078, 1081 (9th Cir. 2004) (order); *Hanna v. Keisler*, 506 F.3d 933, 939 (9th Cir. 2007.) *Belishta*, 378 F.3d at 1081. The fear of other harm need not be related to a protected ground.

## The Harm Ms. X Suffered Constitutes Persecution

Persecution is “the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive.” *Li v. Holder*, 559 F.3d 1096, 1107 (9th Cir. 2009) *citing* *Gormley v. Ashcroft,* 364 F.3d 1172, 1176 (9th Cir. 2004) (internal quotation marks omitted). It is well established that physical violence is persecution under 8 U.S.C. § 1101(a)(42)(A). *See Li*, 559 F.3d at 1107; *Guo v. Ashcroft,* 361 F.3d 1194, 1197-98, 1202-03 (9th Cir.2004) (finding beatings of a Chinese detainee to rise to the level of persecution); *Chand v. INS,* 222 F.3d 1066, 1073 (9th Cir.2000) (“Physical harm has consistently been treated as persecution.”); *Smolniakova v. Gonzales*, 422 F.3d 1037, 1048-49 (9th Cir. 2005) (physical attacks and death threats are sufficient to establish past persecution). Rape and sexual assault have also been established as forms of persecution. *See Boer-Sedano v. Gonzales*, 418 F. 3d 1082, 1088 (9th Cir. 2005) (forced sex is past persecution); *Shoafera v. INS*, 228 F.3d 1070, 1075 (9th Cir. 2000) (rape is persecution); *Lopez-Galarza v. INS*, 99 F.3d 954 (9th Cir. 1996) (rape and abuse constitute persecution); *Lazo-Majano v. INS*, 813 F.2d. 1432 (9th Cir. 1987) (rape and other gender-based violence is persecution) (*overruled in part by Fisher v. INS*, 79 F.3d 954 (9th Cir. 1996) (en banc). However, individual acts that alone may not suffice as persecution can cumulatively constitute persecution. *Tchemkou v. Gonzales,* 495 F.3d 785 (9th Cir. 2007) (cumulative significance of events must be considered rather than events on their own when determining if persecution exists). As Ms. X was a teenager at the time that she was first beaten and raped by her partner, her age should be a significant factor considered in making a determination about past persecution. *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045 (9th Cir. 2007); Mendoza-Pablo v. Holder, 667 F.3d 1308 (9th Cir. 2012).

Ms. X was physically, emotionally and sexually abused by her husband starting at the young age of 15 years old. She was beaten, threatened, sexually abused and controlled by her husband. She was also sexually assaulted by her father-in-law and threatened by her husband’s family for failing to act as they believed a wife should behave. Under Ninth Circuit and Board of Immigration Appeals (“BIA” or “Board”) precedent, as well as USCIS Asylum division and UNHCR guidance, the beatings, sexual assault, threats and psychological harm suffered by Ms. X clearly constitute persecution.

## Ms. X Suffered Past Persecution On Account of her Membership in a Particular Social Group

### *Married Guatemalan Women Unable to Leave the Marital Relationship*

Ms. X is a member of the particular social group of “Married Guatemalan women Unable to Leave the Marital Relationship.” The Board and the Ninth Circuit have provided a framework for determining what constitutes a particular social group. In *Matter of Acosta*, the Board held that a particular social group referred to individuals who hold a “common, immutable characteristic,” which may be “an innate one such as sex, color, kinship ties, or in some circumstances…. a shared past experience….” *Matter of Acosta*, 19 I. & N. Dec. 211, 233-234 (BIA 1985), overruled in part on other grounds by In re Mogharrabi, 19 I. & N. Dec. 439 (BIA 1987). The Board specified that the immutable characteristic must be one “that the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *Id.*

Recently, in *Matter of A-R-C-G,* the BIA held that “married Guatemalan women unable to leave the marital relationship” is a particular social group that satisfies all three social group requirements – immutability, particularity, and social distinction. 26 I.&N. Dec. 388 (BIA 2014).

The Board recognized that marriage may be immutable because a woman may be unable to leave the relationship. According to the BIA, a determination of immutability of marital status depends on factors such as “whether dissolution of a marriage could be contrary to religious or other deeply held moral beliefs or if dissolution is possible when viewed in light of religious, cultural, or legal constraints.” 26 I.&N. Dec. at 392-93. When evaluating immutability of marital status the BIA continued, “adjudicators must consider a respondent’s own experiences, as well as more objective evidence, such as background country information.” *Id*. at 392-93. DHS has recognized that in addition to legal or social constraints, immutability of a domestic relationship can be established where the abuser would not recognize separation or divorce as ending the relationship. *See* Exh. Z.

The requirement of particularity is also met with the above stated social group. Particularity considers whether a group is “defined by characteristics that provide a clear benchmark for determining who falls within the group,” and whether “the terms used to describe the group have commonly accepted definitions in the society of which the group is a part.” *See Matter of M-E-V-G,* 26 I.&N. Dec. 227, 238-39 (BIA 2014). In *A-R-C-G* the BIA found that the evidence, for example showing that the police in Guatemala told Ms. *A-R-C-G* that they do not interfere with marriages, established that in the context of Guatemala the terms “married,” “women,” and “unable to leave the relationship” are commonly understood. *Id*.

Finally, social distinction is a question of whether the group is “perceived within the given society as a sufficiently distinct group.” 26 I.&N. Dec. at 238. Evidence of “documented country conditions,” “law enforcement statistics and expert witnesses,” “the respondent’s past experiences” (which are relevant to how members of the PSG are treated or perceived), and “other reliable and credible sources of information can establish social distinction. *Id.* at 395. The BIA approved the social group in *A-R-C-G* (married Guatemalan women unable to leave the relationship) based on evidence that Guatemalan society meaningfully distinguishes married women who cannot leave the relationship from other segments of society. 26 *Id*. at 394. In particular the Board relied on evidence that: a) Guatemala has a culture of “machismo and family violence” and that sexual offenses, including spousal rape, remain a serious problem, b) the Guatemalan government, including the National Civilian Police “often failed to respond to requests for assistance related to domestic violence,” and c) Guatemalan police refused to protect Ms. *A-R-C-G,* specifically saying they would not interfere in a marital relationship. 26 *Id.* at 393, 394.

### *Guatemalan Women Who Are Viewed As Property and are Unable to Leave due to their Position in the Domestic Relationship*

Ms. X is also a member of the particular social group stated directly above. In the Department of Homeland Security’s (“DHS”) Supplemental Brief in *Matter of L-R-* (“DHS L-R- Brief”), DHS stated its position that victims of domestic violence can establish eligibility for asylum. *See* Exh. Z. In discussing an appropriate articulation for social groups of victims of domestic violence, DHS stated that the particular social group “is best defined in light of the evidence about how the Ms. X’s abuser and her society perceive her role within the domestic relationship.” *Id.*at 14. DHS asserted that “Mexican women who are viewed as property by virtue of their positions within a domestic relationship” would constitute a cognizable social group. *Id.*

Ms. X’s social group is defined by the immutable characteristics of nationality, gender, status in society and in a domestic relationship. These shared characteristics are immutable, as a person cannot change his or her gender, nationality, or how she is viewed in society. *Hernandez-Montiel*, *supra*. The Ninth Circuit and the Board have recognized similar groups as possessing an immutable characteristic. *See Perdomo v. Holder,* 611 F.3d 662, 668 (9th Cir. 2010) (holding that young women in Guatemala subject to femicide may be a social group and rejecting that a person is ineligible for social group consideration because the “persecuted group may simply represent too large a portion of a population.”); *Karouni v. Gonzales,* 399 F.3d 1163, 1172 (9th Cir. 2005) (holding that “all alien homosexuals are members of a ‘particular social group’”); *Mihalev v. Ashcroft,* 388 F.3d 722, 726 (9th Cir. 2004) (holding that Gypsies are an identifiable ethnic group and that being a Gypsy is a protected ground for asylum); In re Fauziya Kasinga, 21 I. & N. Dec. 357, 366 (BIA 1996) (holding that women who belong to a particular tribe and who oppose female genital mutilation constitute a cognizable social group).

The Ninth Circuit and Board have held that gender is an immutable characteristic. In Mohammed v. Gonzales, 400 F.3d 785 (9th Cir. 2005), the Ninth Circuit held that that gender is an “innate characteristic” that is “fundamental to [one's] identit[y].” Id.at 797. Moreover, in the seminal decision of *Acosta*, the Board expressly held that one’s sex is a prototypical example of an immutable characteristic. *Matter of Acosta*, 19 I. & N. Dec. at 233-234. USCIS guidance also states that gender is an immutable trait. USCIS AOBTC Female Asylum Applicants and Gender-related Claims, USCIS, RAIO, Asylum Division, March 12, 2009, at 30.

Furthermore, the status of “viewed as property” is an immutable trait. In the DHS *L-R-* Brief, DHS argued that an applicant’s status within a domestic relationship can be immutable. Exh. Z, DHS *L-R-* Brief, at 16. As DHS has recognized, “under U.S. immigration law, a detailed framework exists for conceptualizing domestic relationships.” *Id.* at 19. Under this framework, a domestic partner can be “an individual with whom the person shares a child in common” or “who is cohabitating with or has cohabitated with the person as a spouse.” *Id*.; *see also* INA § 237(a)(2)(E)(1). Ms. X cannot alter the historic fact that she was married, was in a domestic relationship and had children with her husband. Ms. X fled from Guatemala to escape abuse and control, but she will never be able to undo the domestic relationship she entered into because these are facts that cannot be undone.

In determining whether a status is immutable, something that the applicant can or could not change, an adjudicator must consider the “context of the social, political, and historical conditions of the country.” *Id.* “[A]ll relevant evidence should be considered including the applicant’s individual circumstances and country conditions information about the applicant’s society.” *Id.*at 16-17. Country conditions reports regarding Guatemala demonstrate that domestic violence against women is an epidemic in the country. *See* Exs. F-Y. Furthermore, the documentation shows that the male dominated culture in Guatemala accepts such violence against women. *Id*. While Guatemala has passed some laws against domestic violence, a large percentage of domestic violence victims do not report the abuse and do not receive help because of societal perceptions of women and a belief that domestic abuse is a private family manner. *See* Exhs. F, G, I, L, O, Q, R.

Country condition reports demonstrate that Guatemalan women are generally recognizable by others in the society. *See* Exhs. F, G, K, L, N, P-Y. Moreover, the evidence in the instant case demonstrates that Guatemalan women viewed as property are much more likely than other Guatemalans to suffer domestic violence. *Id.* Ms. X's husband’s words and actions demonstrate that he viewed Ms. X as his property. The culture in Guatemala supports her husband’s views and is evidenced by the extensive documentation demonstrating that this particular social group is socially particular because women in Guatemala are viewed as property by virtue of their position in a domestic relationship. *See* Exhs. F, G, K, L, N, P-Y. Therefore, Guatemalan women viewed as property are the type of “cohesive, homogeneous group” that the Board and Ninth Circuit has found to be show sufficient particularity. *See e.g., Perdoma*, 611 F.3d at 666.

The Board has ruled that to have social distinction, there must be evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. *Matter of W-G-R* at 217; see also *In re A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (social visibility must be considered in the context of the country of concern and the persecution feared). Notably, the society need not be able to easily identify who is a member of the group, but it must be commonly recognized that the shared characteristic is one that defines the group. *Matter of W-G-R* at 217.

In Ms. X’s case, the appropriate context is Guatemala, where domestic violence is rampant and women are constantly exposed to the threat of violence from the dominant male figure in their lives, such as their husband or other family member. *See* Exhs. F, G, K, L, N, P-Y. The culture of *machismo* in Guatemala normalizes the widespread belief that women must be subservient to men, that women obtain their identity from and belong to their partners, husbands and fathers, and that intimate relationships should be controlled by the man without any outside intervention. *Id.*  This attitude persists throughout all levels of Guatemalan society.  *Id.*

Country condition reports demonstrate that Guatemalan women are generally recognizable by others in the society. *See* Exhs. F-Y. Moreover, the evidence demonstrates that Guatemalan women viewed as property are much more likely than other Guatemalans to suffer domestic violence. *Id.* As detailed in Ms. X’s declaration, she was viewed both by her partner and the members of her community as his property. *See* Ms. X’s Declaration. The culture in Guatemala supports this view that women are viewed and treated as the property of their husband. This community attitude is evidenced by the extensive documentation demonstrating that this particular social group is socially visible because women in Guatemala are viewed as property by virtue of their position in a domestic relationship. *See* Exhs. G-J, L, Q-W. Therefore, Guatemalan women viewed as property are the type of “cohesive, homogeneous group” that the Board and Ninth Circuit has found to be show sufficient particularity and social distinction. *See e.g., Perdomo*, 611 F.3d at 666.

## Ms. X Was Persecuted on Account of Her Membership in The Particular Social Groups

To qualify for asylum, the applicant must establish the protected ground “was or will be at least one central reason for persecuting the applicant.” 8 U.S.C. § 1158(b)(1)(B)(i) (emphasis added). However, the applicant need not demonstrate that the protected ground will be the dominant central reason. *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2009). “[A] motive is a ‘central reason’ if that motive, standing alone, would have led the persecutor to harm the applicant.” *Id.* To demonstrate a nexus between persecution and a statutorily protected ground, the applicant must provide “direct or circumstantial evidence.” *See Sangha v. INS*, 103 F.3d 1482, 1486-87 (9th Cir. 1997).

DHS has asserted that in cases of domestic violence evidence can demonstrate that an abuser targets the victim because of the “perception of the subordinate status she occupies within that domestic relationship.” DHS L-R- Brief, at 15. DHS argued that this nexus can be demonstrated by actions of the abuser and by general country conditions regarding the status of women in domestic relationships. *Id.* DHS stated that these “factors would work in concert to create the trait which accounts for [the abuser’s] inclination to target her for abuse, whether that trait is interpreted as relating to her being perceived as property by virtue of her status in the domestic relationship, or as relating to her presence in a domestic relationship that she is unable to leave.” *Id.* at 15-16.

The evidence presented supports a finding that men regularly abuse their spouses specifically because they view them as their property. *See* Exhs. G-J, L, R-X. In Ms. X’s case, the evidence demonstrates that her husband abused Ms. X specifically because she was his wife and he believed he could control her and that she could never leave him. *See* Ms. X Declaration. Specifically, her husband told Ms. X that as the woman she could not question his actions and had to do what he wanted. *Id.* Furthermore, Ms. X’s husband knew he could harm her with impunity because she was a woman and his wife, and authorities often do not assist women who are the victims of domestic violence. *See* Exhs. F-Y.

## The Guatemalan Government is Unwilling or Unable to Control Ms. X’s Persecutor

An asylum applicant must demonstrate that the persecution was or will be inflicted by either the government or by persons the government is unable or unwilling to control. *Avetovo-Elisseva*, 213 F.3d at 1196. The applicant is not required to report third-party persecution to the government where it would be futile or result in further abuse. *See Castro-Martinez v. Holder*, 641 F.3d 1103 (9th Cir. 2011) (holding that reporting is not a necessary condition to establish government’s unwillingness to protect from harm); *Afriyie v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010) (holding that an applicant may use generalized country conditions information to show that reporting harm would be futile); *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1057 (9th Cir. 2006) (holding that failure to report is not required if doing so would be futile or subject the applicant).

The evidence in the instant case demonstrates that Guatemala’s laws and customs effectively deprive persons such as Ms. X of any meaningful governmental protection. *See* Exhs. F-Y. Ms. X attempted to report the abuse she suffered but this only resulted in a worse beating from her husband and additional death threats. *Id.* Furthermore, after Ms. X attempted to leave, her husband tracked her down and came with the police to force her to return to him. Id. The police told Ms. X she had to return to her husband despite his abuse as he was her husband. *Id.*

## Ms. X Has an Independent Well-Founded Fear of Persecution On Account of Her Membership In Particular Social Groups

### *Ms. X’s Well-Founded Fear of Persecution Is Subjectively Genuine and Objectively Reasonable*

Because Ms. X can show past persecution, she is entitled to the presumption that her fear of future persecution is well-founded. *See* *Hanna v. Keisler*, 506 F.3d 933, 938 (9th Cir. 2007); *Deloso v. Ashcroft*, 393 F.3d 858, 863-64 (9th Cir. 2005). The burden now “shifts to the government to show, by a preponderance of the evidence, that there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution, or the applicant could avoid future persecution by relocating to another part of the applicant’s country.” *Deloso*, 393 F.3d at 863-64 (internal citation omitted). The government cannot prove either here.

Even without this presumption, Ms. X- has a well-founded fear of future persecution in Guatemala. A “well-founded fear” includes both subjective and objective components. *See* *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430-31 (1987) *See Mgoian v. I.N.S*., 184 F.3d 1029, 1035 (9th Cir. 1999); *Korablina v. INS,* 158 F.3d 1038, 1044 (9th Cir. 1998). An asylum applicant’s well-founded fear of persecution must be subjectively genuine and objectively reasonable to qualify for asylum. An applicant satisfies the subjective component by credibly testifying that he or she genuinely fears persecution. *Id.* An applicant generally satisfies the objective component in one of two ways: either by establishing that she has suffered persecution in the past or by showing that she has a good reason to fear future persecution. *Mgoian v. I.N.S.,* 184 F.3d 1029, 1035 (9th Cir. 1999). Even if there is only a one-in-ten possibility of an event occurring, such a possibility can give rise to a well-founded fear of persecution. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987).

Ms. X’s fear of returning to Guatemala is subjectively genuine. Ms. X’s Declaration. As detailed in Ms. X’s declaration, she is terrified of being harmed once again by her husband and his family. *Id.* She suffered extreme physical and sexual abuse at the hands of her husband for years and knows that domestic violence is a widespread problem and that police often fail to protect women who are victims. *Id.* She is afraid if she returns to Guatemala, her husband fined her and the abuse, control, and violence against her will continue. *Id.*

Ms. X’s fear is also objectively reasonable. As demonstrated by the evidence in this case, women in Guatemala are frequently targeted for violence and are not provided protection. *See* Exhs. F-Y. Therefore, Ms. X has established that she has “good reason to fear future persecution.” *Mgoian v. I.N.S.*, 184 F.3d 1029, 1035 (9th Cir. 1999). *See also, Avetova-Elisseva v. I.N.S.*, 213 F.3d 1192, 1201 (9th Cir. 2000) (finding that the evidence in the record of Armenian harassment in Russia creates “a strong likelihood of persecution, possibly resulting in physical harm or death.”)(internal quotations omitted).

### *The Harm Ms. X Faces Rises to the Level of Persecution*

As discussed *supra*, persecution has been defined as “the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive.” *Li*, 559 F.3d at 1107. It is well established that physical violence is persecution under 8 U.S.C. § 1101(a)(42)(A). *See Li*, 559 F.3d at 1107; *Guo v,* 361 F.3d at 1197-98; *Chand,* 222 F.3d at 1073; *Smolniakova*, 422 F.3d at 1048-49; *Matter of O-Z- & I-Z*, 22 I. & N. Dec. at 25.

The evidence in Ms. X’s case clearly demonstrates that Guatemalan women suffer rampant physical abuse. *See* Exhs. F-Y. Therefore, the harm Ms. X fears rises to the level of persecution.

### *Ms. X Has a Well-Founded Fear of Future Persecution On Account of Her Membership in Particular Social Groups Defined By Marital Status, Gender and Her Defiance of Traditional Gender Roles*

#### **Ms. X Faces Persecution On Account Of Her Membership in a Particular Social Group of Married Guatemalan Women Who Are Unable to Leave the Marital Relationship or Women Who are Viewed as Property in Guatemala**

As discussed *supra*, to qualify for asylum, the applicant must establish the protected ground “was or will be at least one central reason for persecuting the applicant.” 8 U.S.C. § 1158(b)(1)(B)(i) (emphasis added). However, the applicant need not demonstrate that the protected ground will be the dominant central reason. *Parussimova*, 555 F.3d at 741. To demonstrate a nexus between persecution and a statutorily protected ground, the applicant must provide “direct or circumstantial evidence.” *See Sangha*, 103 F.3d at 1486-87.

Country condition evidence demonstrates that Guatemalan women are viewed as property, and as a result, they are often victims of domestic violence. *See* Exhs. G-J, L, Q-W. Moreover, as Ms. X was persecuted for this reason in the past, she possesses a well-founded fear that such persecution would continue if she were returned to Guatemala. After Ms. X fled to the United States, her husband has threatened to harm her if she ever returned to Guatemala. Ms. X Declaration. Her husband has already been deported once and given his violent behavior is likely to deported again. Moreover, he has repeatedly told Ms. X that while he may not be able to get to her in the United States, he will harm her once she is back in Guatemala. His determination to punish Ms. X for trying to escape him, puts her at even greater risk of persecution in the future. *Id.*

#### **Ms. X Faces Persecution On Account Of Her Membership in a Particular Social Group of Women Who Refuse to Conform to Traditional Gender Roles**

 When Ms. X left her partner, she defied him. Ms. X Declaration. Her husband became more enraged after she left him and the country. *Id*. Ms. X’s act of leaving him and the country puts her in even greater danger than she was in when she would leave to stay at her parents’ home, as the level of defiance is much greater. Her husband has taken her departure as serious defiance as well and has made it clear to Ms. X and her mother that he will harm Ms. X if she ever returned to Guatemala. *Id.*

### *The Guatemalan Government is Unable or Unwilling to Protect Ms. X From the Persecution She Faces in Guatemala*

The evidence demonstrates that Guatemala’s laws and even more so, the lack of implementation of the laws, effectively deprive women such as Ms. X of any meaningful governmental protection in Guatemala. Ms. X Declaration; *See* Exhs. F-Y.

### *Ms. X Cannot Avoid Persecution By Reasonable Internal Relocation*

An asylum applicant “does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, if under all the circumstances it would be reasonable to expect the applicant to do so.” 8 C.F.R. § 208.13(b)(2)(ii). In determining whether the possibility of internal relocation is reasonable, “adjudicators should consider, but are not limited to considering, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties.” 8 C.F.R. § 208.13(b)(3). The inquiry is an individualized consideration into the specific facts of the case. *Id*.

It is not reasonable to expect female victims of domestic violence to be safe from their abusers within Guatemala due to the size of the country as well as social and cultural constraints on women in the male-dominated culture in Guatemala. *See* Exhs. F-Y. Ms. X’s husband easily found her when she attempted to relocate within Guatemala. *See* Ms. X Declaration. In fact, when she attempted to internally relocate, the police came with her husband to force Ms. X to return to her husband. *Id.*

## Ms. X Suffered Severe and Atrocious Past Persecution and Faces “Other Serious Harm” and Is Entitled to Asylum Pursuant to 8 C.F.R. § 208.13(b)(1)(iii)(B)

Ms. X is entitled to a grant of asylum even in the absence of a well-founded fear of persecution because her past persecution was severe and atrocious, leaving her with lasting psychological trauma, and because she faces “other serious harm” if she is forced to return to Guatemala. *See* Ms. X’s Declaration; Exh. F-Y; 8 C.F.R. § 208.13(b)(1)(iii)(A); *Matter of Chen*, 20 I&N Dec.16, 21 (BIA 1989). Victims of past persecution who no longer reasonably fear future persecution on account of a protected ground may be granted asylum if they can establish a reasonable possibility that they may suffer other serious harm upon removal to that country. *Belishta v. Ashcroft*, 378 F.3d 1078, 1081 (9th Cir. 2004) (order); *Hanna v. Keisler*, 506 F.3d 933, 939 (9th Cir. 2007.) The fear of future harm need not be related to a protected ground. *Belishta*, 378 F.3d at 1081. There is “no minimum showing of atrocity necessary to warrant” a grant of humanitarian asylum. *Kazlauskas v. INS*, 46 F.3d 902, 907 (9th Cir. 1995).

The harm that Ms. X suffered meets the definition of “severe and atrocious” as she was consistently beaten and raped. *See, e.g., Lopez-Galarza v. INS*, 99 F.3d 954, 962-63 (9th Cir. 1996) (where applicant had been subjected to violent rapes and beatings, the court held that the past persecution was atrocious and severe enough for asylum eligibility even in the absence of a well-founded fear); *Matter of S-A-K- and H-A-H-*, 24 I. & N. Dec. 464 (BIA 2008) (holding that humanitarian asylum was warranted to a mother and daughter who suffered FGM and continue to suffer side effects). The court in *Lopez-Galarza* referred to numerous studies discussing how rape is a severe form of persecution akin to torture and that it has long-lasting psychological effects such as chronic anxiety, depression, and mistrust of others. Lopez-Galarza, 99 F. 3d at 962.

Ms. X also faces “other serious harm” if she returns to Guatemala. 8 C.F.R. § 208.13(b)(1)(iii)(B); *Matter of L-S-*, 25 I. & N. Dec. 705 (BIA 2012) (in “other serious harm” cases focus should include current conditions such as civil strife and psychological harm to the applicant). Ms. X has suffered psychological harm as a result of years of abuse and returning to Guatemala will be detrimental to her health if she had to return to the place where the abuse was inflicted. Furthermore, the country conditions in Guatemala show the ongoing violence against women that plagues the country. *See* Exhs. F-Y.

# In the Alternative, Ms. X Has Established A Clear Probability Of Future Persecution, And Is Thus Entitled to Withholding of Removal

Ms. X also qualifies for withholding of removal under INA § 241(b)(3). Withholding of removal is mandatory if a respondent demonstrates that her life or freedom would be threatened in the country of removal as a result of a protected characteristic. 8 C.F.R. § 208.16(b); *Maldonado-Cruz v. INS*, 883 F.2d 788, 793 (9th Cir. 1989) (overruled on other grounds). This may be shown by establishing a past or future threat to life or freedom. *Id.* Respondent must demonstrate that he experienced past persecution or show that he faces a “clear probability of persecution.” *INS v. Stevic*, 467 U.S. 407, 430 (1984). To so do, she must show that “it is more likely than not that (s)he would be subject to persecution” in the country in which the applicant would be returned. *Id.*at 429-30. An applicant for withholding of removal merits protection from persecution by the Government, or groups the government cannot or will not control. *Navas v. INS*, 217 F.3d 646, 654 (9th Cir. 2000).

If this Court declines to grant asylum, then Ms. X should be granted withholding of removal. If Ms. X returns to Guatemala, there is a very clear probability that her life or freedom will be threatened by her former partners. As established, Ms. X has suffered past persecution on account her membership in a particular social group and is entitled to a presumption that her life or freedom will be threatened in the future. 8 C.F.R. § 208.16(b)(1). This presumption may only be rebutted if the government demonstrates by a preponderance of the evidence that there has been a fundamental change in circumstances or that she could avoid a future threat by reasonable relocation or another part of the country of removal. 8 C.F.R. 208.16(b)(1)(i)-(ii). As discussed, the government cannot show either. In addition, she has established that it is more likely than not that she will be subjected to future persecution on the basis of her membership in a particular social group and that she cannot avoid that threat by relocating within Guatemala. Thus, Ms. X is eligible for withholding of removal on the basis of a past and future threat to life or freedom.

# In the Alternative, Ms. X is Eligible for Relief Under the Convention Against Torture

In the event the Court does not grant Ms. X asylum or withholding of removal, Ms. X respectfully requests relief from removal under the Convention Against Torture. The United States is a party to the United Nations Convention Against Torture (“CAT”). The CAT is a multilateral treaty designed to prevent torture and to compensate victims of torture. Article 1 of the CAT defines torture as follows:

For purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted upon a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent in, or incidental to lawful sanctions (emphasis added).

This definition has been incorporated into United States law as 8 C.F.R. § 208.18(a). Pursuant to 8 C.F.R. § 208.16(c), deferral of removal under CAT is mandatory relief available where Respondent establishes “it is more likely than not” that he or she would be tortured in the proposed country of removal.” 8 C.F.R. § 208.16(c)(2); see 64 Fed. Reg. 8478, 8480 (Feb. 19, 1999). Acquiescence requires that “the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.” 8 C.F.R. § 208.18(a)(7). In consideration of a request for CAT relief, the Court should consider, among other factors, evidence of past torture; evidence of reasonable relocation in the country of removal; evidence of gross, flagrant or mass violations of human rights within the country of removal; and other relevant country conditions. 8 C.F.R. § 208.16(C)(3).

Ms. X was beaten, raped, and fears her husband and his family will beat and kill her if she returns to Guatemala. *See* Ms. X’s Declaration. In Ms. X’s testimony and the evidence provided demonstrate that authorities in Guatemala do not protect women against the violence perpetuated against a spouse or domestic partner.  *Id.; see also* Exhs. F-Y. The authorities perceive domestic violence as a personal family issue in which the government or law enforcement should get involved. *See* Exhs. G-L, O-P. Thus, the government knowingly acquiesced and condoned the persecution Ms. X suffered, and will continue to do if she returns. *Id.* For all the above stated reasons, relocation within Guatemala is neither possible nor reasonable. As such, Ms. X has demonstrated that she is entitled to relief under CAT.

# Conclusion

For the foregoing reasons, Ms. X respectfully requests that this Court GRANT her Request for Asylum, or in the Alternative, Withholding of Removal or Deferral of Removal Under the Convention Against Torture.

Dated: 2014 Respectfully submitted,

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 NAME

 Pro Bono Attorney for Respondent

**CERTIFICATE OF SERVICE**

I, Eleni Wolfe-Roubatis, am over the age of 18 and not a party to this matter, hereby certify that I delivered a copy of the foregoing Respondent’s Brief and Supporting Documentation to ICE/DHS Office of the District Counsel, located at 100 Montgomery Street, Suite 200, San Francisco CA 94104.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CONTACT INFO

Date: 12/2014

1. In the interests of economy, rather than account all of the facts of Ms. X’s Declaration here, the Statement of Facts is a summary of the facts contained within the declaration. Accordingly, Ms. X hereby incorporates the contents of her Declaration, previously submitted with Form I-589. [↑](#footnote-ref-2)