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Amicus Brief Filed by CGRS in S-G-C-

Overview of the Attached Brief

The attached amicus brief was filed by the Center for Gender & Refugee Studies (CGRS or Center) to the Board of Immigration Appeals (BIA) on November 22, 2006 in the matter of S-G-C-. Identifying information has been redacted in accordance with the wishes of the applicant. The brief addresses domestic violence as a basis for asylum and argues that “women in the Dominican Republic who are unable to leave their marital relationship” is a particular social group.

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Amicus Curiae in Support of Respondent [REDACTED]

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS**

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In the Matter of:)
)
[REDACTED])
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In Removal Proceedings)
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FILE No.: [REDACTED]

BRIEF OF AMICUS CURIAE

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Statement of *Amicus Curiae*

Amicus Center for Gender & Refugee Studies (CGRS), based at the University of California, Hastings College of the Law, has a direct and serious interest in the development of immigration law and in the issues under consideration. Founded in 1999, CGRS provides legal expertise and resources to attorneys representing women asylum-seekers fleeing gender-related harm and is directly involved in national asylum law and policy across a wide range of issues. As recognized experts on asylum law and with an interest in the development of U.S. jurisprudence consistent with relevant domestic and international refugee and human rights law, the questions under consideration implicate matters of great consequence to *amicus*, involving important principles of jurisprudence and statutory construction, with broad ramifications for the uniform administration of the law.

Introduction

Ms. [REDACTED] a citizen of the Dominican Republic, arrived in the United States without inspection on July 11, 2001 in Texas. She was placed in removal proceedings on August 12, 2004, and sought asylum and withholding of removal, as well as protection under the Convention Against Torture (CAT). Hearings took place on [REDACTED] [REDACTED] and [REDACTED] after which Immigration Judge (IJ) Eliza C. Klein issued a decision (hereinafter “IJ Dec.”). IJ Klein found Ms. [REDACTED] to be credible. (IJ Dec. at 11). The IJ also held that Ms. [REDACTED] [REDACTED] was excused from the one-year bar, because she had established extraordinary circumstances due to her “youthful age” at entry and the fact that she was suffering from Post-Traumatic Stress Disorder, as well as adjustment and depression disorders. (IJ Dec. at 2). However, the IJ ruled that Ms. [REDACTED] had failed to establish eligibility for asylum, withholding, and relief under the Convention Against Torture, because she had not suffered past persecution, she was not a member of a cognizable social group, nor had she been persecuted on any of the other enumerated grounds, and her risk of future harm was not well-founded because its likelihood was less than ten percent. (IJ Dec. at 11-13). Ms. [REDACTED] filed a timely appeal to the BIA and *Amicus* submits this brief in support of her appeal.¹

Statement of Facts

[REDACTED] [REDACTED] [REDACTED] was born on [REDACTED] in [REDACTED] [REDACTED], Dominican Republic (Transcript of the hearing (hereinafter “Tr.”) at 20), a

¹ Ms. [REDACTED] eligibility for a waiver of the one-year bar is not at issue before the BIA because the IJ ruled that Ms. [REDACTED] was eligible for a waiver and the government did not reserve the right to appeal that ruling.

² “[REDACTED]” is erroneously spelled “[REDACTED]” in the transcript.

country that the Department of State characterizes as having “serious problems” including “violence and discrimination against women[.]”³ She began school at the age of nine and was only able to attend until the third grade. (Tr. at 20). She suffered difficulties at home; her brother was abusive, and would force her to clean, and yell at her if she was not working. At the age of fourteen, she fled into a marital-like relationship with [REDACTED] a man twice her age, to escape the exploitative conditions at home. (Tr. at 21-23). However, shortly after moving in with [REDACTED] Ms. [REDACTED] [REDACTED] began experiencing abuse so severe that it would eventually cause her to flee for her life to the United States, leaving her daughter behind with her mother. (Tr. at 21).

From the start, [REDACTED] asserted that because they were in a relationship, he owned Ms. [REDACTED] and could do whatever he wanted to her. “Because ... he was older than I was, and I was just a girl, he always felt that I had to be with him – than [sic] he own[ed] me and [I had to] do whatever he wanted me to do.” (Tr. at 23). He forced her to comply with his idea of a female role by demanding that she clean and cook; if she resisted, he threw food at her. On other occasions when she did not do what he requested he called her derogatory names such as “bitch” and “slut.” (Tr. at 23-25, 28; Decl. of [REDACTED] [REDACTED] Group Exhibit 4, at 2-4). This abuse was a constant presence in her life, and became even worse after the birth of their daughter on [REDACTED] (Tr. at 24, 33).

When Ms. [REDACTED] protested against his domination and stood up for her rights, [REDACTED] screamed at her, slapped her across the face, forcefully kicked her (causing chronic hip and back pain), and threw her to the floor. (Tr. at 24, 28; Decl. of

³ Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, Dominican Republic -- Country Reports on Human Right Practices 2004, (February 2005) (hereinafter “2004 Country Reports”), Group Exhibit 4, at 53.

██████████ ██████████ Group Exhibit 4, at 3). He exerted complete control over all aspects of her life. (Tr. at 23-26, 32). In April 1999, while Ms. ██████████ was visiting a friend's house, ██████████ insisted that he come to pick her up. After he came for her, and they arrived home, he began verbally berating her — calling her a “prostitute”— and then he attacked her, beating her violently on her shoulders and face. (Tr. at 24-25). He punched the side of her head with such force that her right ear started to bleed, but he still continued to beat her and threw her to the floor. (Tr. at 25-26; Decl. of ██████████

██████████ Group Exhibit 4, at 3). Scared for her life, Ms. ██████████ fled to seek protection at her mother's house in ██████████, which is an hour's distance from where she resided with ██████████ (Tr. at 25, 30). However, three days later, ██████████ found her and forced her to return to him. (Tr. at 25-26).

It was around this time period that ██████████ began violently raping Ms. ██████████ ██████████ on a regular basis. (Tr. at 26). When Ms. ██████████ tried to resist and assert her right to physical integrity, ██████████ threatened to kill her and told her that because they were married, he could have sex with her and beat her whenever he wanted. (Tr. at 26-27). He continued to rape her almost nightly. (Tr. at 27, 33).

As a result of ██████████ beatings, Ms. ██████████ right ear became black and inflamed, and she had to go to the hospital to obtain medical treatment. She was afraid to tell anyone at the hospital about the abuse, because ██████████ had threatened to kill her if she reported the violence. (Tr. at 26; Decl. of ██████████ ██████████ Group Exhibit 4, at 4). Such threats were not to be taken lightly since domestic violence is the fourth leading cause of death of women in the Dominican Republic.⁴ In fact, 10 to 15

⁴ Human Rights Watch, “A Test of Inequality: Discrimination against Women Living with HIV in Dominican Republic,” <http://hrw.org/reports/2004/dr0704>, 2004, Group Exhibit 4, at 88.

women are reported to die each month from reported domestic violence in that country, and this number may not fully reflect the actual killings, since many cases go unreported.⁵ She did, however, tell the hospital staff about the abuse. Two weeks after this severe injury to the ear, and following another atrocious physical attack in which [REDACTED] punched her in the nose, causing it to bleed, Ms. [REDACTED] took the brave step of reporting the beatings to the police. (Tr. at 27; Decl. of [REDACTED] [REDACTED] [REDACTED] Group Exhibit 4, at 5).

After filing the police report, Ms. [REDACTED] fled an hour away to her sister's house. The police had promised her that they would arrest [REDACTED] (Tr. at 27-28). This turned out to be an empty promise; the police took no action to investigate [REDACTED] crimes against Ms. [REDACTED] nor did they take any steps whatsoever to arrest him. (Tr. at 28).

The failure of the police to take any action to protect Ms. [REDACTED] or to investigate and prosecute [REDACTED] confirmed Ms. [REDACTED] fears that it was useless – or worse – to report the abuse to the police. Ms. [REDACTED] had worried about possible police inaction before reporting her own brutal abuse because a neighbor, who had been abused by her husband, had also reported the violence she had endured, but the police did nothing. (Decl. of [REDACTED] [REDACTED] Group Exhibit 4, at 5). Ms. [REDACTED] personal experience with the police is corroborated by country condition evidence, which states that despite the existence of laws against

⁵ 2004 Country Reports, at Group Exhibit 4, at 67.

domestic violence in the Dominican Republic, almost half of the women victims do not report it because it is “no use.”⁶

Unfortunately for Ms. [REDACTED] [REDACTED] was once again able to discover her whereabouts by making inquiries. When he learned that she was hiding at her sister’s house in [REDACTED] (half an hour’s distance from Ms. [REDACTED] mother), he arrived there and threatened to kill Ms. [REDACTED] if she did not return with him. (Tr. at 28-30, 32). He told her “a lot of men here in the Dominican Republic kills [sic] their wives and nothing happens to them.” (Tr. at 29). Ms. [REDACTED] [REDACTED] felt that she had no alternative but to return to the man who had raped her and brutally beat her. (Tr. at 29).

Ms. [REDACTED] brother and sister were present when [REDACTED] arrived at her sister’s house and forced her to return with him. Appalled by the escalation of violence against their sister, they promised Ms. [REDACTED] that they would help her escape, as they realized that this would be the only way she would be safe. (Tr. at 29, 32). “[M]y sister and my brother told me that I should go with him so nothing could happen. So, on that time [sic] they could get the money so I could leave.” (Tr. at 29). Three weeks later, Ms. [REDACTED] fled from [REDACTED] once again, hiding at the home of a family friend who lived in the [REDACTED] [REDACTED]. This time she was successful at evading him for the two months she remained there until she left for the U.S. in July 2001. (Tr. at 32, 42). Upon arriving in the U.S., Ms. [REDACTED] attempted to start a new life, but was profoundly affected by the trauma and depression she suffered as a result of the violent abuse she had endured. She felt fearful, and lived in a state of

⁶ Kishor, Sunita and Kierston Johnson, “Profiling Domestic Violence – A Multi-Country Study” (2004) (hereinafter “Kishor Report”), Group Exhibit 4, at 159-160.

uncertainty. (Tr. at 34-35, 47, 59). Ms. [REDACTED] fear was exacerbated when she learned from her mother that [REDACTED] was still asking about her. (Tr. at 50).

Argument

I. The IJ Erred in Holding That Ms. [REDACTED] Did Not Suffer Past Persecution “on Account of” Her Particular Social Group and Political Opinion

In order to establish eligibility for asylum based on past persecution, an applicant must establish that the harm rises to the level of persecution; that it is on “account of” one of the five statutorily-protected grounds; and that the persecutor is the government or a non-governmental actor which the government is unwilling or unable to control. *Navas v. INS*, 217 F.3d 646, 655-656 (9th Cir. 2000); *Chen Yun Gao v. Ashcroft*, 299 F.3d 266, 272 (3d Cir. 2002); *Matter of S-A-*, 22 I&N Dec. 1328, 1334-35 (BIA 2000).

Through her credible testimony, Ms. [REDACTED] has established that she has suffered repeated rapes and beatings, numerous death threats, and degrading and controlling treatment by her common-law spouse, [REDACTED]. Under well-established law, this harm clearly rises to the level of persecution.

In addition, Ms. [REDACTED] testimony clearly indicates that she was persecuted on account of her membership in a social group defined by nationality, gender and inability to leave the marital relationship. She was also persecuted on account of her political opinion that her common-law spouse did not have the right to beat and subordinate her. Moreover, the record undoubtedly establishes that the government was unable and unwilling to control [REDACTED]. The IJ’s contrary rulings on these issues are clearly erroneous and must be reversed.

A. The IJ Committed a Legal Error in Finding That Ms. [REDACTED] [REDACTED] Has Not “Ever Been Persecuted in the Past.”

Despite finding Ms. [REDACTED] to be consistent and credible in her testimony about her repeated rapes, severe beatings and hospitalization, and [REDACTED] complete control over her life, the IJ found that Ms. [REDACTED] had not “*ever been persecuted in the past.*” (IJ Dec. at 12) (emphasis added). In doing so, the IJ conflated the issue of whether a harm constitutes persecution with the question of whether a nexus between that harm and a statutorily protected ground has been established. This analysis is legally erroneous and must be reviewed *de novo*, because it is well established that assessing whether a harm rises to the level of persecution is a separate and distinct inquiry from whether the harm is perpetrated on account of a statutorily protected ground. *See Matter of C-A-L-*, 21 I&N Dec. 754, 756 (BIA 1997) (an asylum applicant must first establish that a “reasonable person” in his circumstances would fear persecution, and in addition, prove that his well-founded fear is “on account of” one of the five statutory grounds); *Matter of Acosta*, 19 I&N Dec. 211, 219 (BIA 1985), *overruled in part by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987) (section 101(a)(42)(A) of the Immigration and Nationality Act “creates four separate elements that must be satisfied before an alien qualifies as a refugee”); 8 C.F.R. § 1003.1(d)(3) (BIA reviews questions of law *de novo*).

Because she employed an improper analysis, the IJ reached the erroneous conclusion that Ms. [REDACTED] did not suffer past persecution. In fact, courts have repeatedly found harms of the type that Ms. [REDACTED] endured to constitute persecution. *See Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1088 (9th Cir. 2005) (forced sex is past persecution); *Shoaf 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.) (en banc) (1996)); *Kovac v. INS*, 407 F.2d 102, 106-107 (9th Cir. 1969) (in amending section 243(h), Congress intended for persecution to include more than bodily harm: “tyranny over the mind and spirit of a person has been demonstrated as more fearsome than the ancient measures of torture”). Because the harm suffered by Ms. [REDACTED] clearly constitutes persecution, the BIA must reverse the IJ’s finding that she has not been “persecuted in the past.”

B. Ms. [REDACTED] Suffered Past Persecution on Account of Her Membership in a Particular Social Group Defined by Nationality, Gender and Inability to Leave the Marital Relationship.

i. The IJ Erred in Characterizing Ms. [REDACTED] Particular Social Group as Battered Women in the Dominican Republic

In denying the cognizability of Ms. [REDACTED] social group, the IJ characterized it as *battered* women in the Dominican Republic. (IJ Dec. at 3) (emphasis added). This characterization improperly conflates the harm with the social group definition. The appropriate social group characterization, as discussed below, is women in the Dominican Republic who cannot leave their marital relationship. The determination of whether a social group is cognizable is a legal issue and must be reviewed *de novo*.

ii. Ms. [REDACTED] Belongs to a Particular Social Group of Women in the Dominican Republic Who Are Unable to Leave Their Marital Relationship

In its seminal decision, *Matter of Acosta*, the BIA held that a social group is defined by a “common, immutable characteristic” that the members “either cannot change, or should not be required to change because it is fundamental to their individual identities or conscience.” 19 I&N Dec. at 233. Numerous federal circuits have adopted the standard set out in *Acosta*. See, e.g., *Lukwago v. Ashcroft*, 329 F.3d 157, 170-73 (3d Cir. 2003); *Lwin v. INS*, 144 F.3d 505, 510-513 (7th Cir. 1998); *Alvarez-Flores v. INS*, 909 F.2d 1, 7 (1st Cir. 1990). Ms. [REDACTED] social group is women in the Dominican Republic who cannot leave their marital relationship; it is thus defined by her nationality, gender and inability to leave her relationship, and meets the standard set forth in *Acosta*, and elaborated upon in subsequent BIA and federal court decisions.

In *Acosta*, the BIA explicitly recognized sex or gender as the type of characteristic which could define a particular social group. *Matter of Acosta*, 19 I&N Dec at 214. It reaffirmed this position in *Matter of Kasinga*, 21 I&N Dec. 357, 365-66 (BIA 1996) (“young women of the Tchamba-Kunsuntu Tribe who have not had FGM, as practiced by that tribe, and who oppose the practice”). Numerous federal circuits, including the Second Circuit, have accepted social groups defined by gender in combination with other immutable or fundamental characteristics. In *Gao v. Gonzales*, the Second Circuit applied *Acosta* in recognizing a social group defined by nationality, gender, and subjection to forced marriage. 440 F.3d 62, 69-70 (2d Cir. 2006) (“Gao’s social group consists of women who have been sold into marriage (whether or not that marriage has yet taken place) and who live in a part of China where forced marriages are considered

valid and enforceable.”).⁷ *See also, Fatin v. INS*, 12 F.3d 1233, 1239 (3d Cir. 1993) (sex is an innate characteristic that can define members of a social group); *Niang v. Gonzales*, 422 F.3d 1187, 1198 (10th Cir. 2005) (women in the Tukolor Fulani tribe constitute a cognizable social group).

Ms. [REDACTED] particular social group defined by her gender, nationality, and inability to leave the marital relationship, meets the requirements of *Gao, Acosta*, and its progeny. In addition to gender and nationality, which are both immutable and fundamental, Ms. [REDACTED] inability to leave the relationship is a characteristic that further defines her social group. The Department of Homeland Security has taken the position that marital or common-law relationships may be immutable where the abusing partner will not allow the abused spouse to leave. *See* DHS’s brief to the Attorney General in *Matter of R-A-*, A73-753-922, at 21 (DOJ, Feb. 19, 2004); *see also* U.S. Dep’t of Justice, Proposed Asylum Rule, 65 Fed. Reg. 236, at 76593 (December 7, 2000). The record clearly establishes that [REDACTED] viewed his marital-like relationship with Ms. [REDACTED] as being immutable, and there was nothing she could do to leave him and change her relationship status. Ms. [REDACTED] fled an hour away from [REDACTED] numerous times, and each time, he would track her down and force her to return. (Tr. at 28, 32-33). [REDACTED] behavior is consistent with that of other abusive males in the Dominican Republic, who become even more violent when their victims attempt to leave the relationship. *See* International Planned Parenthood

⁷ The court clarified its earlier decision in *Gomez v. INS*, 947 F.2d 660 (2d Cir. 1991), which has been improperly interpreted as limiting the recognition of gender-defined social groups. In *Gao*, the court explained that the issue in *Gomez* was not that a social group could not be defined by gender in combination with other attributes, but that in the circumstances of *Gomez*, there was no indication that the particular social group of young Salvadoran women who had been battered and raped in the past would be identifiable and targeted for persecution on account of their membership in this social group. *Gao v. Gonzales*, 440 F.3d 62, 70 (2d Cir. 2006).

Federation, “Providers Need Both Ongoing Training and Care,” March 2002 newsletter, Group Exhibit 4, at 32 (women in the Dominican Republic face danger if they leave their abuser).

In its recent decision, *Matter of C-A-*, the BIA engrafted social visibility onto the *Acosta* standard, stating that it requires that the group be recognized within a society. 23 I&N Dec. 951 (BIA 2006). In *Matter of C-A-*, the Board found that a group of former noncriminal drug informants working against the Cali drug cartel does not have the requisite social visibility to constitute a “particular social group” because persons working as informants are not generally known to society as informants. 23 I&N at 960-61. In contrast, the record in this case is replete with evidence demonstrating that women in marital or common-law relationships are recognized as a group in the Dominican Republic. Recognition of the victimized status they hold within the society is evident by the enactment of many anti-domestic violence laws which unsuccessfully attempt to stem the endemic violence against them. *See* IPS-Inter Press Service, “HIV/AIDS: Dominican women face double discrimination,” July 13, 2004 (hereinafter “IPS Article”), Group Exhibit 4, at 22 (27% of women in the Dominican Republic suffer from domestic violence); Human Rights Watch, “A Test of Inequality: Discrimination against Women Living with HIV in Dominican Republic,” (hereinafter “HRW Report”), Group Exhibit 4, at 87 (women are expected to submit to male authority); 2004 Country Reports, Group Exhibit 4, at 53, 59, 67 (serious problems include violence and discrimination against women; there is a law against domestic violence, but monitoring and sanctioning systems for human rights abuses are ineffective); Marilyn Shapiro, “The Law; Cultural Biases at Issue in a Tarrytown Murder,” *New York Times*, May 28, 2000 (hereinafter

“NYT Article”), Group Exhibit 4, at 26-28 (describing the murder of a woman from the Dominican Republic by her ex-boyfriend, and discussing the weakness of the judicial system and a cultural tolerance for the murder of women by “husbands who believe their wives have disrespected them”). Over one-quarter of the women in the Dominican Republic are abused, and about half of abused women do not report the abuse because they know it is “no use.” IPS Article, Group Exhibit 4, at 22; Kishor Report, Group Exhibit 4, at 159. Ms. [REDACTED] and her violent common-law spouse, [REDACTED] were aware of the pervasive attitudes in society which allow women’s rights to be violated with impunity. Ms. [REDACTED] testified that the police refused to take any action when both she and her neighbor went to the police to report their abuse, (Tr. at 27-28; Decl. of [REDACTED] [REDACTED] Group Exhibit 4, at 5) and [REDACTED] bragged about the fact that men could beat, rape and kill their wives with impunity in the Dominican Republic. (Tr. at 27, 29).

iii. Ms. [REDACTED] Was Persecuted on Account of Her Membership in This Particular Social Group

The statutory phrase “on account of” requires an asylum applicant to demonstrate a nexus between the persecution and one of the protected grounds. *See INS v. Elias-Zacarias*, 502 U.S. 478, 482-83 (1992). While the protected ground need not be the sole reason for the persecution, it must be “at least one central reason for persecuting the applicant.” INA § 208(b)(1)(B)(i). As established in the preceding section, Ms. [REDACTED] is a member of a particular social group defined by her gender, her nationality, and her inability to leave her common-law spouse.

The IJ ruled that Ms. ██████████ failed to establish nexus; however, the evidence demonstrates that Ms. ██████████ membership in this social group was a central reason for ████████ years of brutal beatings, rapes, and verbal abuse. The IJ's ruling that Ms. ██████████ failed to establish a nexus is clearly erroneous and must be reversed.

Ms. ██████████ testified that her common-law partner believed he had the right to brutally abuse her because she was a woman in a relationship with him, and he knew that she could not leave him. ████████ made it clear that he considered Ms. ██████████ ██████████ to be his property, and that he could treat her however he wished. For example, while raping Ms. ██████████ ████████ stated, “[I]f I catch you ever with another person, I’m going to kill you[,]” and that men married women so that they could do whatever they want to them. (Tr. at 26-27). When she fled, and he tracked her down, he told her that she must return and stay with him, or he would kill her. (Tr. at 29, 33).

The socio-cultural, legal, political, and judicial context in which the harm takes place may further shed light on the persecutor's motivation. Proposed Asylum Rule, 65 Fed. Reg. 236, at 76593; DHS Brief, *Matter of R-A-*, at 36. Patterns of violence in a society against individuals similarly situated to the applicant, and evidence that violence is supported by the legal system or social norms should be considered when making an “on account of” determination. Proposed Asylum Rule 65 Fed. Reg. 236, at 76593; DHS Brief, *Matter of R-A-*, at 36. The record verifies that domestic violence is rampant in the Dominican Republic, and that an abuser can act with impunity. 2004 Country Reports, Group Exhibit 4, at 67 (10 to 15 women die each month from domestic violence in the Dominican Republic); NYT Article, Group Exhibit 4, at 26-28 (regional judicial and law

enforcement branches are independent of the national branches, so they do not necessarily enforce national rulings on domestic violence). [REDACTED] knew that the authorities in the Dominican Republic would not protect Ms. [REDACTED] and this further motivated his attacks upon her. [REDACTED] explicitly spoke of the impunity that he would enjoy – even if he killed her – telling her that “A lot of men here in the Dominican Republic kills [sic] their wives and nothing happens to them.” (Tr. at 29). On these facts, it is clear that [REDACTED] was motivated to beat, rape, and verbally terrorize Ms. [REDACTED] because she was a woman in a relationship that he would not permit her to leave.

The IJ’s ruling that Ms. [REDACTED] was not harmed on account of her membership in a particular social group is not only clearly erroneous, but puzzling. The IJ herself conceded that [REDACTED] “harmed her on account of her being female. On account of his belief that because she was living with him, he had the right to mistreat her, and that the authorities would do nothing.” (IJ Dec. at 9). This observation alone should have resulted in a finding that Ms. [REDACTED] was persecuted on account of her membership in a particular social group defined by nationality, gender, and intimate partner relationship. The IJ’s findings to the contrary are legally erroneous and must be reversed.

C. Ms. [REDACTED] Suffered Past Persecution on Account of Her Political Opinion

Ms. [REDACTED] believed that her common-law spouse did not have the right to beat and subordinate her. She expressed her opinion by resisting [REDACTED] demands of sex, and rejecting societal views that women should be subordinate to men. She also expressed her opinion by leaving [REDACTED] and reporting the abuse to the police. Ms.

██████████ beliefs constitute political opinions within the meaning of the Refugee Act. Furthermore, the record clearly indicates that in response to her belief, ██████ abuse escalated. The IJ ruled that the harm Ms. ██████ suffered was not on account of any of the grounds – including political opinion. (IJ Dec. at 9). The IJ’s decision was undeniably erroneous because Ms. ██████ opinion is a political opinion, and the evidence establishes that ██████ abused Ms. ██████ because of her political opinion.

i. Ms. ██████ Belief That Her Common-Law Spouse Did Not Have the Right to Beat and Subordinate Her Was an Expression of Political Opinion

“Political opinion” has a broad meaning and is not limited to traditional concepts of political parties or partisan politics. *See, e.g., Sagaydak v. Gonzales*, 405 F.3d 1035, 1041-45 (9th Cir. 2005) (retaliation against auditor for exposing corruption is persecution on account of political opinion); *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993) (feminism can be a political opinion); *Chang v. INS*, 119 F.3d 1055, 1062 n.4 (3d Cir. 1997) (refusal to report persons who violate China’s security rules is political opinion). Political opinion has a broad meaning and may be expressed through actions as well as words. *See, e.g., Osorio v. INS*, 18 F.3d 1017, 1031 (2d Cir. 1994) (applicant’s activities express the “political opinion that strikes by municipal workers should be legal and that workers should be given more rights”); *Rivas-Martinez v. INS*, 997 F.2d 1143, 1148 (5th Cir. 1993) (utterances against the guerrillas constitute a political opinion). Ms. ██████ ██████ opinions that she did not have to have sex with ██████ just because they were common-law partners, that she was not required to follow his demands, and that she had

the right to attempt to leave him, and to seek police protection, all meet the definition of “political opinion” within the meaning of the Refugee Act. (Tr. at 26-27).

ii. Ms. [REDACTED] Suffered Past Persecution on Account of Her Political Opinion

Ms. [REDACTED] testimony establishes that [REDACTED] harmed her because of her political opinion. [REDACTED] had a definite opinion about the role of men and women in relationships, and he demanded complete control over Ms. [REDACTED] life and body. When Ms. [REDACTED] challenged his opinion by resisting his demands and control, [REDACTED] would violently retaliate by hurling abuses at her, raping and beating her and threatening her life. As Ms. [REDACTED] credibly testified: “I asked him to stop, but he continued. He ... told me that’s why somebody married somebody – to have sex anytime and [so that] he can hit me whenever he wants, that’s why they get married.” (Tr. at 27). [REDACTED] would not permit Ms. [REDACTED] to challenge him in any respect; he viciously beat her, causing her nose to bleed, because she refused to stop what she was doing and cook him dinner as is expected in Dominican society. (Tr. at 28). On another occasion, [REDACTED] brutally attacked Ms. [REDACTED] because she resisted his orders and wore the clothes she wanted to wear; this beating was so severe it has resulted in chronic back problems. (Tr. at 24; Psychological Evaluation, Group Exhibit 4, at 8). *See also* Kishor Report, Group Exhibit 4, at 186 (“[A]n individual woman’s expression of empowerment can result in violence when such behavior is perceived as violating normative gender roles.”). The fact that her expression of her opinion often preceded extreme abuse demonstrates that her opinion of resistance was a central reason for the persecution she suffered. [REDACTED] behavior is consistent with authoritative opinion that

“men use violence against women as a way of disciplining women for transgressions of traditional female roles or when they perceive challenges to their masculinity.”⁸

D. Ms. [REDACTED] Was Persecuted on Account of Her Imputed Political Opinion

Persecution “on account of” political opinion also includes persecution that is inflicted because of a political belief that is attributed to the victim by the persecutor. *See, e.g., Kumar v. Gonzales*, 435 F.3d 1019, 1029-30 (9th Cir. 2006); *Gao v. Gonzales*, 424 F.3d 122, 129 (2d Cir. 2005); *Nakibuka v. Gonzales*, 421 F.3d 473, 478-79 (7th Cir. 2005); *Lazo-Majano v. INS*, 813 F.2d 1432, 1435 (9th Cir. 1987) *overruled in part by Fisher v. INS*, 79 F.3d 955 (9th Cir) (en banc) (1996). Ms. [REDACTED] was also persecuted on account of her imputed political opinion of a woman’s right to be free of her spouse’s domination and abuse. [REDACTED] viewed Ms. [REDACTED] attempts to assert her rights as an expression of her beliefs that men do not have the right to subjugate and abuse their female partners. He retaliated against her resistance by beating, raping, and threatening to kill her. (Tr. at 26-29, 32-33). [REDACTED] persecution was on account of Ms. [REDACTED] imputed political opinion of the right to physical and emotional integrity in an intimate relationship.

II. Because Ms. [REDACTED] Has Established That She Suffered Past Persecution on Account of Her Social Group Membership and Political Opinion, She Is Entitled to a Presumption of a Well-Founded Fear of Future Persecution

Ms. [REDACTED] suffered past persecution on account of her social group and political opinion, and therefore, she is entitled to a presumption of a well-founded fear of future persecution. 8 C.F.R. § 208.13(b)(1). The government bears the burden of

⁸ World Health Organization, “Intimate Partner Violence and HIV/AIDS,” WHO Information Bulletin Series, Number 1, *available at* <http://www.who.int/gender/violence/en/vavinformationbrief.pdf>.

overcoming this presumption by proving by a preponderance of the evidence that there have been changed circumstances in the applicant's home country so that she no longer has such a fear, or that the applicant can avoid future persecution through reasonable internal relocation. 8 C.F.R. § 208.13(b)(1)(i)(A)-(B).

The government did not offer any evidence to rebut the presumption of a well-founded fear of future persecution, and the record evidence demonstrates that conditions for women remain dire. Ms. [REDACTED] suffered her abuse in 2002; the 2004 State Department Country Conditions Report states that domestic violence continues to be a serious problem in the Dominican Republic, and 10 to 15 women are killed each month by their partners. (Group Exhibit 4, at 67). This is more than two years after Ms. [REDACTED] suffered horrific abuse at the hands of her common-law spouse. Clearly, Ms. [REDACTED] still has a reasonable fear that if she returns to the Dominican Republic the persecution will continue with impunity.

The government argued, and the IJ ruled, that Ms. [REDACTED] would be able to reasonably relocate within the Dominican Republic, and that she could "retain protection by residing with family members." (IJ Dec. at 3). However, this finding has no basis in the record, which actually supports the opposite conclusion – that she cannot escape her persecutor. On two occasions, Ms. [REDACTED] fled and sought protection at a family member's house that was more than an hour away from where [REDACTED] resided. (Tr. at 25, 28, 30). Each time, [REDACTED] searched for and found Ms. [REDACTED] and forced her to return to him. (Tr. at 29, 32-33). Ms. [REDACTED] was not able to find protection with her family members, and the IJ's contrary finding is not supported by the facts, nor by the law. *See, e.g., Gao v. Gonzales*, 440 F.3d 62, 71-72 (2d

Cir. 2006) (Gao was found unable to reasonably relocate in China where fiancé had previously searched for and found her when she was seeking refuge an hour away).

III. Ms. [REDACTED] Suffered Severe and Atrocious Past Persecution and Faces “Other Serious Harm” and Is Entitled to Asylum

Ms. [REDACTED] is entitled to a grant of asylum even in the absence of a well-founded fear of persecution because her past persecution was undeniably severe and atrocious, leaving her with lasting physical injuries and psychological trauma, and because she faces “other serious harm” should she return to the Dominican Republic. (Tr. at 34-35, 59); 8 C.F.R. § 208.13(b)(1)(iii)(A); *Matter of Chen*, 20 I&N Dec.16, 21 (BIA 1989).

The jurisprudence is clear that the harm that Ms. [REDACTED] suffered meets the definition of “severe and atrocious.” *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). 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. Therefore, the past persecution of repeated rapes, mental torment, and beatings suffered by Ms. [REDACTED] clearly rises to the level of severe and atrocious. (Tr. at 23-29, 33).

Ms. [REDACTED] also faces “other serious harm” if she returns to the Dominican Republic. 8 C.F.R. § 208.13(b)(1)(iii)(B). Ms. [REDACTED] was examined by a pre-doctoral psychology intern and a supervising psychologist. Her psychological evaluation and the expert opinion of the pre-doctoral intern established that

she is suffering from depression, anxiety, and Post-Traumatic Stress Disorder, and that continued therapy and medicine are necessary to address her fragile mental state. (Tr. at 58-59; Psychological Evaluation, Group Exhibit 4, at 9-10). If Ms. [REDACTED] is forced to return to the Dominican Republic, it is unlikely that she will be able to receive the medical treatment she needs. International Planned Parenthood Federation, “Incorporating Personal Experience and Perceptions into GBV Sensitization and Training,” Winter 2001 newsletter, Group Exhibit 4, at 41 (health care providers in the Dominican Republic do not know how to adequately respond to victims of domestic violence); 2004 Country Reports, Group Exhibit 4, at 68 (police are reluctant to handle rape cases); HRW Report, Group Exhibit 4, at 88 (there is only one domestic violence shelter in the Dominican Republic).

Furthermore, the constant fear that [REDACTED] will find her, as he always has done in the past, will be traumatic for Ms. [REDACTED] and will cause further deterioration to her health. Indeed, the IJ herself conceded this point, stating that returning Ms. [REDACTED] to her home country would be “traumatic for her emotionally.” (IJ Dec. at 12). *See Mohammed v. Gonzales*, 400 F.3d 785, 801 (9th Cir. 2005) (women in the Benadiri clan are particularly vulnerable because of the widespread violence, and therefore applicant is at risk to suffer from “other serious harm” if she returns).

IV. Ms. [REDACTED] Has an Independent Well-Founded Fear of Future Persecution on Account of Her Membership in a Particular Social Group of Women in the Dominican Republic Who Are Unable to Leave Their Common-law Spouse and on Account of her Political Opinion That Her Common-law Spouse Does Not Have the Right to Beat and Subordinate Her

Even in the absence of the presumption arising from her past persecution, Ms. [REDACTED] can establish a well-founded fear of future persecution. She has

testified that if she returns [REDACTED] will seek her out and continue to abuse her as he has in the past, with beatings, rapes, and probable death. As discussed *supra*, there is no dispute that these harms rise to the level of persecution. See *Shoafera v. INS*, 228 F.3d 1070, 1075 (9th Cir. 2000) (rape is persecution); *Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1088 (9th Cir. 2005) (forced sex is past 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.) (en banc) (1996)); *Lopez-Galarza v. INS*, 99 F.3d 954 (9th Cir. 1996) (rape and abuse constitute persecution). Moreover, as previously discussed, the record establishes that [REDACTED] harmed Ms. [REDACTED] on account of her social group membership and political opinion.

A fear of future persecution is well-founded if it is subjectively genuine and objectionably reasonable, or if there is a one in ten likelihood of the harm to occur. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987); *Guan Shan Liao v. U.S. DOJ*, 293 F.3d 61, 68 (2d Cir. 2002). The IJ erroneously held that Ms. [REDACTED] did not have a well-founded fear of future persecution, because in the IJ's opinion, there was less than a ten percent actual risk of harm. (IJ Dec. at 11). Contrary to the IJ's finding, the record establishes that [REDACTED] sought out Ms. [REDACTED] every time she attempted to escape, and that when he found her, he forced her to come back to him and continued the abuse. (Tr. at 29, 32-33). Furthermore, the record is clear that [REDACTED] has continued to search for her since she left the country, asking Ms. [REDACTED] mother about her whereabouts. (Tr. at 50). Under these circumstances, a reasonable person in Ms. [REDACTED] situation would certainly fear persecution. *Gao v. Gonzales*, 440 F.3d 62, 66-71 (2d Cir. 2006) (applicant has a well-founded fear of future persecution

where fiancé from forced marriage arrangement has continued to ask about applicant since applicant fled to the U.S.).

Moreover, Ms. [REDACTED] fear of persecution is subjectively reasonable because the country conditions documentation leads to the inexorable conclusion that Ms. [REDACTED] is highly likely to suffer persecution if she returns to the Dominican Republic. *See* International Planned Parenthood Federation, March 2002 newsletter, Group Exhibit 4, at 32 (women face dangers if they leave their abuser); 2004 Country Reports, Group Exhibit 4, at 67 (10 to 15 women die each month from domestic violence and many cases go unreported). Therefore, it is clear that Ms. [REDACTED] has established a well-founded fear of future persecution, independent from the presumption to which she is entitled as a result of her past persecution.

V. The Government of the Dominican Republic Is Unwilling and Unable to Prevent the Persecution Suffered by Ms. [REDACTED]

In order to be eligible for asylum, an applicant who faces persecution by non-State actors must show that the government is unable or unwilling to control the persecutor. *Sotelo-Aquije v. Slattery*, 17 F. 3d 33, 37 (2d Cir. 1994) (“the [asylum] statute protects against persecution not only by government forces by also by nongovernmental groups that the government cannot control”). Ms. [REDACTED] testimony and documentation clearly establish that the government was unwilling and unable to protect her.

While there are laws against domestic violence in the Dominican Republic, Ms. [REDACTED] testimony, found credible by the IJ, confirmed that she attempted to seek protection from the police to no avail. (Tr at 28). Directly after suffering a brutal beating by [REDACTED] which left her with severe injuries, Ms. [REDACTED] went to the

police and filed a report. “The police told me that they were going to arrest him, but they never arrest him. Never.” (Tr. at 28). In addition, Ms. [REDACTED] neighbor had a similar experience where she reported her husband’s violent abuse, and the police did nothing. (Decl. of [REDACTED] [REDACTED] Group Exhibit 4, at 5). In fact, as discussed above, the widespread violence against women and the impunity for abusers is one of the factors motivating [REDACTED] actions. As he bragged to Ms. [REDACTED] “A lot of men here in the Dominican Republic kills [sic] their wives and nothing happens to them.” (Tr. at 29).

Furthermore, there is ample documentation illustrating that the government has been unable and unwilling to control violence against women, and that women victims of domestic violence do not have reasonable access to state protection. 2004 Country Reports, Group Exhibit 4, at 67 (10 to 15 women die each month from domestic violence in the Dominican Republic); NYT Article, Group Exhibit 4, at 26-28 (Dominican law enforcement authorities told American detective Sgt. Gene Buonanno of the Tarrytown Police Department that if a wife “discredits her husband, killing her would be allowed.”); HRW Report, Group Exhibit 4, at 87 (women are expected to submit to male authority).

Therefore, it is clear that the government of the Dominican Republic is unable and unwilling to prevent the harm suffered by Ms. [REDACTED]

VI. Ms. [REDACTED] Is Eligible for Withholding of Removal

In order to establish eligibility for withholding of removal, an individual must show that his or her life or freedom would be threatened. *INS v. Stevic*, 467 U.S. 407 (1984). This can be established by the presumption arising from past persecution, or by

proof of objective factors showing the requisite risk of persecution. 8 C.F.R. §208.16(b)(1).

The IJ erroneously held that Ms. ██████████ failed to establish eligibility for withholding of removal. Having established past persecution on account of her membership in a particular social group and political opinion, Ms ██████████ is entitled to a presumption of eligibility for withholding of removal. The government has not carried out its burden of overcoming that presumption by demonstrating by a preponderance of the evidence that she could relocate within the Dominican Republic or that circumstances there have changed to such an extent that it is no longer more likely than not that she would face a threat to her life or freedom. 8 C.F.R. § 208.16(b)(2); *Ivanishvili v. US DOJ*, 433 F.3d 332 (2d Cir. 2006) (if the applicant establishes past persecution on account of a statutory ground, eligibility for withholding is presumed, subject to rebuttal); *Ali v. Ashcroft*, 394 F.3d 780, 791 (9th Cir. 2005) (where Somali clan member was gang raped by another clan, a finding of past persecution gave rise to a presumption of withholding of removal).

Furthermore, as discussed in section IV *supra*, ██████████ persistence in pursuing her, coupled with the lack of state protection, make it more likely than not that her life or freedom will be threatened if she returns to the Dominican Republic. 8 C.F.R. § 208.16(b)(2); *INS v. Stevic*, 467 U.S. 407, 424 (1984) (the standard for withholding of deportation under §243(h) is clear-probability). *See Serfimovich v. Ashcroft*, 465 F.3d 81 (2d Cir. 2006) (applicant was eligible for withholding where State Department Reports demonstrated the disintegration of human rights, and the applicant testified that government agents had visited her parents asking about her whereabouts since she had

fled to the U.S.). The record in this case establishes a level of abuse and pervasiveness of violence more than sufficient to establish that the harm is more likely than not. 2004 Country Reports, Group Exhibit 4, at 53, 59 (in the Dominican Republic, monitoring and sanctioning systems for abuses of human rights are ineffective, and serious problems include violence and discrimination against women).

VII. Ms. [REDACTED] Is Eligible for Relief Under the Convention Against Torture

In order to establish eligibility for relief under the Convention Against Torture (CAT), an applicant must show that it is more likely than not that he or she will suffer torture if he or she returns. 8 C.F.R. § 208.16(c). In addition, if the agent inflicting the torture is non-governmental, the applicant must prove government acquiescence to the torture. 8 C.F.R. § 208.18(a)(1). The IJ ruled that Ms. [REDACTED] failed to meet the standard for protection under the CAT. However, the IJ's ruling is clearly erroneous in that Ms. [REDACTED] has established that it is more likely than not that she will be tortured if she returns to the Dominican Republic, and that the torture will be with the acquiescence of the government.

A. The Harm That Ms. [REDACTED] Fears Constitutes Torture

If Ms. [REDACTED] returns to the Dominican Republic, it is more likely than not that [REDACTED] will seek her out and continue his brutal beatings and rapes, and that he may even kill her. The harm that she will suffer meets the definition of torture. 8 C.F.R. §208.18(a)(1) (defining torture as an act that causes severe physical or mental pain or suffering); *Zubeda v. Ashcroft*, 333 F.3d 463, 472-73 (3d Cir. 2003) (rape can constitute torture); *Sackie v. Ashcroft*, 270 F.Supp.2d 596, 601-03 (E.D. Pa. 2003) (child

soldier who suffered from death threats and cuts on back and arms met burden that he was tortured).

B. Ms. [REDACTED] Is More Likely Than Not to be Tortured

The infliction of this torture is more likely than not to occur. The controlling regulations provide that in determining whether torture is more likely than not to occur, one can look at a number of factors, including the occurrence of past torture, and the conditions in the country regarding flagrant and gross violations of human rights. 8 C.F.R. §208.16(c)(3)(i)-(iv). The record clearly establishes a pattern of past torture of Ms. [REDACTED] by [REDACTED] and that [REDACTED] continues to search for Ms. [REDACTED] [REDACTED] in a country where it is widely know that men kill their wives and “nothing happens to them.” (Tr. at 29). One can only conclude from the evidence that Ms. [REDACTED] is more likely than not to suffer torture if she returns to the Dominican Republic. *Khouzam v. Ashcroft*, 361 F.3d 161, 168-71 (2d Cir. 2004) (applicant was more likely than not to suffer torture if returned to Egypt where documentation showed that there was a routine use of torture by police and that high government officials were aware of or remain willfully blind to such a practice); *Hosseini v. Gonzales*, 464 F.3d 1018, 1024 (9th Cir. 2006) (applicant more likely than not to suffer torture if returned to Iran, because applicant’s involvement with an opposition group will be visible to the government and even though torture is outlawed “the Islamic regime’s human rights record continues to be abysmal ... [with] widespread use of torture and other degrading treatment”); *Khup v. Ashcroft*, 376 F.3d 898, 904-907 (9th Cir. 2004) (applicant more likely than not to suffer torture if returned to Burma in light of past torture and documentation of arrests and beatings of other Christian clergy).

C. The Government of the Dominican Republic Acquiesces to the Torture Ms. [REDACTED] Is More Likely Than Not to Suffer

Acquiescence is found where there is actual knowledge or willful blindness and a breach of responsibility to prevent torture. *Khouzam v. Ashcroft*, 361 F.3d 161, 168-71 (2d Cir. 2004) (standard is governmental knowledge of or willful blindness to the torture). Ms. [REDACTED] testified that she went to the police after a brutal beating, and the police took absolutely no action in response. (Tr. at 28). Moreover, the record shows that the government of the Dominican Republic is aware of the rampant problem of domestic violence, because the government passed a law against it. As discussed above, the law is totally ineffectual in addressing the problem, and the government – in allowing this state of affairs – acquiesces to the continuing torture of women by their abusive spouses. *See Zheng v. Ashcroft*, 332 F.3d 1186, 1197 (9th Cir. 2003) (remanding issue of acquiescence to the BIA, but noting that the government of China “maintains in its possession significant information about Chinese smuggling rings ... that may support the petitioner’s ‘awareness’ claim”). In addition, the record shows that the government is aware of the fact that the laws are not enforced and domestic violence remains a rampant human rights violation in the Dominican Republic. 2004 Country Reports, Group Exhibit 4, at 53, 67 (violence against women continues to be a serious problem and many government officials have publicly denounced the problem); IPS Article, Group Exhibit 4, at 22 (domestic violence is the fourth leading cause of death for women in the Dominican Republic); HRW Report, Group Exhibit 4, at 88 (there is only one domestic violence shelter in the Dominican Republic).

Conclusion

For the foregoing reasons, Ms. [REDACTED] has met the statutory requirements for asylum because she suffered past persecution and has a well-founded fear of persecution on account of her membership in a particular social group and political opinion. Furthermore, there are no negative discretionary factors that would result in denial of relief. In addition, Ms. [REDACTED] has also met the standard for withholding of removal and for relief under the Convention Against Torture, and since no statutory bars are applicable to her, she must be granted this form of relief. *Amicus* respectfully requests that the BIA reverse the IJ's decision and find Ms. [REDACTED] eligible for asylum, withholding of deportation, and protection under the Convention Against Torture.

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Respectfully submitted,

[REDACTED]

[REDACTED]

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