STATEMENT OF THE FACTS

Ms. Client ("Respondent" or "Ms. Client"), met Abuser, a # year old sergeant in the Honduran police, when she was # years old.[1] Exh. B, Respondent's Affidavit ("Resp't Aff.") ¶¶ 5-6; Transcript ("Tr.") at 33. Abuser used the investigation and purported identification of potential suspects of an armed robbery that had occurred at Ms. Client's home as a pretext to take Ms. Client to remote locations to rape her. Resp't Aff. ¶¶ 10-12. Enraged at the news that Ms. Client had become pregnant with his child, Abuser "began being physically rough – violently shaking and pulling [Ms. Client]." *Id.* ¶ 15. He also secretly made arrangements with Ms. Client's parents that Ms. Client and Abuser would live like husband and wife in the house attached to the Client family home. *Id.* ¶ 16. Ms. Client did not want to live with her rapist, but her mother told her, "You have to be with him. You are pregnant with him and you have his child." Tr. at 35. Respondent gave birth to their daughter, on DATE. Only days later, Abuser beat Ms. Client, hitting her in the face and telling her "[she] was 'his woman' now and that [she] had no right to tell him what to do." Resp't Aff. ¶ 18. Ms. Client testified that "[b]efore Client was born, he did not hit me," but after Daughter was born, his behavior changed "in a tragic manner," because "[h]e began showing how he could behave aggressively with me." Tr. at 36. During Client's Daughter's first birthday party, Abuser, punched Ms. Client in the face with his closed fist, knocking her to the ground in front of five or six of his colleagues from the police force. Tr. at 37. None of the other police officers at the party did anything to help Ms. Client and instead, "[t]hey continued to drink calmly" as Abuser took her into another room where he began

[1] Ms. Client's appeal brief erroneously characterized her as 16 years of age when she met Abuser however both her Affidavit and Transcript consistently report that she was 15 years old, and nearing 16 years of age when she met Abuser. Please excuse this prior mischaracterization of her age.

to beat Respondent "even more." Tr. at 37-38; *See also,* I.J. Exh. 4 Tab L-7, page 111 (photograph of facial injury).

In all, Ms. Client suffered seven years of regular beatings at the hands of Abuser who punched her in the face hard enough to break her teeth, beat her with objects like lamps and the butt of his gun, pushed her into broken glass, and strangled and whipped her with his belt. Resp't Aff. ¶¶ 19-22. In one incident, Abuser stomped on Ms. Client's bare toes with the heel of his boot until they bled and the nails turned black, sliced between her toes with his knife, and then threatened to kill her and chop her into pieces. Tr. at 42. In another, he forced her to touch a live electric cable, electrocuting her while he laughed. *Id.* at 58-59. He also used knives to cut off pieces of her hair and threatened to chop off her head, because he said, "[i]n that head, you have only shit." Tr. At 72-73. Ms. Client endured this abuse because Abuser warned that if she ever attempted to leave him, "in the attempt [she] would die." Tr. at 68. When Ms. Client did try to escape, Abuser tied her up and brought her home by force. *Id.* at 69.

Though they were never formally married, Ms. Client's community treated Ms. Client as if she were married to Abuser. For example, Ms. Client's own father refused to protect her from Abuser "[b]ecause he said that between married people, one should not enter and involve themselves." Tr. at 83. When Ms. Client consulted with a psychologist at the Department of Health about the abuse she was experiencing, the psychologist told Ms. Client, "You cannot make him change. Who are you to be able to change him?" *Id.* at 58, and even the counselor at a women's shelter advised Ms. Client "to find the strength in [her]self to endure the suffering," she was experiencing at the hands of her child's father. Resp't Aff. ¶ 42-43. As country conditions demonstrate, Ms. Client's experience is reflective of Honduran society's acceptance and

tolerance of domestic violence within domestic partnerships like Ms. Client's: "Victims of domestic violence in Honduras… were told that they should resolve the dispute on their own, that their plight was a matter between husband and wife, boyfriend and girlfriend, and should be confined to the privacy of their homes." I.J. Exh. 4(V).

Nonetheless, desperate for protection, Ms. Client reported Abuser to the police and sought assistance from the courts "at least ten times during the time [she] was with him." Resp't Aff. ¶ 68. The police did little more than write a report. *See* Tr. at 51; I.J. DEC. at 18. She received two protective orders, but both times Abuser violated the orders almost immediately after their issuance and the police refused to enforce them. Tr. at 52-53.

PROCEDURAL HISTORY

Ms. Client entered the U.S. on XXXXX, with her minor daughter. *See* Notice to Appear ("NTA") of XXXXX. An NTA was issued on XXXXX, and was served on the Respondent on XXXXX. *Id.*

On XXXXX, a Master Calendar hearing was held before Immigration Judge Castro in San Antonio, Texas. Tr. at 1. The Respondent and her daughter did not appear for the hearing and the Court proceeded *in absentia*. *See* Tr. at 2. On a later, unknown date, a Motion to Change Venue and a Motion to Reopen were filed with the San Antonio Immigration Court. *See* Order of March 5, 2008. Judge Castro granted the motions, transferred the case to Baltimore, Maryland, and indicated in her order that the Respondent provided written pleadings, admitting the charges and conceding removability. *Id.*; Tr. at 6.

On XXXXX Ms. Client's case was accepted by the Tahirih Justice Center for *pro bono* representation. Two days later, on XXXXX, counsel filed an Emergency Motion for Leave to

File I-589 Asylum Application or for an Expedited Master Calendar Hearing. At a subsequent Master Calendar hearing on XXXXX, at the Baltimore Immigration Court, Judge Jill H. Dufresne stated that the I-589 "was received on June 11th, so there is no one-year issue." Tr. at 11.

Ms. Client's individual hearing (initially calendared on XXXXX) was held in the Baltimore Immigration Court on XXXXX [2] before Judge Jill H. Dufresne ("IJ"). Ms. Client based her claim to asylum upon membership in the particular social group of "Honduran women who are unable to leave relationships with the fathers of their children" as well as political opinion. Respondent's Pre-Hearing Brief ("Resp't Brief") at 12-27. Assistant Chief Counsel Joey Caccarozza initially stipulated to the particular social group:

> IJ: Ms. Paparozo, does the Government have any issues with the social group that the respondent's claiming membership in?
> TA: No.
> TA: I'm agreeing to stipulate that it is a social group as defined.
> IJ: Okay. Then in closing arguments, you would be prepared to advise the Court of why you felt that it is a social group."
> TA: Right.
> IJ: Okay. So whether or not she's a member of a particular social group isn't an issue for the Government?
> TA: No.

Tr. at 27-29, but then attempted to recant that stipulation in her closing argument in stating "Your honor, the Government doesn't believe that the definition of social group, as defined, it should not be recognized as a particular social group." Tr. at 104. Subsequently, she stipulated to Ms. Client's eligibility for CAT protection.[3] *Id.* at 105.

[2] XXXXXXXXXXXXXXXXXXXXXXXXX

[3] TA: "…[S]he may be eligible for CAT… So, that's the Agency's position." IJ: "Okay. So you wouldn't oppose a grant of CAT, if I understand you correctly?" TA: "That's correct." Tr. at 105.

On XXXXX the IJ issued a decision in Respondent's case finding her credible, to have suffered "harsh physical, sexual and psychological abuse," and that she was "undeniably the victim of torture by Abuser, a Honduran police officer," but denying asylum based on membership in the particular social group of "Honduran women who are unable to leave relationships with the fathers of their children" because she found that it was "not a viable particular social group." Tab A, I.J. Decision ("IJ Dec.") at 14-15. The Immigration Judge stated in her decision that "the proposed group is amorphous and lacks the social visibility required under Matter of S-E-G and Matter of E-A-G." *Id*. at 15. She further concluded, "Respondent's proposed group has no such immutable characteristic. The inability to leave the relationship is not immutable as the relationship might end for any number of reasons. In fact, Respondent did eventually leave Abuser, terminating the relationship." *Id*. at 15. However, the IJ granted Respondent withholding of removal under the Convention Against Torture stating that "[t]he DHS stipulated that Respondent is eligible for CAT relief. The Court concurs for the reasons set forth below." IJ Dec. at 15.

Respondent timely filed a Notice of Appeal with the Board of Immigration Appeals ("Board") on XXX, appealing the denial of asylum. Ms. Caccarozza timely filed a Notice of Appeal on XXX, appealing the same grant of withholding under CAT to which she had previously stipulated and alleging that "[t]he IJ erred in granting the respondent's application for Withholding of Removal under the Convention Against Torture." On November 4, 2009, Respondent filed a Motion to Dismiss Summarily DHS' Appeal, on the basis that the lone reason for an appeal cannot be a finding of fact or conclusion of law conceded by the party per 8 C.F.R. § 1003.1(d)(2)(i)(B)(2003). On XXX, DHS withdrew its appeal.

STATEMENT OF ISSUES

The Board should reverse the decision denying Respondent asylum in light of its findings of the cognizability of the particular social group of "married women in Guatemala who are unable to leave their relationship" in *Matter of A-R-C-G-*:

A. *Matter of A-R-C-G-* further clarifies that the IJ erred as a matter of law in concluding that the particular social group of "Honduran women who are unable to leave relationships with the fathers of their children" was not a cognizable particular social group because it "ha[d] no [ ] immutable characteristic." I.J. DEC. at 15.

B. While the Board made clear in *Matter of A-R-C-G-* that "marital status can be an immutable characteristic where the individual is unable to leave the relationship" it clearly did not limit immutability to *only* marital relationships as it noted that "determination of this issue will be dependent upon the particular facts and evidence in a case" and therefore, *Matter of A-R-C-G-* further demonstrates that the IJ erred as a matter of law in not recognizing Respondent's characteristic of a "relationship with the father[] of [her] children" as an immutable characteristic.

C. In light of *Matter of A-R-C-G-'s* recognition that the terms "married", "women" and "unable to leave the relationship" can "combine to create a group with discrete and definable boundaries" it is clear that the IJ erred as a matter of law in concluding that Respondent's particular social group consisting of the identical terms "women" and "unable to leave the relationship" was not cognizable because it was "amorphous." *Id.*

D. The IJ's conclusion that there was "no evidence to support a finding that such a group is 'perceived as a group by society" was clearly erroneous in light of the Board's clarification in *Matter of A-R-C-G-* that evaluation of social distinction requires inquiry into "whether a society, [] makes meaningful distinctions based on the common immutable characteristics of being a married woman in a domestic relationship that she cannot leave." *Id*.

E. The IJ found that Respondent suffered harm that would amount to persecution were they motivated by a statutory ground. IJ Dec. at 14 (stating Respondent was "undeniably the victim of torture by Abuser"). She further concluded that "Respondent made numerous police reports but no actions were taken to protect her," that "her attempts to relocate proved futile," and "she would not be safe if she returned to any part of that country." IJ Dec. at 18. Given those factual findings (harm rising to the level of persecution, lack of governmental protection, and Respondent's inability to internally relocate), a grant of asylum would have been warranted but for the IJ's beliefs that Respondent's articulated social group was not cognizable under the law and her clearly erroneous conclusions on nexus.

F. The IJ committed clear error in concluding that Respondent had failed to prove a nexus between the harm she suffered and her social group in stating that she "was not abused because she was unable to leave the relationship. Rather, she was unable to leave the relationship because she was being abused. It appears that the abuse suffered by Respondent, although tragic, was the result of Abuser's efforts

to exert power and control over her, not her membership in any particular social group." I.J. DEC. at 14-15.

STANDARD OF REVIEW

The Board has jurisdiction to review the IJ's decision per 8 C.F.R. § 1003.1(b)(3)(2003) and Respondent requests that this Honorable Board exercise its discretion pursuant to 8 C.F.R. § 1003.3(c)(1) to consider this supplemental brief in light of new authority, namely *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014). Questions of law, discretion and judgment are reviewed *de novo* pursuant to 8 C.F.R. 1003.1(d)(3)(iii). Whether or not Respondent's articulated social group is cognizable is a question of law that should be reviewed *de novo*. 8 C.F.R. 1003.1(d)(3)(ii)(2014); *see also, Matter of A-R-C-G-*, 26 I&N Dec. at 390. Pursuant to *Matter of N-M-*, a "persecutor's actual motive is a matter of fact to be determined by the Immigration Judge and reviewed by [the Board] for clear error." 25 I&N Dec. 526, 532 (BIA 2011).

SUMMARY OF ARGUMENT

The Board should reverse the IJ's denial of asylum in light of the guidance that *Matter of A-R-C-G-* provides as to the cognizability of a social group like Ms. Client's, constructed by the immutable characteristics of gender, nationality, and, relationship status rendering an individual unable to leave. Additionally, *Matter of A-R-C-G-* clarifies that a combination of such characteristics can create a group with "discrete and definable boundaries" in direct contradiction of the IJ's conclusion that Ms. Client's own social group was too "amorphous." Similarly in incorporating the intervening law in *Matter of W-G-R* and *Matter of M-E-V-G* as to social distinction, *Matter of A-R-C-G-* further clarifies that the IJ in Ms. Client's case erred in concluding that there was "no evidence to support a finding that [Ms. Client's] group is

'perceived as a group by society'" when she overlooked substantial evidence of record that demonstrates that Honduran society makes meaningful distinctions based on the common immutable characteristics of being in a domestic relationship that Ms. Client cannot leave.

Further, the IJ's finding of fact that there was "no evidence" that the persecution was on account of Ms. Client's group membership is clearly erroneous in light of the substantial evidence in the record that tethers Abuser's abuse to Ms. Client's status as the mother of his child and domestic partner and should therefore be reversed.

In concluding that Ms. Client was a victim of torture the IJ found that Respondent suffered harm that would amount to persecution were it motivated by a statutory ground. Further, while Respondent's persecutor is a member of the Honduran police force, and therefore should not be treated as a "private" actor, the IJ's grant of Convention Against Torture relief would not have been possible had she not concluded as a matter of fact that the Honduran Government was unwilling or unable to control Ms. Client's persecutor or that a reasonable internal relocation alternative existed (i.e. government acquiescence must necessarily encompass unwillingness or inability to stop a persecutor). Given those underlying factual findings, a grant of asylum would have been warranted but for the IJ's beliefs that Ms. Client's articulated social group was not cognizable under the law and her clearly erroneous conclusions on nexus. As such, this Board should now reverse that decision and find Ms. Client eligible for asylum.

ARGUMENT

I. Respondent's articulated social group is legally cognizable.

In *Matter of W-G-R,* and *Matter of M-E-V-G,* this Board clarified that all asylum applicants seeking protection based on membership in a "particular social group" must establish

three things about the articulated social group: (1) the group is composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) social distinct within the society in question. *See Matter of A-R-C-G-*, 26 I&N Dec. at 392; *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014). As described in more detail below, Respondent's social group is defined by the intersecting immutable characteristics of gender, nationality, relationship status, and her inability to leave the relationship and is both socially distinct and particular.

A. Under *A-R-C-G-*, Respondent's social group is defined by the intersecting common immutable characteristics of: Gender, Nationality, and Relationship Status rendering Respondent unable to leave.

The particular social group of "Honduran women who are unable to leave relationships with the fathers of their children" is premised on three immutable characteristics: nationality, gender, and relationship status. It is Ms. Client's inability to leave the relationship that makes her relationships status as immutable as her gender and her nationality. The IJ correctly stated in her decision that a particular social group must be defined by a common, immutable characteristic. I.J. DEC. at 11. She further noted that, per *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985), "the common characteristic may be as innate as sex." *Id.* However, in the instant case, she concluded that "Respondent's proposed group has no such immutable characteristic," *Id.* at 15, despite the basis of the group being "Honduran women." This conclusion is also in direct contradiction to the findings in *Matter of A-R-C-G-* which specifically recognized that female group members "share the common immutable characteristic of gender." *See Matter of A-R-C-G-*, 26 I&N Dec. at 392. Sex or gender, namely being a woman, is clearly an immutable

characteristic, and it has been recognized as such for more than twenty-five years.[4] Ms. Client's articulated social group consists of not only women, but "Honduran women" and according to Board precedent, nationality has been considered immutable for over a decade. *See Matter of V-T-S-*, 21 I&N Dec. 792 (BIA 1997).

Perhaps, the immutable characteristic to which *Matter of A-R-C-G-* lends the most clarity is that of the immutability of relationship status. In *A-R-C-G-*, the Board held that "marital status can be an immutable characteristic where the individual is unable to leave the relationship" *Matter of A-R-C-G-* at 392-3. These findings on the immutability of relationship status, codified years of arguments set forth by Respondents and the Department of Homeland Security in matters such as *L-R-*, a case of an un-married Mexican women who was subjected to domestic violence by the father of her children. In that case's briefing before the Board, DHS argued that a domestic relationship might be immutable "where economic, social, physical or other constraints made it impossible for the applicant to leave the relationship during the period when the persecution was inflicted." Tab C, Dep't of Homeland Security's Brief in *Matter of L-R-* ("DHS *L-R-* Brief") at 16; *see also, Matter of A-R-C-G-*, 26 I&N Dec. at 393 (referring to religious, cultural and legal constraints as part of a range of factors relevant to evaluating whether or not a dissolution of marriage is possible). Similar to this matter, Ms. Client was unable to leave the relationship during the period in which she was persecuted due to social, cultural, psychological and, in some instances physical constraints.

[4] Of note is the fact that in previous decisions, Immigration Judge Dufresne has held unequivocally that sex is an immutable characteristic because "[c]learly one's sex is not something often subject to change and, according to the BIA, could be sufficient to form the basis of a social group." *Matter of Sandra [redacted]*, U.S. Immigration Court, Baltimore, MD (Nov. 8, 2006), at 19.

It is clear from the record, and duly noted by the IJ, that Ms. Client was not able to escape the relationship within Honduras. I.J. Dec. at 18. The evidence in the record demonstrates that she tried to escape from Abuser on two occasions to two different locations, but both times he found her, beat her for running away, and the abuse continued. Resp't Aff. ¶¶ 55-56; Tr.at 69 (describing when Respondent was found at her aunt's home "I told him I didn't want to go back with him. I didn't want to even see him, but it didn't matter. And he just pulled me away. I tried to stop him by hanging onto the door. But I couldn't stop him. He dragged me away.") *cf.* DHS *L-R-* Brief at 16 (finding that the Respondent's inability to leave was an immutable characteristic where she "testified about many instances of repeated abuse even after she had left [redacted]").

Expert witness, Dr. Expert explains the psychological constraints that did not allow Ms. Client to leave the abusive relationship within the context of Battered Woman Syndrome. In Dr. Expert's expert opinion, Ms. Client was unable to leave due to the Battered Woman Syndrome's theory of learned helplessness which suggests that:

> [w]hen a woman's efforts to control her partner's violence fail, she learns to feel ineffectual and helpless. The learned helplessness can also create a feeling of dependency on the batterer and make it harder for the victim to separate herself from him. . . She has often been socially isolated and controlled and may feel her true home is with batterer.

I.J. Exh.4 (M) at 6. Further, Dr. Expert concludes that because Ms. Client's relationship with Abuser began at such an early age, and through his use of force, Ms. Client never had a normal adolescence, or even, "the experience of deciding whether or not she liked a boy." *Id*. at 12. Consequently, Dr. Expert concludes that "It is not surprising that [Respondent's] PAI profile indicates a poorly developed sense of personal identity." *Id.* As Dr. Expert describes, when

Abuser "barged into her life and forced her to have sex with him" he "created a sense of obligation in her." *Id*.

Moreover, Ms. Client was bound by cultural and social constraints placed upon her because she mothered Abuser's child. For example, when Respondent sought support from a local center for women and children, the counselor there did not encourage her to leave the abusive relationship but instead told Ms. Client that she needed to "find the strength in [her]self to endure the suffering [she] had been given." Resp't Aff. at ¶42. Ms. Client describes the societal and cultural pressures she faced when she states, "I never felt love towards him from the beginning. What I felt from—of him was a fear towards him. In the beginning, when I was pregnant, I thought that I should be with him because he was the father of my child, but then it became something that I couldn't support and it didn't matter to me to be alone with my daughter." Tr.at 80. Unfortunately for Ms. Client, as a factual matter, she was only able to "terminate" the relationship by putting great physical distance (that of two countries) between herself and her persecutor. If Ms. Client is returned to Honduras, there is no doubt that she would continue to be unable to leave the relationship and would be persecuted on account of this characteristic.

The "more objective" record evidence on country conditions in Honduras similarly demonstrates that cultural obstacles prevent women from leaving abusive relationships. For example, women's rights organizations in Honduras assert that in Honduran culture "pain, submission and sacrifice are part of the condition of being a woman," I.J. Exh. 4(U), and communities, the police, and local churches "hold on to this mindset" that domestic abuse is "an aspect of the culture." *Id*. *See also,* Resp't Brief. at 17, n. 29.

Additionally, there are serious legal constraints that make it difficult for domestic violence victims to safely leave a relationship. According to the UNFPA, "[v]ictims of domestic violence in Honduras… were told that they should resolve the dispute on their own, that their plight was a matter between husband and wife, boyfriend and girlfriend, and should be confined to the privacy of their homes" and "even after the law [against domestic violence] was established, victims of domestic violence often found little support from police." I.J. Exh. 4 (V). Similarly, the Women's Movement for Peace notes "judicial bias consistently favors male perpetrators in domestic-violence cases." I.J. Exh. 4 (R). CEDAW's Honduras Report noted "the Committee is concerned that women's ability to bring cases of discrimination before the courts is limited by factors such as poverty, lack of assistance in pursuing their rights, lack of information about their rights and attitudes of law enforcement and judicial officials that create obstacles for women seeking access to justice." I.J. Exh. 4 (T). Consequently, according to the Honduran special prosecutor for women's affairs, nearly a third of women who submitted domestic violence complaints were not able to escape but instead were eventually killed by their abusers. I.J. Exh. 4 (S) *citing* an Amnesty International Report.

The pervasive discrimination against women in Honduras has also led to serious economic constraints rendering women unable to leave abusers who are often the sole-bread winners for their families. As the U.S Department of State reports, "[t]he majority of women worked in lower-status and lower-paid informal occupations, such as domestic service, without legal protections or regulations. Women were represented in small numbers in most professions, and cultural attitudes limited their career opportunities." I.J. Exh 4 (R). According to the Honduran National Institute of Statistics, "women's salaries were 66 percent of salaries for

men." I.J. Exh 4 (R). Likewise, CEDAW expressed concern over "continuing discrimination against women in the labour [sic] market" and reports that the "persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and society" are a "root cause of the disadvantaged position of women in all areas, including in the labour [sic] market and in political and public life." I.J. Exh 4 (T).

In light of the numerous, social, cultural, psychological, legal, and economic constraints facing domestic violence victims in Honduras, the IJ erred as a matter of law in not recognizing the immutability of Ms. Client's relationship with the father of her child and domestic partner, particularly in light of both her personal experiences and the country conditions evidence of record.

B. Under A-R-C-G- non-marital relationship status can be an immutable characteristic where the individual is unable to leave.

While the Board made clear in *Matter of A-R-C-G-* that "*marital* status can be an immutable characteristic where the individual is unable to leave the relationship" it did not, by any certain terms, limit immutability to *only* marriage-based relationships, noting that "determination of this issue will be dependent upon the particular facts and evidence in a case." *Matter of A-R-C-G-*, 26 I&N Dec. at 392-3 *emphasis added*. Instead, the Board instructed adjudicators to consider two things: (1) a respondent's own experiences and (2) more "objective evidence, such as background country information." *Id*. at 393.

In the present case, Ms. Client's personal experiences demonstrate that she was considered, by herself and by others within society, to be married to her persecutor despite the fact that the couple never formally married. Ms. Client testified that she referred to Abuser "as

if he were my husband." Tr.at 93. This was further reinforced by her family members who refused to protect Ms. Client from Abuser, citing their "marriage" as a barrier to intervention:

> Q: Why didn't he [your father] help you?
> A: Because he said that between married people, one should not enter and involve themselves.

TR.at 83. When asked again later, if her own father "refused to intervene, in part because he thought the abuse is what happened between a husband and a wife" Ms. Client replied "That's how he saw it." Tr.at 93. However, it was not just Ms. Client and her family who saw things this way, members of her community and the larger Honduran society similarly reinforced these concepts. For example, Ms. Client testified "[e]verybody in the community thought of Abuser as my husband, especially since he was Daughter's father and we lived together. Over time, even I started referring to him as my husband." Resp't Aff. at ¶30. It was precisely that implied marital relationship which made it impossible for Ms. Client to leave the relationship.

Finally, the fact that Ms. Client shares a child in common with her persecutor is not only something that she will never be able to change, but is also precisely what defined her relationship status with her abuser and made it so impossible for her leave. *See, Matter of Acosta*, 19 I. & N. Dec. 211, 233-34 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987)(recognizing kinship ties as innate and immutable). In the IJ's 19 page-long decision there is not a single mention, or assessment of, Ms. Client's contention that her motherhood formed an immutable characteristic of her social group despite the fact that Ms. Client articulated this ground in her pre-trial brief and trial counsel specifically addressed the

issue during his closing argument. Resp't Brief at 22; Tr.at 98.[5] The Immigration Judge's failure to consider the immutability of Ms. Client's relation to her abuser as the mother of his child is clear legal error.

C. The IJ's finding that there was "no evidence" that the particular social group was "viewed by society as a group" was clearly erroneous.

The IJ concluded that there was "no evidence to support a finding that such a group is 'perceived as a group by society.'" I.J. Dec. at 15. This holding is clearly erroneous as both the oral and written testimony of Ms. Client, as well as the country conditions documents, demonstrate that "Honduran woman who are unable to leave relationships with fathers of their children" is a socially distinct group within Honduran society. The record establishes that these women are targeted by Honduran men with an obvious interest in opposing any change to the status quo, which would affect their traditional domination over this group, and that these women receive disparate treatment by society, including unequal protection from the state.

In *Matter of A-R-C-G-*, the Board drew upon *Matter of W-G-R's* and *Matter of M-E-V-G's* requirement of social distinction, in articulating that group recognition must be "determined by the perception of the society in question" and requires that all social groups, be 'perceived as

[5] "We did include motherhood here. The fact that - - I would think that the fact that, that Ms. Client is the mother of Abuser's child was very important, again, in his sense of entitlement over his ability to persecute her, and in society's sense of acceptance, you know, at the end of the day, willing acceptance of this abuse…it was also clearly linked to persecution in a lot of ways. Ms. Client testified that she worried more than anything about the safety of Daughter and Abuser constantly threatened Daughter's safety by being - - you know, by being a very dangerous person and by threatening to take her away, and lying to her about the state of the law, and there was a constant barrage of threats, which really I think had a profound psychological impact, and was, again, a very important operating motive of the persecution." Tr.at 98.

a group by society.'" *Matter of A-R-C-G-*, 26 I&N Dec. at 393-94. The Board further clarified that "[w]hen evaluating the issue of social distinction, we look to the evidence to determine whether a society, . . . , makes meaningful distinctions based on the common immutable characteristics of being a married woman in a domestic relationship that she cannot leave." *Id*. at 394.

The Board has noted that "[s]ocial groups based on innate characteristics such as sex . . . are generally easily recognizable and understood by others to constitute social groups." *Matter of C-A-*, 23 I&N Dec. 951, 959 (BIA 2006). The same decision cited favorably the particular social group articulated in *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996), "young women who are members of the Tchamba-Kunsuntu Tribe of northern Togo who have not been subjected to female genital mutilation, as practiced by that tribe, and who oppose the practice," as a group which involved characteristics "that were highly visible and recognizable by others in the country in question." *Id.* at 960. In fact, none of the seminal cases establishing the social distinction requirement (formerly known as social visibility) have rejected particular social groups premised on sex or gender. *See id.* (rejecting the purported groups "former noncriminal drug informants working against the Cali drug cartel" and "noncriminal informants"); *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69 (BIA 2007) (rejecting the purported group of "affluent Guatemalans"); *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008) (rejecting the purported groups "Salvadoran youths who have resisted gang recruitment" or "family members of such Salvadoran youth"). The group articulated in the instant case, based on "Honduran woman" is perceived as a distinct group by Honduran society.

In *Matter of L-R-*, DHS concluded that two groups – "Mexican women in domestic relationships who are unable to leave" and "Mexican women who are viewed as property by virtue of their positions within a domestic relationship" – were socially visible, should the evidence establish that being in a domestic relationship resulted "in a significant social distinction being drawn in terms of who will receive protection from serious physical harm." DHS *L-R-* Brief at 18. This disparate treatment is exactly what the record evidence has established in Ms. Client's case: her parents, members of the general public, and the police did not intervene to protect her from Abuser's violence because she was a woman and she was "his mate." The country conditions fully corroborate that Honduras is a *machista* society, in which women in relationships who are subjected to violence by their partners do not receive equal protection from the law or within society. [6] *See also, Matter of A-R-C-G-*, 26 I&N Dec. at 394 ("the record in this case includes unrebutted evidence that Guatemala has a culture of 'machismo and family violence.').

Ms. Client testified to the disparate treatment that her group members received from the Honduran authorities when she described police and judiciary responses to her repeated (more than 10) attempts to enforce the protective orders against Abuser that were always met with silence and inaction. Tr.at 53-54. Further, as Ms. Client's trial counsel argued in closing "simply the fact that the police officers knew and could recognize that she was a member of this group,

[6] Machismo is defined as "a strong or exaggerated sense of manliness; an assumptive attitude that virility, courage, strength, and *entitlement to dominate are attributes or concomitants of masculinity*," Random House, *Dictionary.com Unabridged* (2009) (emphasis added), or alternatively as, "a strong or exaggerated sense of masculinity stressing attributes such as physical courage, virility, *domination of women*, and aggressiveness," *American Heritage Dictionary of the English Language* (4th ed. 2009) (emphasis added).

and so they didn't send the patrol car by" to assist her when she called for help evinces her social distinction. Tr.at 99.

Country conditions similarly reflect the incongruent treatment of Honduran women. The U.S. Department of State found that "[t]he government did not enforce the law effectively with regard to domestic abuse" and that in two hundred murders of women, "domestic violence [w]as the most common cause." I.J. Exh. 4 (R). In 2006, for example a mere 2.55 percent of all complaints of domestic violence filed with the police were resolved. I.J. Exh. 4 (T). The UN Committee on the Elimination of Discrimination Against Women expressed concerns about the "negative attitudes of police and magistrates responsible for enforcing the law and applying protection mechanisms for the benefit of women victims of violence, which result in the continuation of impunity for crimes of violence against women." I.J. Exh. 4 (T); *See also,* I.J. Exh. 4 (P)(Amnesty International reports a "lack of effective action to tackle domestic violence" and "[c]ontinuing high levels of domestic violence").

Honduran society views women as a sub-class and likewise, women in domestic relationships are accorded differential treatment. Honduran society is based on "patriarchal attitudes," I.J. Exh. 4 (S), and is a "*machista* culture," I.J. Exh. 4 (U). The Department of State described patterns of discrimination against women, and women in domestic relationships in particular, which reflect the *machista* culture: "[a]lthough the law accords men and women equal rights under the law, including property rights in divorce cases, in practice women did not enjoy such rights" and "cultural attitudes" limited women's career opportunities. I.J. Exh. 4 (R).

Ms. Client's own experiences reflect Honduran society's differential treatment of her group members. For example, while Abuser had Ms. Client "tied up" and was physically

dragging her home after she attempted to escape his control, a bystander on the street saw what was happening and made no attempt to intervene or assist Ms. Client. Tr.at 69-70. In fact, of the countless neighbors who witnessed the physical violence experienced by Ms. Client, none of them intervened or made any attempt to stop Abuser. Tr.at 59. Ms. Abuser's testimony clearly establishes that within Honduran society women in domestic relationships, especially in relationships with fathers of their children, were considered property of those men and as such a group to which normal practices and prerogatives did not apply. As Ms. Client's own mother told her, "You have to be with him [because you] are pregnant with him"; her father refused to help because "between married people, one should not enter and involve." Tr. at 83. In one particularly public incident at a local beach, Abuser yelled at Ms. Client before a crowd of onlookers, including police officers, tore her towel away leaving her naked, and then ripped out her belly button ring. *Id.* at 43. At the merits hearing, the IJ asked the Ms. Client, "Why do you think that nobody tried to stop him?" and Ms. Client responded simply, "Because, perhaps, they saw that I was his, his mate." *Id.*

Consequently, the IJ's conclusion that there was "no evidence" to support a finding of social visibility, was clearly erroneous. Further, as described above, Ms. Client's social group meets *Matter of A-R-C-G-*'s articulation of social distinction as Honduran society's *machista* culture results in distinct and differential treatment of women who share a child in common with their abusers.

D. The IJ erred when she held that Respondent's particular social group was "amorphous" and did not meet the particularity standard.

In *Matter of A-R-C-G-* the Board recognized that the terms "married", "women" and "unable to leave the relationship" can "combine to create a group with discrete and definable boundaries." 26 I&N Dec. at 393. Respondent's trial counsel made a nearly identical argument in his closing statement:

> We articulated this social group for Ms. Client, applying the (indiscernible) standard of immutable characteristic and the guidance in the DHS' own briefing in the Matter of R-A-, which instructed to focus on the intersection of factors, factors that work in - - immutable factors that may work in concert to define more precisely the targeted group. Tr.at 97.

Nonetheless, the Immigration Judge concluded summarily that "the proposed group is amorphous" without any further reasoning or explanation. I.J. Dec. at 15.

The Board has explained that terms are amorphous when "people's ideas of what those terms mean can vary." *Matter of S-E-G-*, 24 I&N Dec. at 585. To establish the requisite particularity, a group must be comprised of terms sufficiently particular "to create a benchmark for determining group membership." *Id.* at 584. In previous cases, the Board has rejected "wealth" as too amorphous because it would "necessitate a sociological analysis as to how persons with various assets would have been viewed by others in their country." *Id.* at 585.

Quite the contrary, the particular social group of "Honduran woman who are unable to leave relationships with fathers of their children" is a well-defined group. Women are easily identified within Honduras and the term has a clear meaning, understood throughout society. DHS argues in its brief in *Matter of L-R-* that the term "domestic relationship" can be interpreted "in a manner that entails considerable particularity." DHS *L-R-* Brief at 19. Women in relationships with the fathers of their children is simply a more clearly delineated subset of the larger category of domestic relationships. For a woman in Honduran society, carrying the child

of a man has very distinct social consequences and gives the woman a known social identity. Motherhood – and the raw existence of the child – is visible and public evidence of the relationship.

Lastly, as advocated by DHS, a woman's inability to leave the relationship can be a sufficiently particular term when it is evaluated within the context of a specific society and an individual claim. *Id.* at 20. In Respondent's case, the societal understanding of her inability to leave the relationship was best articulated by her own mother who told her, "You have to be with him. You are pregnant with him and you have his child." Tr. at 35. This understanding – that because she bore his child she belonged to him and could not leave – was a basic tenet of the *machista* society and was held by many of the individuals whom Ms. Client told about her plight. *Id.* at 35, 43, 83; I.J. Exh. 4 (S), (U), (V). Respondent, therefore, presented ample evidence of the particularity of her social group and the Immigration Judge erred in concluding, with no explanation whatsoever, that Respondent's group was "amorphous."

II. The IJ erroneously concluded that Respondent's social group was not cognizable under the law and that there was no Nexus.

While the IJ found that the harms suffered by Ms. Client rose "to the level of persecution" she held that Ms. Client did not establish past persecution and that she "failed to demonstrate that she has a well-founded fear of future persecution" because "nothing in the record suggests that Respondent will be targeted by Abuser for any reason other than his desire to establish a sense of power and control over her." I.J. Dec. at 14, 16. The IJ found that "Respondent is genuinely fearful of returning to Honduras," meeting the requirement of subjective fear. *Id.* While the IJ failed to make an explicit finding that Ms. Client's fear was objectively reasonable in the asylum context, such a finding is implicit in the IJ's grant of CAT

protection, which required her to conclude that "it is more likely than not that she would be tortured in Honduras." I.J. Dec. at 18.

A. The IJ misapplied the nexus standard of "at least one central reason."

The IJ found that there was no nexus between Ms. Client's abuse and her membership in the particular social group of "Honduran woman who are unable to leave relationships with the fathers of their children." I.J. Dec. at 14-15. Instead, she held that the abuse "was the result of Abuser's efforts to exert power and control of her" and was "because of a personal dispute with the father of her daughter." *Id.* Critical to her rejection of the particular social group theory articulated by Ms. Client was the IJ's rationale that Abuser abused Respondent "for months . . . before their relationship ever began," and thus that Ms. Client "fell into" the particular social group she articulated after the abuse had begun. *Id.* at 14.

In fact, the initial incidents of persecution in Ms. Client's case were rapes, and those rapes did not, as the IJ stated, start before the "relationship" began. Instead, the rapes themselves are what began to form the "relationship" a relationship from which Ms. Client was unable to leave almost as soon as it began. Ms. Client's gender was a factor in the initial persecution (the rapes) and her gender continued to be a factor in future attacks, as did her inability to leave the relationship, which was cemented with her pregnancy and the birth of her daughter. The implicit reasoning in the IJ's analysis —that the persecutor have one motive, established precisely at the first attack, which remains constant and does not change or morph, despite changes in the relationship between the persecutor and his victim or the persecutor's knowledge of the victim – is unsupported as a matter of law and common sense. Her reading of nexus is not in conformity

with the interpretations of the Board, the Fourth Circuit or the Asylum Office and perversely penalizes those who have endured multiple acts of persecution.[7]

Because Respondent's application was filed after May 11, 2005, it is governed by the provisions of the REAL ID Act of 2005. Division B of Pub. L. No. 109-13, 119 Stat. 302 ("REAL ID Act"). *See Matter of S-B-*, 24 I&N Dec. 42, 45 (BIA 2006). To establish nexus, she must show that a protected ground was or will be "at least one central reason" for persecuting her. INA § 208(b)(1)(B)(i). Under the Board's jurisprudence, "the protected ground cannot play a minor role in the alien's past mistreatment." *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212 (BIA 2007). However, "persecutors may have differing motives for engaging in acts of persecution" or mixed motives. *Id.* at 211. This language in the Board's decision is recognition that *each* act or incident of harm has a motive. Such a finding is in keeping with the Fourth Circuit's analysis that a nexus to a protected ground is established when the protected ground "initiated, *escalated*, *perpetuated*, *or otherwise* constituted a central reason for the persecution." *Quinteros-Mendoza v. Holder*, 556 F.3d 159, 165 (4th Cir. 2009) (emphasis added). The Asylum Office similarly provides guidance to its officers that "there is no requirement that the persecutor's harmful contact with the applicant be initially motivated by the applicant's

[7] An analogy demonstrates the result that such an interpretation might have: An individual is arbitrarily detained for many months for unknown reasons and occasionally beaten and subjected to harsh interrogations. While in prison, the guards learn that he is homosexual. They begin torturing him and sodomizing him on a daily basis, shouting insults at him related to his sexual orientation. He escapes after several years of this abuse and makes an asylum claim, alleging persecution on account of his sexual orientation. Yet, under Judge Dufresne's approach, an IJ can conclude that he was not persecuted on account of his sexual orientation because the guards persecuted him when they detained and beat him (before they knew he was a homosexual) and therefore did not initially target him because of his sexual orientation.

Judge Dufresne's analysis also suggests that Ms. Client's case would have a different result if Ms. Client and Abuser's relationship had commenced differently: had the relationship come about because Ms. Client fell in love with Abuser, and had she then been subjected to his abuse, she would have been persecuted on account of her membership in the stated particular social group. However, because the relationship came about because of the rapes (because of prior persecution), there was no nexus between the abuse and her membership in the group.

possession of a protected characteristic." Asylum Officer Basic Training Course, Eligibility Part III: Nexus (Mar. 12, 2009), at 10. The Board has stated in the past that "[i]n adjudicating mixed motive cases, it is important to keep in mind the fundamental humanitarian concerns of asylum law." *Matter of S-P-*, 21 I&N Dec. 486, 492 (BIA 1996).

In Ms. Client's case, Abuser's persecution, initially in the form of isolated sexual assaults, escalated into an onslaught of emotional and verbal abuse, assertion of complete control over her life, severe weekly beatings, and regular rapes at knifepoint, *only after* he was able to solidify his control over her because she gave birth to his child and was viewed as his spouse. *See* Tr. at 36, 44. After Daughter was born, Ms. Client was severely mistreated – to the level of torture, I.J. at 18. – at first monthly, and then weekly for approximately seven years, Tr. at 40-41. Under the correct analysis, if simply one of (or a group of) these hundreds of incidents of physical or sexual abuse was severe enough to rise to the level of persecution and was on account of her membership in a particular social group, then Ms. Client has established past persecution. She does not have the burden of establishing that each of the initial rapes and every subsequent incidents of abuse were on account of her membership in a particular social group – requiring her to do so was an error of law. As discussed below, had the IJ analyzed the nexus issue in conformity with Board and Fourth Circuit precedent, there was sufficient record evidence to conclude that Ms. Client was persecuted by Abuser on account of her membership in the particular social group of "Honduran woman who are unable to leave relationships with the fathers of their children."

1. The IJ's finding that there was "no evidence" that the persecution was "on account of" Respondent's membership in the particular social group was clearly erroneous

The IJ denied asylum, in part, because she found that there was "*no evidence* that Abuser targeted Respondent because she was a member of this group." I.J. Dec. at 14 (emphasis added). The burden on the Respondent is to provide "*some* evidence of [motive], direct or circumstantial." *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). She can satisfy the nexus requirement with her own credible testimony. *Matter of J-B-N- & S-M-*, 24 I&N Dec. at 214.

Ms. Client's testimony, deemed credible by both the IJ and DHS, I.J. Dec. at 14, establishes that several, if not all, of the incidents of persecution perpetrated by Abuser were on account of her membership in the group of "Honduran women who are unable to leave relationships with the fathers of their children." Although Ms. Client's relationship with Abuser commenced when he began raping her using the criminal investigation as a pretext, Resp't Aff. ¶¶ 10-11, this abuse changed and escalated: once Abuser knew of the pregnancy, he began being "physically rough," shaking and pulling Ms. Client, *id.* ¶ 15. Daughter's birth – the moment when Ms. Client became trapped in the relationship with the father of her child – marked a severe escalation in Abuser's campaign of persecution. Ms. Client testified that "[b]efore Daughter [sic] was born, he did not hit me," but after daughter was born his behavior changed "in a tragic manner," because "[h]e began showing how he could behave aggressively with me." Tr. at 36. She explained that she continued to use contraception in secret "because I did not wish to have any more children, and because after Daughter was born, he began to behave very differently." *Id.* at 44.

Abuser first beat Ms. Client only a few days after she gave birth to Daughter, hitting her in the face and telling her "[she] was 'his woman' now and that [she] had no right to tell him

what to do." Resp't Aff. ¶ 18. These beatings continued on a regular basis for the next seven years, at first monthly and then weekly. *See* Tr. at 40-41. Abuser made clear that he could treat Ms. Client however he wanted, because as his woman and the mother of his child, she was his property. He shouted gender-based insults at her, like "street walker" and "bitch." Resp't Aff. ¶ 27. After one beating, Abuser explained that he hoped the beating taught her, a woman, "how worthless [she] was next to him," a man. *Id.* ¶ 33. He similarly berated her during an attack that she was worthless and pathetic and "if [she] were a man, [she] could defend herself." *Id.* ¶ 52. Abuser told Ms. Client repeatedly not to question or disobey him and that he did not care what she thought because she was "[his] woman." Tr. at 62, 68.

2. Motherhood rendered her unable to leave the relationship

He frequently beat Ms. Client because he believed she was not performing her duties as his woman and a mother: he would "accuse [her] of not watching [Daughter] properly, then start hitting [her]," Resp't Aff. ¶ 29; when Ms. Client tried to attend school, Abuser beat her and restrained her from going to classes, accusing her of "being neglectful of Daughter." *Id.* ¶ 47. On one occasion, he came to her school and "scream[ed] in front of [her] classmates telling her, "Come home, see the disorder you've left. Come, pick things up, clean, come back to the house." Tr. at 65. Another time, he expressed to Ms. Client that her efforts at obtaining an education were "ridiculous" and that he "was ashamed" "because [she] was his spouse." *Id.* at 63. When she tried to work as a nurse at an area hospital, he came to the hospital and forced her home, punching and kicking her, yelling that it was "[her] fault because [she] wasn't taking good care of Daughter and because [she] wouldn't obey him," Resp't Aff. ¶ 51. Ms. Client ultimately fled Honduras after the incident described above, in which Abuser held a gun to her

head, a knife to her throat, and beat her, all because he thought she was neglecting Daughter. Tr. at 72-73.

Professor Nancy Lemon, an expert on domestic violence, has shown that "[b]eing female is the strongest risk factor for whether an individual will be a victim of partner violence" I.J. Exh. 4(N) at 4. From this fact she concludes that "the male batterer's abuse and violence is motivated by a view that sees men as entitled to beat and control women," *id.* at 5, and he uses the violence "to enforce gender stereotypical roles," *id.* at 8, and when the woman "fail[s] to fulfill the 'obligations of a good wife,'" *id.* at 10. Most notably, she finds that "[u]sing the children as blackmail and making a woman feel like she is a bad mother is gender-specific abuse, because it is targeted to undermine and exploit what for a woman is very often the most significant and essential aspect of her identity – motherhood." I.J. Exh. 4(N) at 9.

3. Respondent was abused at least in part because her Persecutor knew that she was unable to leave.

Abuser also made clear that he could, and did, treat Ms. Client as he wanted because she could not leave the relationship. He told her that if she tried to escape him, he wouldn't let her go to "anyone else." Tr. at 56-57. On another occasion, he "told [her] never to try it, because in the attempt that [she] would die." *Id.* at 68. When she actually ran away from Abuser, he tied her up and brought her back by force, telling her "that [she] was a woman of the streets and that [she] belonged at the house." *Id.* at 69. He further stated that "[she] should never try to escape again, because even if [she] were to hide under a rock, he would find [her] again." *Id.* at 70.

These numerous incidents demonstrate that Abuser did persecute Ms. Client because she was a woman, who was unable to leave the relationship with him, the father of her child. The

escalation of Abuser's abuse demonstrates that first, Ms. Client's pregnancy, and then, giving birth to their daughter – the moments at which she became the mother of his child – were crystallizing moments for Abuser, which led him to target Ms. Client in a different and more severe manner. In several incidents of persecution, Absuer beat her explicitly because of her alleged failures as a wife and mother, tormented her for being "merely" a woman, insulted her using gender-based insults, and made clear that she had no rights – including the ability to leave the relationship – because she was his partner and the mother of his child. Such record evidence is in direct contradiction with the Immigration Judge's clearly erroneous conclusion that there was "no evidence" of nexus.

CONCLUSION

For the foregoing reasons, Respondent urges the Board to find that Ms. Client was persecuted on account of her membership in the particular social group of "Honduran women who are unable to leave relationships with the fathers of their children" and to reverse the IJ's decision denying asylum. In light of this Board's validation of a nearly identical social group in *Matter of A-R-C-G-*, and the IJ's erroneous conclusions on nexus, Ms. Client should now, in the interest of justice, be expeditiously granted asylum through an affirmative decision in her favor.

In the alternative, if the Board cannot reverse the IJ based on the record below, we respectfully request that the case be remanded without prejudice for additional fact-finding and further consideration of Ms. Client's claim in light of *Matter of A-R-C-G-*.

Respectfully Submitted,

Morgan Weibel
Tahirih Justice Center
201 N Charles St.
Suite 920
Baltimore, MD 21202

Dated: 21st of January of 2014