

January 23, 2015

U.S. Citizenship and Immigration Services
Houston Asylum Office
16630 Imperial Valley, Suite 200
Houston, TX 77060

Re: Legal Arguments in Support of B [REDACTED]'s Application for Asylum
Be [REDACTED] A# [REDACTED]

Dear Sir or Madam:

Please find the enclosed legal analysis in support of [REDACTED]'s ("B [REDACTED]") application for asylum under United States immigration law. B [REDACTED] is a [REDACTED] year old girl from El Salvador who was raped by her father and has endured ongoing domestic violence throughout her life. If forced to return to El Salvador, B [REDACTED] fears rape, domestic violence, and death.

B [REDACTED] satisfies the legal requirements for asylum and we request that her application be granted.

1. Statement of Facts

B [REDACTED] was born in [REDACTED], El Salvador, on [REDACTED].¹ She originally lived together with her parents ([REDACTED] and [REDACTED]) and her older sister, [REDACTED], until she was around three or four years old.² Her father was physically abusive to B [REDACTED], her sister, [REDACTED], and her mother.³ He would push and hit B [REDACTED]'s mother in front of the children. He was also a womanizer and drug user.⁴ When B [REDACTED] was around four years old, her father drew a knife on her mother after a vicious argument.⁵ He threatened to murder B [REDACTED]'s mother if she ever left him. As a result of these threats, B [REDACTED]'s mother escaped to the U.S.

After her mother moved to the U.S. in 2003, their father chose to leave B [REDACTED] and her sister, [REDACTED] under the custody and care of their paternal grandmother ([REDACTED]) and her partner ([REDACTED]).⁶ By moving houses, B [REDACTED] went from one abusive household to another. B [REDACTED] hated living at her grandmother's house because her grandmother routinely physically and psychologically abused her. Both her father and grandmother claimed that B [REDACTED]'s mother deserted them and she no longer wished to care for her daughters.⁷ They lied to them collectively and explained that their mother lived nearby when in fact they knew she was living in the U.S.⁸ B [REDACTED]'s grandmother mocked B [REDACTED] and would call B [REDACTED]'s mother a "whore."⁹ Whenever B [REDACTED] would try to defend her

¹ Exhibit 1, Declaration of B [REDACTED] ¶1.

² *Id.* at ¶3.

³ *Id.* at ¶7.

⁴ *Id.* ¶7 and ¶14.

⁵ *Id.* at ¶ 7.

⁶ *Id.* at ¶ 3.

⁷ *Id.* at ¶ 8.

⁸ *Id.*

⁹ *Id.*

mother, or would contradict what was said, her grandmother would hit her with sticks and belts. Sometimes, she would leave B ■ bruised and swollen. She still has scars from these beatings.¹⁰

Despite B ■'s paternal grandmother being physically abusive to B ■, their father never tried to intervene or prevent any of her beatings.¹¹ He too would physically abuse his daughters by hitting them with sticks and electrical cords whenever they talked back or misbehaved.¹² In one incident, B ■ was beaten so badly with an electrical cord that she was in physical pain for three days.¹³

In addition to the ongoing beatings, B ■ endured psychological abuse at the hands of her father and grandmother.¹⁴ They would call her worthless, overweight, and say she was not part of the family.¹⁵ Her father wished that her mother had aborted B ■, and he let B ■ know about it.¹⁶ From a young age, B ■ was torn down and made to feel worthless by the people who were supposed to love and protect her.

B ■'s father eventually was determined to reconcile his relationship with B ■'s mother.¹⁷ In 2004 or so, B ■'s father moved to the U.S. to be with B ■'s mother. They eventually had two more children together (■, DOB: ■ and ■, DOB: ■).¹⁸ By 2007, they decided to bring K ■ to the U.S. to live with them.¹⁹ B ■'s father insisted that they bring just K ■.²⁰ This stemmed from K ■ being her father's favorite daughter.²¹ B ■'s father had decided to bring K ■ using lies and indicating that she needed to come to America with them because she "needed more love."²² B ■'s father psychologically abused B ■ by letting her know he wanted her mother to originally abort her pregnancy.²³ In other instances, he would tell her that she was not actually his daughter because she was overweight and did not physically look like him.²⁴ Whenever he would call B ■'s grandmother's house in El Salvador when he was already living in the U.S., he would ask to speak to each member of his family, except B ■.²⁵

B ■'s father would eventually live in the U.S. with all his children except B ■ from 2004-2013, until he was deported back to El Salvador for the last time.²⁶ Over time, his conduct had regressed back to his criminal behavior from the past. He became more violent with his mother and K ■.²⁷ He controlled their daily lives. He sexually assaulted his eldest daughter, K ■.²⁸ On this occasion,

¹⁰ *Id.*

¹¹ *Id.* at ¶ 9.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at ¶ 8.

¹⁵ *Id.* at ¶ 8 and ¶ 11.

¹⁶ *Id.* at ¶ 11.

¹⁷ *Id.* at ¶ 10.

¹⁸ *Id.* at ¶ 6.

¹⁹ *Id.* at ¶ 10.

²⁰ *Id.* at ¶ 11.

²¹ *Id.* at ¶ 11-12.

²² *Id.* at ¶ 11.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at ¶ 12.

²⁶ *Id.* at ¶ 14.

²⁷ *Id.*

²⁸ *Id.*

Disorder.⁴⁷ B■■■■ cries spontaneously and often feels sad and worthless.⁴⁸ In March 2014, B■■■■'s appendix ruptured and she received surgery for appendicitis at a public hospital.⁴⁹ Her father forced her to return to live in Conchagua again with her grandmother.⁵⁰

Upon returning to live with her grandmother, B■■■■ suffered a nervous breakdown.⁵¹ She was depressed and her sadness forced her to drop out of school.⁵² Her father and grandmother continued to say hurtful things to her.⁵³ One day, she told her father and grandmother that they had ruined her life.⁵⁴ B■■■■ told her grandmother that her father raped her, but her grandmother refused to believe her.⁵⁵ She had no protection from her grandmother either. The next day, B■■■■ informed her mother about her sexual abuse.⁵⁶ Her mother advised her to leave her grandmother's house immediately.⁵⁷

B■■■■ is concerned that should she be forced live at her father's or grandmother's house, she would continue to be beaten regularly, insulted, psychologically abused, and possibly raped again by her own father.⁵⁸ B■■■■ describes living in that house as torture. B■■■■'s only option is to not live with her abusive father and grandmother. If returned, she would need to live on her own, making her extremely vulnerable to the MS 13 gangs that run rampant in El Salvador. Many of her classmates were forced to either join the gang or have sexual relations with gang members, or face death.⁵⁹ Her friend, ■■■■, was forced to have sex with a gang member.⁶⁰ Her grandmother's neighborhood has a gang "curfew" and residents there are expected to remain quiet, do as their told, or else there will be consequences.⁶¹ B■■■■ believes that should she return to the El Salvador, she likely would be forced to join MS13 or else get murdered.⁶² Given that her father and grandmother have beaten and abused her throughout her young life, B■■■■ does not believe they will protect her from gangs.⁶³

B■■■■ was finally able to escape from her persecutors. She was spared from any violence during her journey to the U.S., and was detained by U.S. Customs and Border Protection on June 16, 2014.⁶⁴

Since arriving in the U.S., B■■■■ has received counseling services from her ORR shelter and from the Memorial Herman school based clinic at Shapstown High School in Houston, TX.⁶⁵ Her licensed social worker, ■■■■, believes that B■■■■ is adjusting perfectly to her new found protection in the U.S. She stated that B■■■■ has received counseling for her depression and that B■■■■

⁴⁷ See Exhibit 6 at pg. 3-4.

⁴⁸ See Exhibit 1 at ¶ 19-20, ¶ 23, and Exhibit 6 at pg. 3-4.

⁴⁹ See Exhibit 1 at ¶ 21.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at ¶ 23.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at ¶ 24.

⁵⁷ *Id.*

⁵⁸ *Id.* at ¶ 25.

⁵⁹ *Id.* at ¶ 25-26.

⁶⁰ *Id.* at ¶ 26.

⁶¹ *Id.*

⁶² *Id.* at ¶ 28-29.

⁶³ *Id.* at ¶ 26.

⁶⁴ See Exhibit 5, Notice to Appear and Exhibit 1 at ¶27.

⁶⁵ See Exhibit 7, S. ■■■■, LCSW, Counseling Letter on Behalf of B■■■■

has found it very helpful.⁶⁶ She believes it would be “detrimental” for B█ to return to El Salvador.⁶⁷ “She {B█} has the support of her mother, siblings, friends, school, and the clinic. She also has more access to the mental health resources she needs or may need to address her history of trauma...There is a lot of support in place (including the school based clinic) to help students achieve this goal.”⁶⁸

2. B█ is Eligible for Asylum.

An alien may receive a grant of asylum upon a determination that she is a “refugee,” that is, that she is unable or unwilling to return to and avail herself to the protection of her country because of persecution or a well-founded fear of persecution by government agents, or those the government is unwilling or unable to control, and that “one central reason for the persecution” is or would be her membership in a particular social group.⁶⁹

B█ is unable or unwilling to return to El Salvador because of past persecution and her well-founded fear of future persecution. Past persecution creates a presumption of a well-founded fear of future persecution.⁷⁰ Even without past persecution, asylum may be granted where the applicant has a well-founded fear of future persecution.⁷¹ A fear is “well-founded” so long as it is “subjectively genuine and objectively reasonable.”⁷²

Here B█’s affidavit, as well as corroborating country reports, clearly demonstrate that she has suffered persecution and has a well-founded fear of persecution as a member of one or more particular social groups, including being a Salvadoran daughter who was raped by her father and unable to leave the paternal relationship, and being and a young Salvadoran female of scarce means and without family protection.⁷³

a. The harm B█ has suffered and fears constitutes persecution.

B█ has suffered persecution at both the hands of her father and grandmother. B█’s father raped her when she was 14 years old.⁷⁴ After the rape, her father mocked and laughed at her.⁷⁵ He threatened that her grandmother would likely die if she told her grandmother because of her old age.⁷⁶ He made her feel worthless, and that nobody would believe her. To this day, she suffers traumatically from the sexual assault and ongoing abuse.⁷⁷ Her father also physically abused B█ repeatedly by hitting her with his hands, sandals, electrical cords and sticks.⁷⁸ B█’s

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(B)(i).

⁷⁰ 8 C.F.R. § 208.13(b)(1).

⁷¹ 8 C.F.R. § 208.13(b)(2)(iii)(A).

⁷² *Karouni v. Gonzales*, 399 F.3d 1163, 1170 (9th Cir. 2005) (internal quotation marks omitted).

⁷³ See 8 C.F.R. § 208.13(a).

⁷⁴ See Exhibit 1 at ¶2, ¶17-19.

⁷⁵ *Id.* at ¶ 19.

⁷⁶ *Id.*

⁷⁷ See Exhibit 6, pg.3-4 and Exhibit 7.

⁷⁸ See Exhibit 1 at ¶ 9.

father refused to protect her when her grandmother would beat her too. She fears for her life should she return to El Salvador because of what her father is capable of doing.⁷⁹

B■■■■ also suffered persecution from her grandmother. Her grandmother used to physically and emotionally abuse her.⁸⁰ Her grandmother would beat B■■■■ with belts and sticks and leave her bruised and swollen.⁸¹ She used to insult and tease B■■■■, and berate her about her mother.⁸² Her grandmother also refused to protect B■■■■ when she told her grandmother that her father sexually abused her.⁸³ B■■■■ has nowhere else to go, except to stay with her mother in the U.S.

The amount of harm suffered by a child may amount to persecution even if the same harm inflicted upon an adult in the same or similar circumstances would not amount to persecution. *See* U.S. Dept. of Justice, *Guidelines for Children's Asylum Claims*, at 1998 WL 34032561 (1998) ("The harm a child fears or has suffered . . . may be relatively less than that of an adult and still qualify as persecution."); *see also Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir. 2004) ("[A]ge can be a critical factor in the adjudication of asylum claims, and may bear heavily on the question of whether an applicant was persecuted."); *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006) (Immigration Judges' denial of asylum vacated because said judge failed to consider the accumulated harms "from the perspective of a small child"). Applications by minors should be granted more liberal review than those filed by adults.⁸⁴ Specifically, minors are entitled to a liberal application of the benefit of the doubt.⁸⁵

It is undisputed that rape constitutes persecution.⁸⁶ Additionally, the sexual, physical, and mental abuse that B■■■■ suffered at the hands of her father, including her grandmother's physical and emotional abuse, constitutes persecution.⁸⁷

b. The Salvadoran government is unwilling or unable to control B■■■■'s persecutors.

Persecution is the infliction of harm or suffering by a government or government agent or by persons a government is unwilling or unable to control. The Salvadoran government is unwilling or unable to control those who have harmed B■■■■ and threaten her with future harm. Gender-based crimes, or crimes against females, are endemic in Salvadoran society, and they are committed with near impunity.

⁷⁹ *Id.* at ¶ 28.

⁸⁰ *Id.* at ¶ 8.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at ¶ 23.

⁸⁴ *See* United Nations High Commissioner for Refugees, *Handbook on Procedures & Criteria for Determining Refugee Status*, at ¶214-217.

⁸⁵ *Id.* at ¶ 219, cited with approval by *Abay v. Ashcroft*, 368 F.3d 634, 640 (6th Cir. 2004).

⁸⁶ *Shoafra v. I.N.S.*, 228 F.3d 1070, 1074 (9th Cir. 2000); *Angoucheva v. I.N.S.*, 106 F.3d 781, 790 (7th Cir. 1997); *In re D-V*, 21 I. & N. Dec. 77, 79-80 (BIA 1993).

⁸⁷ *See Fiadjoe v. Att'y Gen.*, 411 F.3d 135, 160-61 (3rd Cir. 2005) (remanding to BIA for consideration of whether the government of Ghana was either unable or unwilling to control her father's ritual sexual abuse); *Bah v. Mukasey*, 529 F.3d 99, 116 (2d Cir. 2008) (requiring consideration of evidence that local women were routinely subjected to domestic violence, rape, genital mutilation, and sex trafficking, all without legal recourse).

The most extreme manifestation of violence against women is femicide, the murder of females because they are female. Femicide is widespread in El Salvador. “It is common for the bodies of women to be abandoned in public and private areas with signs of mutilation, severe traumas and sexual violations, and it is also common for women to be buried while still alive.”⁸⁸ El Salvador has the highest rate of femicide in the world.⁸⁹ Not only is femicide widespread, but impunity for femicide is also widespread. Less than three percent of the reported femicide cases are resolved in court.⁹⁰ “Violent aggressors are emboldened by knowing that the chance of being convicted for the horrendous crimes is virtually nonexistent, a fact that only further normalizes the violence.”⁹¹ Femicide is a leading cause of death among young females in El Salvador.⁹²

A number of factors contribute to the impunity associated with gender-based crimes in El Salvador. One of the factors is *machismo*, an entrenched characteristic of Salvadoran society, “a system of patriarchal gender biases which subject women to the will of men. Salvadorans are taught from early childhood that women are subordinate.... Society accepts and tolerates men who violently punish women for violating ... gender roles or disobeying male relatives.”⁹³ “Like Salvadoran society as whole, law enforcement officials, prosecutors, and judges discriminate against women, reduce the priority of women’s claims and otherwise prevent women from accessing legal protections and justice. This results in impunity for aggressors, which reinforces aggressor’s perception that they can inflict violence without interference or reprisal.”⁹⁴ With regard to domestic violence, “[p]olice, judges, prosecutors and other officials often believe that women deserve the blame for violence they encounter at home, and that domestic violence cases are a waste of time.”⁹⁵

As noted by the U.S. State Department, two other factors contributing to the impunity are widespread weakness in the security forces and judiciary and corruption.⁹⁶

Inadequate training, lack of enforcement of the administrative police career law, arbitrary promotions, insufficient government funding, failure to effectively enforce evidentiary rules, and instances of corruption and criminality limited the PNC’s [National Civilian Police] effectiveness.⁹⁷

Although the constitution provides for an independent judiciary, the judiciary suffered from inefficiency, corruption, political infighting, and insufficient resources. Substantial corruption in the judicial system contributed to a high level of impunity, undermining the

⁸⁸ See Exhibit 8, Declaration of [REDACTED], at ¶ 26.

⁸⁹ See Exhibit 9, “Central America: Femicides and Gender-Based Violence,” University of California, Hastings College of Law.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² See Exhibit 10, “In Central America, women killed ‘with impunity’ just because they’re women,” New York Daily News, January 10, 2014.

⁹³ Exhibit 8 at ¶17.

⁹⁴ *Id.* at ¶35.

⁹⁵ See Exhibit 11, Declaration of America Joaquina Romualdo Carcomo, ¶22.

⁹⁶ See Exhibit 12, “El Salvador 2013 Human Rights Report”, U.S. Department of State, pg. 1.

⁹⁷ *Id.* at pg. 5.

rule of law and the public's respect for the judiciary. The criminal conviction rate was less than 5 percent. An ineffective public security strategy, inadequate government funding and training of the PNC [National Civilian Police], and ineffective senior-level leadership made it difficult to identify, arrest, and prosecute perpetrators of human rights abuses and other crimes, thus diminishing public confidence in the judicial system. Imitation and killing of police officers, crime victims, and witnesses created a climate of fear, complicating investigation of violent crime and other alleged human rights abuses.⁹⁸

Patriarchal gender biases have subjected B█ to the will and control of her principal persecutor, her father. Over time, B█'s father "punished" the women in his nuclear family through physical, sexual, or emotional abuse. Both B█ and her sister, K█, were sexually assaulted by their father. If they tried to defend themselves, then they were threatened, mocked, or abused.⁹⁹ B█'s father physically abused B█, K█, and their mother. The perceived impunity in the Salvadoran justice system for abusers could have also influenced B█'s father's perception that he could inflict his will on the women of his nuclear family without police interference or reprisal.

Engrained Salvadoran gender bias distorted B█'s grandmother's behavior as well. B█ testifies that her grandmother would hit her whenever she tried to defend herself or her mother.¹⁰⁰ The entrenched *machismo* and subordination of women translated to her grandmother's abusive behavior and her shielding of B█'s father's actions. Whereas her sister K█ was quieter and did as she was told, B█ was more independent and opinionated.¹⁰¹ When B█'s father sexually abused B█, her grandmother refused to believe her.¹⁰² The grandmother's criticism of B█'s mother may have been rooted in the belief that her mother had disobeyed her gender role when she separated from B█'s father. A Salvadoran wife, like a husband's child, was expected to be subservient and controlled by the patriarch of the family.¹⁰³ When B█'s mother tried to break away from her gender cast by separating from B█'s mother, both B█'s father and her grandmother vilified B█'s mother by calling her a "whore," or accusing her of abandoning her family.¹⁰⁴

B█ never sought the assistance of the police because her father threatened that the stress would kill her grandmother.¹⁰⁵ B█ was manipulated into thinking that talking to the police would not be an option because nobody would believe her anyways.¹⁰⁶ B█ had also heard stories about the police hitting people indiscriminately and never helping anyone.¹⁰⁷ To the contrary, in El Salvador, those who sought the assistance of the police would get threatened by the MS 13. B█'s experience of being threatened or manipulated for calling the police is shared by those of limited

⁹⁸ *Id.* at page 7.

⁹⁹ See Exhibit 1 at ¶2, 7-9, 13-14, 18-20, and 23.

¹⁰⁰ *Id.* at ¶8.

¹⁰¹ *Id.* at ¶ 11-13

¹⁰² *Id.* at ¶ 23.

¹⁰³ See Exhibit 8 at ¶17.

¹⁰⁴ See Exhibit 1 at ¶8.

¹⁰⁵ *Id.* at ¶ 19.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at ¶ 28.

means of El Salvador; especially when the harm involves gender-based crimes.¹⁰⁸ The abuse is steeped in history, especially in Central America, where death squads and civil wars have left a legacy of corruption and intimidation. People who report crimes are routinely threatened with death or simply disappear”¹⁰⁹

Clearly the Salvadoran government is unwilling or unable to control those who have harmed B [REDACTED] and those who threaten her with future harm. Gender-based crimes, or crimes against females, are endemic in Salvadoran society, and they are committed with impunity. Consequently, B [REDACTED]’s persecution is caused by individuals the government is unwilling or unable to control, or worse.

c. B [REDACTED] has suffered past persecution which entitles her to a presumption that she has a well-founded fear of future persecution, a presumption which cannot be rebutted

Past persecution creates a presumption of a well-founded fear of future persecution. Under the law, that presumption can only be rebutted with a showing that there has been a fundamental change in circumstances in El Salvador, or if B [REDACTED] could avoid persecution by relocating within El Salvador, that relocation is reasonable "under all the circumstances."¹¹⁰

Clearly there has not been a change of circumstances in El Salvador since B [REDACTED] arrived to the U.S. on June 2014. The rates of femicide “have been increasing precipitously in recent years.”¹¹¹ Moreover, B [REDACTED] cannot relocate within El Salvador. She has no family member she can live with without her father interfering. When B [REDACTED] fled from her father and grandmother to San Salvador, her father forced her to come back to [REDACTED].¹¹² Her father sent for his work associate, “[REDACTED]” to return her to her grandmother’s.¹¹³ Her other relative, [REDACTED], also lives in [REDACTED] and he already told B [REDACTED] that he cannot take care of her because of family politics and he does not want to be financially burdened with the task.¹¹⁴

El Salvador is the smallest country in Central America, or about the size of Massachusetts. It is not reasonable to expect a 16 year old girl to safely relocate within El Salvador and expect her to work and support herself fulltime. The U.S. Citizenship and Immigration Services guidelines state that "it is not generally reasonable to expect a child to internally relocate by him or herself."¹¹⁵ All of B [REDACTED]’s immediate family members—other than her abusive father whom she fears—have fled to the United States. Moreover, the MS 13 is present throughout the country; its presence and

¹⁰⁸ See Exhibit 8, Declaration of [REDACTED] and Exhibit 13, “MS 13 – America’s Deadliest Gang,” National Geographic Video).

¹⁰⁹ See Exhibit 10, “In Central America, women killed ‘with impunity’ just because they are women,” New York Daily News, January 10, 2014.

¹¹⁰ 8 C.F.R. § 208.13(b)(1).

¹¹¹ See Exhibit 9, “Central America: Femicides and Gender-Based Violence,” University of California, Hastings College of Law.

¹¹² See Exhibit 1 at ¶ 21.

¹¹³ *Id.*

¹¹⁴ *Id.* at ¶ 20.

¹¹⁵ Guidelines for Children’s Asylum Claims, p. 42.

activities permeate the country. 10,000 members rule the streets of El Salvador.¹¹⁶ Should B■■ try to live in her own, MS 13 intrusion will be unavoidable.¹¹⁷ B■■ has nowhere she can safely go if she is returned to El Salvador.

Therefore the presumption that B■■ has a well-founded fear of future persecution based on past persecution cannot be rebutted.

d. Not only is B■■ entitled to a presumption that she has a well-founded fear of future persecution which cannot be rebutted, she in fact possesses a well-founded fear of future persecution.

There is no need to rely solely on the presumption that B■■ has a well-founded fear of future persecution based on past persecution, since she also in fact possesses a well-founded fear of future persecution. A fear is “well-founded” so long as it is “subjectively genuine and objectively reasonable.”¹¹⁸

B■■’s fear of future harm is clearly “subjectively genuine.” She has personally and repeatedly been the victim of gender-based crimes in El Salvador. She has been the victim of shocking domestic violence at the hands of her father and grandmother. She has also experienced the tip of brutality of the MS 13. She has firsthand knowledge of the impunity with which these crimes are committed.

B■■’s fear of harm is also “objectively reasonable.” Surely a reasonable person facing the same threat of death, rape, and physical abuse would fear returning to El Salvador. The U.S. Supreme Court has suggested that a 10% chance of harm is sufficient to ground a “well-founded fear” of persecution.¹¹⁹ The possibility of harm to B■■ if she is returned to El Salvador is near certain. Given the shocking abuse that B■■ has suffered at the hands of her father and grandmother in the past, and the fact there are no longer family members in El Salvador to protect her, her fear that they will harm her again is certainly reasonable. Given the vicious nature of the MS 13, the probability that they will eventually threaten or rape her is very high, as is the probability they will kill her if she does not join them.

B■■ clearly has a “subjectively genuine and objectively reasonable” fear of future persecution and therefore has a well-founded fear of persecution.

e. B■■’s Membership in a Particular Social Group is the one Central Reason for her Persecution.

A three prong test is applied in determining whether a group is a “particular social group.” The group must be 1) composed of members who share a common, immutable characteristic, 2)

¹¹⁶ “MS 13 – America’s Deadliest Gang,” National Geographic Video at <https://www.youtube.com/watch?v=uFGvPnvhXUU>, March 2, 2013.

¹¹⁷ See Exhibit 1 at ¶ 25-26 and 28-29.

¹¹⁸ Karouni v. Gonzales, 399 F.3d 1163, 1170 (9th Cir. 2005) (internal quotation marks omitted).

¹¹⁹ I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 440 (1987).

defined with particularity, and 3) socially distinct within the society in question.¹²⁰ An immutable characteristic is a characteristic that members cannot change or should not be required to change.¹²¹ “Particularity” addresses “the question of delineation.”¹²² “Social distinction” does not require literal identifiability, such as being able to spot a member of the group just by seeing them on the street. “Rather, the group must be perceived as a distinct component of society, which may or may not include ocular visibility.”¹²³ Groups sharing B■■■■’s immutable characteristics are perceived as a distinct component of society: a) Salvadoran daughters who are unable to leave the paternal relationship, b) Members of ■■■■■’ Nuclear Family and c) young Salvadoran females of scarce means and without family protection.

B■■■■’s persecution is based upon a potent nexus of these immutable characteristics. Gender is an immutable characteristic.¹²⁴ Age is an immutable characteristic. While youth is a transient state, the BIA acknowledges “that the mutability of age is not within one’s control.”¹²⁵ Where, as here, the asylum applicant is young at the time of her asylum determination, this characteristic is sufficiently unchangeable. As a minor, B■■■■ cannot change the fact that she is of scarce means. She also cannot change the fact that she lacks family protection. Obviously her past experiences of being raped and beaten by her father, or throbbed by her grandmother, cannot be changed. Nor can she change the fact that she is her father’s daughter. Families and kinship ties have been universally recognized as particular social groups.¹²⁶ Finally, victims of domestic violence unable to leave the family relationship have been recognized as a particular social group.¹²⁷

B■■■■ is not the victim of random or anonymous attacks. Rather, B■■■■ has been and is the specific target of persecution because of her membership in one or more groups that are particular and perceived by society, and particularly by the aggressors, as distinct. B■■■■ has been and is the specific target of domestic violence at the hands of her father because she is a Salvadoran daughter who is unable to leave the paternal relationship. As a Salvadoran daughter who is unable to leave the paternal relationship, B■■■■ fears that she will again suffer harm at the hands of her father if she is returned to El Salvador.

She will be the target of the MS 13 because she is a young Salvadoran female of scarce means and without family protection. As a young Salvadoran female of scarce means and without family protection, B■■■■ will likely be recruited and forced to join MS 13. She fears that should she refuse to join or have sex with gang members, she will be murdered and/or raped by the MS 13 if she is returned to El Salvador.

¹²⁰ *In the Matter of W-E-V-G-*, 26 I&N Dec. 227 (BIA 2014) and *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014).

¹²¹ *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985).

¹²² *See Matter of W-G-R-*

¹²³ *See Matter of M-E-V-G-*

¹²⁴ E.g., *Perdomo v. Holder*, 611 F.3d 662, 665-67 (9th Cir. 2010); *Hassan v. Gonzales*, 484 F.3d 513, 517-18 (8th Cir. 2007).

¹²⁵ *In re S-E-G-*, 24 I. & N. Dec. 579, 583-84 (BIA 2008).

¹²⁶ *Torres v. Mukasey*, 551 F.3d 616, 629 (7th Cir. 2008); *Lopez-Soto v. Ashcroft*, 383 F.3d 228, 235 (4th Cir. 2004); *Jie Lin v. Ashcroft*, 377 F. 3d 1014, 1028 (9th Cir. 2004); *Gebremichael v. INS*, 10 F. 3d 28 (1st Cir. 1993); *In re Acosta*, 19 I&N Dec. 211, 233 (BIA 1985) (noting kinship ties are a common, immutable characteristic), overruled on other grounds by *In re Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

¹²⁷ *Matter of A-R-C-G*, 26 I & N Dec. 399 (BIA 2014).

B■■■■'s identified social groups are based upon immutable characteristics, and Salvadoran society, including the aggressors, distinguishes individuals who share those characteristics from individuals who do not.

i. Salvadoran Daughters Who are Unable to Leave the Paternal Relationship

B■■■■ is the target of persecution in the form of domestic violence because she is a Salvadoran daughter who is unable to leave the paternal relationship. Her family status is immutable and, as explained below, her inability to leave the paternal relationship is immutable. The group is defined with particularity as the description is sufficiently precise. The group is socially distinct because its members are singled out for paternal abuse.

The norms of Salvadoran society reflect the “socially-accepted beliefs that women are the property of the men with whom they have familial ... relationships.” ...”¹²⁸ There are some “cultural phenomena that remain ‘unspeakable’ and [therefore] inappropriate to confront” in El Salvador, including “widespread patterns of incest [and] abuse of women and children by parents”¹²⁹ The sexual abuse and incest has resulted in an increase in suicides among adolescent girls and young women who feel they have no other recourse.¹³⁰ “Society justifies [domestic sexual violence] by reasoning that the man has the right to demand sex from [a] woman he owns, controls and financially supports, regardless of her consent.”¹³¹ “Many men believe that the Old Testament of the Bible gives the father ownership of his daughters and stepdaughters, including the right to engage in intimate sexual contact, including rape.... Countless Salvadoran girls have their first sexual experiences with relatives. Incest and sexual abuse of girls is an endemic problem in El Salvador Society resists recognizing the extent of this problem and most of these crimes are never reported or prosecuted.”¹³²

B■■■■ cannot leave the paternal relationship she has with her father, nor can her older sister, K■■■■ who was also sexually assaulted by her father. Legally, both B■■■■ and K■■■■ cannot escape the paternal relationship. A daughter cannot, of course, “divorce” her father. Moreover, the Salvadoran government does not protect a daughter from domestic violence suffered at the hands of her father. “[T]here are many barriers to obtaining ... orders of protection, and even when they are issued, they are often inadequately drafted and lack any enforcement whatsoever”¹³³ With regard to domestic violence, “[p]olice, judges, prosecutors and other officials often believe that women deserve the blame for violence they encounter at home, and that domestic violence cases are a waste of time.”¹³⁴

In addition, B■■■■ cannot escape the paternal relationship with her father through the custody or protection of other family members. All surviving members of her immediate family,

¹²⁸ See Exhibit 8 at ¶ 21.

¹²⁹ *Id.* ¶23.

¹³⁰ *Id.* ¶48

¹³¹ See Exhibit 11 at ¶13.

¹³² *Id.* at ¶14.

¹³³ *Id.* at ¶23.

¹³⁴ *Id.* at ¶22.

other than her abusive father, have fled El Salvador. Moreover, no existing extended family member can protect B [REDACTED] from her father's influence and control.¹³⁵ B [REDACTED] tried fleeing already and living on her own.¹³⁶ Her father however brought her back to [REDACTED]. Her uncle [REDACTED] cannot take her in.¹³⁷ She cannot be expected to live with her other persecutor, her grandmother either.

For these reasons, B [REDACTED] is a Salvadoran daughter who is unable to leave the paternal relationship, and for that reason has been the victim of persecution and fears future persecution at the hands of her father.

ii. Members of [REDACTED]' Nuclear Family

B [REDACTED] is the target of persecution in the form of domestic violence because she is a member of [REDACTED]' immediate family. As mentioned above, her family status is immutable and her ability to leave her family is also immutable. This group is defined with particularity based on its description of 'immediate family members.' The group is socially distinct because [REDACTED]' immediate family has suffered from his domestic violence.

Courts have adopted that family constitutes a cognizable particular social group.¹³⁸ The BIA has held that where "persecution," is "on the account of" an immutable characteristic, such as membership in a family and shared past experiences, the applicant is entitled to political asylum.¹³⁹ The "on account of" requirement is satisfied if the perpetrator acts, "at least in part," based on the protected characteristic.¹⁴⁰

Here, B [REDACTED]'s father persecuted B [REDACTED] on the account of her membership of her particular social group. B [REDACTED] is a member of her father's nuclear family. Like her mother and older sister K [REDACTED], B [REDACTED] was a victim of her father's domestic abuse.¹⁴¹ As the patriarch of his nuclear family, B [REDACTED]'s father persecuted those members of his family that challenged his authority and control. Consequently, B [REDACTED]'s younger siblings ([REDACTED]) were not abused by their father because their father was repeatedly deported and could not challenge their father's authority.¹⁴²

¹³⁵ See Exhibit 1 at ¶ 21 and 29.

¹³⁶ *Id.* at ¶ 20-21.

¹³⁷ *Id.* at ¶ 21.

¹³⁸ See *Thomas v. Gonzales*, 409 F.3d 1177, 1180 (9th Cir. 2005) (holding, "a family may constitute a social group for the purposes of refugee statutes."); *Iliev v. I.N.S.*, 127 F.3d 638,642 nA (7th Cir. 1997) (noting that "case law has suggested, with some certainty, that a family constitutes a cognizable 'particular social group' within the meaning of the law" and for purposes of the well-founded fear analysis); *Gebremichael v. I.N.S.*, 10 F.3d 28, 36 (1st Cir. 1993) ("[t]here can, in fact, be no plainer example of a social group based on common, identifiable and immutable characteristics than that of the nuclear family."); *Fatin v. I.N.S.*, 12 F.3d 1233, 1239-40 (3d Cir. 1993) (adopting the ruling in *Matter of Acosta*, 19 I. & N. Dec. 211,212, Interim Decision 2986 (BIA 1985) overruled on other grounds, *Matter of Mogharrabi*, 191 I. & N. Dec. 439 Interim Decision 93028 (BIA 1987), that "kinship ties" qualify as a particular social group); *Adebisi v. INS*, 952 F.2d 910, 913 n. 4 (5th Cir. 1992) ("The immigration judge, in her oral opinion stated, 'there is no doubt, particularly in a situation like yours, that the family relationship that is kinship, can constitute membership in a particular social group.').

¹³⁹ See *Matter of C-A-*, 231 I. & N. Dec. 951, 960 Interim Decision 3535 (BIA 2006) (holding that past persecution may be a "relevant factor in considering a purported social group's social visibility in society.")

¹⁴⁰ See *Borja v. I.N.S.*, 175 F.3d 732, 736 (9th Cir. 1999).

¹⁴¹ See Exhibit 1 at ¶ 7, 9, 14, and 18.

¹⁴² See Exhibit 1 at ¶ 6 and 14.

The immediate family members that challenged B■■■■'s father's control were persecuted (abused) by B■■■■'s father. B■■■■'s mother was physically abused by B■■■■'s father.¹⁴³ When she tried to defend herself by separating from B■■■■'s father, he pulled a knife her out and threatened her with her life.¹⁴⁴ Similarly, when B■■■■ and K■■■■ would misbehave, or when B■■■■ would talk back to her father and grandmother, B■■■■'s father would physically abuse both of them. Sadly, both siblings were also sexually assaulted by their father.¹⁴⁵ Moreover, B■■■■ cannot escape the nuclear family relationship for the same reasons as specified above. She is her father's daughter and B■■■■ cannot escape her father's control wherever she moves to in El Salvador.¹⁴⁶ A minor cannot be reasonably expected to be forced to drop out of school, work full time, and live on her own. She cannot live anywhere else but the U.S.

iii. Young Salvadoran Females of Scarce Means and Without Family Protection

B■■■■ is a viable target of persecution by members of the MS 13 because she is a young Salvadoran female of scarce means and without family protection. “[S]exual violence against women was, and is still, an inseparable part of the patriarchal norms [in El Salvador] that give men authority over women’s bodies and justify the use of violence, be it physical, sexual, psychological, or patrimonial to assert their authority.”¹⁴⁷ “The widespread belief that women’s bodies are the property of men permits male aggressors to justify sexual violence against women.”¹⁴⁸ “Gangs, like Salvadoran society in general, view women as the property of men. Gang members commit acts of domestic violence for the same reasons as non-gang members, yet violent acts are amplified because gang members have access to deadly weapons and vast criminal networks.”¹⁴⁹ “Gang violence against women outside the gang manifests in a brutality which reflects these extreme *machista* attitudes.”¹⁵⁰

The fact that B■■■■ is young makes her a more attractive and vulnerable victim of rape by the MS 13, as does the fact that she has scarce means. Women of scarce means find themselves “much more vulnerable” to gender-based crime.¹⁵¹ Although poverty might in some situations be considered mutable, because B■■■■ is a minor, it is a characteristic, like her age, which she cannot escape. Her poverty puts her in an environment where crime, including rape, is more pervasive. It also significantly limits her ability to access public and private security, a fact that is well-known by the gangs. The absence of family members to protect her significantly increases her vulnerability,¹⁵² a situation which is significantly magnified by the fact that the Salvadoran government is unwilling or unable to control those who threaten B■■■■, and may in fact be a participant.

¹⁴³ *Id.* at ¶7.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at ¶14 and 18.

¹⁴⁶ *Id.* at ¶ 21.

¹⁴⁷ See Exhibit 8 at ¶20.

¹⁴⁸ See Exhibit 11 at ¶13.

¹⁴⁹ See Exhibit 8 at ¶ 31.

¹⁵⁰ *Id.* at ¶32.

¹⁵¹ *Id.* at ¶6.

¹⁵² See Exhibit 1 at ¶ 29.

Gang violence is already pervasive around B■■■■'s life. B■■■■ was forced to drop out of in part because of increased gang violence in the area.¹⁵³ Many of her female classmates have been raped or forced to join MS 13.¹⁵⁴ Her grandmother's/father's neighborhood is controlled by MS 13, including their curfew.¹⁵⁵ After 6 p.m., no one is allowed outside without their permission.¹⁵⁶ MS 13 gang members used to extort money from her grandmother's store before she was forced to close.¹⁵⁷ Should B■■■■ be forced to return to El Salvador and live and work on her own, B■■■■ is vulnerable to gang recruitment, sexual assault, or worse. Simply put, she has no one to protect her, and the gang members know it.¹⁵⁸

3. B■■■■ also qualifies for grant of humanitarian asylum.

B■■■■ also qualifies for grant of humanitarian asylum. An applicant qualifies for humanitarian asylum even if it would be safe for her to return to her country today, if a) she has suffered past persecution on account or her membership in a particular social group and b) “demonstrate[s] compelling reasons for being unwilling or unable to return to [her home] country arising out of the severity of the past persecution.”¹⁵⁹ For instance, as explained above, B■■■■ has suffered past persecution because she is a Salvadoran daughter who is unable to leave the paternal relationship. B■■■■'s father raped B■■■■ when she was 14 years old.¹⁶⁰ Her father physically abused B■■■■ whenever he hit her with electrical cords, sandals, hands, sticks, or with whatever he could find.¹⁶¹ He left B■■■■ with bruises and physical pain.¹⁶² Her father also emotionally abused her.¹⁶³ As both supporting medical evidence demonstrate, B■■■■ has struggled to get over her father and grandmother's emotional (and physical) torment. Both her father and grandmother were not shy to remind B■■■■ that K■■■■ was their favorite.¹⁶⁴ Her father would also let B■■■■ know that she was “worthless” and “not his daughter.”¹⁶⁵ Moreover, B■■■■'s father refused to protect her when her grandmother would hit her too. And, B■■■■'s grandmother refused to protect B■■■■ from her father when she did not believe B■■■■ that she was raped by her father.¹⁶⁶ Surely B■■■■, a 16 year old minor, has compelling reasons for unwilling to return to El Salvador. This arises from the severity of her past persecution. Should B■■■■ not face future persecution at the hands of her father or grandmother, her father has left her in a perilous situation where she would be homeless, quit school, forced to work on her own, and subject to extortion, murder and/or rape at the hands of the MS 13.

An applicant also qualifies for humanitarian asylum if a) she has suffered past persecution on account of her membership in a particular social group and b) she “establishes that there is a

¹⁵³ *Id.* at ¶ 28

¹⁵⁴ *Id.* at ¶ 26 and 28.

¹⁵⁵ *Id.* at ¶ 25-26 and 28.

¹⁵⁶ *Id.* at ¶ 26.

¹⁵⁷ *Id.* at ¶ 28.

¹⁵⁸ *Id.* at ¶ 29.

¹⁵⁹ 8 C.F.R. 208.13(b)(1)(iii)(A)

¹⁶⁰ See Exhibit 1 at ¶ 18.

¹⁶¹ *Id.* at ¶ 9.

¹⁶² *Id.*

¹⁶³ See Exhibit 6, pg.2-3 and Exhibit 7.

¹⁶⁴ See Exhibit 6, pg.2 and Exhibit 1 at ¶ 12-13.

¹⁶⁵ See Exhibit 6, pg.2

¹⁶⁶ See Exhibit 1 at ¶ 23.

reasonable possibility that ... she may suffer other serious harm upon removal to [her home] country.”¹⁶⁷ Using the same example as above, B [REDACTED] has suffered persecution because she is a Salvadoran daughter who is unable to leave the paternal relationship. Even if she would not face future persecution at the hands of her father or grandmother, she faces other serious harm if she returns to El Salvador. B [REDACTED] does not have family she can live with. B [REDACTED] will be forced to live and work on her own. The MS 13 gang in her grandmother’s neighborhood has already demonstrated that they will threaten vulnerable people, no matter their age.¹⁶⁸ Like her friend and classmate [REDACTED], MS 13 will learn of her vulnerability, force her to join them or have sexual relations with them, or else die. Based on country conditions as well as current local gang violence, there is clearly a “reasonable possibility” that she will suffer from other serious bodily harm if she returns to El Salvador.

B [REDACTED]’s father raped her. He physically and emotionally abused her as well. He has beaten and threatened to murder B [REDACTED]’s mother. He has sexually and physically assaulted her sister, K [REDACTED]. B [REDACTED] continues to writhe in mental anguish every day. B [REDACTED] has nowhere else to turn to. No one else can take care of her in her home country. She fears her father will rape and control her again. She fears that her grandmother will physically and mentally abuse her. She fears that MS 13 will threaten and force her to do things against her will.

For the foregoing reasons, we request that that the Asylum Officer GRANT B [REDACTED] [REDACTED]’s application for asylum.

Respectfully submitted,

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Tahirih Justice Center
[REDACTED]

Pro Bono Counsel for B [REDACTED]

¹⁶⁷ 8 C.F.R. 208.13(b)(1)(iii)(B)

¹⁶⁸ See Exhibit 1 at ¶ 25-29.