

No. 17-2031

IN THE
United States Court of Appeals
for the Third Circuit

S.E.R.L., *et al.*,

Petitioners,

v.

ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

On Appeal from the United States Board of Immigration Appeals
Alien Nos. A ***-***-692, A ***-***-690, A ***-***-691

BRIEF OF *AMICI CURIAE*
NIWAP, INC. AND PENNSYLVANIA COALITION AGAINST DOMESTIC
VIOLENCE IN SUPPORT OF PETITIONERS AND REVERSAL

Kirsten L. Nathanson
(D.C. Bar No. 463992)
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 624-2500
Fax: (202) 628-5116

Emily T. Kuwahara
Daniel P. Wierzba
CROWELL & MORING LLP
515 South Flower Street, 40th Floor
Los Angeles, CA 90071
Tel: (213) 622-4750
Fax: (213) 622-2690

Tu-Quyen Pham
CROWELL & MORING LLP
3 Park Plaza, 20th Floor
Irvine, CA 92694
Tel: (949) 263-8400
Fax: (949) 263-8414

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

The amici curiae herein, NIWAP, Inc., the National Immigrant Women's Advocacy Project ("NIWAP"), and the Pennsylvania Coalition Against Domestic Violence ("PCADV"), through its undersigned counsel, submit this Disclosure Statement pursuant to Federal Rule of Appellate Procedure 26.1.

NIWAP is a non-stock, nonprofit organization, which has no parent company, and no person or entity owns it or any part of it. It is not aware of any publicly held corporations not a party to this proceeding with a financial interest in its outcome.

PCADV is a non-stock, nonprofit organization, which has no parent company, and no person or entity owns it or any part of it. It is not aware of any publicly held corporations not a party to this proceeding with a financial interest in its outcome.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT i

INTEREST OF AMICI CURIAE..... 1

INTRODUCTION 3

SUMMARY OF THE ARGUMENT 6

ARGUMENT 7

I. HONDURAS IS NOTORIOUSLY DANGEROUS FOR WOMEN BECAUSE THE COUNTRY HAS RAMPANT AND UNCHECKED GENDER-BASED VIOLENCE AGAINST WOMEN. 7

 A. Honduran Women Face Rampant Gender-Based Violence..... 7

 B. Gender-Based Violence in Honduras Is Underreported, and Even Women Who Do Report Violence Have No Recourse or Protection. 10

II. DOMESTIC VIOLENCE ENDANGERS FAMILY MEMBERS WHO ATTEMPT TO INTERCEDE ON BEHALF OF THE DIRECT VICTIMS. 14

III. HONDURAN WOMEN WHO INTERVENE TO PROTECT A FAMILY MEMBER FROM DOMESTIC VIOLENCE FACE GREAT DANGER AS THEY HAVE NO PROTECTION AGAINST RETALIATION..... 17

CONCLUSION..... 19

TABLE OF AUTHORITIES

Page(s)

Cases

Matter of A-R-C-G-,
26 I&N Dec. 388 (BIA 2014)4

Bi Xia Qu v. Holder,
618 F.3d 602 (6th Cir. 2010)5

Gomez Zuluaga v. Att’y Gen.,
527 F.3d 330 (3d Cir. 2008)5

Hassan v. Gonzales,
484 F.3d 513 (8th Cir. 2007)5

Mohammed v. Gonzales,
400 F.3d 785 (9th Cir. 2005)5

Matter of R-A-,
22 I&N Dec. 906 (A.G. 2001, BIA 1999)4

Sarhan v. Holder,
658 F.3d 649 (7th Cir. 2011)5

Yadegar-Sargis v. INS,
297 F.3d 596 (7th Cir. 2002)5

Statutes and Rules

Fed. R. App. P. 29 1

Violence Against Women Act 1, 2

Other Authorities

Blaine Bookey, *Domestic Violence As A Basis for Asylum: An Analysis of 206 Case Outcomes in the United States from 1994 to 2012*, 24 *Hastings Women’s L.J.* 107 (2013)4, 5

Centro de Derechos de Mujeres, Red Nacional de Defensoras de Derechos Humanos de Honduras, Foro de Mujeres por la Vida, JASS-Honduras y Centro de Estudios de la Mujer, *Feminist Organizations Report: Status of Violence Against Women in Honduras* (Jan. 6, 2014)11

Cindy Carcamo, *Domestic Violence Ruling May Help Thousands of Immigrants Get Asylum*, *L.A. Times* (Sept. 5, 2014)13

Elise Foley, *Honduran Mom Fleeing ‘Horrific Acts Of Harm’ Wins U.S. Asylum With Daughters*, *Huffington Post* (Sept. 25, 2014).....13

Emily Meyer, Lori Post, *Collateral Intimate Partner Homicide*, *SAGE Open* Vol. 3, Iss. 2 (2013)15, 16

Franco Ordonez, *Landmark Asylum Ruling Has Helped Fewer Domestic Violence Victims Than Hoped*, *Miami Herald* (Dec. 30, 2015) 4-5, 12

Inter-Am. C.H.R., *Report on the Situation of Human Rights in Honduras*, OEA/Ser.L/V/II. Doc. 42/15 (2015).....8, 10, 11, 12

JuJu Chang, Jackie Jesko, Ignacio Torres, Jenna Millman, “*Men Can Do Anything They Want to Women in Honduras’: Inside One of the Most Dangerous Places on Earth to Be a Woman,*” *ABC News* (May 3, 2017)..... 6, 9-10

KIND Latin America Working Group, *Sexual and Gender Based Violence (SGBV) & Migration Fact Sheet* (June 2017)8

PBS Newshour, *Inside the ‘Pure Hell’ of Honduras’s Rising Tide of Domestic Violence* (Oct. 24, 2015).....11

R.P. Dobash, R.E. Dobash, *Who Died? The Murder of Collaterals Related to Intimate Partner Conflict*, *Violence Against Women* 18(6):662 (2012)16, 17

Sharon G. Smith, Ph.D., Katherine A. Fowler, Ph.D., and Phyllis H. Niolon, *Intimate Partner Homicide and Corollary Victims in 16 States: National Violent Death Reporting System, 2003–2009*, Am. J. Pub. Health at 461 (March 2014, Vol. 104, No. 3).....15

United Nations, *Preliminary Report on the Visit to Honduras By the Office of the UN Special Rapporteur on Violence against Women* (July 7, 2014)8

United Nations, *Report of the Special Rapporteur on Violence Against Women, Its Cause and Consequences, Rashida Manjoo, Mission to Honduras, A/HRC/29/27/Add.1* (Mar. 31, 2015).....9, 10, 11, 18

U.N. High Comm’r for Refugees, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras*, HCR/EG/HND/16/03 (July 27, 2016)7

U.N. Office of the High Comm’r for Human Rights, *Preliminary Observations on the Official Visit to Honduras by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions* (May 27, 2016).....9

U.S. Dep’t of State, *Report on Human Rights Practices 2016, Honduras* § 6.....8, 12

U.S. Gov’t Accountability Office, Report No. GAO-08-940, *U.S. Asylum System: Significant Variation Existed in Asylum Outcomes across Immigration Courts and Judges* (Sept. 2008).....4

INTEREST OF AMICI CURIAE

NIWAP, Inc., the National Immigrant Women's Advocacy Project, ("NIWAP")¹ is a law and policy center with a special interest in the rights of immigrant women and, in particular, survivors of domestic violence. NIWAP is a non-profit public policy advocacy organization that develops, reforms, and promotes the implementation and use of laws and policies that improve legal rights, services, and assistance to immigrant women and children who are victims of domestic violence, sexual assault, stalking, human trafficking, and other crimes. NIWAP is a national resource center offering technical assistance and training to assist a wide range of professionals at the Federal, State, and local levels who work with and/or whose work affects immigrant crime victims.

NIWAP provides direct technical assistance and training for attorneys, advocates, immigration judges, the Board of Immigration Appeals judges and staff, state court judges, police, sheriffs, prosecutors, Department of Homeland Security adjudication and enforcement staff, and other professionals. NIWAP Director Leslye E. Orloff was closely involved with the enactment of the Violence Against

¹ In accordance with Federal Rule of Appellate Procedure 29(a)(2), amici curiae have filed a motion for leave to file this amicus brief. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than amici curiae or their counsel made a monetary contribution to the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

Women Act (“VAWA”) legislation, including the VAWA self-petition in 1994 and the so-called T and U visas in 2000, as well as the 1996, 2000, 2005, and 2013 VAWA confidentiality protections. She has also published legal and social science research articles on domestic violence experienced by immigrant women and children.

The Pennsylvania Coalition Against Domestic Violence (“PCADV”) is a statewide collaborative membership organization committed to ending intimate partner violence and all forms of violence against women. PCADV is a coalition of 60 community-based programs and statewide offices, acting hand in hand on behalf of domestic violence victims and their children.

INTRODUCTION

At great risk to herself, Petitioner S.E.R.L. went to the police to report the man that raped, kidnapped and attempted to traffic her daughter to Mexico, knowing that the Honduran government would offer her no protection. She was able to rescue her daughter from a horrific, abusive relationship and her daughter fled to the United States where she was granted asylum based on the abuse she suffered at the hand of the man who kidnapped, raped, abused and attempted to traffic her. After S.E.R.L.'s daughter fled Honduras, her daughter's abuser continued to come after S.E.R.L. so that he could find S.E.R.L.'s daughter.

S.E.R.L. is herself a victim of domestic violence at the hands of her stepfather, who has repeatedly threatened to kill her for interfering with his repeated abuse of her mother. S.E.R.L. fled to the United States with her other children in fear for her life and safety, but the U.S. immigration courts denied her refuge in the United States as an asylee. Unfortunately, S.E.R.L.'s dangerous situation, as a Honduran woman who is a victim of domestic violence and who is also protecting her domestically abused family members, is far from unique.

A woman from Honduras can find little help from her government to protect her from gender-based violence. And a woman who intercedes to rescue a family member from domestic violence faces great danger of retaliation from the abuser, including death. In light of these two dangerous circumstances, it is clear that the

fear S.E.R.L. felt for herself and her children is substantial and undeniable as she has no protection from retaliation from her daughter's abuser or her stepfather. To offer refuge to the direct victims of domestic violence who are able to flee danger and escape to the United States, only to slam the door shut on their loved ones who risked their lives to protect them—and send them back to a country where they are left unprotected and vulnerable—is senseless.

Our immigration courts have granted asylum to women escaping gender-based violence by recognizing gender-based persecution as grounds for asylum status, demonstrating our nation's commitment to combat gender-based violence.² Unfortunately for women fleeing domestic violence abroad and seeking asylum in the United States, whether they are granted asylum is too often dependent upon whether and how an individual immigration judge views domestic violence.³

² See, e.g., *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014); *Matter of R-A-*, 22 I&N Dec. 906 (A.G. 2001, BIA 1999).

³ Blaine Bookey, *Domestic Violence As A Basis for Asylum: An Analysis of 206 Case Outcomes in the United States from 1994 to 2012*, 24 *Hastings Women's L.J.* 107, 109 (2013), citing U.S. Gov't Accountability Office, Report No. GAO-08-940, *U.S. Asylum System: Significant Variation Existed in Asylum Outcomes across Immigration Courts and Judges* (Sept. 2008) (analyzing more than 198,000 asylum decisions rendered by immigration judges from Oct. 1, 1994 through Apr. 30, 2007). See also Franco Ordonez, *Landmark Asylum Ruling Has Helped Fewer Domestic Violence Victims Than Hoped*, *Miami Herald* (Dec. 30, 2015), available at <http://www.miamiherald.com/news/nation-world/national/article52091630.html> (noting that “[a] review of recent decisions in domestic violence asylum cases has

(continued...)

While state laws mandate or encourage that state court judges receive training on the dynamics of domestic violence, including how to assess lethality of abuse and the danger it poses to family members, immigration judges do not routinely receive such training. Further, immigration judges are reticent to issue asylum to victims of domestic violence and other forms of gender based violence, despite the fact that Courts of Appeals have recognized growing numbers of gender-based social groups.⁴

This case presents this Court with an opportunity to recognize a gender-based social group facing imminent danger and in need of protection under this country's asylum laws – Honduran women who intervene to protect their families from abuse and domestic violence. Not only is S.E.R.L. subject to some of the

(continued...)

advocates saying that outcomes continue to be influenced by courts' locations and whether applicants have lawyers.”).

⁴ Bookey, *Domestic Violence As A Basis for Asylum: An Analysis of 206 Case Outcomes in the United States from 1994 to 2012*, 24 *Hastings Women's L.J.* at 147, citing *Gomez Zuluaga v. Att'y Gen.*, 527 F.3d 330 (3d Cir. 2008) (women who escaped involuntary servitude after being abducted and confined by a guerrilla organization); *Bi Xia Qu v. Holder*, 618 F.3d 602 (6th Cir. 2010) (Chinese women subjected to forced marriage and involuntary servitude); *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011) (Jordanian women who have flouted repressive moral norms and face a high risk of honor killing); *Yadegar-Sargis v. INS*, 297 F.3d 596 (7th Cir. 2002) (Iranian Christian women who do not wish to adhere to the Islamic female dress code); *Hassan v. Gonzales*, 484 F.3d 513 (8th Cir. 2007) (Somalian women subjected to female genital mutilation); *Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005) (same).

most dangerous conditions on earth as a woman if forced to return to Honduras, but she also faces greater danger and potential death because she is a victim of domestic violence and she interfered with one domestic violence perpetrator's abuse of her daughter and another perpetrator's abuse of her mother. For many women fleeing Honduras from domestic violence situations, their flight and ability to be granted asylum in the United States is a matter of life and death; they are not escaping poverty.⁵ Such is the case here for S.E.R.L.

Amici respectfully request that this Court reverse the BIA's decision.

SUMMARY OF THE ARGUMENT

Women in Honduras endure a particularly dangerous and hostile environment where rampant gender-based violence is inflicted upon them with no protection from the Honduran government. Furthermore, those who intervene to protect their family from perpetrators of domestic violence are at risk of violent retaliation by the perpetrator, up to and including death. Faced with both of these extremely dangerous circumstances, Honduran women who intervene in domestic violence situations risk their lives to protect their loved ones, and are left

⁵ JuJu Chang, Jackie Jesko, Ignacio Torres, Jenna Millman, "*Men Can Do Anything They Want to Women in Honduras': Inside One of the Most Dangerous Places on Earth to Be a Woman*," ABC News (May 3, 2017), available at <http://abcnews.go.com/International/men-women-honduras-inside-dangerous-places-earth-woman/story?id=47135328>.

completely vulnerable to violent retaliation. Therefore, S.E.R.L., and women like her, have a substantial and unquestionable fear of persecution in Honduras. The BIA's decision must be reversed.

ARGUMENT

I. Honduras Is Notoriously Dangerous for Women Because The Country Has Rampant and Unchecked Gender-Based Violence Against Women.

Honduran women in their home country face an extremely hostile and dangerous environment, which is left completely unchecked by its government. Indeed, the United Nations High Commissioner for Refugees (“UNHCR”) guidelines for international protection of those fleeing Honduras states: “women and girls from areas . . . where sexual and gender-based violence against women and girls is practiced, may be in need of international refugee protection on the basis of their membership of a particular social group, and/or their (imputed) political opinion, or on the basis of other Convention grounds.”⁶

A. Honduran Women Face Rampant Gender-Based Violence.

Violence against women and impunity for perpetrators has been and

⁶ U.N. High Comm’r for Refugees, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras*, HCR/EG/HND/16/03 (July 27, 2016), available at <http://www.refworld.org/docid/579767434.html>.

continues to be a serious problem in Honduras.⁷ After a visit to Honduras, the United Nations Special Rapporteur on Violence against Women (“U.N. Special Rapporteur”) reported, “violence against women is widespread, systematic and its impact is manifest in various forms on women and young girls.”⁸ Gender-based violence is the second leading cause of death for women of reproductive age in Honduras.⁹ The National Violence Observatory at the National Autonomous University of Honduras reported 478 violent deaths of women in Honduras in 2015, and 222 violent deaths of women during the first six months of 2016.¹⁰ The Inter-American Commission on Human Rights (“IACHR”) reported that, between 2005 and 2013, Honduras experienced a 263.4% increase in murders of women.¹¹ Between 2008 and 2013, the reported cases of disappeared women increased

⁷ U.S. Dep’t of State, *Country Report on Human Rights Practices 2016, Honduras* § 6.

⁸ United Nations, *Preliminary Report on the Visit to Honduras By the Office of the UN Special Rapporteur on Violence against Women* (July 7, 2014), available at <http://www.hn.undp.org/content/honduras/es/–home/presscenter/articles/2014/07/07/informe-preliminar-de-la-visita-a-honduras-realizada-por-la-relatora-especial-de-la-onu-sobre-la-violencia-contra-las-mujeres.html>.

⁹ KIND Latin America Working Group, *Sexual and Gender Based Violence (SGBV) & Migration Fact Sheet* (June 2017).

¹⁰ U.S. Dep’t of State, *Country Report on Human Rights Practices 2016, Honduras* § 6.

¹¹ Inter-Am. C.H.R., *Report on the Situation of Human Rights in Honduras*, OEA/Ser.L/V/II. Doc. 42/15, 52 (2015).

281%.¹² Between 2002 and 2014, 4,283 women died violently in Honduras, and one woman dies violently on average every 17 hours.¹³ In 2015 and the first quarter of 2016 575 femicides, murdering women because they are women, were reported in Honduras.¹⁴ Honduras does recognize femicide as a crime, but as of December 2014 the Public Prosecutor's Office had issued orders to prosecute in only five cases of femicide and obtained only one conviction for femicide in the capital of Tegucigalpa.¹⁵

These ever-increasing numbers are the result of a society and government that accepts gender-based violence against women. Tragically, Honduras has been called the most dangerous place on earth to be a woman because “[m]en can do anything they want to women in Honduras.”¹⁶ Indeed, a female magistrate of the

¹² United Nations, *Report of the Special Rapporteur on Violence Against Women, Its Cause and Consequences, Rashida Manjoo*, Mission to Honduras, A/HRC/29/27/Add.1, 6-7 (Mar. 31, 2015).

¹³ *Id.*

¹⁴ U.N. Office of the High Comm’r for Human Rights, *Preliminary Observations on the Official Visit to Honduras by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions* (May 27, 2016), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20030&LangID=E>.

¹⁵ *Id.* at 55.

¹⁶ JuJu Chang, Jackie Jesko, Ignacio Torres, Jenna Millman, “‘Men can do anything they want to women in Honduras’: Inside one of the most dangerous places on Earth to be a woman,” ABC News (May 3, 2017), available at

(continued...)

Honduras Supreme Court of Justice stated “violence against women [in Honduras] is considered as something natural.”¹⁷ The U.N. Special Rapporteur reported that “[v]iolence against women [in Honduras] is widespread and systematic and affects women and girls in numerous ways.”¹⁸ “A climate of fear, in both the public and private spheres, and a lack of accountability for violations of human rights of women are the norm, despite legislative and institutional developments.”¹⁹ She also concluded that impunity, socioeconomic disparities, and corruption continue to foster a generalized state of violence against women in Honduras.²⁰

B. Gender-Based Violence in Honduras Is Underreported, and Even Women Who Do Report Violence Have No Recourse or Protection.

Each year, 30,000 Honduran women report domestic violence, and a Honduran woman reports sexual violence every three hours. Yet those figures represent a very small portion of the actual incidents of violence because there is

(continued...)

<http://abcnews.go.com/International/men-women-honduras-inside-dangerous-places-earth-woman/story?id=47135328>.

¹⁷ Inter-Am. C.H.R., *Report on the Situation of Human Rights in Honduras*, Doc. 42/15 at 53.

¹⁸ *Report of the Special Rapporteur on Violence Against Women, Its Cause and Consequences*, Rashida Manjoo, at 4.

¹⁹ *Id.*

²⁰ *Id.* at 19.

widespread underreporting.²¹ Often women in Honduras will avoid seeking help or reporting acts of violence because of stigma, shame, fear of reprisals from the perpetrators, and complications and risks prior to lodging complaints.²² As one organization reported to the U.N. Special Rapporteur, as a result, “[t]he lack of confidence in security institutions and a sure lack of protection translate into a low rate of complaints lodged.”²³ When women wish to file complaints, they are often encouraged to withdraw the case.²⁴ While others “retract their cases because of the cycle of violence.”²⁵

Further, even those Honduran women who report or file complaints do not have any recourse or protection from the nation’s police force, courts or infrastructure. The Center for Women’s Rights reported that 18,070 women filed

²¹ *Id.*

²² *Id.* at 10.

²³ Centro de Derechos de Mujeres, Red Nacional de Defensoras de Derechos Humanos de Honduras, Foro de Mujeres por la Vida, JASS-Honduras y Centro de Estudios de la Mujer, *Feminist Organizations Report: Status of violence against women in Honduras*, 8 (Jan. 6, 2014), available at <http://protectioninternational.org/wp-content/uploads/2014/07/Violence-Women-Honduras-RapporteurONU-June2014final.pdf>.

²⁴ *Id.*

²⁵ PBS Newshour, *Inside the ‘Pure Hell’ of Honduras’s Rising Tide of Domestic Violence* (Oct. 24, 2015), available at <http://www.pbs.org/newshour/bb/inside-pure-hell-violence-women-honduras/>.

domestic violence complaints in special domestic violence courts in 2015.²⁶

However, according to IACHR, there is a 95% impunity rate in Honduras for crimes against women.²⁷ Indeed, the IACHR reported that when a woman files a complaint against violence, she receives an appointment in three months. During that three month period, “either the victim reconciles with her assailant or he ends up killing her.”²⁸

Newspapers report several stories of Honduran women who have sought government protection against domestic violence to no avail. In one case, a woman called the Honduran police when her husband grabbed a cast iron grill off a hot stove and pressed it into her arm, but the police ignored her plea simply because her abuser was the father of her children.²⁹ In another case, an asylum seeker testified that her abuser was able to rape her even in prison, and no

²⁶ U.S. Dep’t of State, *Country Report on Human Rights Practices 2016, Honduras* § 6.

²⁷ Inter-Am. C.H.R., *Report on the Situation of Human Rights in Honduras*, Doc. 42/15 at 54-55.

²⁸ *Id.* at 54.

²⁹ Franco Ordonez, *Landmark Asylum Ruling Has Helped Fewer Domestic Violence Victims Than Hoped*, Miami Herald (Dec. 30, 2015), available at <http://www.miamiherald.com/news/nation-world/national/article52091630.html>.

government officials were willing to help her divorce him.³⁰ As one Honduran domestic violence expert testified, “The general response of police is not to protect women . . . It’s not a priority for them.”³¹

The situation faced by S.E.R.L. is a stark example of the systemic violence against women and the failure of Honduran authorities to prosecute against perpetrators of violence. First, after S.E.R.L.’s daughter was raped, kidnapped, and taken to Mexico by her perpetrator J.A.G.U. in an attempt to sell her into the sex trade, S.E.R.L. contacted J.A.G.U.’s parents and the police to report his crimes and initiate an investigation. Joint Appendix (“J.A.”) 000024. However, police efforts were ineffective and no arrest was ever made, even after J.A.G.U.’s own father reported his crimes to police. J.A. 000024-25, 246-51. Instead, after S.E.R.L.’s daughter escaped from J.A.G.U and returned to Honduras, J.A.G.U.’s father and the police visited S.E.R.L.’s mother and offered to have J.A.G.U. marry S.E.R.L.’s daughter “as restitution for his crimes.” J.A. 000025, 246-51. After S.E.R.L.’s daughter fled to the United States seeking asylum (which she did

³⁰ Cindy Carcamo, *Domestic Violence Ruling May Help Thousands of Immigrants Get Asylum*, L.A. Times (Sept. 5, 2014), available at <http://www.latimes.com/nation/la-na-ff-immig-domestic-20140906-story.html>.

³¹ Elise Foley, *Honduran Mom Fleeing ‘Horrific Acts Of Harm’ Wins U.S. Asylum With Daughters*, Huffington Post (Sept. 25, 2014), available at http://www.huffingtonpost.com/2014/09/25/domestic-violence-asylum_n_5885266.html.

receive), J.A.G.U.'s efforts to track find her did not stop. J.A.G.U. tried to track her down by seeking out her acquaintances and family members, including S.E.R.L. J.A. 000025-26, 163-64, 170-71, 246-51.

Second, S.E.R.L. has suffered domestic violence at the hands of her stepfather, J.O., when she tried to protect her mother from domestic violence. He repeatedly threatened to kill S.E.R.L. because she interfered with his abuse against her mother. J.A. 000175-180. Indeed, after she lent J.O. \$2,500 in 2013, he threatened to kill her instead of repaying her. J.A. 000026, 177-80, 193-96, 249-50. S.E.R.L. has heard from two people, including her own mother, that J.O. said that he would kill her. J.A. 000250.

Not surprisingly, S.E.R.L. now fears that if she and her underage daughters are returned to Honduras, J.A.G.U or his family would harm her to either obtain information about where her daughter is located, as retribution for reporting his crimes to the Honduran police, or both. J.A. 000026, 174, 192-93, 250. S.E.R.L. also fears retribution from her stepfather J.O. for attempting to stop his repeated abuse of her mother, just as J.O. assaulted her half-siblings when they tried to defend S.E.R.L.'s mother from the latest abuse just a few months ago. J.A. 000026, 196, 250.

II. Domestic Violence Endangers Family Members Who Attempt to Intercede on Behalf of The Direct Victims.

It is widely-established that domestic violence endangers the family

members of victims of domestic violence and intimate partner violence, especially when they attempt to intercede to protect the victim of abuse. For example, a study of intimate partner related homicide in the United States found that a substantial number of those homicides include family members, friends, neighbors, persons who intervene, law enforcement responders, or bystanders, which are known collectively as corollary or collateral victims.³² More specifically, that study found that 48.8% of the corollary victims it studied were family members of the domestic violence victim.³³ Another study found 84 collateral intimate partner incidents in the State of Michigan over a period of 18 years, with many of the incidents involving multiple collateral victims.³⁴ All of the domestic violence victims (or focal victims) were women, all of the perpetrators were men, and in those 84 incidents, the perpetrators killed 111 collateral murder victims. Of those, the perpetrator killed the parents or siblings of the domestic violence victim in nearly

³² Sharon G. Smith, Ph.D., Katherine A. Fowler, Ph.D., and Phyllis H. Niolon, *Intimate Partner Homicide and Corollary Victims in 16 States: National Violent Death Reporting System, 2003–2009*, Am. J. Pub. Health at 461 (March 2014, Vol. 104, No. 3), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953789/pdf/AJPH.2013.301582.pdf>.

³³ *Id.* at 462, FIGURE 1.

³⁴ Emily Meyer, Lori Post, *Collateral Intimate Partner Homicide*, SAGE Open Vol. 3, Iss. 2, 1, 3 (2013).

25% of the cases.³⁵

Another study on intimate relationship and domestic violence studied the effect of domestic violence on corollary victims in Britain. Allies of the domestic violence victims, which include mothers, family members, or acquaintances, were murdered because the perpetrator was focused on revenge, punishment, and annihilation since he could not force his partner to return or remain with him.³⁶ The study found that 63% of allies of domestic violence victims that were murdered were women, two-thirds of the women allies murdered were relatives (mothers, sisters, and daughters), and 42% of the ally women murdered were also raped.³⁷ Notably, few (only 5%) of the allies murdered has any prior history of suffering crime victimization prior to their murder by their family member's perpetrator.³⁸ In one case, the perpetrator raped and strangled his mother-in-law immediately after release from prison for assaulting the victim's daughter because he objected to the mother-in-law's interference in his abusive relationship.³⁹ All of the murders of allies and collateral victims involved the perpetrators exhibiting

³⁵ *Id.* at 4-6.

³⁶ R.P. Dobash, R.E. Dobash, *Who Died? The Murder of Collaterals Related to Intimate Partner Conflict*, *Violence Against Women* 18(6):662, 667-69 (2012).

³⁷ *Id.* at 665.

³⁸ *Id.*

³⁹ *Id.* at 666.

harassment, punishment, and revenge relating to the domestic violence victim.⁴⁰

Thus, the above studies demonstrate that even in countries that provide protections to domestic violence victims, the victims and corollary victims, including family members, are subject to danger and death. In countries that provide little or no support, such as Honduras, the risk of danger and death increases exponentially.

III. Honduran Women Who Intervene To Protect A Family Member From Domestic Violence Face Great Danger As They Have No Protection Against Retaliation.

The Honduran government's protections for family members of domestic violence victims are currently non-existent. "[W]hen complaints are filed, especially for femicide and disappearances, the victim's family members abandon the process due to all the difficulties they encounter."⁴¹ Indeed, after studying the violence against women in Honduras, the U.N. Special Rapporteur made several recommendations to the Honduran government that explicitly recognize the precarious position of Honduran women who intercede on behalf of their family members in domestic violence situations. The U.N. Special Rapporteur recommended that the Honduran government "[e]nsure that protection measures are put in place to ensure the safety, privacy and dignity of victims *and their*

⁴⁰ *Id.* at 667.

⁴¹ *Id.*

families at all stages of the criminal justice process, and ensure that witness and victim protection programmes are established[.]”⁴² The U.N. Special Rapporteur further recommended that the Honduran government “[e]nsure that all procedures and complaint mechanisms are accessible to women who are victims of violence *and their family members* and other witnesses without fear of reprisal[.]”⁴³ None of these recommendations have been implemented, and women like S.E.R.L. continue to live in fear of retaliation and violence.

Indeed, after S.E.R.L. reported J.A.’s crimes to the Honduran police, the response was that the police showed up with J.A. and his father, where J.A. and his father offered to have J.A.G.U. marry S.E.R.L.’s daughter as “retribution” for his crimes. J.A. 000248-249. Indeed, even though S.E.R.L. never dropped the charges against J.A.G.U., neither he nor his father was arrested by the Honduran police. J.A. 000249.

In sum, Honduran women who protect their female family members from domestic violence are at great risk of violent retaliation themselves by the abuser, because they are left wholly unprotected in a country that accepts violence against women as a norm. They offer a compelling and chilling case for protection under

⁴² *Report of the Special Rapporteur on Violence Against Women, Its Cause and Consequences, Rashida Manjoo, Mission to Honduras*, at 20 (emphasis added).

⁴³ *Id.* (emphasis added).

our asylum laws, and the BIA was wrong to conclude otherwise.

CONCLUSION

Amici respectfully support Petitioners' position and request that this Court reverse the BIA's decision.

September 25, 2017

Respectfully submitted,

/s/Kirsten L. Nathanson
Kirsten L. Nathanson
(D.C. Bar No. 463992)
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 624-2500
Fax: (202) 628-5116

Counsel for Amici Curiae

COMBINED CERTIFICATION

Under the Federal Rules of Appellate Procedure and the Local Rules of the United States Court of Appeals for the Third Circuit (“Local Rules”), Kirsten L. Nathanson hereby certifies the following:

1. I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.
2. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5), 32(a)(7)(A), and the Local Rules, because this brief contains 3,893 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
3. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally spaced typeface using Word 2010 in 14-point Times New Roman style.
4. The text of the electronic brief and the hard copies are identical.
5. A virus check was performed on the electronic brief using Microsoft Windows 10 – Windows Defender Antivirus, and no virus was detected.
6. On September 25, 2017, I caused the Brief of Amici Curiae to be electronically filed. All counsel of record are Filing Users and will be served electronically through the Court’s electronic docketing system (CM/ECF).
7. I further certify that on September 25, 2017, I caused seven (7) copies of the Brief to be sent to the Clerk’s Office via hand-delivery on September 26, 2017.
8. I certify that the foregoing is true and correct.

September 25, 2017

/s/Kirsten L. Nathanson
Kirsten L. Nathanson
(D.C. Bar No. 463992)
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 624-2500
Fax: (202) 628-5116
Counsel for Amici Curiae