No. 20[redacted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[redacted]

Petitioner,

v.

WILLIAM P. BARR, U.S. Attorney General,

Respondent.

ON PETITION FOR REVIEW OF AN ORDER OF THE BOARD OF IMMIGRATION APPEALS

BRIEF OF *AMICUS CURIAE* THE HARVARD IMMIGRATION AND REFUGEE CLINICAL PROGRAM IN SUPPORT OF PETITIONER

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RULE 26.1 DISCLOSURE STATEMENT

The Harvard Immigration and Refugee Clinical Program ("HIRC") is a clinical program at Harvard Law School. No publicly-held entity owns an interest of ten percent or more in HIRC, and it does not have any members who have issued shares or debt securities to the public.

Dated: Nov. 20, 2020

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TABLE OF CONTENTS

RULE 26.1 DISCLOSURE STATEMENT i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

INTEREST OF AMICUS CURIAE 1

INTRODUCTION 2

ARGUMENT 4

I. MEMBERSHIP IN A COGNIZABLE PARTICULAR SOCIAL GROUP MAY BE SHOWN BASED ON GENDER ALONE 4

II. THE CONCLUSION THAT GENDER ALONE IS SUFFICIENT TO ESTABLISH MEMBERSHIP IN A PARTICULAR SOCIAL GROUP IS FAITHFUL TO THE INA, AS RECOGNIZED IN ACOSTA 6

III. GENDER MEETS THE CRITERIA THE BOARD HAS ADDED TO DEFINE MEMBERSHIP IN A PARTICULAR SOCIAL GROUP SINCE *ACOSTA* 10

IV. OTHER SIGNATORIES TO THE REFUGEE CONVENTION AND INTERNATIONAL BODIES HAVE ALSO RECOGNIZED GENDER ALONE AS A COGNIZABLE SOCIAL GROUP 14

CONCLUSION 18

CERTIFICATE OF COMPLIANCE 19

CERTIFICATE OF SERVICE 20

ADDENDUM 21

TABLE OF AUTHORITIES

Cases

—, (Arlington Immigration Court, 2018) 10, 18

—, (Arlington Immigration Court, May 1, 2020)..... 9, 14, 16

—, (Boston Immigration Court, June 18, 2019)..... 10, 16

—, (Denver Immigration Court, Mar. 7, 2019) 10, 17

—, (Newark Immigration Court, Mar. 13, 2020)..... 10, 15, 17

—, (San Francisco Immigration Court, Sept. 13, 2018)..... 10

Alvarez Lagos v. Barr, 927 F.3d 236 (4th Cir. 2019)..... 16

C-, (Philadelphia Immigration Court, May 15, 2019) 10

Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689 (Can., S.C.C.)..... 19

De-Pena-Paniagua v. Barr, 957 F.3d 88 (1st Cir. 2020) 9, 13, 17

Diaz-Reynoso v. Barr, 968 F.3d 1070 (9th Cir. 2020) 9, 10, 13, 17

Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993)..... 13

Grace v. Barr, 965 F.3d 883 (D.C. Cir. 2020) 10

Hassan v. Gonzales, 484 F.3d 513 (8th Cir. 2007)..... 13

Henriquez-Rivas v. Holder, 707 F.3d 1081 (9th Cir. 2013) 17

INS v. Cardoza-Fonseca, 480 U.S. 421 (1987) 19

Josile v. Canada (Minister of Citizenship & Immigration), [2011] 382 FTR 188 (Can. FC, Jan. 17, 2011) 20

Juan Antonio v. Barr, 959 F.3d 778 (6th Cir. 2020) 10

Kn v. Canada (Minister of Citizenship & Immigration), (2011) 391 FTR 108 (Can. FC, June 13, 2011) 20

Matter of A-B-, 27 I. & N. Dec. 316 (A.G. 2018) 7, 8

Matter of Acosta, 19 I. & N. Dec. 211 (BIA 1985) 7, 12

Matter of Kasinga, 21 I. & N. Dec. 357 (BIA 1996) 14

Matter of M-E-V-G-, 26 I. & N. Dec. 227 (BIA 2014) 15, 16

Matter of W-G-R-, 26 I. & N. Dec. 208 (BIA 2014) 15

M-D-A-, (BIA, Feb. 14, 2019) 11, 16

Miguel-Miguel v. Gonzales, 500 F.3d 941 (9th Cir. 2007) 22

Mohammed v. Gonzales, 400 F.3d 785 (9th Cir. 2005) 12

Ngengwe v. Mukasey, 543 F.3d 1029 (8th Cir. 2008) 13

Niang v. Gonzales, 422 F.3d 1187 (10th Cir. 2005) 13, 14

N-P-S-, AXXX-XXX-777 (BIA, July 27, 2020) 11

Perdomo v. Holder, 611 F.3d 662 (9th Cir. 2010) 12, 15, 16

Silvestre-Mendoza v. Sessions, 729 F. App'x 597 (9th Cir. 2018) 9

S-R-P-O-, AXXX XXX 056 (BIA, Dec. 20, 2018) 11

Ticas-Guillen v. Whitaker, 744 F. App'x 410 (9th Cir. 2018) 9

T-S-M-, (BIA, Apr. 16, 2019) 10

X-Q-C-D-, (BIA, Dec. 11, 2018) 11

Y-M-L-, (BIA, Sept. 10, 2019) 11

Statutes

8 U.S.C. § 1101(a)(42) 14

Other Authorities

Australian Department of Immigration and Multicultural Affairs, *Refugee and Humanitarian Visa Applicants: Guidelines on Gender Issues for Decision Makers* (July 1996) 21

Convention relating to the Status of Refugees, adopted July 28, 1951, entered into force Apr. 22, 1954, 189 UNTS 137 19

Fornah (FC) v. Sec'y of State for Home Dep't, [2006] UKHL 46 20

Honduras's Constitution of 1982 with Amendments through 2013 13

Immigration & Refugee Board of Canada, *Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act* (Mar. 9, 1993) 20

Immigration Appellate Authority of the United Kingdom, *Asylum Gender Guidelines* (Nov. 2000) 20

Islam & Shah v. Sec'y of State Home Dep't, [1999] 2 AC 629 (U.K.) 20

James C. Hathaway & Michelle Foster, The Law of Refugee Status (2d ed. 2014) 20

Memorandum from Phyllis Coven, INS Office of International Affairs, to All INS Asylum Officers and HQASM Coordinators, *Consideration for Asylum Officers Adjudicating Asylum Claims from Women* (May 26, 1995) 13

Minister for Immigration & Multicultural Affairs v. Khawar (2002) 76 A.L.J.R. 667 (Aust.) 21

Protocol relating to the Status of Refugees, adopted Jan. 31, 1967, entered into force Oct. 4, 1967, 606 UNTS 267 19

Refugee Appeal No. 76044 (NZ RSAA, 2008) 21

UNHCR, *Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, U.N. Doc. HCR/GIP/02/01 (May 7, 2002) 22

UNHCR, *Guidelines on International Protection: Membership of a Particular Social Group within the context of Article 1(A)(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, U.N. Doc. HCR/GIP/02/02 (May 7, 2002) 22

INTEREST OF AMICUS CURIAE

The Harvard Immigration and Refugee Clinical Program ("HIRC") submits this brief pursuant to Federal Rules of Appellate Procedure, Rule 29(a) and Circuit Rules 26(b) and 29-3.[1] HIRC has been a leader in the field of refugee and asylum law for over 30 years and has a direct interest and extensive expertise in the proper development and application of immigration and asylum law, so that claims for protection receive fair and full consideration under existing standards of law.

HIRC is dedicated to the representation of individuals applying for U.S. asylum and related protections, as well as the representation of individuals who have survived domestic violence and other crimes and are seeking avoidance of forced removal in immigration proceedings. HIRC has worked with thousands of immigrants and refugees from around the world since its founding in 1984. It combines representation of individual applicants for asylum and related relief with appellate litigation and policy advocacy.

HIRC attorneys are recognized experts in asylum law, including asylum cases involving gender. HIRC was central to the drafting of the historic U.S. Gender Asylum Guidelines, which were adopted by the federal government, and HIRC has filed briefs as amicus curiae in cases before the U.S. Supreme Court, the federal

[1] Petitioner consents to this filing and Respondent takes no position on this filing. *Amicus* states that no counsel for the party authored this brief in whole or in part, and no party, party's counsel, or person or entity other than *amicus* and their counsel contributed money that was intended to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

courts of appeals, the Board of Immigration Appeals, and various international tribunals.

Among HIRC's clients are survivors of human rights abuses from all over the world, including women from Honduras, applying for refugee protection. Accordingly, HIRC has a direct interest in the outcome of this action and respectfully submits this brief in support of the Petitioner.

INTRODUCTION

The Board of Immigration Appeals ("Board") erred in summarily rejecting Petitioner's proposed particular social group of "Honduran women" and/or "Honduran women unable to leave a domestic relationship"—as not cognizable in light of *Matter of A-B-*, 27 I. & N. Dec. 316, 328 (A.G. 2018). That conclusion is inconsistent both with longstanding precedent and with the narrow holding in *Matter of A-B-*, which is not applicable to Ms. [redacted] case. Since *Matter of A-B-*, this Court, the Board itself, and immigration judges have repeatedly reaffirmed that gender alone or gender along with another immutable characteristic, such as nationality, can constitute a cognizable social group, depending on the evidence presented in a given case.

Matter of A-B- affirmed the reasoning of *Matter of Acosta*, the seminal decision in which the Board explicitly recognized "sex" as a quintessential example of a cognizable particular social group ("PSG"). *See Matter of Acosta*, 19 I. & N. Dec. 211, 233 (BIA 1985). The Attorney General in *A-B-* reiterated a key aspect of *Acosta*, highlighting that "persecution . . . directed toward an individual who is a

member of a group of persons all of whom share a common, immutable characteristic" constitutes "persecution on account of membership in a particular social group." *A-B-*, 27 I. & N. Dec. at 328. The Attorney General's endorsement of *Acosta* is hardly surprising: *Acosta*'s conclusion that a PSG can be defined by gender comports with the Immigration and Nationality Act ("INA") and the *ejusdem generis* canon of statutory interpretation.

Gender-based particular social groups, including gender itself or gender along with nationality, also satisfy the additional requirements of particularity and social distinction announced in Board decisions since *Acosta*. Indeed, after *A-B-*, numerous decisions of the immigration courts and the Board have recognized that such groups can satisfy both requirements. In failing to recognize that Petitioner proposed a cognizable particular social group under *Acosta* and more recent decisions, the Board in this case overlooked what courts have long recognized both nationally and internationally: the Refugee Convention provides protection to survivors of gender-based violence on account of their gender.

For these reasons, the Board thus erred when it categorically rejected the gender-based social groups set forth by Petitioner, including the social group of Honduran women. This Court should correct that error and vacate the Board's decision.

ARGUMENT

I. MEMBERSHIP IN A COGNIZABLE PARTICULAR SOCIAL GROUP MAY BE SHOWN BASED ON GENDER ALONE

Since *Matter of A-B-*, this Court, several sister circuits, the Board, and immigration judges have all recognized that gender or gender plus nationality can form the basis of a cognizable social group. In *Silvestre-Mendoza v. Sessions*, for example, this Court recognized "Guatemalan women" as cognizable, emphasizing that gender was "the gravamen of [the petitioner's] complaint." *Silvestre-Mendoza v. Sessions*, 729 F. App'x 597, 598 (9th Cir. 2018); *see also Ticas-Guillen v. Whitaker*, 744 F. App'x 410 (9th Cir. 2018) (finding that "gender and nationality can form a particular social group"). Indeed, as the First Circuit recently declared, it is "difficult to think of a country in which women do not form a 'particular' and 'well-defined' group of persons." *De-Pena-Paniagua v. Barr*, 957 F.3d 88, 96 (1st Cir. 2020) (recognizing the cognizability of "women" or "women in country X" as a PSG); *see also Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1079–80 (9th Cir. 2020) (remanding for further consideration of whether "Guatemalan indigenous women who are unable to leave their relationship" is cognizable. Honduras is certainly no exception to that rule.

The Board and immigration judges across the country have also continued to recognize the cognizability of gender-based social groups, including Honduran women specifically, since *Matter of A-B-* and have granted asylum and withholding of removal on that ground. *See, e.g.*, —, (Arlington Immigration Court, May 1, 2020) (finding "Honduran women" cognizable and granting asylum), Add. 50, 54; —,

(Newark Immigration Court, Mar. 13, 2020) (same), Add. 65, 67; —, (Arlington Immigration Court, 2018) (unpublished) (finding the particular social group of "women in Honduras" cognizable and granting asylum), Add. 116, 118; *see also T-S-M-*, (BIA, Apr. 16, 2019) (unpublished) (remanding for the immigration judge to consider Guatemalan women as a PSG, because "being a woman is an immutable characteristic . . . as gender is fundamental to one's individual identity or conscience"), Add. 2; —, (Boston Immigration Court, June 18, 2019) (unpublished) (recognizing "Guatemalan women" as a cognizable social group and granting asylum), Add. 16, 18; *C-*, (Philadelphia Immigration Court, May 15, 2019) (unpublished) (same), Add. 38; —, (Denver Immigration Court, Mar. 7, 2019) (unpublished) (finding "Mexican women" cognizable and granting asylum), Add. 83; —, (San Francisco Immigration Court, Sept. 13, 2018) (unpublished) (concluding that "Mexican females" are a cognizable social group), Add. 93, 105.[2]

The Board thus erred in categorically rejecting Petitioner's gender-based social groups, including the social group of "Honduran women," without conducting a case-specific analysis, and this Court should therefore vacate its decision. *See, e.g., Diaz-Reynoso*, 968 F.3d at 1079–80 (holding that *A-B-*did not create a general rule against claims involving domestic violence, and emphasizing the need for a case-by-case approach); *see also Grace v. Barr*, 965 F.3d 883, 904–06 (D.C. Cir. 2020) (same); *Juan Antonio v. Barr*, 959 F.3d 778, 790 n.3 (6th Cir. 2020) (emphasizing

[2] All unpublished decisions cited herein have been included in the Addendum.

there can be "no general rule against claims involving domestic violence as a basis for membership in a particular social group").

At a minimum, the Board should have remanded Petitioner's case to permit the immigration judge to make a determination regarding the cognizability of "Honduran women" in the first instance. The Board has followed that approach in several cases post-dating *Matter of A-B-*. *See, e.g.*, *Y-M-L-*, (BIA, Sept. 10, 2019) (unpublished) (remanding for consideration of claim based on "Guatemalan women"), Add. 121; *see also N-P-S-*, AXXX-XXX-777 (BIA, July 27, 2020) (unpublished) (remanding for consideration of whether "Mexican women" constitutes a cognizable PSG), Add. 124; *S-R-P-O-*, AXXX XXX 056 (BIA, Dec. 20, 2018) (unpublished) (same), Add. 126–27; *X-Q-C-D-*, (BIA, Dec. 11, 2018) (unpublished) (same), Add. 131–32; *M-D-A-*, (BIA, Feb. 14, 2019) (unpublished) (remanding for further consideration of whether "women in El Salvador" constituted a cognizable particular social group), Add. 136.

II. THE CONCLUSION THAT GENDER ALONE IS SUFFICIENT TO ESTABLISH MEMBERSHIP IN A PARTICULAR SOCIAL GROUP IS FAITHFUL TO THE INA, AS RECOGNIZED IN *ACOSTA*

The recognition that gender itself is sufficient to establish membership in a cognizable social group dates back to the Board's seminal 1985 decision in *Matter of Acosta*. In that case, the Board drew on the *ejusdem generis* canon of statutory construction, which "holds that general words used in an enumeration with specific words should be construed in a manner consistent with the specific words," in order

to clarify the meaning of the "membership in a particular social group" ground for asylum. *Acosta*, 19 I. & N. Dec. at 233.

Looking to the other four protected grounds—race, religion, nationality, and political opinion—the Board in *Acosta* found that each "describes persecution aimed at an immutable characteristic . . . that either is beyond the power of an individual to change or is so fundamental to individual identity or conscience that it ought not be required to be changed." *Id.* Based on that understanding, the Board determined that "membership in a particular social group" should be read to encompass "persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic." *Id.* The Board then recognized that "[t]he shared characteristic" for purposes of establishing asylum eligibility "might be . . . *sex*, color, or kinship ties." *Id.* (emphasis added).

This Court has long accepted the *Acosta* framework and recognized gender as an immutable characteristic. Reasoning from *Acosta*, this Court has observed that "the recognition that girls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group is simply a logical application . . . [of the conclusion that] a 'particular social group' is one united by . . . an innate characteristic[.]" *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005); *see also Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010) (remanding the Board's decision that "women in Guatemala" could not constitute a particular social group because it was "inconsistent with . . . *Acosta*"). This analysis has not changed in light of *Matter of A-B-*, which this Court has interpreted to clarify

that "the BIA must conduct the proper particular social group analysis on a case-by-case basis." *Diaz-Reynoso*, 968 F.3d at 1080.

Sister circuits share this same approach. Just this year, the First Circuit reiterated that gender is an immutable characteristic and that a PSG united by gender or gender-plus-nationality is cognizable. *See De Pena-Paniagua*, 957 F.3d at 95–96. In *Niang v. Gonzales*, the Tenth Circuit "[a]ppl[ied] the *Acosta* definition" to find that "female members of a tribe" qualified as a particular social group, observing that "[b]oth gender and tribal membership are immutable characteristics." 422 F.3d 1187, 1199–1200 (10th Cir. 2005). In *Hassan v. Gonzales*, the Eighth Circuit recognized the particular social group "Somali women" based on the applicant's "possession of the immutable trait of being female." 484 F.3d 513, 518 (8th Cir. 2007); *see also Ngengwe v. Mukasey*, 543 F.3d 1029 (8th Cir. 2008) (holding that "Cameroonian widows" is a cognizable particular social group). And, then-Judge Alito of the Third Circuit cited *Acosta* approvingly in *Fatin v. INS*, recognizing that *Acosta* "specifically mentioned 'sex' as an innate characteristic that could link the members of a 'particular social group.'" 12 F.3d 1233, 1240 (3d Cir. 1993) (noting that Fatin had satisfied that requirement "to the extent that . . . [she] suggest[ed] that she would be persecuted . . . simply because she is a woman").[3]

[3] *Acosta* also provided the framework for federal guidelines issued in 1995 regarding "asylum claims by women." *See generally* Memorandum from Phyllis Coven, INS Office of International Affairs, to All INS Asylum Officers and HQASM Coordinators, *Consideration for Asylum Officers Adjudicating Asylum Claims from Women* 9 (May 26, 1995) (describing *Fatin* as consistent "with the statement of the Board in *Acosta* that 'sex' might be the sort of shared characteristic that could define a particular social group"); *see also Matter of Kasinga*, 21 I. & N. Dec. 357, 377

Importantly, recognizing that gender or gender plus nationality may define a particular social group does not mean that all women around the globe are entitled to protection under the Refugee Act. The other elements of the refugee definition, including the requirements that an applicant demonstrate that the persecution suffered or feared is on account of a protected ground, play an important limiting role in gender-based claims. As is true in cases based on other protected grounds (such as race or religion), an applicant must demonstrate that she meets all elements of the refugee definition. *See* 8 U.S.C. § 1101(a)(42); *see also Niang*, 422 F.3d at 1199–200 ("[T]he focus with respect to [gender based asylum] claims should be not on whether either gender constitutes a social group (which both certainly do) but on *whether the members of that group are sufficiently likely to be persecuted . . . 'on account of' their membership*." (emphasis added)).[4]

(BIA 1996) (Rosenberg, concurring) ("Our recognition of a particular social group based upon tribal affiliation and gender is also in harmony with the guidelines for adjudicating women's asylum claims issued by [INS].").

[4]The record evidence of pervasive violence against women in Honduras and impunity for perpetrators of gender-based violence supports a finding that the persecution Ms. [redacted] suffered and fears was on account of her gender. *See* A.R. 001121–22 (recounting [redacted] beating Ms. [redacted] because "no woman . . . had ever left him" and she "wasn't going to . . . be the first"); *see also* —, (Arlington Immigration Court, May 1, 2020) (finding the applicant's membership in the PSG of "Honduran women" was at least one central reason for her persecution and granting asylum), Add. 51.

III. GENDER MEETS THE CRITERIA THE BOARD HAS ADDED TO DEFINE MEMBERSHIP IN A PARTICULAR SOCIAL GROUP SINCE *ACOSTA*

In recent years, the Board has "expanded the [particular social group] analysis beyond the *Acosta* test," requiring that the social group also be "particular" and "socially distinct." *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 232 (BIA 2014). With respect to social distinction, the Board has explained that asylum seekers must offer evidence that "society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group." *Matter of W-G-R-*, 26 I. & N. Dec. 208, 217 (BIA 2014). With respect to particularity, the Board has emphasized that the group "must be defined by characteristics that provide a clear benchmark for determining who falls within [it]." *Id.* at 214. *Matter of A-B-* did not alter the Board's approach to particularity and social distinction, both of which the Board has characterized as "fact-specific" inquiries that require case-by-case analysis. *See M-E-V-G-*, 26 I. & N. Dec. at 241. The social group of Honduran women proffered by Ms. [redacted] these requirements. *See, e.g.*, —, (Newark Immigration Court, Mar. 13, 2020) (finding "Honduran women" to be a cognizable PSG because it is immutable, particular, and socially distinct), Add. 64–65.

Gender meets the requirement of particularity. *See Perdomo*, 611 F.3d at 669 (determining that the group of "women in Guatemala" can be sufficiently particular to be cognizable). A PSG must have "definable boundaries" that are not "amorphous,

overbroad, diffuse, or subjective." *See M-E-V-G-*, 26 I. & N. Dec. at 239. Honduran women, like Ms. [redacted] are "recognized in the society in question as a discrete class of persons." *See id*. at 249. The government, for example, lists gender on birth certificates, including those of Ms. [redacted] children. A.R. 000254, 000250; *see also* —, (Arlington Immigration Court, May 1, 2020) (explaining that gender meets the particularity requirement because "there is a clear and unambiguous benchmark to determine who is a member . . . Honduran women are members; Honduran men and people of other nationalities are not."), Add. 49.

This Court has rightfully "rejected the notion that a persecuted group may simply represent too large a portion of the population to allow its members to qualify for asylum." *See Perdomo*, 611 F.3d at 669; *see also Alvarez Lagos v. Barr*, 927 F.3d 236, 253 (4th Cir. 2019) (noting that a PSG need not be small to satisfy the particularity requirement); *M-D-A-*, (BIA, Feb. 14, 2019) (unpublished) (rejecting notion that a persecuted group may be too large and remanding claim based on membership in "women in El Salvador"), Add. 136; —, (Boston Immigration Court, June 18, 2019) (unpublished) (noting that "none of the other protected grounds . . . are limited by size"). Add. 13. The particular social group of Honduran women has well-defined boundaries and therefore meets the particularity requirement established by the Board.

"Honduran women" also satisfies the social distinction requirement. This Court has explained that "social distinction considers whether those with a common immutable characteristic are set apart, or distinct, from other persons within the society in some significant way." *Diaz-Reynoso*, 968 F.3d at 1077 (quoting *M-E-V-G-*, 26 I. & N. at 238) (internal quotation marks omitted). And, as the First Circuit recently noted, there is "no clear reason" why gender would not be a socially distinct group. *De Pena-Paniagua*, 957 F.3d at 96.

Additionally, this Court has recognized that legislation addressing a specific group is among the best "evidence that a society recognizes a particular class of individuals as uniquely vulnerable." *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013). Accordingly, immigration judges have credited (too often ineffective) laws addressing the needs of women as a class as evidence that establishes the social distinction of PSGs defined by gender. *See, e.g.*, —, (Newark Immigration Court, Mar. 13, 2020) (unpublished) (citing legislation banning discrimination against women to support the finding that Honduran society views women as a distinct group), Add. 65; —, (Denver Immigration Court, Mar. 7, 2019) (unpublished) ("The existence of laws that protect women in Mexico does not undermine this particular social group; rather, it emphasizes that Mexican society views women as a group and recognizes that it is a group in need of protection."), Add. 75. Cultural and legal norms permitting widespread violence against women

can also demonstrate that women are "set apart" in society and are therefore "socially distinct." *See, e.g.*, —, (Arlington Immigration Court, 2018) (finding that "women in Guatemala" was a socially distinct group based on reports by the State Department and United Nations bodies showing marginalization, discrimination, and pervasive violence against women, as well as impunity for perpetrators), Add. 113.

Honduran laws and culture reflect both the fact that women are "uniquely vulnerable" and the fact that women are "set apart." Rape and domestic violence are "widespread" in Honduras, and pervasively underreported. A.R. 000309–10 (U.S. State Department Country Report on Human Rights Practices, Honduras). Women are often discriminated against and struggle to access the rights Honduran law grants them while in divorce proceedings and employment. A.R. 000312 (U.S. State Department Country Report on Human Rights Practices, Honduras); *see also* A.R. 001311 (U.S. State Department 2012 Human Rights Report on Honduras, noting that Honduran law prohibits employment discrimination against women in theory but women remain underpaid in practice); Honduras's Constitution of 1982 with Amendments through 2013, Art. 60 (prohibiting discrimination "based on race, *sex*, class, or any other reason prejudicial to human dignity") (emphasis added), *available at* https://www.constituteproject.org/constitution/Honduras_2013.pdf. Honduras has one of the highest rates of femicide in the world, and the murder rate for women has generally been on the rise since 2005. A.R. 000362 (sociology article about the

prevalence and impacts of femicide in Honduras). These high rates of domestic violence and femicide, along with laws that purport to address the needs of women as a class, constitute evidence that women are viewed as a distinct group in Honduras.

IV. OTHER SIGNATORIES TO THE REFUGEE CONVENTION AND INTERNATIONAL BODIES HAVE ALSO RECOGNIZED GENDER ALONE AS A COGNIZABLE SOCIAL GROUP

Both the *Acosta* framework and the conclusion that gender may define a particular social group are firmly established within the jurisprudence of other signatories to the Refugee Convention and 1967 Protocol.[5] The views of other signatories are directly relevant to the proper interpretation of the INA, given that "the definition of 'refugee' that Congress adopted is virtually identical to the one" in the Refugee Convention. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 437 (1987) (noting that "one of Congress' primary purposes [in passing the Refugee Act of 1980] was to bring United States refugee law into conformance with the [1967 Protocol relating to the Status of Refugees]" (internal quotation marks omitted)).

[5] The United States is a signatory to the 1967 Protocol relating to the Status of Refugees, which incorporated most of the provisions of the 1951 Convention, while removing certain temporal and geographical limitations. *See* Protocol relating to the Status of Refugees, adopted Jan. 31, 1967, entered into force Oct. 4, 1967, 606 UNTS 267; Convention relating to the Status of Refugees, adopted July 28, 1951, entered into force Apr. 22, 1954, 189 UNTS 137.

The Supreme Court of Canada, for example, relied upon *Acosta* in its seminal decision *Canada (Attorney General) v. Ward*, finding that particular social group "would embrace individuals fearing persecution on such bases as gender," which it recognized as an "immutable characteristic." [1993] 2 S.C.R. 689, 75, 79 (Can., S.C.C.); *see also Josile v. Canada (Minister of Citizenship & Immigration)*, [2011] 382 FTR 188 (Can. FC, Jan. 17, 2011), at [10], [28]-[30] ("Haitian women"); *Kn v. Canada (Minister of Citizenship & Immigration)*, (2011) 391 FTR 108 (Can. FC, June 13, 2011), at [30] ("women in the [Democratic Republic of Congo]"), *cited in* James C. Hathaway & Michelle Foster, The Law of Refugee Status § 5.9.1 (2d ed. 2014) (collecting these and other cases). Canada also adopted gender asylum guidelines in 1993, updated in 1996, which recognized that gender is the type of innate characteristic that may define a particular social group. Immigration & Refugee Board of Canada, *Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act* (Mar. 9, 1993) (updated on Nov. 13, 1996).

The United Kingdom House of Lords similarly relied on *Acosta* to recognize "women in Pakistan" as a particular social group, observing that its conclusion was "neither novel nor heterodox," but "simply logical application of the seminal reasoning in *Acosta*." *Islam & Shah v. Sec'y of State Home Dep't*, [1999] 2 AC 629, 644–45 (U.K.); *see Fornah (FC) v. Sec'y of State for Home Dep't*, [2006] UKHL

46, para. 31 (Lord Cornhill) (identifying "women in Sierra Leone" as "a group of persons sharing a common characteristic which, without a fundamental change in social mores is unchangeable, namely a position of social inferiority compared with men"); *see also* Immigration Appellate Authority of the United Kingdom, *Asylum Gender Guidelines* 41 (Nov. 2000) ("Particular social groups can be identified by reference to innate or unchangeable characteristics or characteristics that a woman should not be expected to change," including "gender.").

Tribunals in New Zealand and Australia have similarly noted that "it is indisputable that sex and gender can be the defining characteristic of a social group and that 'women' may be a particular social group." *Refugee Appeal No. 76044* para. 92 (NZ RSAA, 2008); *accord Minister for Immigration & Multicultural Affairs v. Khawar* (2002) 76 A.L.J.R. 667 (Aust.) (recognizing "women in Pakistan" as a cognizable social group). Australia has also adopted guidelines recognizing that "whilst being a broad category, women nonetheless have both immutable characteristics and shared common social characteristics which may make them cognizable as a group and which may attract persecution." Australian Department of Immigration and Multicultural Affairs, *Refugee and Humanitarian Visa Applicants: Guidelines on Gender Issues for Decision Makers* § 4.33 (July 1996).

The United Nations High Commissioner for Refugees ("UNHCR") provides further support for the view that gender alone may establish membership in a

particular social group. As part of its supervisory responsibilities, UNHCR issues interpretive guidance on the provisions of the 1951 Convention and 1967 Protocol relating to the Status of Refugees. In 2002, for example, the UNHCR issued gender guidelines which adopted *Acosta*'s *ejusdem generis* analysis and found that "sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics." UNHCR, *Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, U.N. Doc. HCR/GIP/02/01 (May 7, 2002); *see also* UNHCR, *Guidelines on International Protection: Membership of a Particular Social Group within the context of Article 1(A)(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, U.N. Doc. HCR/GIP/02/02 at 4 (May 7, 2002) ("[W]omen may constitute a particular social group under certain circumstances based on the common characteristic of sex, whether or not they associate with one another based on that shared characteristic."). This UNHCR guidance constitutes "persuasive authority in interpreting the scope of refugee status under domestic asylum law." *Miguel-Miguel v. Gonzales*, 500 F.3d 941, 949 (9th Cir. 2007).

CONCLUSION

The Board thus erred when it categorically rejected the gender-based social groups set forth by Petitioner, including the social group of Honduran women. This Court should correct that error and vacate the Board's decision.

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Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

I, Sabrineh Ardalan, certify that this brief contains approximately 4,250 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief is an amicus brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3), which in this case is 7,000 words.

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CERTIFICATE OF SERVICE

I, Sabrineh Ardalan, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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