**UNITED STATES DEPARTMENT OF JUSTICE**

**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

**U.S. IMMIGRATION COURT**

**CITY,STATE**

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IN THE MATTER OF: )

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**Laura, L**  ) **File No. A**

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Respondent )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) **IN REMOVAL PROCEEDINGS**

**Immigration Judge: Next Hearing:2018**

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**MEMORANDUM IN SUPPORT OF RESPONDENT’S CLAIM**

**THAT SHE IS A MEMBER OF A PARTICULAR SOCIAL GROUP**

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1. **INTRODUCTION**

COMES NOW, the respondent, by and through the undersigned counsel and respectfully submits this Memorandum in support of her claim that she is a member of a particular social group, and for her application for asylum under INA §208, withholding of removal under INA §241(b) (3), and relief under the Convention against Torture, INA §208.17; 8 CFR §208.16(c) (3).

1. **STATEMENT OF FACTS**

The Respondent, Ms. Laura is a native and citizen of Guatemala. On or about 2016 at the age of 15, she fled Guatemala to escape persecution and threats of future harm. Respondent entered the US without inspection on 2016 near Arizona and was apprehended by Officers of the U.S. Customs and Border Protection shortly thereafter. Respondent was served with a Notice to Appear (“NTA”), and charged with removability under INA §212(a)(7)(A)(i)(I) for not having a valid entry document.

Since she was an unaccompanied minor, Respondent was placed in ORR custody in a facility in Glendale, Arizona. On 2016, she was released from custody into the care of her uncle, Romeo Laura, pending Removal proceedings. At a subsequent hearing in Removal proceedings, the Respondent, through counsel, admitted the charges contained in the NTA, and conceded that she is removable from the United States as charged. As relief from removal, the respondent submitted an application for asylum, withholding of removal, and Convention Against Torture protection on or about 2018.

The Respondent will testify and state that the following occurrences are true:

**C. Legal Argument**

To qualify for asylum, the Respondent is required to establish not only classification under one of the five protective grounds, “race, religion, nationality, membership in a particular social group, or political opinion”, but also that she possess a well-founded fear of persecution, that such persecution is perpetrated by the government or an entity the government is unwilling or unable to control, and that she merits a favorable exercise of discretion and that none of the statutory bar to asylum apply. INA § 101(a)(42)(A). *See* REAL ID Act of 2005, Pub. L. No. 109-13, eiv. B., §101(a) (3) (B), 119 Stat. 231, 303.

In the instant case, Respondent requests asylum, withholding of removal and CAT protection in the United States based upon past persecution and a well-founded fear of future persecution in her home country of Guatemala. She was persecuted by her father as well as a leader of the Mara Salvatrucha gang. She was persecuted on account of her membership in a particular social group. In her case, it was actually four distinct particular social groups described in her Form I-589, asylum application at Part B, questions 1(a)- 1(b); each of which qualify as a protected ground:

1. Respondent belongs to a particular social group of pre-teen girls in Central America facing forced marriage to a Mara Salavatrucha gang leader under threat of injury and death by family members.
2. Respondent belongs to a particular social group of pre-teen girls in Central America facing forced marriage to a Mara Salavatrucha gang leader under threat of injury, rape and death by the gang leader and/or other gang members.
3. Respondent is a member of the particular social group comprising of young girls facing familial indentured servitude under threat of harm;
4. Respondent is a member of the particular social group comprised of Guatemalan children unable to leave a family relationship due to child abuse by their parent. Respondent faced child abuse by her father, in which she was verbally and physically abused, psychologically terrorized and threatened with forced marriage and abandonment.

A “particular social group” has been defined as a collection of persons who share a common characteristic that “either is beyond the power of an individual to change or is so fundamental to an individual identity or conscience that it ought not to be required to be changed.” *Matter of Acosta,* 19 I&N Dec. 211, 233 (BIA 1985); *see also Matter of Mogharrabi,* 19 I&N Dec. 439 (1988); *Matter of H-*, 21 I&N Dec. 337 (BIA 1996). In *Matter of Acosta*, *supra* the Board interpreted the statute permitting an asylum applicant to obtain asylum through membership in a particular social group. Relying on the doctrine of ejusdem generis, “of the same kind,” the Board construed the term in comparison to the other grounds for protection within the refugee definition. *Id*. at 233. The Board concluded that the commonality shared by all five protected grounds in the refugee definition, 8 U.S.C. § 1101(a)(42)(A), is the fact that they encompass innate characteristics (like race and nationality) or characteristics one should not be required to change (like religion or political opinion). *Id*. at 233. By the same token, held the Board, for social group membership to be protected, it must be based either on a shared characteristic members cannot change (like gender or sexual orientation) or a characteristic they should not be required to change (like being an uncircumcised female). *Id*. (listing “sex” as an immutable characteristic); *see also* *Matter of Toboso-Alfonso*, 20 I&N Dec. 819 (BIA 1990) (recognizing homosexuality as an immutable characteristic); *Matter of Kasinga*, 21 I&N Dec. 357, 366 (BIA 1996) (recognizing the status of being an uncircumcised woman as a characteristic one should not be required to change).

While the Acosta test – or a variation of it – governed the analysis of social group claims for decades, See e.g., *Lwin v. INS*, 144 F.3d 505, 511-12 (7th Cir. 1998), the definition has repeatedly shifted over the past 12 years. Since 2006, the Board has published at least seven asylum decisions focusing on whether a respondent had presented a viable particular social group: *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006); *A-M-E- & J-G-U-*, 24 I&N Dec. 69; *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008); *M-E-V-G-*, 26 I&N Dec. 227; *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014); and *A-R-C-G-*, 26 I&N Dec. 388.

The requirements for establishing particular social group membership evolved, through the above listed cases, into the uneasy definition of individuals who have been harmed, or who fear harm, based on immutable characteristics that are defined with particularity and that they are helpless to alter. A particular social group is defined with particularity when its terms have commonly accepted definitions within the society, taking into account the social and cultural context of the country. *Matter of W-G-R-*, 26 I&N Dec. at 214. In addition, the particular social group must also have social visibility i.e. whether the social group is recognized within society as a distinct entity, which BIA subsequently renamed “social distinction.” *M-E-V-G-*, S*upra* at 240-41. The BIA further clarified that “social distinction exists where the relevant society perceives, considers, or recognizes the group as a distinct social group.” *Id*. at 48. Most of these recent BIA decisions, especially *M-E-V-G-* and *W-G-R-*, created significant confusion among asylum adjudicators, a clear split within the Courts of Appeals and a recently denied Writ of Certiorari by the US Supreme Court stemming from the *Matter of W-G-R* decision. *See Wilfredo Garay Reyes v. Jefferson B. Sessions*, U.S. S.Ct Docket #17-241 (2018).

In 2014, the Board of Immigration Appeals found that domestic violence victims may constitute a particular social group in some circumstances in *Matter of A-R-C-G*, 26 I & N Dec. 338 (BIA 2014). In it, the Board found that “married women in Guatemala who are unable to leave their relationship” is a particular social group as they share a common immutable characteristic, which is gender. Marital status can also be an immutable characteristic in instances where the person is unable to leave a relationship. *Matter of A-R-C-G-* at 392-293. In addition, the BIA found that the group has particularity and is socially distinct. *Matter of A-R-C-G-* at 394. These findings led the Board to conclude that the respondent suffered harm rising to the level of persecution on account of her membership in a particular social group and remanded the case to the Immigration Judge to consider whether the government of Guatemala was unwilling or unable to control the respondent’s husband and to issue a decision on her eligibility for asylum.

On June 11, 2018 after referring the case to himself, Attorney General Jeff Sessions issued a precedential decision in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) overruling *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014). The language in *Matter of A-B-*purports to foreclose asylum claims based upon domestic violence and nearly all persecution by non-state actors. *Matter of A-B-* finds that a social group cannot be defined based upon the harm suffered & insinuates that *Matter of A-R-C-G-* wrongly rested on this definition. Matter of A-B- further instructs that where the persecutor is a non-state actor, the harm must be “attributed to” the government. This imposes a much higher standard than the legal standard currently recognized by the courts (discussed herein) which require the government to be unwilling or unable to control the persecutor. Importantly, this holding misinterprets *Matter of A-R-C-G-* which held that a domestic violence victim can be a part of a social group if she’s married to someone she cannot leave. It did not rest on her abuse. Attorney General Sessions also found that social group membership cannot not be defined simply by providing a description of individuals who share certain traits. But again, current asylum law and precedent doesn’t do that. The correct assessment rests upon a trait the victims share, their inability to leave their relationships.

In *Matter of A-B-*, Attorney General Sessions makes broad statements regarding harm at the hands of a non-governmental actors. He states that the applicant must show that the government condoned the behavior or demonstrated a complete helplessness to protect the victim. *Matter of A-B-* stresses that, in applying this standard, "[t]he fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime, any more than it would in the United States. There may be many reasons why a particular crime is not successfully investigated and prosecuted. Applicants must show not just that the crime has gone unpunished, but that the government is unwilling or unable to prevent it." *Matter of A-B-* at 337-338. These statements come in commentary however, and are not part of the opinion. The attorney General’s musings on the standard for unable or unwilling to control appear to impose additional requirements without any legal foundation whatsoever.

While the Attorney General’s decision in *Matter of A-B-* gives the impression that non-state persecutor claims are wholly impermissible, the holding itself is narrow in scope and much of the assertions made by the Attorney General are dicta, not law. The Attorney General framed the issue of “whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable ‘particular social group’ for purposes of an application for asylum or withholding of removal,” Ms. A.B. did not base her social group on her identity as a “victim of private criminal activity,” and nowhere in the Board’s decision was such a group referenced. Sessions’ question appeared to contest a legal argument that was never raised. The framing of his question was particularly troubling, because it seemed to challenge well-established legal principles, some of which have existed in legal precedent for decades. For example, adjudicators have long held that victims of persecution by non-state actors may qualify for asylum in situations where their government is unable or unwilling to protect them.

In contrast to Mr. Session’s views, the Refugee Convention, the Immigration and Nationality Act (INA), and precedential case law at the Courts of Appeal and Board of Immigration Appeals (BIA) continue to support much of what the BIA previously held in *Matter of A-R-C-G-*. In short, although the Attorney General asserts that *Matter of A-B-* simply corrects and clarifies prior inaccurate interpretations of asylum law, his assertions lack legal foundation and run contrary to the INA, international law and decades of court precedent.

Additionally, *Matter of A-B-* cannot be considered final and the procedural posture remains far from settled. The attorney general took this case not from the Board of Immigration Appeals, but from the immigration judge in clear violation of established procedure. Now he’s sending it back down to the immigration judge to make a decision. When the judge issues that decision, it can be appealed to the Board of Immigration Appeals, subject to further review by the circuit court in which the Respondent resides. In this case, the 4th U.S. Circuit Court of Appeals. If the 4th Circuit affirms the Attorney General, a circuit court split would be highly likely as several other circuits’ rulings directly conflict with key holdings in Matter of A-B-, setting up a potential certification to the Supreme Court. Many scholars have publicly chastised the Attorney General for abusing a rarely used provision to rewrite our immigration laws — a function the attorney general himself said should be reserved for Congress. As of today’s date, at least one lawsuit challenging Matter of A-B- has been filed in the US District Court of the District of Colombia, *Grace v. Sessions*, 1:18-cv-01853,(D.C. Dist. Ct. 2018)

At the present time, the controversy surrounding *Matter of A-B-* must be considered within the framework of the statutes and governing caselaw but also viewed with common sense. In defining a particular social group, an applicant who proposes a poorly defined particular social group should not be penalized or have his or her claim disregarded if the applicant can show (a) that he or she is in fact a member of the proposed group, and (b) that he or she has been or would be persecuted on account of that membership. Likewise, an applicant benefitting from using the exact magic language to define his or her group should not be judged based upon carefully crafted language alone. The group’s social distinction should be viewed in the lens of a discrete group but not so onerously as to impose a literal box around the group in question.

A thorough discussion of the proper standards on social group, which *Matter of A-B-* left intact, occurred in *Cece v. Holder*, 733 F.3d 662 (7th Cir. 2013). In *Cece*, the Seventh Circuit noted, in an *en banc* decision, that it is the substance of the claim rather than the precise construction of the PSG that should drive the adjudicator’s assessment in asylum cases. *Niang v. Gonzales*, 422 F.3d 1187 at 1199-1200 (explaining that “the focus . . . should be not on whether either gender constitutes a social group (which both most certainly do) but on whether the members of that group are sufficiently likely to be persecuted that one could say they are persecuted “on account of” their membership”); see also *Perdomo v. Holder*, 611 F.3d at 669 (citing *Singh v. INS*, 94 F.3d 1353 (9th Cir. 1996)); *Benitez-Ramos*, 589 F.3d at 431; *Malonga v. Mukasey*, 546 F.3d 546, 553-54 (8th Cir. 2008).

Where an applicant is a member of a cognizable particular social group, she must still show (1) that she was or will be persecuted; (2) that such persecution was or will be on account of that social group membership; (3) that the persecutor was or will be the government or an entity the government is unable and/or unwilling to control; and (4) that it is not safe or reasonable for her to relocate within the country to avoid persecution. *See* e.g., *Crespin-Valladres v. Holder*, 632 F.3d 117, 129 (4th Cir. 2011)

1. **Gang threats as basis for asylum**

Respondent qualifies for asylum based upon membership in a particular social group related to direct threats of harm by an organization that the government is unable and unwilling to control. Respondent is a member of the particular social group comprising of young girls facing forced marriage to gang leaders under threat of injury, rape or death. Respondent was pressured and threatened that she would have to marry a gang leader or be killed, beaten or raped. She faced threats both from the gang leader himself and from her father.

The Respondent’s social groups remain viable despite *Matter of A-B-* and all of the above referenced BIA decisions since each is a very specific group that can be easily identified in Guatemalan society and the definitions apply to a specific and tangible group of individuals. Similar groups, discussed throughout this brief, have been accorded particular social group status by the courts. In order for the BIA’s interpretation of “particular social group” to receive deference, the agency’s interpretation must be based on a permissible construction of the statute. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984); Cece, 733 F.3d at 668-669 (the BIA’s reasonable interpretation of the INA receives Chevron deference). The asylum statute states that “[a]ny alien who is physically present in the United States or who arrives in the United States . . . may apply for asylum.” INA § 208(a)(1). The term “particular social group” is included in the definition of a refugee at INA § 101(a)(42)(A).

There have been multiple cases in Immigration Courts, the BIA, and the Courts of Appeal recognizing gang related persecution as a basis for asylum. For instance, in 2009, the Seventh Circuit held that “tattooed, former Salvadoran gang members” were a particular social group, *Benitez-Ramos v. Holder*, 589 F.3d 426, 431 (7th Cir. 2009). The courts have recognized that the determination of whether gang-based persecution qualifies as a protected ground for asylum should be conducted on a case by case basis based upon whether the individual seeking relief was a member of a cognizable particular social group. See *Matter of M-E-V-G*, 26 I&N Dec. at 242. Gang based persecution should be afforded asylum protection if applicants can demonstrate membership in a particular social group with an immutable characteristic i.e. that they are united by a shared past experience they cannot undo. While it is correct that when the social group is too broad or lacks specificity, it will fall short of the requirements of particular social group. *Matter of S-E-G-*, 24 I&N Dec. 579, 585 (BIA 2008) (holding that a group comprised of ‘family members,’ which could include fathers, mothers, siblings, uncles, aunts, nieces, nephews, grandparents, [and] cousins” of “Salvadoran youth who have been subjected to recruitment efforts by MS-13 and who have rejected or resisted membership in the gang” is too amorphous to constitute a cognizable particular social group), clarified by *Matter of M-E-V-G-*, 26 I&N Dec. 227, and *Matter of W-G-R-*, 26 I&N Dec. 208. However, the court acknowledged that does not preclude particular social group membership based upon gang persecution in all cases, and a more narrowly defined group would be permissible. In other words, the basic particular social group construction remains intact after *Matter of A-B-*.

Before the BIA decisions in *M-E-V-G-* and *W-G-R-*, the Seventh and Third Circuits had already rejected the BIA’s social visibility (now distinction) requirement, the Third Circuit had rejected the particularity requirement, and the Seventh and Ninth Circuits had issued decisions that appear to limit the particularity definition. For example, while the BIA rejected the former gang member PSG in *W-G-R-* as insufficiently particular, the Seventh Circuit explicitly found that the same PSG was “neither unspecific nor amorphous.” *Benitez-Ramos v. Holder*, 589 F.3d 426, 431 (7th Cir. 2009). Both the Sixth and Seventh Circuits have issued precedent decisions recognizing former Honduran gang members qualifying as a particular social group. *Urbina-Mejia v. Holder*, 597 F.3d 360, 366 (6th Cir. 2010); *Benitez Ramos v. Holder*, 589 F.3d 426, 429 (7th Cir. 2009).

Although the Fourth Circuit has “endorsed both the immutability and particularity criteria,” it has “explicitly declined to determine whether” the social distinction criterion “is a reasonable interpretation of the INA.” *Martinez v. Holder*, 740 F.3d 902, 910 (4th Cir. 2014); see also *Zelaya v. Holder*, 668 F.3d 159, 165 (4th Cir. 2012). But the Fourth Circuit has twice suggested that a PSG similar to petitioner’s proposed group— former gang members in Honduras— is cognizable under the INA. See *Martinez*, 740 F.3d at 911-13; *Matter of Oliva*, 807 F.3d at 61-62.

The Fifth, Eighth, Tenth, and Eleventh Circuits have held that the BIA’s particularity and social-distinction requirements merit Chevron deference. See, e.g., *Hernandez-De La Cruz v. Lynch*, 819 F.3d 784, 786-87 (5th Cir. 2016); *Ngugi v. Lynch*, 826 F.3d 1132, 1138 (8th Cir. 2016); *Rodas Orellana v. Holder*, 780 F.3d 982, 990-92 (10th Cir. 18 2015); Gonzalez v. U.S. Att’y Gen., 820 F.3d 399, 405-06 (11th Cir. 2016) (per curiam); Castillo-Arias v. U.S. Att’y Gen., 446 F.3d 1190, 1196-99 (11th Cir. 2006)

The Third Circuit decision, *Valdiviezo-Galdamez v. Holder*, 663 F.3d 582 (3d Cir. 2011), is helpful to our analysis as the facts are similar to the facts in the instant case. Nov. 8, 2011. Mr. Valdiviezo-Galdamez is a Honduran man who fled to the United States after being subjected to forced recruitment by the Mara Salvatrucha (MS-13). On his second petition for review to the Third Circuit, Mr. Valdiviezo-Galdamez asserted that the BIA’s social visibility and particularity tests were inconsistent with prior BIA decision and therefore did not merit Chevron deference. The Court agreed, finding that the BIA has recognized a number of “particular social groups” where there was no indication that the groups’ members possessed characteristics that were “socially visible or recognizable,” such as “women who are opposed to female genital mutilation” and “homosexuals required to register in Cuba.” The Court noted that although it has afforded Chevron deference to the BIA’s interpretation of “particular social group” in the past, that deference does not give the BIA authority to thereafter adjudicate social groups claims inconsistently or irrationally. Since the “social visibility” requirement is inconsistent with past BIA decisions, the Court held that it was an unreasonable addition to the social group definition and did not merit deference. Similarly, the Court rejected the Board’s particularity requirement, holding that it was also inconsistent with many of the BIA’s prior decisions.

The court also discussed how the BIA has adopted a flawed approach in the context of how social groups have been constructed internationally. “The UNHCR advocates a disjunctive test, finding a social group where the characteristic forming the group is either immutable or the group is perceived as a group by society.” See Brief of the United Nations High Commissioner for Refugees as Amicus Curiae in Support of the Petitioner, p. 13, *Valdiviezo Galdamez v. Attorney Gen. of U.S.*, 663 F.3d 582, 587 (3d Cir. 2011) (“The Board's reliance here on its previous articulations of “social visibility” is misplaced because its conclusion in *S-E-G-* and earlier decisions that the UNHCR Social Group Guidelines “endorse an approach in which an important factor is whether the members of the group are ‘perceived as a group by society’ is inaccurate.”). In contrast to UNHCR guidance, which has been adopted by many other countries and constitutes international norm, instead of either/or, the BIA requires both. *Id*.

Though this term and the process of seeking asylum in general are concededly inexact, the BIA’s convoluted interpretation of the statute is impermissible and the Attorney General opinion in Matter of A-B- utterly fails to “clarify” existing caselaw or the precise construction of particular social group, and instead simply attempts to make and impose new law without justification.

The requirements set forth in *M-E-V-G-* and *W-G-R-* for establishing a particular social group, along with the Attorney Gerneal’s ruling, effectively preclude pro se applicants from seeking asylum, which cannot possibly represent congressional intent nor governing international treaties. First, the BIA’s particularity requirement requires the applicant to articulate a particular social group in terms which are statistically precise. *W-G-R-*, 26 I&N Dec. at 221-222. A pro se applicant – and indeed many represented applicants – would likely be unable to prevail because formulating such a group is complex to the point of being nearly impossible. Second, the BIA’s social distinction requirement effectively requires a country conditions expert or similar sociological evidence to show how the foreign society views the group posited by the applicant. *M-E-V-G-*, 26 I&N Dec. at 244.

Pro se applicants and represented applicants with limited resources are unlikely to be able to marshal such evidence, assuming it even exists. By raising the evidentiary burden to such a level that an asylum seeker must have representation, expert witnesses, and significant financial resources in order to effectively present his or her case, the BIA’s interpretation directly conflicts with the statutory language allowing “any alien” to apply for asylum. As an impermissible interpretation of the statute, the Attorney General and inconsistent BIA decisions cannot receive deference.

Deference is also not warranted here because the aforementioned interpretations are unreasonable. One of the primary reasons the Third and Seventh Circuits found the social visibility requirement arbitrary and unreasonable was the BIA’s failure to explain how previously accepted social groups would still qualify under the new standard. *Gatimi v. Holder*, 578 F.3d at 615-616. Although the BIA attempted to respond to this criticism in *M-E-V-G-* and *W-G-R-*, its attempts are disingenuous and insufficient. For example, in *M-E-V-G-*, the BIA asserted that based on the evidence, it found the social group in *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996), to be perceived as a distinct group. 26 I&N Dec. at 246. In reality, the decision in *Kasinga* only references social group with regard to immutable characteristics and the evidence cited does not support the group being perceived as distinct among others in the respondent’s home country. *Kasinga Supra*, at 360-62, 365-66.

Likewise, the Attorney General provides only conclusory statements that particular social group characteristics can’t be based on harm while ignoring the fact that the characteristic of Ms. A-B- weren’t based on harm. This continued failure to reconcile previously accepted social groups with new social group requirements means that social visibility/distinction remains an arbitrary and unreasonable addition to the particular social group test and therefore, not entitled to Chevron deference.

In the instant case, each of the Respondent’s particular social groups remain viable under the BIA’s modified particular social group test and the Attorney General’s opinion in *Matter of A-B-*. If this court applies the social distinction and particularity tests as articulated in *M-E-V-G-* and *W-G-R*, the Respondent should nonetheless be found to be a member of a cognizable particular social group because the four groups in Respondent’s case are (1) comprised of members who share a characteristic that is immutable or that they should not be required to change; (2) are socially distinct; and (3) are particular. Evidence in the record establishes that each of the groups illustrated by Respondent is socially distinct because society in Honduras views them as a group and are not defined by unspecific or amorphous terms, any more so than the groups accepted in *Benitez-Ramos*, 589 F.3d 426; or *Sarhan*, 658 F.3d 649; or *Cece*, 733 F.3d 662.

In *Matter of A-B-*, the Attorney General asserts that private actors can rarely qualify as persecutors because they can’t prove government consent or what he terms “complete helplessness.” His language should be ignored as this new requirement is without adequate foundation and imposes additional requirements over and above the legal standard that the government is “unable and unwilling to control” the persecutor.

In the instant case, the evidence in the record establishes that Respondent faced specific threats by Mara Salavatrucha and her father that she would be raped and/or killed if she didn’t marry a Mara Salvatrucha gang leader. Her social group contains socially distinct groups of individuals with a precise definition, who are perceived as such by the community. These shared past experiences of facing forced marriage under threat of harm & death is an immutable characteristic because it cannot be changed or undone. Thus, the Respondent has shown that even under the new BIA decisions, her particular social group remains viable.

**b) Respondent qualifies for asylum as an Guatemalan girl unable to leave her relationship due to child abuse at the hands of her father, along with indentured servitude at the hands of her father.**

It is well established that gender can form the basis of a particular social group. *See Acosta*, 19 I&N Dec. at 232. In Acosta, the Board listed gender as a paradigmatic example of an innate characteristic that would qualify as a “particular social group.” Id. at 233. Subsequently, various courts of appeals that have examined gender-based persecution claims have likewise either implicitly or explicitly recognized the immutable nature of gender in approving claims based on membership in a particular social group. *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010); *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007); *Niang v. Gonzales*, 422 F.3d 1187, 1199 (10th Cir. 2005); *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005).

In Petitioner’s case, her situation is nearly identical to the Respondent in the *A-R-C-G-* case in that she is a girl from Guatemala unable to leave her relationship with her father due to child abuse and indentured servitude. It is irrational to assert that a child can leave her parents home and change this characteristic. Gender and child status are immutable and places her firmly within a particular social group that should be recognized by this Court. Whether that characteristic causes her to be persecuted is a question of nexus and calls for a separate analysis. Female children in Guatemala subject to abuse and indentured servitude are particular and socially distinct groups, with an immutable characteristic that is visible and easily identifiable to other members of the community.

Like the Respondent in *A-R-C-G*, the Respondent in this case is a member of a particular social group with immutable characteristics and which is sufficiently particular and has social distinction. Therefore, she can demonstrate that she was persecuted by her father based upon a protected ground and qualifies for asylum and related protections in the United States.

**D. Conclusion**

Under INA §208(b)(1)(A), an individual who meets the definition of a refugee under INA §101(a)(42)(A) may be eligible for asylum. To qualify for asylum, an individual must “establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason” motivating persecution. *Id*. In this case, the respondent complies with such requirement by establishing she has a well-founded fear of persecution, based on her membership in four (4) particular social groups. Membership in those particular social groups constitutes more than one central reason for Respondent’s past persecution and well founded fear of future persecution. The Guatemalan government is unwilling and unable to control the Mara Salvatrucha gang or protect the respondent, if she were to return to her father and/or to El Salvador.

It is a national obligation, both in statute and treaty, not to return individuals to a country where they face persecution. See 8 U.S.C. § 1231(b)(3); 19 U.S.T. 6223, 6259-6276, T.I.A.S. No. 6577 (1968); see generally *INS v. Stevic*, 467 U.S. 407, 416-17 (1984). If an applicant demonstrates a reasonable possibility that she will suffer persecution and that such persecution will occur because of an immutable characteristic she shares with others, she merits asylum and relief from removal.

WHEREFORE, for the reasons stated above, the respondent respectfully requests this Court recognize her membership in the particular social groups listed above which constitute a protected ground for the purposes of her application for asylum.

Dated this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Respectfully submitted by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_