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**UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW BOARD OF IMMIGRATION APPEALS**

In the Matter of:

Z-T-,

Respondent.

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File No. A



**BRIEF OF KIDS IN NEED OF DEFENSE
AS *AMICUS CURIAE* IN SUPPORT OF THE RESPONDENT**

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INTRODUCTION AND STATEMENT OF INTEREST

Kids in Need of Defense (“KIND”) has been granted leave to appear before the Board of Immigration Appeals (“BIA” or “Board”) as *amicus curiae* in this case in support of the Respondent, [REDACTED].

KIND is a non-profit organization that was founded in 2008 to assist children who enter the United States without a parent or guardian and are placed into immigration removal proceedings. KIND’s mission is to find high-quality and compassionate *pro bono* legal counsel for these unaccompanied minors, so that they do not have to face immigration proceedings alone.

Since 2009, KIND has assisted over 7,000 unaccompanied children, trained over 8,000 *pro bono* attorneys, and provided *pro bono* representation to over 3,000 children. Many of these children are victims of child abuse who, like Respondent, have fled their homes in Central America. KIND’s experience enables it to provide a valuable perspective on the problem of child abuse faced by Central American children, particularly in Honduras, El Salvador, and Guatemala. Since its establishment, KIND has also advocated for changes in US law to protect the rights of unaccompanied children.

KIND respectfully submits this *amicus* brief on issues related to the asylum eligibility of children who have suffered child abuse.

SUMMARY OF ARGUMENT

Respondent [REDACTED] was subjected to years of severe physical and psychological abuse by his uncle in Honduras. Respondent’s mother migrated to the United States when he was eight months old, leaving him in the care of his uncle and grandmother. Respondent’s uncle, a police officer, began abusing him when he was four years old. The abuse did not stop until Respondent fled Honduras at the age of fourteen, after one particularly

traumatizing incident in which his uncle threatened to kill him, shot at him, and beat him in the head with a firearm, causing Respondent to lose consciousness. The Immigration Judge found that this decade of serious physical child abuse rose to the level of “torture.”

Children who suffer from this type of abuse or other manifestations of child abuse within a family or custodial setting may be able to establish eligibility for asylum. The Board recently recognized that victims of domestic violence may be eligible for asylum in the United States on the ground that they belong to a particular social group. In *Matter of A-R-C-G-*, the Board recognized “married women in Guatemala who are unable to leave their relationship” as a particular social group in an asylum claim based on domestic violence. *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014). Married women and minor children share many similar characteristics, and the Board should consider that victims of child abuse, such as the Respondent in this case, may be members of a particular social group, and therefore able to establish asylum eligibility. Children are often even more vulnerable and less capable of extricating themselves from abusive relationships than married women because of their age, low social status in certain countries including Honduras, and dependence on their parents or caretakers who are often themselves the abusers. *Amicus* respectfully requests that the Board hold that Respondent has established that he is a member of a particular social group and his eligibility for asylum. In the alternative, *Amicus* requests that the Board remand the case for consideration of Respondent’s application for asylum.

STATEMENT OF FACTS

Respondent [REDACTED] (Respondent) was subjected to severe physical and psychological abuse by his uncle. Respondent was born on [REDACTED] 1989 in [REDACTED], Honduras. Hearing Transcript at 29 (Sept. 11, 2014) (hereinafter “Tr.”).

Respondent's mother migrated to the United States when he was eight months old, leaving him in the care of his grandmother. Tr. at 31. He never met his father. *Id.* at 11.

Respondent's uncle, who is a police officer, and his family also lived in the house with Respondent and his grandmother. *Id.* at 31. The uncle disliked and resented Respondent for as long as Respondent could remember. *Id.* at 33-34. The uncle called Respondent names like "bastard" and criticized him for having been abandoned by his mother. *Id.* at 34. Respondent's uncle clearly disliked Respondent's presence in his house, and wanted him to leave. *Id.*

Respondent's uncle began physically abusing Respondent when he was four years old. *Id.* at 32. The uncle abused Respondent for reasons he did not understand for more than a decade. *Id.* at 35 (Respondent left Honduras when he was 14). At one point, Respondent tried to leave his grandmother's house to live with an aunt who lived in the same town, but his grandmother forced him to come back to her house. *Id.* at 33. Respondent returned to his grandmother's house after a week. *Id.* His grandmother wanted to keep him in her house (with his abusive uncle) because she benefitted from remittances sent by Respondent's mother, which she would lose if he moved out. *Id.* To address the abuse, Respondent's grandmother merely advised Respondent to stay away from his uncle, but she did not defend him or tell his uncle to stop the abuse. *Id.* Respondent felt that he could not seek protection from the police because his uncle worked for the police. *Id.* at 37.

Respondent's abuse culminated in one particularly terrifying event, when his uncle threatened to kill him, shot at him, and then struck him in the head with a rifle, causing him to lose consciousness. *Id.* at 31-32. After this incident, at the age of 14, Respondent fled from Honduras to [REDACTED] Mexico, where he lived with a family friend for two years starting in [REDACTED] 2003. *Id.* at 35, 29. When Respondent's mother fell ill in 2006, he came to the

United States to care for her. *Id.* at 30. Respondent still fears returning to Honduras because of his uncle's threat to kill him if he ever saw him again. *Id.* at 37.

Respondent was detained and placed into removal proceedings in March, 2014. *See* Notice of Custody Determination. He applied for asylum *pro se* but his application was denied on September 11, 2014. In her decision, the Immigration Judge conceded that Respondent's abuse arose to the level of "torture." Immigration Judge's Signed Oral Decision, at 10 (Sept. 11, 2014) (hereinafter "IJ Decision").

ARGUMENT

I. CHILDREN'S ASYLUM CLAIMS MUST BE ANALYZED WITH CHILD-SPECIFIC CONSIDERATIONS

U.S. and international law clearly establish the principle that children's asylum claims must be treated differently from adults' claims, because children are fundamentally different from adults. The First, Second, Sixth, Seventh and Ninth Circuit Courts of Appeals have all recognized that children's asylum claims should be analyzed differently from adults. *See Kids in Need of Defense & Ctr. for Gend. & Refugee Studies, A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System* 10 (2014). There are additional persuasive sources such as the UNHCR Guidelines for Children's Asylum Claims and USCIS Asylum Officer Basic Training Course Guidelines for Children's Asylum Claims that are frequently cited in Circuit Courts of Appeal, often as binding authority. At least two circuit courts have recognized that failure to consider child-specific factors can be reversible error. *See, e.g., Mejilla-Romero v. Holder*, 614 F.3d 572, 572 (1st Cir. 2010) (vacating and remanding BIA case where BIA failed to consider DHS and UNHCR guidelines for children's asylum claims); *Abay v. Ashcroft*, 368 F.3d 634, 640 (6th Cir. 2004).

Consideration of asylum claims from a child's point of view and experience of harm and suffering reflects a more sophisticated understanding of psychological and neurobiological child and adolescent development. Children are more likely to be distressed by hostile situations, to believe improbable threats, to be emotionally affected by unfamiliar circumstances, and to be severely traumatized by cumulative harms. *See U.N. High Comm'r for Refugees, Guidelines on International Protection: Child Asylum Claims Under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCR/GIP/09/08

(Dec. 22, 2009) (hereinafter “UNHCR Children’s Guidelines”).¹ Trauma in the form of abuse, loss or violence impacts children differently than it does adults and may have lasting effects on children’s developing brains. Additionally, harms like ostracism and harassment have a much greater impact on children, given their developing sense of self and place in world and susceptibility to peer pressure. *See, e.g.*, U.N. Secretary-General, U.N. Doc A/61/299 (Aug. 29, 2006) U.N. Secretary-General, *Report of the Independent Expert for the United Nations Study on Violence Against Children*, ¶ 36 (Aug. 29, 2006). Children are especially vulnerable when separated from parents and families, and may function with reduced cognitive and social abilities compared to other children their age. *See generally*, Int’l Comm. of the Red Cross, *Inter-agency Guiding Principles on Unaccompanied and Separated Children* (2004), <http://www.unhcr.org/4098b3172.html>. Therefore, it is critical to understand the age and developmental stage of the child at the time each harm was inflicted, consider psychological and medical opinions, scientific journal articles, and evidence regarding whether, how, and why the effect of a particular kind of harm would constitute persecution for a child, and whether any harm inflicted significantly impacted the child applicant. *See* U.S. Citizenship and Immigration Servs., *Asylum Officer Basic Training Course Participant Workbook, Guidelines for Children’s Asylum Claims*, 36 (2009) (hereinafter “AOBTC Guidelines for Children’s Asylum Claims”). Finally, a child need not articulate the subjective intent behind the harm or persecution inflicted on them by family or other actors. *Id.* Persecution includes harm that the actor may believe is good for the child, such as the punitive use of force that causes severe pain disguised as harsh

¹ Although the UNHCR Guidelines are not always binding on US Courts, federal courts frequently turn to the guidelines for interpretive guidance. *See, e.g.*, *Zhang v. Ashcroft*, 388 F.3d 713, 720 (9th Cir. 2004) (“[W]e are guided by the analysis set forth in the Office of the United Nations High Commissioner for Refugees”); *Rodriguez-Roman v. INS*, 98 F.3d 416, 425 (9th Cir. 1996) (noting the BIA “is bound . . . to consider the principles established by the United Nations High Commissioner for Refugees” in the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status).

discipline, or female genital circumcision that is intended to make the child marriageable. U.S. law has long recognized that the persecutor need not intend to harm for his conduct to constitute persecution. *See* UNHCR Children’s Guidelines ¶ 32; Immigration & Naturalization Serv., U.S. Dep’t of Justice, *Guidelines for Children’s Asylum Claims* 21 (1998) (hereinafter “1998 INS Guidelines”) (vulnerability of children places them at mercy of “adults who may inflict harm without viewing it as such” but punitive or malignant intent not required for harm to constitute persecution); *see generally Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997) (involving female genital circumcision); *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996) (involving the use of psychiatric treatments to overcome homosexuality).

A. Asylum Claims Must Be Analyzed from the Perspective of the Child and the Applicant’s Age at the Time of Persecution

Circumstances in the child’s life in his home country, when taken together, can constitute persecution based on an analysis from the child’s perspective and the child’s age at the time of persecution. *See, e.g., Kholyavskiy v. Mukasey*, 540 F.3d 555, 571 (7th Cir. 2008) (finding that the IJ and BIA erred in failing to consider the cumulative nature of persecution and the applicant’s age at the time of persecution and remanding to the BIA); *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006) (“Jorge-Tzoc was a child at the time of the massacres and thus necessarily dependent on both his family and his community. . . . This combination of circumstances could well constitute persecution to a small child totally dependent on his family and community.”); *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045-1046 (9th Cir. 2007) (“[A] child’s reaction to injuries to his family is different from an adult’s. The child is part of the family, the wound to the family is personal, the trauma apt to be lasting. . . . [I]njuries to a family must be considered in an asylum case where the events that form the basis of the past persecution claim were perceived when the petitioner was a child.”); *see also Zhang v. Gonzales*,

408 F.3d 1239, 1247 (9th Cir. 2005) (holding that substantial evidence did not support the IJ's finding that Zhang's deprivation did not constitute persecution and citing 1998 INS Guidelines for the appropriate standard of persecution in children's cases); *Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir. 2004) (recognizing that while "[t]here may be situations where children should be considered victims of persecution though they have suffered less harm than would be required for an adult," this principle did not apply because the applicant was near the age of majority); *Mansour v. Ashcroft*, 390 F.3d 667, 679 (9th Cir. 2004) (Pregerson, J., dissenting) (citing the 1998 INS Guidelines, the UNHCR. Executive Committee's Resolution 47 on Refugee Children, and the Convention on the Rights of the Child in disagreeing with the majority's holding that the harm endured did not rise to the level of persecution, and concluding that since the harm occurred when the petitioners were children it rises beyond mere harassment or discrimination to persecution).

The Asylum Division of USCIS recognizes that officers must be sensitive to the age and stage of cognitive and social development of the child in analyzing forms of persecution. Asylum Officers are instructed to consider that "[t]he harm a child fears or has suffered may still qualify as persecution despite appearing to be relatively less than that necessary for an adult to establish persecution. This is because children, dependent on others for their care, are prone to be more severely and potentially permanently affected by trauma than adults, particularly when their caretaker is harmed." AOBTC Guidelines for Children's Asylum Claims, at 36 (endorsing the view in the UNHCR Children's Guidelines that "[i]ll-treatment which may not rise to the level of persecution in the case of an adult may do so in the case of a child"); *see also* 1998 INS Guidelines, at 18-20. The AOBTC Guidelines for Children's Asylum Claims also instruct Asylum Officers to look to international law (including UNHCR Children's Guidelines) in the

absence of binding U.S. case law. AOBTC Guidelines for Children's Asylum Claims, at 51 ("Considering that the issue of children asylum-seekers is relatively new in U.S. immigration law, asylum officers may have to look to international law for guidance when binding U.S. case law does not speak to the relevant issue.").

UNHCR's Children's Guidelines establish that a child-sensitive perspective should be applied in analyzing children's asylum claims. *See generally*, UNHCR Children's Guidelines. The Guidelines explain that children have "unique experiences of persecution" which, "due to factors such as their age, their level of maturity and development and their dependency on adults have not always been taken into account. Children may not be able to articulate their claims to refugee status in the same way as adults and, therefore, may require special assistance to do so." *Id.* ¶ 2.

B. Child-Specific Forms of Harm, Such as Child Abuse, or Harm that Occurred when the Applicant Was a Child Often Constitute Persecution

International and domestic authorities have both recognized that there are child-specific forms of persecution, which can include family or domestic violence, under-age recruitment into armed conflict, child trafficking, female genital mutilation or female genital circumcision, forced or underage marriage or relationships, physical violence, torture, threats, detention, abuse, bonded or hazardous child labor, forced labor, forced prostitution, child pornography, criminal exploitation, mental/emotional/psychological harm, substantial economic deprivation, ostracism, loss of self-determination/bodily autonomy (i.e. restavek situations, etc.) or discrimination and harassment consistent with the 1951 Refugee Convention. *See* U.N. High Comm'r for Refugees, *Conclusion on Children at Risk* No. 107 (LVIII) (Oct. 5, 2007) <http://www.unhcr.org/4717625c2.html>; UNHCR Children's Guidelines ¶¶ 18-36; AOBTC Guidelines for Children's Asylum Claims, at 39-40.

The UNHCR Children’s Guidelines, in recognizing these child-centric forms of persecution, note that children are more susceptible to psychological harm in hostile situations, are uniquely dependent upon adult caregivers, and are more sensitive to trauma. *Id.* ¶¶ 15-17. The Guidelines specifically recognize that abuse against children that takes place in the home can rise to the level of persecution:

Violence against children may be perpetrated in the private sphere by those who are related to them through blood, intimacy or law. Although it frequently takes place in the name of discipline, it is important to bear in mind that parenting and caring for children, which often demand physical actions and interventions to protect the child, is quite distinct from the deliberate and punitive use of force to cause pain or humiliation.

Id. ¶ 32 (citations omitted).

The Guidelines also note the following in terms of domestic violence against children:

[M]ental violence may be as detrimental to the victim as physical harm and could amount to persecution. Such violence may include serious forms of humiliation, harassment, abuse, the effects of isolation and other practices that cause or may result in psychological harm. Domestic violence may also come within the scope of torture and other cruel, inhuman and degrading treatment or punishment.

Id. ¶ 33 (citations omitted).

Similarly, courts have found that a family member who persecutes another family member through physical and emotional abuse is a persecutor. *See Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000) (finding past persecution when applicant was physically assaulted, isolated and deprived of education by father); *Faruk v. Ashcroft*, 378 F.3d 940, 943 (9th Cir. 2004) (holding IJ erred because refused to consider harm inflicted by the applicants’ relatives when determining whether they experienced past persecution, observing that “[t]here is no exception to the asylum statute for violence from family members; if the government is unable or unwilling to control persecution, it matters not who inflicts it”); *Aguirre-Cervantes v. INS*, 242

F.3d 1169, 1172 (9th Cir.) (agreeing with BIA that father persecuted members of his family), *vacated and remanded for stipulated reopening*, 273 F.3d 1220 (9th Cir. 2001). As the UNHCR Children’s Guidelines recognize, child abuse may amount to persecution because of the uniquely vulnerable position of children in society and the devastating effects child abuse is likely to have on the development and well-being of a child, finding that “[v]iolence in the home may have a particularly significant impact on children because they often have no alternative means of support.” UNHCR Children’s Guidelines ¶ 32. Courts around the world have also found significant domestic abuse (including child abuse) to constitute persecution, and an appropriate ground for asylum, including “Argentina, Australia, Canada, Ecuador, Germany, Hungary, Ireland, New Zealand, Romania, Spain, the United States, and the United Kingdom.” U.N. Office of the High Comm’r for Refugees, *Handbook for the Protection of Women and Girls* 144 (Jan. 2008), <http://www.unhcr.org/47cfa9fe2.html>.

Committing (or permitting) child abuse is a violation of a child’s human rights. The United Nations Convention on the Rights of the Child guarantees children, *inter alia*, their inherent right to life, protection against all forms of “physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child,” and a standard of living “adequate for the child’s physical, mental, spiritual, moral and social development.” UN General Assembly, *Convention on the Rights of the Child*, United Nations, Treaty Series, vol. 1577, p. 3, (Nov. 20, 1989) U.N. Convention on the Rights of the Child, arts. 6, 19, 27, Nov. 20, 1989, 1577 U.N.T.S. 3 (hereinafter “CRC”);² *see also* Universal Declaration

² Although the United States has signed but not yet ratified the CRC, the CRC has arguably attained the status of customary international law—having been adopted by virtually every nation in the world. *See, e.g., Beharry v. Reno*, 183 F. Supp. 2d 584, 600 (E.D.N.Y. 2002), *rev’d on other grounds sub nom. Beharry v. Ashcroft*, 329 F.3d 51 (2nd

of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (Article 3: “everyone has the right to life, liberty, and security of the person.” Article 5: “no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment”)³; U.N.

International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171

(guaranteeing individuals, inter alia, the right to life (art. 6), the right to be free from degrading treatment or torture (art. 7), and the right to protection from the law (art. 17); U.N. International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (recognizing children’s right to an adequate standard of living and protecting children from economic and social exploitation and other forms of abuse).⁴

Here, the Immigration Judge erred in failing to recognize that victims of child abuse are similar to women who suffer from domestic violence who may qualify for asylum. The Immigration Judge found that the Respondent was in an abusive domestic relationship and suffered a childhood of constant abuse by his uncle, yet concluded that domestic violence between an adult and a child was not recognized under asylum law. *See* IJ Decision, at 8-9. This blanket conclusion fails to recognize that child abuse can constitute persecution and, given the severity and duration of the abuse in this case, certainly was persecution under US asylum law.

Cir. 2002) (“The CRC has been adopted by every organized government in the world except the United States. This overwhelming acceptance is strong reason to hold that some CRC provisions have attained the status of customary international law.”).

³ The principles of the UDHR are generally considered to have attained the status of customary international law. *See, e.g.,* Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 Ga. J. Int’l & Comp. L. 287, 290 (1995/1996) (“The Universal Declaration remains the primary source of global human rights standards, and its recognition as a source of rights and law by states throughout the world distinguishes it from conventional obligations. Virtually every international instrument concerned with human rights contains at least a preambular reference to the Universal Declaration, as do many declarations adopted unanimously or by consensus by the U.N. General Assembly . . . the Universal Declaration of Human Rights may be even more easily invoked as a source or evidence of customary international law than a corresponding treaty provision.”).

⁴ The United States has both signed and ratified the ICCPR and ICESCR generally obligating the United States to uphold its provisions.

There is also no evidence in the record that the IJ looked to objective facts such as country conditions in Honduras to analyze Respondent's claim. The IJ did not consider the fact that Respondent's uncle was a police officer and that police officers in Honduras are known to commit acts of violence against children and to act with impunity. U.S. Dep't of State, *2013 Human Rights Report: Honduras* 19 (2014) ("Police, gangs, and members of the public engaged in violence against poor youths. Human rights groups continued to allege that individual members of the security forces and civilians used unwarranted lethal force against . . . youths not known to be involved in criminal activity.").

II. APPLICANTS LIKE RESPONDENT WHO SUFFER CHILD ABUSE IN CENTRAL AMERICA, SIMILAR TO WOMEN WHO SUFFER DOMESTIC VIOLENCE IN CENTRAL AMERICA, CAN OFTEN DEMONSTRATE ELIGIBILITY FOR ASYLUM

A. The Factual Context of Child Abuse in Central America Is Similar to Domestic Violence in Central America

In Central America, there are epidemic levels of violence against women and children. See U.N. Office of the High Comm'r for Human Rights, *Special Rapporteur on Violence Against Women Finalizes Country Mission to Honduras and calls for Urgent Action to Address the Culture of Impunity for Crimes Against Women and Girls* (July 7, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14833>. The same culture of patriarchy and machismo that forges unbreakable marital bonds and subjugates women acts upon children in the region. Scholars have identified a "culture of violence" in Central America, which is "a system of norms, values, and attitudes which enables, fosters, and legitimizes the use of violence in interpersonal relationships. Examples include cultural norms that support the physical discipline of children These norms exist throughout the different institutions in society, including schools and the home." World Bank, *Crime and Violence In Central America*, Vol. II, Report No. 56781-LAC, at 54 (September 2010) (citations omitted).

While the focus of this amicus brief is on Honduras, there are comparable circumstances in Guatemala and El Salvador.

Since 1999, when the U.S. Department of State began issuing human rights reports, Honduras has been identified as a country with serious issues of violence against women and children. In 1999, street children were first identified as being subjected to violence and extrajudicial killings at the hands of police and vigilante groups. *See* U.S. Dep't of State, *1999 Human Rights Report: Honduras* (2000). Since 2005, the U.S. government has consistently called child abuse a serious problem in Honduras. *See* U.S. Dep't of State, *2005 Human Rights Report: Honduras* (2006); U.S. Dep't of State, *2006 Human Rights Report: Honduras* (2007); U.S. Dep't of State, *2007 Human Rights Report: Honduras* (2008); U.S. Dep't of State, *2008 Human Rights Report: Honduras* (2009); U.S. Dep't of State, *2009 Human Rights Report: Honduras* (2010); U.S. Dep't of State, *2010 Human Rights Report: Honduras* (2011); U.S. Dep't of State, *2011 Human Rights Report: Honduras* (2012); U.S. Dep't of State, *2012 Human Rights Report: Honduras* (2013); U.S. Dep't of State, *2013 Human Rights Report: Honduras* (2014).

The Overseas Development Institute contrasts the visible violence of gangs with the widespread intra-household social violence, including gender-based domestic violence, the abuse of children and inter-generational conflict, as less visible with a low profile, with Honduras having a less studied and even lower public profile than comparable countries in Central America. Caroline Moser & Alisa Winston, *Violence in the Central American Region: Toward a Framework for Violence Reduction* viii (Overseas Dev. Inst., Working Paper No. 171, 2002), *available at* <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1826.pdf>. This low profile occurs because intra-household social violence is widespread and treated as a private family matter. *Id.* at viii-ix. Additionally, according to Dr. Ubaldo

Herrera Coello, a medical doctor and expert on the status of children in Honduras, Honduran children are treated as property, not only of their parents, but of the community of adults around them. *See* Ex. B, Ubaldo Herrera Coello, Expert Declaration of Ubaldo Herrera Coello Expert on Children’s Rights in Honduras ¶ 2 (Sept. 29, 2014), (hereinafter “Coello Dec.”). This problem is especially acute for children who have been abandoned by their parents and left in the care of other adults. Coello Dec. ¶ 16 (“The perception that children are inferior to adults and occupy a lower status in the family extends to other adult family members besides parents, including grandparents, aunts and uncles, and other relatives. This perception is especially common among relatives who have taken over the caretaking of a child because the child has been abandoned or abused . . .”).

The United Nations Committee on the Rights of the Child has also noted that domestic violence and abuse of children, including sexual abuse, is on the rise and constituted a serious problem with insufficient services for the physical and psychological support of victims of violence. *See* U.N. Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Concluding Observations: Honduras*, ¶51 U.N. Doc. CRC/C/HND/CO/3 (May 3, 2007) (hereinafter “CRCR Concluding Observations”). The U.N. Committee on the Rights of the Child has urged the Honduran government to strengthen its efforts to prevent “ill-treatment of children within . . . the family,” but the Honduran government has failed to take adequate action to prevent child abuse. *See id.*, at 12. Many cases of child abuse are never reported to government authorities “for reasons ranging from ignorance and a lack of faith in the justice system to fear of the institutional maltreatment to which victims are often subjected.” U.N. Comm. on the Rights of the Child, *Consideration Of Reports Submitted By States Parties Under Article 44 Of The Convention: Honduras*, 53-54 §

189-90, U.N. Doc. CRC/C/HND/3 (July 27, 2006) (“CRCR Report”). There is a limited possibility of denouncing aggressors because the aggressor often is a member of the family or social nuclei where the child lives. See COIPRODEN, *Current Report of the Honduran Childhood Situation* 40 (2005). The patriarchal culture and asymmetric power relations in which children grow up inhibit such denouncements.

Violence against children is common in Central America. A recent survey of unaccompanied children found that “[n]early half of the children (48%) said they had experienced serious harm or had been threatened by organized criminal groups or state actors, and more than 20% had been subject to domestic abuse.” William A. Kandel, et al., Cong. Research Serv., R43628, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration* 4 (2014) (hereinafter “CRS Report”). Conditions for children are deteriorating. In 2006, the number of children reporting that they were fleeing from such persecution was only 13%. *Id.*

In Honduras, violence against children and impunity for criminal acts is particularly problematic. Honduras has the highest homicide rate in the world, and the murder rate is especially acute for adolescent males. See UNICEF, *Annual Report 2013 - Honduras* 2 (2013). UNICEF calls Honduras’s murder rate among of 192.7 for 18-year-olds “staggering.” *Id.* at 3. Of the criminal cases that are reported, few are actually prosecuted. For example, in 2006, the Honduran Public Ministry received 1,934 reports of alleged crimes against children in Tegucigalpa and San Pedro Sula alone, yet only 216 claims were processed and a mere 72 cases were resolved. U.S. Dep’t of State, 2006 Human Rights Report: Honduras (2007). Amnesty International has reported that the Honduran government has failed in its duty and responsibility to prevent human rights violations and to protect its victims such that there is almost a total

paralysis of cases at the stage of investigation and trial, particularly in cases of extrajudicial killings of children. *See* Amnesty Int'l, *Honduras: Zero Tolerance For Impunity: Extrajudicial Executions of Children and Youth Since 1998* 1 (2003). Although sexual abuse is criminalized in Honduras, the maximum sentence for child abuse in Honduras is only three years. *See* U.S. Dep't of State, *2006 Human Rights Report: Honduras* (2007). The factual context in Honduras demonstrates the similarities and linkages between domestic violence against spouses and child abuse. Similar to women in Central America, children have a low social standing, are often the victims of violence and have little to no ability to access governmental protection from that violence.

III. CHILDREN WHO SUFFER CHILD ABUSE MAY BE ABLE TO DEMONSTRATE MEMBERSHIP IN A PARTICULAR SOCIAL GROUP

A. The Immigration Judge Erred in the Analysis of Particular Social Group in the Context of Child Abuse

For an applicant to seek asylum based on membership in a particular social group, the applicant must show that s/he belongs to a group that is “(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.” *Matter of A-R-C-G-* 26 26 I&N Dec. 388, 392 (BIA 2014). Then the applicant must demonstrate that he was persecuted “on account of” his membership in that group, and that the government is “unwilling or unable to protect” him from such harm. Children who suffer domestic abuse in their home countries may be able to demonstrate all of these elements in certain cases. *See id.* at 392, 395 (indicating elements that must be demonstrated to establish asylum eligibility in domestic marital abuse case).

UNHCR Children's Guidelines clearly establish that child groupings, including abused children, can constitute a particular social group under international law. Specifically, the Guidelines instruct that “[a] range of child groupings . . . can be the basis of a claim to refugee

change. *See Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985), *overruled in part on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439, 439 (BIA 1987). The immutable characteristics that can define the particular social groups in the child abuse context include: family membership, gender,⁵ childhood, status in a familial relationship, inability to leave the family, abandonment, being born out of wedlock, disability, and other characteristics that make a child exceptionally vulnerable. Each of these characteristics is either immutable or fundamental to their identity under the *Acosta* standard.

1. Age Is an Immutable Characteristic for Applicants Like the Respondent

Childhood is an immutable characteristic because a child cannot change his age to escape persecution. *See Matter of S-E-G-*, 24 I&N Dec. 579, 583-584 (BIA 2008) (acknowledging that “the mutability of age is not within one’s control and that if an individual has been persecuted in the past on account of an age-described particular social group, or faces such persecution at a time when that individual’s age places him within the group, a claim for asylum may still be cognizable”) (emphasis added); *see also* UNHCR Children’s Guidelines ¶ 49 (“Although age, in strict terms, is neither innate nor permanent as it changes continuously, being a child is in effect an immutable characteristic at any given point in time.”). A child cannot change his age to escape child abuse any more than a woman can change her gender to escape domestic violence.

Since Respondent’s claim is based primarily on establishing past persecution (which entitles him to a presumption of fear of future persecution or consideration for humanitarian

⁵ Courts have recognized that gender is an immutable characteristic. *See, e.g., Niang v. Gonzales*, 422 F.3d 1187, 1198 (10th Cir. 2005) (women in the Tukulor Fulani tribe are a cognizable social group); *Fatin v. INS*, 12 F.3d 1233, 1240 (3d Cir. 1993) (women can constitute a social group); *Matter of Kasinga*, 21 I&N Dec. 357, 365-66 (BIA 1996) (“[Y]oung women of the Tchamba-Kunsuntu Tribe who have not had FGM as practiced by that tribe, and who oppose the practice”); *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1987) (“The shared characteristic might be an innate one such as sex, color, or kinship ties”) (emphasis added), *overruled in part on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439, 439 (BIA 1987).

asylum), the Judge should have focused on his immutable age at the time of his persecution in considering whether he was a member of a particular social group. UNHCR Children's Guidelines ¶ 49 ("The fact that the child eventually will grow older is irrelevant to the identification of a particular social group, as this is based on the facts as presented in the asylum claim [at the time of analysis]. Being a child is directly relevant to one's identity, both in the eyes of society and from the perspective of the individual child.").

2. Membership in a Family Group Is an Immutable Characteristic

Family membership is also a fundamental characteristic because a child should not be forced to forego family in order to avoid persecution. It is also immutable because a child has no power to change his or her status in the family or society. *See, e.g., Lopez-Soto v. Ashcroft*, 383 F.3d 228, 235 (4th Cir. 2004) (family constitutes a particular social group); *Molina-Estrada v. INS*, 293 F.3d 1089, 1095 (9th Cir. 2002) (affirming that immediate family might constitute a social group for asylum purposes); *Gebremichael v. INS*, 10 F.3d 28, 36 (1st Cir. 1993) ("There can, in fact, be no plainer example of a social group based on common, identifiable and immutable characteristics than that of the nuclear family."); *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1586 (9th Cir. 1986) (an immediate family is the "prototypical example" of a particular social group); *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1987) ("The shared characteristic might be an innate one such as sex, color, or kinship ties"), *overruled in part on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439, 439 (BIA 1987); *see also Matter of C-A-*, 23 I&N Dec. 951, 959 (BIA 2006) ("Social groups based on innate characteristics such as sex or family relationship are generally easily recognizable and understood by others to constitute social groups.").

Although the opinion was withdrawn, the Ninth Circuit has found family membership to constitute a particular social group in a case involving child abuse that was remanded for a

stipulated reopening of the case. *Aguirre-Cervantes v. INS*, 242 F.3d 1169, 1181 (9th Cir.) (granting asylum to a victim of child abuse), *vacated and remanded for stipulated reopening*, 273 F.3d 1220 (9th Cir. 2001).

3. Similar to Cases of Married Women, Being “Unable to Leave a Relationship” Is an Immutable Characteristic for Applicants Like Respondent

In *A-R-C-G-*, the Board found that “marital status can be an immutable characteristic where the individual is unable to leave the relationship.” *Matter of A-R-C-G-*, 16 I&N Dec. 388, 393 (BIA 2014). The Board notes that this determination is based upon the particular facts and evidence of the case and could include consideration of whether dissolution of the relationship is possible in light of religious, cultural, or legal constraints, the respondent’s own experiences, and objective evidence.

Similarly, a dependent child, like the Respondent in this case, typically cannot dissolve the custodial relationship with the adult. *See* UNHCR Children’s Guidelines ¶ 32. This point is demonstrated by the objective evidence discussed in Section II. A., *supra*, regarding the Honduran societal view toward children as property, the widespread occurrences of child abuse in Honduras and the government’s failure to take adequate steps to prevent child abuse. *See also*, Coello Dec. ¶ 2 (regarding children being treated as property in Honduras); CRCR Concluding Observations ¶ 51 (regarding severity of child abuse problem in Honduras), ¶ 12 (regarding government’s failure to act). As in this case, if an applicant attempts to leave, he or she may be forced to return by the abuser, another family member, or by state officials. Here, the Respondent testified to his own experience of being unable to leave the custodial relationship. Tr. at 31, 5-8, 11, 31-32, 6-12, 33, & 37.

4. The Status of Being an Abandoned Child Such as Respondent Is an Immutable Characteristic

Parents often make decisions regarding their children's living situation – such as in whose care they will be placed or whether their parents will move to another country and leave them behind. For example, Respondent's mother decided to migrate to the United States and to leave him with his grandmother and uncle when he was eight months old. Tr. at 31:23-31:25. A toddler has no say in a parent's decision to migrate and abandon him or leave him in the care of others, and a child has little influence in convincing his/her parent to return or resume care for the child. Being abandoned is not a characteristic that a child can often change, particularly at a tender age, or of a child's own volition. Respondent in this case was not able to change his status. He fled for his life on his own to live at the age of 14 to live with a family friend for two years and then reunited with his mother but he was really her caretaker as he provided care for her when she became ill.

C. Child Victims of Domestic Abuse Can Often Meet the Particularity Requirement for Membership in a Particular Social Group

The particularity requirement refers to whether the particular social group is “sufficiently distinct” that it would constitute a “discrete class of persons” defined by “characteristics that provide a clear benchmark for determining who falls within the group.” *Matter of W-G-R-*, 26 I&N Dec. 208, 210 (BIA 2014); *see also Matter of A-R-C-G-*, 26 I&N Dec. 388, 392 (BIA 2014) (“The particularity requirement addresses the question of delineation. . . . Not every immutable characteristic is sufficiently precise to define a particular social group.”) (quoting *Matter of M-E-V-G-*, 26 I&N Dec. 227, 239 (BIA 2014) (internal quotation marks omitted)).

The particular social groups presented herein or similar particular social group formulations can fulfill this particularity requirement. Adjudicators can determine who is

included in a family-based particular social group, as long as the contours of the group are well defined. For example, it is clear who is included in the following particular social groups: “nuclear family,” “daughters of X,” and “biological children of X.” Laws defining different family relationships, such as kinship care laws, and cultural norms regarding family could help clarify who is a group member in cases where there is some question as to the outer boundaries of a particular social group defined in whole or in part by family membership. *See* DHS’s Supplemental Brief, *Matter of L-R-*, at 19 (BIA Apr. 13, 2009) (hereinafter “L-R- Brief”) (suggesting that INA section 237(a)(2)(E)(I), which defines the crime of domestic violence, provides specificity regarding who is in a domestic relationship, and therefore who is in the particular social group); *see also* *Matter of A-R-C-G-*, 26 I&N Dec. at 393 (finding that the terms used to describe the group—“married,” “women,” and “unable to leave the relationship”—have commonly accepted definitions within Guatemalan society based on the facts in this case, including the respondent’s experience with the police and therefore the “particularity” requirement had been met).

In addition, to establish particularity, whether a child is viewed as subordinate because of his status in the family and whether he is unable to leave the family are both factual questions that an adjudicator can determine based on evidence about the child’s individual circumstances, as well as social and legal norms. Facts that go to establishing a child’s inability to relocate, for example, would be relevant to a determination regarding that child’s inability to leave the family. L-R- Brief, at 20 (suggesting that an adjudicator can determine an applicant’s inability to leave a relationship on a case by case basis, looking to the facts used to assess the applicant’s ability to relocate, as well as other relevant facts.) Adjudicators should also be able to determine who is a child, but could look to laws defining the term “child,” or setting the age of majority for

guidance. Finally, in determining who is a member of a particular social group of a subset of children, such as “disabled children,” “abandoned children,” “orphan children,” or “illegitimate children” adjudicators can look to laws defining terms like “orphan,” “abandoned,” “disabled,” or “born out of wedlock.”

1. “Abandoned” Children or Children “Without Effective Parental Protection” Can Meet the Particularity Requirement for Membership in a Particular Social Group

Respondent’s status as an abandoned child or a child without effective parental protection defines his particular social group with particularity. UNHCR Children’s Guidelines ¶ 50 (“Age and other characteristics may give rise to groups such as ‘abandoned children’”); *see also* MJZ, V97-03500, 1999 CRDD 118 (Can.) (accepting abandoned children from Mexico as a particular social group under international law). This is a definable group that is limited in scope. Not all children in Honduras have been abandoned by their parents. Similar to *Matter of A-R-C-G-*, 26 I&N Dec. at 393, where the Board found that certain terms used to describe the group—“married,” “women,” and “unable to leave the relationship”—have commonly accepted definitions within Guatemalan society based on the facts in that case, and therefore the “particularity” requirement had been met, in Honduras, terms such as “abandoned” and “children” have commonly accepted definitions. Those who have been abandoned are those whose parents have abdicated direct care of their children. As Dr. Ubaldo Herrera Coello, a medical doctor and expert on the status of children in Honduras states, Honduran children are treated as property, not only of their parents, but of the community of adults around them. *See* Coello Dec. ¶ 2. Perhaps even more notable is that this problem is especially acute for children who have been abandoned by their parents and left in the care of other adults. Coello Dec. ¶ 16 (“The perception that children are inferior to adults and occupy a lower status in the family extends to other adult family members besides parents, including grandparents, aunts and uncles,

and other relatives. This perception is especially common among relatives who have taken over the caretaking of a child because the child has been abandoned or abused . . .”).

2. Children “Unable to Leave a Family Relationship” Can Meet the Particularity Requirement for Membership in a Particular Social Group

Children like Respondent are often bound to their abusers by coercion and force. Central American countries are heavily dependent on remittances from the United States, *see, e.g.*, CRS Report, at 5 n.17, which gives families a strong incentive to keep the recipient of the remittances in the home, even if the intended recipient is being abused. For example, when Respondent tried to leave his uncle’s home to live with his aunt, his grandmother forced him return to living with his uncle so that they could collect money that Respondent’s mother sent to care for him. *II Decision*, at 4-5. Respondent had no choice but to return to his abuser; he could not leave the relationship. Respondent testified that he could not move somewhere else because he did not have family in other parts of Honduras and he did not know of any other places in Honduras. *II Decision*, at 6. “Victims of child abuse are unable to leave their abusive relationships because they are socially and economically dependent on their abusers for basic support.” Coello Dec. ¶ 66. Even when Respondent tried to escape his abusive caretakers, his familial ties proved too strong to break, and his caretakers forced him back into an abusive relationship. Just as in *Matter of A-R-C-G-*, in which “a married woman’s inability to leave the relationship may be informed by societal expectations about gender and subordination, as well as legal constraints regarding divorce and separation”, a child’s inability to leave a caretaker is informed by societal views, such as those in Honduras, that a child is subordinate and/or property of caretakers. *Matter of A-R-C-G-*, 26 I&N Dec. 388, 393 (BIA 2014) (citing *Matter of W-G-R-*, 26 I&N Dec. 208, 214 (BIA 2014) (observing that in evaluating a group’s particularity, it may be necessary to

take into account the social and cultural context of the alien's country of citizenship or nationality)).

D. Children Can Belong to a Particular Social Group that Is Socially Distinct Within the Society in Question

In addition to sharing an immutable characteristic, members of a particular social group must be socially distinct in their home countries. *See Matter of A-R-C-G-*, 26 I&N Dec. at 392; *see also Matter of M-E-V-G-*, 26 I&N Dec. 227, 240 (BIA 2014) and *Matter of W-G-R-*, 26 I&N Dec. 208, 215-218 (BIA 2014) (particular social group requires "social distinction"). In order to meet the requirement of "social distinction," there must be 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. at 217. The examples of particular social groups presented herein can satisfy the social distinction requirement, as the groups may be recognizable and/or meaningful or distinct in society.

1. Children's Particular Social Groups Can Be Distinctive in Light of How a Child's Abuser and the Child's Society Perceives the Child's Role Within the Domestic Relationship

According to the Department of Homeland Security, a particular social group for a domestic violence case "is best defined in light of the evidence about how the respondent's abuser and her society perceive her role within the domestic relationship." L-R- Brief, at 14. In *A-R-C-G-*, the BIA found that evidence proving social distinction for victims of domestic violence includes "whether the society in question recognizes the need to offer protection to victims of domestic violence, including whether the country has criminal laws designed to protect domestic abuse victims, whether those laws are effectively enforced, and other sociopolitical factors." *Matter of A-R-C-G-*, 26 I&N Dec. at 394. This social distinction – between who can expect protection from physical harm and who cannot (women in domestic

relationships) – could establish the distinctiveness of the social groups proposed by DHS. *See L-R- Brief*, at 18. Thus, evidence regarding high rates of child abuse, social norms tolerating child abuse within the family, and a lack of protection for abused children in a particular society should establish the distinctiveness of particular social groups defined by the child’s status in the family or his inability to leave, because such evidence reflects distinct treatment of group members, as well as a negative perception of group members in society. *See U.N. High Comm’r for Refugees, Guidelines on International Protection: “Membership of a Particular Social Group” Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, ¶ 14, U.N. Doc. HCR/GIP/02/02 (May 7, 2002) (while a social group “cannot be defined exclusively by the fact that it is targeted for persecution . . . persecutory action toward a group may be a relevant factor in determining the visibility of a group within a particular society”).

There is ample evidence that Honduran society perceives child abuse as a serious problem. *See Section II. A., supra*. Just as the Board highlighted Guatemala’s domestic violence laws to support social visibility in *A-R-C-G-*, it should note that Honduras has legislation targeted at ending child abuse. U.S. Dep’t of State, *2013 Human Rights Report: Honduras* 19 (2014) (“Child abuse remained a serious problem [in Honduras].”). The law establishes prison sentences of up to three years for persons convicted of child abuse. The Permanent Commission on Protection for the Physical and Moral Well-Being of Children, under the Secretariat of State of Interior and Population, coordinates public and private efforts to combat child abuse. The government provided a hotline where investigative authorities could receive reports of suspected crimes against children.”)

Similar to the poorly enforced domestic violence laws in *A-R-C-G-*, laws against child abuse are poorly enforced in Honduras. According to Dr. Coello, “[d]espite the enactment of laws intended to improve the status of children, governmental intuitions in Honduras continue to provide insufficient protection to children and fail to bring perpetrators of violence to justice in the majority of cases.” Coello Dec. ¶ 2; *see also* COIPRODEN, *Current Report of the Honduran Childhood Situation* 40 (2005).

2. Children’s Particular Social Groups Can Be Distinctive Based on Dependent Family Relationships

Dependent family relationships are often easily recognizable in a given society. Families are, for example, given particular rights and recognition, special laws and courts are directed to the family unit, and “family values” are a common issue in political campaigns. The BIA has noted that a social group based on family relationship is “easily recognizable and understood by others to constitute [a] social group[.]” *Matter of C-A-*, 23 I&N Dec.951, 959 (BIA 2006). Family ties are crucially important to defining how Honduran society perceives children, and how Honduran children perceive themselves. A study commissioned by The World Bank found “*family orientation as the crucial component in the identity of Honduran children.*” Hector Lindo-Fuentes & Tania Salem, World Bank, *Family, Gender and Identity: Influences and Opportunities for Children in Honduras*, 3, 6 (1999) (emphasis in original). A child’s association with his family is enforced by rigid cultural norms. Honduran “familism . . . emphasizes the preservation of family tradition and its hierarchical organization, and supports traditional family roles. All these characteristics pervade children’s perceptions and constitute crucial elements of their daily experience.” *Id.* at 6.

Honduran society views children as members of an identifiable group, which singles them out for persecution because of their low social status. According to Dr. Coello, “children

are not treated as people with rights but as the property of their parents, and by extension, the broader community of adults in general. Children are vulnerable to a host of abuses and exploitations, including child abuse.” *See, e.g.,* Coello Dec. ¶ 2. The perception in Honduras that children are inferior is especially prevalent among adults who, like Respondent’s uncle, take over care for children whose parents “have migrated to another country and left the child behind. As a result, children are at risk of violence and forced labor not just by parents but by other relatives as well. Because of the low status children have within families, these crimes are rarely denounced, and a child’s immediate or extended family may become a source of danger for the child rather than a source of protection.” Coello Dec. ¶ 16.

3. Children’s Particular Social Groups Can Be Distinctive Based upon Abandonment by a Parent, Lack of Effective Parental Protection, or that the Child Is a Source of Remittances

Children who have been abandoned or lack effective parental protection are highly visible in societies like Honduras in which high numbers of parents have migrated to the United States and left their children behind with family members or other caretakers. Children have become an even more visible group since the surge of unaccompanied alien children fleeing Central America began in 2011. *See, e.g.,* Ioan Grillo, *President of Honduras Expects Mass Deportations of Minors From U.S.*, Time (July 22, 2014), <http://time.com/3020874/honduras-immigration-border-crises-children> (discussing plight of Honduran child migrants). Just this year, the U.S. government began “an aggressive Spanish language outreach effort and an urgent call to action to community groups, the media, parents and relatives in the U.S. and Central America to save and protect the lives of migrant children attempting to cross the southwest border.”); Pamela Constable, *Immigrant Parents Urge U.S. Officials to Help Their Children Flee Central American Violence*, Wash. Post (June 12, 2014), <http://www.washingtonpost.com/national/immigrant-parents-urge-us-officials-to-help-their->

children-flee-central-american-violence/2014/06/12/dc751266-f0b4-11e3-914c-1fbd0614e2d4_story.htm (“One [surge factor] is an epidemic of gang violence cross El Salvador, Honduras and Guatemala that has put many children at risk, especially when parents are not there to protect them.”); Press Release, U.S. Customs & Border Patrol, CBP Commissioner Discusses Dangers of Crossing U.S. Border, Awareness Campaign (July 2, 2014), *available at* <http://www.cbp.gov/newsroom/national-media-release/2014-07-02-000000/cbp-commissioner-discusses-dangers-crossing-us>. Additionally, children who are left behind by migrating parents may also become distinctive as a perceived source of remittances within their families and societies.

E. Children Can Meet the Nexus Requirement on Account of Particular Social Group Through Reliance on Circumstantial and Objective Evidence

Because children often may not know why they have been targeted, official guidance recognizes the importance of relying on objective evidence to determine nexus in their cases. According to the AOBTC Guidelines, “[a] child’s inability to understand all of the circumstances surrounding his or her flight creates difficulty in analyzing the nexus of the harm or fear of harm to a protected ground. Officers must pay close attention to the objective facts surrounding the child’s claim to determine if there is a nexus regardless of the child’s ability to articulate one.” AOBTC Guidelines for Children’s Asylum Claims, at 53. *See also* 1998 INS Guidelines, at 20-21; U.N. High Comm’r for Refugees, *Guidelines on Policies and Procedures in Dealing With Unaccompanied Children Seeking Asylum* ¶ 8.6 (1997), <http://www.unhcr.org/3d4f91cf4.pdf>. The preamble to the Department of Justice’s (“DOJ”) 2000 proposed asylum regulations also acknowledges the relevance of circumstantial evidence that “patterns of violence are (1) supported by the legal system or social norms in the country in question, and (2) reflect a prevalent belief within society, or within relevant segments of society,” to a finding of nexus.

Asylum and Withholding Definitions, 65 Fed. Reg. 76588 (proposed Dec. 7, 2000). In *Matter of Kasinga*, the BIA used a similar approach to determine nexus; it based its nexus finding on objective evidence regarding societal reasons for female genital cutting and the importance of the practice in society. See *Matter of Kasinga*, 21 I&N Dec. 357, 366-67 (BIA 1996). This approach is consistent with DHS's treatment of nexus in the *Matter of R-A-* and *L-R-* briefs, which acknowledge that the abuser's belief regarding a woman's subordinate status in the relationship may be bolstered by societal acceptance of domestic violence – including lack of legal recourse. See DHS Brief, *Matter of R-A-*, at 35-36 (BIA Feb. 19, 2004) (hereinafter “R-A-Brief”) (DHS argued that, “evidence that the abuser uses violence to enforce power and control over the applicant because of the social status that the applicant has within the family relationship is highly relevant to determining the persecutor's motive. This includes . . . circumstantial evidence that such patterns of violence are (1) supported by the legal system or social norms in the country in question, and (2) reflect a prevalent belief within society, or within relevant segments of society[.]”) Therefore, evidence of the abuser's words and actions regarding the child's subordinate status in the family, as well as objective evidence of the subordinate status of children in society and the family, patterns of violence against children or a subset of children, a societal perception that child abuse is a private family matter, and lack of protection available to abused children – including the belief that government should not interfere in family relations or hesitancy on the part of officials to do so - would all support a finding of nexus to one of the above particular social groups.

In cases with social groups defined solely or primarily by family membership, the abuser's violence toward other members of the family supports a finding of nexus. Violence directed at specific family members who fall into a particular category, *e.g.* sons, indicates the

abuser's motivation to target a subset of family members. Similarly, for cases where status as a child defines the group in whole or in part, evidence regarding children's subordinate status in society at large, as well as whether the state protects children from abuse is critical to the question of nexus. As in this case, an abuser could target the child, for example, because of his belief that he can do so with impunity or that the child cannot escape the situation. *See R-A-Brief*, at 37, (noting that, "[the abuser's] view that Alvarado could not leave the relationship played a key role in his choice of her as his victim . . . Alvarado's inability to escape the relationship influences the abuser's motivation in harming her because he knows that he can harm her with impunity, and that he can continue to do so regardless of any action she might take – she cannot leave the relationship.").

1. Applicants Like Respondent Can Establish that Persecution Was on Account of a Particular Social Group

The Immigration Judge erred in forcing the Respondent to bear the burden of explaining why his uncle persecuted him, and then making up her own explanation for the abuse, an explanation that was utterly divorced from the Respondent's testimony. Furthermore, the Immigration Judge erred when she found that the Respondent's uncle had abused him on account of his presence in the home, rather than on account of his particular social group. Respondent testified that, "I don't know why he always mistreated me." Tr. at 31:15-31:16. Although Respondent did not know the exact reason that his uncle abused him (many children do not know why their abusers target them) ample evidence from the transcript suggests the uncle's motivation for his abuse was based on Respondent's status as an abandoned child and the uncle's view of Respondent as an illegitimate child and thus Respondent's relationship to his mother. When the IJ pressed the Respondent to divine the uncle's motivations abusing him, he testified that "[My uncle] would just tell me that he didn't want me there. He would...tell me that I was a

bastard. That my mother had abandoned me. That she abandoned me because she didn't want me. That he was always trying to make me feel bad." Tr. at 34:1-34:4. The country conditions evidence also demonstrates the other elements of the particular social group as in *A-R-C-G-*, that the uncle abused Respondent because he knew he could act with impunity, that child abuse cases are rarely prosecuted in Honduras and that he was a police officer, which bolstered his ability to act with impunity.

Thus, the Immigration Judge should have found that Respondent was persecuted on account of his membership in a particular social group, such as "Honduran children who cannot leave a relationship with their caretakers" or "Honduran children who have been abandoned by their parents and left in the custody of caretakers" or "Honduran children who are viewed as property by their families or caretakers" or "Honduran children who lack effective parental protection" or "Honduran children born out of wedlock without effective parental protection." Instead, despite ample evidence to the contrary, the IJ found that "It appears based on the respondent's testimony that the uncle just had animosity and resentment to respondent's presence in the home." Respondent's presence in the home as the sole explanation for his persecution is baseless and incorrect, because Respondent was present in the same home as his uncle for about three years without any abuse occurring. Tr. at 31:24-32:11. Furthermore, the uncle's final threat to Respondent had little to do with Respondent's presence in his home, but with the uncle singling out respondent for abuse based on Respondent's identity. Finally, Respondent testified that he would feel unsafe due to his uncle's resentment, even if he no longer lived in the same house, but the IJ failed to consider this fact in her decision. Tr. at 34:24-35:10.

Furthermore, as demonstrated, Respondent in this case was unable to leave the relationship and the uncle had to have been aware of this fact. He must have known he could act

with impunity, especially given that he is a police officer. Finally, in claims in which the particular social group is comprised of a subset of children (e.g. abandoned children or illegitimate children or children lacking effective parent protection), nexus can be established through direct evidence or circumstantial evidence showing high rates of abuse of such children, as well as lack of protection for them, or discriminatory policies against them. There is ample country conditions evidence of this nature, as discussed in Section II, *supra*.

IV. APPLICANTS LIKE RESPONDENT WHO HAVE SUFFERED SERIOUS ONGOING CHILD ABUSE OFTEN MERIT A GRANT OF HUMANITARIAN ASYLUM

Victims of longstanding and serious child abuse such as Respondent are likely to be able to demonstrate compelling reasons for being unwilling to return to their home countries arising out of the severity of the past persecution they suffered there. Even if a Respondent lacks a fear of future persecution, he still may qualify for a discretionary grant of “humanitarian asylum.” *See* 8 C.F.R. § 1208.13(b)(1)(iii); *Matter of Chen*, 20 I&N Dec. 16, 19 (BIA 1989). An asylum applicant can qualify for humanitarian asylum by demonstrating either (1) “*compelling reasons* for being unwilling or unable to return to the country *arising out of the severity* of the past persecution;” or (2) demonstrating “a reasonable possibility of *other serious harm* upon removal to that country.” 8 C.F.R. § 1208.13(b)(1)(iii) (emphasis added); *see also Matter of L-S-*, 25 I&N Dec. 705, 710 (BIA 2012). Factors to consider in recognizing humanitarian reasons for asylum include the degree of harm suffered by the applicant, the length of time over which the harm was inflicted and evidence of severe trauma. *See Matter of N-M-A-*, 22 I&N Dec. 312, 326 (BIA 1998).

As demonstrated in Section I. B., *supra*, given the devastating effects child abuse is likely to have on the development and well-being of a child, child abuse may amount to persecution because of the uniquely vulnerable position of children in society. UNHCR

Children’s Guidelines ¶¶ 32-33. Longstanding, repeated physical and/or verbal abuse can have severe physical and psychological impact, and these effects are enhanced when the victim is a child. The long-term impact of child abuse on an individual has been documented and studied. See Penelope K. Trickett & Catherine McBride-Chang, *The Developmental Impact of Different Forms of Child Abuse and Neglect*, 15 *Developmental Rev.* 311 (1995); Robert F. Anda et. al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, 256 *Eur. Archives of Psychiatry & Clinical Neuroscience* 174, 174 (2006) (“Childhood maltreatment has been linked to a variety of changes in brain structure and function and stress-responsive neurobiological systems.”); Joan McCord, *A Forty Year Perspective on Effects of Child Abuse and Neglect*, 7 *Child Abuse and Neglect* 266 (1983); see also 1998 INS Guidelines, at 19 (“The harm a child fears or has suffered . . . may be relatively less than that of an adult and still qualify as persecution.”).

The young age at which child abuse often begins, such as in this case, can also favor a grant of humanitarian asylum. As discussed in Section I, *supra*, as some courts have recognized, children experience persecution differently than adults. Under the 1998 INS Guidelines for Children’s Asylum Claims, “[t]he harm a child fears or has suffered, however, may be relatively less than that of an adult and still qualify as persecution.” 1998 INS Guidelines, at 19; *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006) (citing the 1998 INS Guidelines in remanding to immigration judge to take into account significant evidence and “to address the harms [applicant] and his family incurred cumulatively and from the perspective of a small child”); see also *Liu v. Ashcroft*, 380 F.3d 307, 314; UNHCR Children’s Guidelines ¶ 15 (elucidating how harm affects children more severely: “Immaturity, vulnerability, undeveloped coping mechanisms and dependency as well as the differing stages of development and hindered

capacities may be directly related to how a child experiences or fears harm.”). In this case, the IJ erred when she failed to consider whether Respondent’s evidence entitled him to humanitarian asylum based on (A) the severity of his past persecution; or (B) the possibility of other serious harm if he is returned to Honduras. *See Sheriff v. Att’y Gen. of U.S.*, 587 F.3d 584, 596 (3d Cir. 2009) (remanding to BIA when BIA failed to consider Respondent’s evidence for humanitarian asylum); *see also Kholyavskiy v. Mukasey*, 540 F.3d 555, 577 (remanding to BIA when BIA failed to consider whether Respondent faced “other serious harm”).

A. Respondent Has Compelling Reasons Arising out of the Severity of Abuse He Suffered in Honduras

Respondent suffered ten years of ongoing, physical beatings by his uncle beginning at the age of four, *see* IJ Decision, at 8 (“The Court is very sympathetic to respondent because it appears that respondent did suffer a childhood of constant abuse by his uncle.”), which culminated in an incident in which his uncle shot at him and beat him over the head with a rifle leaving him unconscious, (Tr. at 34). The abuse was so severe that the Immigration Judge found it rose to the level of torture. IJ Decision, at 10. While there is no evidence in the record about the psychological impact of these ongoing beatings, there can be no doubt that they took a serious emotional toll on Respondent. Ongoing child abuse will often constitute persecution serious enough sufficient to warrant a grant of humanitarian asylum. Torture, and therefore persecution arising to the level torture, is undoubtedly severe enough to meet the bar for humanitarian asylum. *See Matter of Chen*, 20 I&N Dec. 16, 19-21 (BIA 1989) (granting humanitarian asylum to applicant who was subjected to years of physical and psychological torture, beginning in childhood); *see also Bacuku v. Holder*, 438 F. App’x 39, 41 (2d Cir. 2011) (remanding to BIA for failing consider whether applicant’s torture was severe enough to merit humanitarian asylum); *Sambia v. Mukasey*, No. 08-3168, 2009 WL 170670, at *8 (6th Cir. Jan.

26, 2009) (“[T]ypically, humanitarian asylum has been reserved for those who have endured torture . . . or repeated physical abuse . . .”). The culminating event of Respondent’s persecution, in which his uncle shot at him and then beat him in the head with a gun, knocking him unconscious, nearly cost Respondent his life. *See* IJ Decision, at 4. Much of the abuse that Respondent endured is identical to the type and severity of persecution that merited humanitarian asylum in *Matter of Chen*. Like the successful applicant in *Chen*, Respondent was subjected to repeated beatings, suffered a blow to the head, was abused for many years, and applied for asylum as an adult based on persecution he experienced as a child.

The long duration of the persecution that child abuse victims suffer can be another “compelling reason” entitling them to humanitarian asylum. *See Matter of N-M-A-*, 22 I&N Dec. 312, 326 (BIA 1998) (length of time is a factor for considering humanitarian asylum); *see also Sholla v. Holder*, 397 F. App’x 253, 255 (8th Cir. 2010); *Kholyavskiy v. Mukasey*, 540 F.3d 555, 576 (7th Cir. 2008). The Board has found 13 months of abuse to be sufficient to support a claim of humanitarian asylum. *See Matter of B-*, 21 I&N Dec. 66, 72 (BIA 1995); *contra Abrha v. Gonzales*, 433 F.3d 1072, 1076 (8th Cir. 2006) (harm lasting two months that did not result in physical or psychological problems was not sufficient). In this case, Respondent was abused for more than 10 years, beginning when he was four-years old, which is more than long enough to qualify for humanitarian asylum. This case is very similar to that of the respondent in *Chen* who was granted humanitarian asylum after he was abused and tortured for nine years, beginning when he was 8 years old. *Matter of Chen*, 20 I&N Dec. 16, 20 (BIA 1989).

While the Immigration Judge recognized that the Respondent credibly testified about his childhood of abuse, the Immigration Judge erred in failing to consider the long-term impact of this abuse, coupled with the death of his only known parent as a young adult, on his

neurobiological and psychological health, that can have a wide range of consequences, from how the Respondent responds in stressful court room situations to memory to depressive conditions that impact daily life.

As a matter of public policy, the U.S. and through its leadership across the world, has worked to develop child protection systems precisely because of the known impact on society of children being subjected to abuse, abandonment, neglect and other similar acts with impunity. Humanitarian asylum is an important remedy for victims of child abuse because harm suffered during youth leaves indelible scars, but the condition that led to the persecution (childhood itself) disappears with age which eliminates many children's ability to establish fear of future persecution.

B. There Is a Reasonable Possibility that Respondent Will Suffer Other Serious Harm if He Is Returned to Honduras

When evaluating asylum claims brought by applicants who have suffered child abuse and have established past persecution, if there is no evidence that the applicant will suffer persecution on a protected ground, humanitarian asylum should be based on the "reasonable possibility that . . . [the applicant] may suffer other serious harm" upon return to the home country should also be considered. 8 C.F.R. § 208.13(b)(1)(iii)(B). To be eligible for asylum on account of "other serious harm," "an applicant need not show that the harm in the past was atrocious." *Matter of L-S-*, 25 I&N Dec. 705, 714 (BIA 2012). Instead, "the focus should be on current conditions and the potential for new physical or psychological harm that the applicant might suffer." *Id.* "[I]t may be wholly unrelated to the past harm." *Id.* The "other serious harm" analysis must consider "the totality of the circumstances in a given situation" and should be determined on a case-by-case basis. *Id.* at 715. An applicant may meet the standard of showing a "reasonable possibility" of future serious harm if there is a reasonable possibility that

“major problems that large segments of the population face or conditions that might not significantly harm others” would “severely affect the applicant.” *Id.* at 714. “Such conditions may include, but are not limited to, those involving civil strife, extreme economic deprivation beyond economic disadvantage, or situations where the claimant could experience severe mental or emotional harm or physical injury.” *Id.*

In this case, there is a reasonable possibility that Respondent will face “other serious harm.” While Respondent is now an adult, he continues to fear his uncle who is a police officer and has demonstrated his intention and ability to cause life threatening harm to Respondent. Tr. at 37:15-37:18. He also fears that he will be targeted by police generally due to his uncle’s vendetta against him and the fact that his uncle is a police officer. *See* Respondent’s I-589, Part B(1)(B). Police corruption and impunity are both serious problems for a large segment of Honduras and given Respondent’s background, “could severely affect the [Respondent]”. *See Matter of L-S*, 25 I&N Dec. at 714. Police corruption and violence is widespread in Honduras, leaving Respondent no safe harbor from his uncle or his uncle’s allies, or unrelated harm at the hands of police:

Civilian authorities failed at times to maintain effective control over the security forces. Members of security forces committed human rights abuses and were turned over to the civilian justice system. Among the most serious human rights problems were corruption, intimidation, and institutional weakness of the justice system leading to widespread impunity [and] unlawful and arbitrary killings by security forces.

. . . .

[C]orruption, intimidation, and the poor functioning of the justice system were serious impediments to the protection of human rights. There continued to be instances in which military or police officials suspected of human rights violations were not investigated or punished.

U.S. Dep’t of State, *2013 Human Rights Report: Honduras* (2014). Thus, it is a reasonable possibility that Honduran police pose a specific threat to Respondent.

Respondent also faces a reasonable possibility of harm based on the violent conditions in Honduras, particularly for males in his age group and given his lack of family support in Honduras. According to a letter from Respondent's sister, "if he [Respondent] gets deported he hasn't a place to live and in our country, Honduras, violence and delinquency is high." IJ Decision, at 10. Honduras has the highest murder rate in the world, at 90.4 per 100,000. U.N. Office on Drugs and Crime, *Global Study on Homicide*, U.N. Sales No. 14.IV.1, at 24 (2013). For males in Respondent's age group (15-29), 1 out of every 360 will die as a result of homicide. *Id.* at 30. Violence, lawlessness, and gang activity are rampant and widely documented in Honduras. *See, e.g.* Philip Sherwell, *Welcome to Honduras, the Most Dangerous Country on the Planet*, Telegraph (Nov. 16, 2013), <http://www.telegraph.co.uk/news/worldnews/central-americaandthecaribbean/honduras/10454018/Welcome-to-Honduras-the-most-dangerous-country-on-the-planet.html>. Respondent will be subject to "extreme economic deprivation beyond economic disadvantage" if he returns to Honduras. *See Matter of L-S-*, 25 I&N Dec. 705, 714 (BIA 2012). Economic deprivation is endemic to Honduras, where 64.5% of the population lives in poverty, and the Gross National Income per capita is just \$2,180. World Bank, *World Development Indicators: Honduras*, http://data.worldbank.org/country/honduras#cp_wdi. Economic deprivation will be especially problematic for Respondent, who will have to move to a new town without any family, social, or economic support because he fears returning to the town where his uncle and grandmother live. *See Tr.* at 37. He also testified that he does not know other places in Honduras, or have family or friends who could help care for him. IJ Decision, 5-6.

Respondent would likely be homeless upon his return and especially vulnerable to attack due to Honduras's widespread criminality. As is the situation for many victims who seek

asylum, if Respondent is compelled to return to his home country, he faces being found by his persecutor, as he has ties to no one else, or resort to his own resources, which makes him all the more vulnerable to violence from strangers and economic deprivation.

CONCLUSION

Based on the forgoing, Amicus respectfully requests that the Board hold that Respondent has established that he is a member of a particular social group and his eligibility for asylum. In the alternative, Amicus requests that the Board remand the case for consideration of Respondent's application for asylum.

Respectfully submitted,

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Dated: February 20, 2015

PROOF OF SERVICE

On February 20, 2015, I, Andrew T. Avorn, served a copy of this *amicus* brief, and all attached pages, on Respondent's Counsel, [REDACTED]. Service was made by Federal Express.

February 20, 2015

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