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Anjum Gupta

Immigrant Rights Clinic

Rutgers Law School

123 Washington Street, 4th Floor

Newark, NJ 07102

(973) 353-5292

UNITED STATES DEPARTMENT OF JUSTICE

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In the Matter of: )

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A- C-T- ) File No.: A-

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In removal proceedings )

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RESPONDENT’S BRIEF IN SUPPORT OF APPEAL OF IMMIGRTION JUDGE’S DENIAL OF WITHHOLDING OF REMOVAL AND CONVENTION AGAINST TORTURE RELIEF

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**STATEMENT OF FACTS**

1. **FACTS SPECIFIC TO MS. C-T-[[1]](#footnote-1)**

 A- C-T- (“A-”) is a 34-year-old native and citizen of Mexico.[[2]](#footnote-2) She has a college degree and worked full-time with a good salary for the Secretary of Rural Development of Puebla in Mexico (SRD).[[3]](#footnote-3) As a rural community assessment technician, A- was responsible for assisting farmers with filling out applications for government benefits to harvest and raise animals.[[4]](#footnote-4)

 A- met M-A-V- (“M-”) in 2007, while she was working for the SRD, a government agency.[[5]](#footnote-5) M-’s family owns the second largest ranch in their municipality and has received a large amount of government support.[[6]](#footnote-6) M-’s father is also a policeman who kept a rifle and two guns at home.[[7]](#footnote-7) M- also has cousins who are policemen. Six months after first meeting M-, A- moved into M-’s family home in Tepeojuma, Puebla, where M-’s parents and brother also lived.[[8]](#footnote-8)

 Three months after A- moved in with M-, he began physically and emotionally abusing her.[[9]](#footnote-9) He would call A-, “stupid, worse than a bitch, and worth nothing.”[[10]](#footnote-10) He would often punch her, kick her, and throw her against the wall.[[11]](#footnote-11) He would rape her both while he was drunk and sober.[[12]](#footnote-12) He would strike her with anything he had in his hands, including rope typically used for horses.[[13]](#footnote-13) On one occasion, when M- did not like what A- cooked for him, he threw hot charcoals at her. He treated her as less than human.[[14]](#footnote-14) M- would beat A- in front of his parents, but his parents did nothing to help her.[[15]](#footnote-15)

 M- became particularly upset about things pertaining to A-’s work. He would become enraged and aggressive when co-workers would call her to ask about certain programs at work.[[16]](#footnote-16) On one occasion, in April of 2008, A- attended an agro-fishing event with M- in her capacity as technician.[[17]](#footnote-17) There, a co-worker told M- that A- was a good worker. This enraged M-, and he proceeded to strike A- in front of her co-workers and other members of the department.[[18]](#footnote-18) Nobody at SRD helped A-, nor did they provide her with information regarding resources to protect herself against M-.[[19]](#footnote-19) She filed a complaint with the police, but she was told that they could not get involved because this was a problem between the couple.[[20]](#footnote-20) When M- found out about the police complaint, he beat A- severely and told her next time he would kill her.[[21]](#footnote-21)

In May 2008, A- was terminated from her job because of her visible bruises. She was told that because she was considered a public figure, the agency could not have someone constantly bruised representing them and removal was necessary to “keep a healthy working environment” in the office.[[22]](#footnote-22)

 In August 2008, A- reported M- to the police again, this time because he beat her so severely that he caused her to miscarry her unborn child.[[23]](#footnote-23) She went to the hospital to remove the fetal tissue that remained in her womb and to treat abundant bleeding due to blows to the abdomen.[[24]](#footnote-24) However, the police never investigated the second report.[[25]](#footnote-25)

 Because of the continuing abuse, in October 2008, without informing anyone, A- went to go stay with her sister, Rocio, in Tecamac, Mexico.[[26]](#footnote-26) Tecemac is in another state and is six hours away from Tepacuma.[[27]](#footnote-27) However, M- was able to somehow find her at Rocio’s home and threatened to harm Laura, A-’s younger sister, if A- did not return home.[[28]](#footnote-28) Afraid, A- left with M-. She then decided she had to leave Mexico for good to be safe.[[29]](#footnote-29)

 A- left Mexico in early 2009 and came to the U.S., but she was immediately removed to Mexico. She re-entered the U.S. two weeks later, painfully aware that M- was capable of and willing to kill her and knowing he could find her anywhere in Mexico.[[30]](#footnote-30) A- assumed M- would have forgotten her in 2014 when she contemplated returning home. Having only told a few friends and family members of her intent, she nonetheless received a phone call from M- on her (U.S.) cell phone.[[31]](#footnote-31) She does not know how he obtained her phone number. M- told A- he would wait for her return, and that he would kill her.[[32]](#footnote-32)

1. **COUNTRY CONDITIONS**

Various reports and articles from both the United States and Mexico have shown that gender-based violence, or “femicide,” has long been a serious issue throughout Mexico. According to the Women’s Media Center, Mexico has one of the highest rates of gender violence in the world, with 67 percent of its women having suffered domestic violence.[[33]](#footnote-33) The number for Guatemala, a country notorious for its domestic violence issue, is 47 percent.[[34]](#footnote-34) The report states that most of these cases likely involve a partner or ex-partner, as 40 percent of these violent cases occur in a woman’s home.[[35]](#footnote-35) While the overall murder date has dropped in Mexico in the last 35 years, the murder rate of women has remained consistent.[[36]](#footnote-36)

Women in Mexico do not have an adequate means to fight gender-based violence. According to a report by the Mexican Commission for the Defense and Promotion of Human Rights (MCDPH), “victims are battered and discriminated against when trying to access the justice system.”[[37]](#footnote-37) A majority of these cases are not investigated as there is a “systematic pattern of impunity” in Mexico.[[38]](#footnote-38) Carlos Echarri, a professor at the Colegio de Mexico in Mexico City, says part of the problem is the country’s lack of statistical culture. He says that police officials are “not required to collect essential categories of information” which is essential in investigating, prosecuting and preventing sexualized violence against women.[[39]](#footnote-39) A large majority of cases often go without a formal investigation, both at the federal and state levels.[[40]](#footnote-40)

Another factor for both the gender-based violence and the complicity within Mexico of that violence is the masculine culture that has hardened gender norms.[[41]](#footnote-41) According to the Women’s Media Center, women do not have the same rights as men in sexualized matters. Therefore, “when a woman does gather enough courage to report an incident to the authorities, she will often encounter emotional violence at the hands of officials who encourage her to forgive her partner and go home.”[[42]](#footnote-42)

While there have been efforts to address femicide in Mexico, reports indicate the government has been largely ineffective at solving the problem. The General Law of Access for Women to a Life Free of Violence (GLAWLFW), which sought to address the alarming situation of violence against women, was established in 2007.[[43]](#footnote-43) The law defines femicide as violent murders due to misogamy and discrimination against women.[[44]](#footnote-44) However, the MCDPH report states that “its implementation and the protective mechanisms enshrined on it are not guaranteeing the protection of the life and integrity of women in Mexico.”[[45]](#footnote-45) Indeed, femicide rates in Mexico actually increased years after the law.[[46]](#footnote-46) Despite this increase, Mexico has made minimal further attempts to prevent perpetration of such violent crimes.[[47]](#footnote-47) Furthermore, when a report to Congress listing several issues, including femicide, was presented, the Committee did not account for the law’s failure to ensure the protection of women against violence committed due to their gender.[[48]](#footnote-48)

 GLAWLFW establishes a duty to guarantee the security and integrity of victims through the issuance of protection orders, which are precautionary and protective measures based on the assumption that the female complainant is in danger of suffering immediate harm.[[49]](#footnote-49) However, according to the report, Puebla, a state that has amongst the highest rates of violence towards women in Mexico, did not provide any protection orders two years after the local legislation was harmonized with the GLAWLFW. [[50]](#footnote-50)

 Additionally, another GLAWLFW mechanism known as the Declaration of Gender Violence has been ineffective.[[51]](#footnote-51) The Declaration of Gender Violence is a set of emergency government actions aimed at addressing and eradicating femicides in a given territory, whether exercised by individuals or by the community.[[52]](#footnote-52) The report states that the mechanism is not working because of a lack of political will to ensure protection of victims of gender violence.[[53]](#footnote-53) Authorities prefer to hide the problems “instead of taking effective and coordinated actions for its eradication.”[[54]](#footnote-54)

1. **PROCEDURAL HISTORY**

On September 17, 2018, A- filed an I-589 application with Judge Mirlande Tadal in a “withholding only” proceeding.[[55]](#footnote-55) On October 22, 2018, a few months after the Attorney General handed down *Matter of A‑B‑*, A- appeared before Judge Nelson A. Vargas Padilla for a merits hearing. While Judge Padilla found A- to be credible, that the abuse she suffered was “vile,” and that the particular social group of “Independent Professional Working Women” was cognizable, he denied her application for Withholding of Removal and denied relief under Article 3 of the Convention Against Torture (CAT), stating that, “pursuant to the law as it stands at this current moment, victims of domestic violence around the world will be unable to avail themselves of relief under the Immigration & Nationality Act in the United States.” A- appeals Judge Padilla’s decision and submits this brief in support of her appeal.

**QUESTIONS PRESENTED**

1. Did the immigration judge err in failing to address entirely Ms. C-T-’s political opinion claim?
2. Was Ms. C-T- persecuted based on her actual or imputed political opinion, when the evidence shows that her persecutor attributed to Ms. C-T- the opinion that women could be independent and abused her based on that opinion?
3. Did the immigration judge err in denying Convention Against Torture relief, when her government employer did nothing to stop the abuse and instead fired her, and when it is more likely than not that Ms. C-T- will be further abused by her persecutor and the government will acquiesce to that abuse?
4. Did the immigration judge err in relying on *Matter of A-B-* in finding that Ms. C-T- did not meet the nexus requirement for withholding of removal, when the record clearly shows that Ms. C- T-’s persecutor was aware of her membership in the particular social group, “independent, working, professional women” and abused her on account of that membership?

**STANDARD OF REVIEW**

The BIA reviews the IJ’s factual determinations, including credibility determinations, for clear error.[[56]](#footnote-56) Questions of law and discretion are reviewed *de novo*.[[57]](#footnote-57) The Board has noted that, “[i]n determining whether established facts are sufficient to meet a legal standard . . . the Board is entitled to weigh the evidence in a manner different from that accorded by the Immigration Judge, or to conclude that the foundation for the Immigration Judge’s legal conclusions was insufficient or otherwise not supported by the evidence of record.”[[58]](#footnote-58)

**ARGUMENT**

1. **THE IMMIGRATION JUDGE ERRED IN FAILING TO ADDRESS ENTIRELY MS. C-T-’S POLITICAL OPINION CLAIM**
2. The IJ Failed to Address the Political Opinion Claim

As part of her I-589 application, A- submitted that she is seeking withholding of removal based on her membership in a particular social group, torture convention, and *political opinion*.[[59]](#footnote-59) Additionally, she submitted a brief in support of her political opinion claim, which included arguments that “M- and the Mexican government persecuted A- for her feminist beliefs” and that “M-’s attacks on her intelligence and the value of her work demonstrate his insecurity, his anger at feeling inferior to a woman.”[[60]](#footnote-60)

However, despite A- clearly arguing as part of her application that she has a well-founded fear of persecution if returned to Mexico on account of her actual or imputed political opinion, Judge Padilla, in his oral decision, failed to acknowledge, let alone decide on her political opinion claim.[[61]](#footnote-61)

In light of Judge Padilla’s failure to address A-’s claim of persecution on account of political opinion, the case should be remanded for further proceedings. The BIA and Third Circuit have remanded appeals when an issue was inadequately addressed or not sufficiently explained. In *In re M-G-M-M-*, the board remanded the case “for the Immigration Judge to consider the argument” that she was not seeking an order of dependency, but an order granting her father sole custody, which would then serve as a predicate order Special Immigrant Juvenile Status.[[62]](#footnote-62) The Board added that the “Immigration Judge’s decision, as presently constituted, does not provide us with a meaningful basis for appellate review.”[[63]](#footnote-63) In *Konan v. Atty. Gen. of U.S.*, the Third Circuit Court of Appeals remanded the case because the BIA failed to provide a rationale for denying the respondents Particular Social Group claim, thus “there is, as of yet, nothing for us to review.”[[64]](#footnote-64) The court further held that “basic principles of administrative law thus require that we remand the case for the BIA to consider this claim in the first instance.”[[65]](#footnote-65)

Accordingly, the IJ’s failure to address Ms. C-T-’s political opinion claim is grounds for remand.

1. Ms. C-T- was Persecuted and has a Well-Founded Fear of Future Persecution on Account of her Political Opinion.

In determining whether an asylum applicant was persecuted because of an imputed political opinion, courts focus on whether “the persecutor attributed a political opinion to the victim, and acted upon the attribution.”[[66]](#footnote-66) However, both the BIA and Third Circuit have recognized the difficulty of determining the exact motives behind an attack.[[67]](#footnote-67) Therefore, in adjudicating such cases, courts “afford a generous standard for protection in cases of doubt.”[[68]](#footnote-68)

 Here, M- has always attributed the political opinion on A- that women could be independent. M- always knew that A- was an educated, professional working woman as they met while she was working.[[69]](#footnote-69) She earned her own income and was publicly well-known and respected in her community.[[70]](#footnote-70) She did not rely on M- for any support and instead *chose* to live with him and his family.[[71]](#footnote-71) This enraged M-, evident by his verbal insults as well as his physical abuse. He would call her “stupid” and “worthless,” knowing full well she earned a college degree and was working on her own.[[72]](#footnote-72)

Much of the abuse A- suffered at the hands of M- was a direct result of her independence. He would become enraged when A-’s co-workers called her to ask about certain programs at work.[[73]](#footnote-73) At a public function, when a co-worker praised A- as a good worker, he struck her in front of her co-workers as well as other members of her department.[[74]](#footnote-74) A-’s real or imputed political opinion that women could be independent was at the very least one “central” reason for the abuse she suffered.[[75]](#footnote-75)

1. **THE IMMIGRATION JUDGE’S FINDING THAT MS. C-T- DID NOT MEET HER BURDEN OF PROOF FOR CONVENTION AGAINST TORTURE RELIEF IS CLEARLY ERRONEOUS**

Article 3 of the CAT provides that “[n]o State Party shall expel, return . . . or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”[[76]](#footnote-76) Unlike with asylum or withholding of removal, an applicant seeking relief under the CAT need not establish that he/she is a “refugee” and therefore need not establish that torture is inflicted “on account of” any protected status.[[77]](#footnote-77) Furthermore, a denial of a claim for withholding of removal or asylum “does not control the analysis of a claim for relief under the Convention Against Torture.”[[78]](#footnote-78)

* 1. It is More Likely Than Not that Ms. C-T- Will be Tortured if Removed to Mexico.

In assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to: (1) Evidence of past torture inflicted upon the applicant; (2) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured; (3) Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and (4) Other relevant information regarding conditions in the country of removal.[[79]](#footnote-79)

 A- clearly experienced and fears treatment that rises to the level of torture. In *Zubeda vs. Ashcroft*, the Third Circuit Court of Appeals recognized that rape constitutes torture, characterizing rape as an egregious violation of humanity.[[80]](#footnote-80) Here, M- raped A- several times throughout the course of the abusive relationship and threatened her with weapons that were in the home.[[81]](#footnote-81) Moreover, M- would beat A- four to five times a month.[[82]](#footnote-82) In August 2008, he beat her so severely that he caused her to miscarry her unborn child.[[83]](#footnote-83) The beating also led to painful lesions and bleeding due to blows to the abdomen.[[84]](#footnote-84)

 A- would not be able to relocate within Mexico, as she has already attempted to flee M- by moving in with her sister Rocio in October 2008.[[85]](#footnote-85) Rocio lives in Tecemac, which is in another state and is six hours away from A-’s and M-’s home in Tepacuma.[[86]](#footnote-86) Additionally, although A- did not inform anyone of her departure, M- was nevertheless able to find her and threaten to kill her and harm her younger sister.[[87]](#footnote-87) Moreover, while A- was in the U.S in 2014, she received a phone call from M- on her (U.S.) cell phone threatening to kill her if she ever came back to Mexico.[[88]](#footnote-88) If removed to Mexico, A- will not be safe from M-. He will be able to track her down using his connections and his desire to kill A-.

 Country reports show a serious gender violence problem within Mexico with ineffective means of fixing it. These reports “are probative evidence and can, by themselves, provide sufficient proof to sustain an alien’s burden under the INA.”[[89]](#footnote-89)

The 2012 National Citizens’ Observatory on Femicide Report reports that of the 1221 gender-related murders in just 13 states in Mexico, 51 percent of victims died from beatings, burnings, trauma, suffocation or puncture wounds, while 46 percent of women were killed by firearms.[[90]](#footnote-90) Additionally, human rights defenders who advocate for measures to end gender violence are specifically targeted. The Nobel Women’s Initiative reports that half of female human rights defenders were targeted violently as a direct result of their work.[[91]](#footnote-91) Government and security forces were responsible for 55 percent of these gendered and sexualized attacks.[[92]](#footnote-92) For example, Susana Chavez, a poet and activist who popularized the phrase “Ni una muerta mas,” meaning “Not one more dead” regarding gender violence, was herself raped, strangled and mutilated.[[93]](#footnote-93)

Record evidence clearly shows that A-, if removed to Mexico, will more likely than not be tortured.

* 1. The Government in Mexico has Acquiesced and will Continue to Acquiesce to the Torture if Ms. C-T- is Removed.

In the Third Circuit, for purposes of CAT claims, acquiescence to torture requires only that government officials remain “willfully blind” to torturous conduct.[[94]](#footnote-94) While government participation in torture certainly suffices to establish acquiescence, it is not necessary.[[95]](#footnote-95) Evidence that officials turn a blind eye to certain groups’ torturous conduct is no less probative of government acquiescence.[[96]](#footnote-96) Moreover, circumstantial evidence may establish acquiescence even when the “government has an official policy or is engaged in a campaign of opposition against the entity the applicant fears.”[[97]](#footnote-97)

In *Myrie v. Atty. Gen. U.S*, an applicant feared returning to Panama due to MS-13, a notorious gang that killed two of his brothers.[[98]](#footnote-98) The BIA denied his CAT claim, citing to the IJ’s findings that “Panama ‘actively engage[s]’ against criminal gangs and combats crime.”[[99]](#footnote-99) However, the Third Circuit Court of Appeals remanded, holding that a government actively engaging against crime does not preclude an applicant from establishing government acquiescence because “nowhere do the regulations require actual knowledge of specific torturous acts against the applicant.”[[100]](#footnote-100) Additionally, the court held the BIA erred in confirming the IJ’s findings because the IJ did not take into account certain circumstantial evidence, such as live testimony, sworn letters attesting that the Panamanian government had not taken steps to protect him or his family, and an affidavit from his former girlfriend. [[101]](#footnote-101)

Here, while the Third Circuit Court of Appeals has held that actual knowledge is not required, the Mexican government clearly knew about M-’s abuse. At the public function pertaining to her job within the government, A- was struck by M- in front of her co-workers and other members of the department.[[102]](#footnote-102) She was fired for her bruises as she was a public figure in her community.[[103]](#footnote-103) SRG had actual knowledge of the abuse and acquiesced to it or was at the very least “willfully blind” to it by failing to help her and, in fact, terminating her. Moreover, Judge Padilla did not mention Rocio’s affidavit nor the country reports submitted into evidence.[[104]](#footnote-104) As the *Myrie* court held, “If [evidence] is to be disregarded, we need to know why.”[[105]](#footnote-105)

In *Gomez-Zuluaga v. Atty. Gen. of U.S.*, an applicant sought CAT relief because of a fear of torture at the hands of FARC, a terrorist organization that violently opposed the Columbian government.[[106]](#footnote-106) FARC threatened the applicant from when she was just six-years-old until adulthood due to her relationships with a police officer and military officer. Government officials told her that there was nothing they could do to help her. The Third Circuit Court of Appeals held that “this may be circumstantial evidence that the Colombian government was willfully blind to such treatment and that to pursue official assistance would have been futile.”[[107]](#footnote-107) Specifically, the court said that on remand the “BIA should consider country conditions that show Colombian authorities have been especially slow to end abuses against women or bring perpetrators to justice.”[[108]](#footnote-108)

Here, A- reported the abuse twice to the police, with both times ending in a lack of justice. The first time, the police told her that they could not get involved because it was a problem between couples.[[109]](#footnote-109) When M- found out about the police complaint, he beat her again and threatened to kill her.[[110]](#footnote-110) The second time, she reported the abuse that led to a miscarriage, but the police never investigated the incident after filing a report.[[111]](#footnote-111)

Additionally, country reports indicate that A- is not alone in having her complaints ignored. According to one report, Mexico lacks a comprehensive system for granting access to justice for women which presents failures in the criminal justice system.[[112]](#footnote-112) The report states that during investigations of the crime, “women constantly face unjustified delays, lack of forensic testing essential for the investigation, unjustified interference in their private lives and many times are blamed or disqualified by the authorities.”[[113]](#footnote-113) Because the Third Circuit has held that in CAT claims “country conditions alone can play a decisive role in granting relief,” the reports in this case, along with her experience, should be more than sufficient to meet the required standards.[[114]](#footnote-114)

In sum, while the law in the Third Circuit only requires a “willfully blind” government, A- has clearly shown acquiescence. The abuse took place in front of governmental officials who did nothing to help her and instead fired her. Moreover, the police knew about M-’s abuse but blatantly told her nothing could be done. Country reports corroborate her experience that protective measures in Mexico are largely ineffective.

1. **THE IMMIGRATION JUDGE’S FINDING THAT MS. C-T- DOES NOT HAVE A WELL-FOUNDED FEAR OF PERSECUTION ON ACCOUNT OF HER MEMBERSHIP IN A PARTICULAR SOCIAL GROUP IS CLEARLY ERRONEOUS**

An applicant for withholding of removal must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least be one central reason for persecuting the applicant.[[115]](#footnote-115) Citing *Matter of A-B-*, Judge Padilla held that M-’s abuse was “motivated by his pre-existing relationship” with A- and not because he was aware of or hostile to her membership in a particular social group, “independent working professional women in Mexico.”[[116]](#footnote-116) He thus found that A- failed to establish the nexus requirement for withholding of removal.[[117]](#footnote-117)

However, Judge Padilla clearly erred in his finding. In *Matter of A-B-*, the Attorney General stated that awareness by the persecutor is key in determining whether the particular social group was a central reason for the persecution.[[118]](#footnote-118) In overturning *Matter of A-R-C-G*, the Attorney General reasoned that there, “the Board cited no evidence that her ex-husband attacked her because he was aware of, and hostile to” her particular social group.

Here, there is evidence that M- clearly knew that A- was a member of the social group of “Independent Working Professional Women” and he abused her because she was a member of that particular social group. A- testified that M- would tell her that he had never seen a woman that would make more than a man in his family.[[119]](#footnote-119) She said this caused problems because she liked her job, made a good salary, and did not depend on M- economically.[[120]](#footnote-120) As a result, not only would he would call her “stupid” and “worthless,” but he would get enraged when co-workers called A- regarding work-related questions.[[121]](#footnote-121) When a co-worker told M- that A- was a good worker, he proceeded to strike A- in front of her co-workers and other members of the department because it reminded him of her status as an independent, working, professional woman.[[122]](#footnote-122)

Judge Padilla also concluded the nexus requirement was not met because M-’s abuse continued after she was terminated from her job in August 2008.[[123]](#footnote-123) However, a woman’s status as an independent, professional woman does not change solely because of a termination or job change. Even after A- was terminated, people recognized her as a technician and would greet her as she was walking down the street, addressing her as “Ms. Engineer.”[[124]](#footnote-124) Therefore, M- kept abusing A- even after being terminated because she still had the status of an independent, professional woman.[[125]](#footnote-125)

 Furthermore, Third Circuit case law supports the conclusion that A-’s independent, professional status was a central reason for M-’s abuse. In *Gonzalez-Posadas v. Atty. Gen. U.S.*, a Honduran applicant feared returning to his country due to threats by Maras, a gang that beat him while calling him homophobic slurs.[[126]](#footnote-126) The court held that his sexual orientation was not a central reason for his persecution, as the applicant admitted during an interview that Maras wanted to harm him to “steal from him.”[[127]](#footnote-127) Additionally, his cousin, who was not gay, was also recruited, which indicated that the gang was also motivated by their attempts to recruit young boys into their gang.[[128]](#footnote-128)

 Unlike the persecutors *Gonzalez-Posadas*, M- did not have any other motivation for persecuting A- besides his jealousy and distain for independent, professional, and working women. A-, in her testimony deemed credible by Judge Padilla, stated that M- beat her as a direct result of being complimented by her co-workers.[[129]](#footnote-129) His remarks towards A-, calling her “stupid” and “worthless,” indicate his resentment towards A- as she did not rely on him and was perfectly capable of taking care of herself.[[130]](#footnote-130) Here, there were no other possible reasons for the persecution, as there was no money involved.[[131]](#footnote-131)

**CONCLUSION**

For the reasons set forth above, Ms. C-T- merits a grant of withholding of removal and is eligible for relief under the Convention Against Torture. The Board should reverse the IJ’s decision and grant relief. Should the Board opt not to grant relief, the case should be remanded for the immigration judge to address the political opinion claim.

Respectfully submitted this 20th day of February 2019.

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Anjum Gupta

Immigrant Rights Clinic

Rutgers School of Law

123 Washington Street, 4th Floor

Newark, NJ 07102

(973) 353-5292

EOIR ID Number: NW153

**CERTIFICATE OF SERVICE**

I, Anjum Gupta, certify that on February 20, 2019, I mailed a complete copy of the foregoing Respondent’s Brief to DHS Counsel at 625 Evans Street Room 135 Elizabeth, NJ, 07201.

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 Anjum Gupta, Esq.

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 Date

1. Counsel initially filed a brief in this case on February 7, 2019, in accordance with the briefing deadline of February 8, 2019. Thereafter, the Board mailed a corrected copy of the Record of Proceedings (ROP) to counsel and re-issued the briefing schedule, indicating a new briefing deadline of March 4, 2019. Counsel are filing the instant brief in accordance with the updated briefing schedule. Other than this footnote, this brief is identical to the one filed on February 7, 2019, in all respects. [↑](#footnote-ref-1)
2. Tr. at 14. [↑](#footnote-ref-2)
3. Exh. 6A, A- Aff. ¶ 6; Tr. at 16. [↑](#footnote-ref-3)
4. Exh. 6A, A- Aff. ¶ 6. [↑](#footnote-ref-4)
5. Tr. at 18. [↑](#footnote-ref-5)
6. Tr. at 17-18. [↑](#footnote-ref-6)
7. Exh. 6A, A- Aff. ¶ 5. [↑](#footnote-ref-7)
8. Exh. 6A, A- Aff. ¶ 2. [↑](#footnote-ref-8)
9. Exh. 6A, A- Aff. ¶ 2. [↑](#footnote-ref-9)
10. Exh. 6A, A- Aff. ¶ 2. [↑](#footnote-ref-10)
11. Exh. 6A, A- Aff. ¶ 3. [↑](#footnote-ref-11)
12. Exh. 6A, A- Aff. ¶ 3. [↑](#footnote-ref-12)
13. Exh. 6A, A- Aff. ¶ 3. [↑](#footnote-ref-13)
14. Exh. 6A, A- Aff. ¶ 3. [↑](#footnote-ref-14)
15. Tr. at 19. [↑](#footnote-ref-15)
16. Tr. at 18. [↑](#footnote-ref-16)
17. Exh. 6A, A- Aff. ¶ 7. [↑](#footnote-ref-17)
18. Exh. 6A, A- Aff. ¶ 7. [↑](#footnote-ref-18)
19. Exh. 6A, A- Aff. ¶ 7. [↑](#footnote-ref-19)
20. Exh. 7, April 2008 Decentralized Attorney of Investigation in Teopojuma Complaint; Exh. 6A, A- Aff. ¶ 8. [↑](#footnote-ref-20)
21. Exh. 6A, A- Aff. ¶ 8. [↑](#footnote-ref-21)
22. Exh. 6A, A- Aff. ¶ 7; Exh.7, Secretariat of Agriculture, Cattle, Urban Development, Fishery and Nutrition Termination letter. [↑](#footnote-ref-22)
23. Exh. 6A, A- Aff. ¶ 8; Exh. 7, August 2008 Decentralized Attorney of Investigation in Teopojuma Complaint. [↑](#footnote-ref-23)
24. Exh. 6A, A- Aff. ¶ 8; Exh. 7, August 2008 Secretariat of Health Medical Note. [↑](#footnote-ref-24)
25. Tr. at 23. [↑](#footnote-ref-25)
26. Tr. at 24; Exh. 8, Rocio Aff. ¶ 7. [↑](#footnote-ref-26)
27. Tr. at 24. [↑](#footnote-ref-27)
28. Tr. at 25. [↑](#footnote-ref-28)
29. Tr. at 25. [↑](#footnote-ref-29)
30. Tr. at 29. [↑](#footnote-ref-30)
31. Tr. at 27. [↑](#footnote-ref-31)
32. Tr. at 27. [↑](#footnote-ref-32)
33. Exh. 8, 2018 Women’s Media Center Profile at 47. [↑](#footnote-ref-33)
34. Exh. 8, 2018 Women’s Media Center Profile at 47. [↑](#footnote-ref-34)
35. Exh. 8, 2018 Women’s Media Center Profile at 48. [↑](#footnote-ref-35)
36. Exh. 8, 2018 Women’s Media Center Profile at 48. [↑](#footnote-ref-36)
37. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 63. [↑](#footnote-ref-37)
38. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 63. [↑](#footnote-ref-38)
39. Exh. 8, 2018 Women’s Media Center Profile at 47. [↑](#footnote-ref-39)
40. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 68. [↑](#footnote-ref-40)
41. Exh. 8, 2018 Women’s Media Center Profile at 48. [↑](#footnote-ref-41)
42. Exh. 8, 2018 Women’s Media Center Profile at 48. [↑](#footnote-ref-42)
43. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 65. [↑](#footnote-ref-43)
44. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 65. [↑](#footnote-ref-44)
45. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 65. [↑](#footnote-ref-45)
46. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 65. [↑](#footnote-ref-46)
47. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 65. [↑](#footnote-ref-47)
48. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 65-66. [↑](#footnote-ref-48)
49. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 69-70. [↑](#footnote-ref-49)
50. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 70. [↑](#footnote-ref-50)
51. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 64. [↑](#footnote-ref-51)
52. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 63. [↑](#footnote-ref-52)
53. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 64. [↑](#footnote-ref-53)
54. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 64. [↑](#footnote-ref-54)
55. Tr. I at 6. [↑](#footnote-ref-55)
56. *See* 8 C.F.R. § 1003.1(d)(3)(i). [↑](#footnote-ref-56)
57. *See* 8 C.F.R. § 1003.1(d)(3)(i). [↑](#footnote-ref-57)
58. *A-S-B-*, 24 I&N Dec. 493, 497 (BIA 2008). [↑](#footnote-ref-58)
59. Exh. 6, I-589 Application for Asylum and Withholding of Removal at 5. [↑](#footnote-ref-59)
60. Exh. 7, Resp’t Br. at 4. [↑](#footnote-ref-60)
61. I.J. at 1-5. [↑](#footnote-ref-61)
62. *In re M-G-M-M-*, AXXX XXX 194 (BIA June 1, 2015). [↑](#footnote-ref-62)
63. Id. [↑](#footnote-ref-63)
64. *Konan v. Atty. Gen. of U.S.*, 432 F.3d 497 (3d Cir. 2005). [↑](#footnote-ref-64)
65. Id. at 498. [↑](#footnote-ref-65)
66. *Espinosa-Cortez v. Atty. Gen. of U.S.*, 607 F.3d 101, 108 (3d Cir. 2010) (citing *Amanfi v. Ashcroft,* 328 F.3d 719, 729 n. 4 (3d Cir.2003). [↑](#footnote-ref-66)
67. *In Re S-P-*, 21 I. & N. Dec. 486, 492 (BIA 1996) (holding that events are such that no particular motive is ascertainable and in other cases, evidence suggests multiple motives); *Chavarria v. Gonzalez*, 446 F.3d 508, 521 (3d Cir. 2006) (patently absurd to expect an applicant ... to produce documentary evidence ... because persecutors are hardly likely to provide their victims with affidavits attesting to their acts of persecution). [↑](#footnote-ref-67)
68. *In Re S-P-*, 21 I. & N. Dec. 486, 492 (BIA 1996) (“In adjudicating mixed motive cases, it is important to keep in mind the fundamental humanitarian concerns of asylum law. In enacting the Refugee Act of 1980, Congress sought to bring the Act’s definition of “refugee” into conformity with the United Nations Convention and Protocol Relating to the Status of Refugees and, in so doing, give “statutory meaning to our national commitment to human rights and humanitarian concerns.”  [↑](#footnote-ref-68)
69. Tr. at 18. [↑](#footnote-ref-69)
70. Exh. 6A, A- Aff. ¶ 6; Tr. at 16. [↑](#footnote-ref-70)
71. Tr. at 29. [↑](#footnote-ref-71)
72. Tr. at 28. [↑](#footnote-ref-72)
73. Tr. at 18. [↑](#footnote-ref-73)
74. Exh. 6A, A- Aff. ¶ 7. [↑](#footnote-ref-74)
75. INA §208(b)(1)(B)(i); 8 USC §1158(b)(1)(B)(i). [↑](#footnote-ref-75)
76. 8 C.F.R. § 1208.16(c)(2). [↑](#footnote-ref-76)
77. *Silva-Rengifo v. Atty. Gen. of U.S.*, 473 F.3d 58, 64 (3d Cir. 2007). [↑](#footnote-ref-77)
78. *Zubeda v. Ashcroft*, 333 F.3d 463, 476 (3d Cir. 2003). [↑](#footnote-ref-78)
79. 8 C.F.R. § 208.16(c)(3). [↑](#footnote-ref-79)
80. *Zubeda*,333 F.3d at 472. [↑](#footnote-ref-80)
81. Tr. at 20-21. [↑](#footnote-ref-81)
82. Tr. at 20. [↑](#footnote-ref-82)
83. Exh. 6A, A- Aff. ¶ 8. [↑](#footnote-ref-83)
84. Exh. 7, August 2008 Police Report with Pictures; Exh. 7, August 2008 Secretariat of Health Medical Note. [↑](#footnote-ref-84)
85. Tr. at 24; Exh. 8, Rocio Aff. ¶ 7. [↑](#footnote-ref-85)
86. Tr. at 24. [↑](#footnote-ref-86)
87. Tr. at 25. [↑](#footnote-ref-87)
88. Tr. at 27. [↑](#footnote-ref-88)
89. *Zubeda v. Ashcroft*, 333 F.3d 463 (3d Cir.2003). [↑](#footnote-ref-89)
90. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 67. [↑](#footnote-ref-90)
91. Exh. 8, 2018 Women’s Media Center Profile at 47. [↑](#footnote-ref-91)
92. Exh. 8, 2018 Women’s Media Center Profile at 47. [↑](#footnote-ref-92)
93. Exh. 8, 2018 Women’s Media Center Profile at 47. [↑](#footnote-ref-93)
94. *Silva-Rengifo v. Atty. Gen. of U.S.*, 473 F.3d 58, 70 (3d Cir. 2007). *Pierre v. Atty. Gen. of U.S.*, 528 F.3d 180 (3d Cir. 2008) (*en banc*), in which the Third Circuit Court of Appeals held that willful blindness does not satisfy the specific intent requirement for CAT relief, is inapposite. The applicant in *Pierre* argued that the Haitian government’s willful blindness to the lack of medical care in prison facilities made him eligible for CAT relief. However, unlike A-’s persecutor in this case, the government there did not have the intention to inflict harm on the applicant; instead, the applicant argued that the government did not have the means to care for him in prison. The court reasoned that the deplorable prison conditions were an “unintended consequence” of Haiti’s “extreme poverty.” Accordingly, there was no specific intent to harm the applicant. *Id.* at 189. Conversely, in this case, M- has specific intent to harm A-, and authorities in Mexico are willfully blind to that harm. *Silva-Rengifo* established that willful blindness is relevant to the government acquiescence analysis of CAT and not the specific intent analysis of CAT. Accordingly, both the specific intent and willful blindness tests are met in A-’s case. [↑](#footnote-ref-94)
95. Id. [↑](#footnote-ref-95)
96. Id. [↑](#footnote-ref-96)
97. *Myrie v. Atty. Gen. U.S.*, 855 F.3d 509, 516 (3d Cir. 2017) (citing *Pieschacon-Villegas v. Atty. Gen. of U.S.*, 671 F.3d 303, 312 (3d Cir. 2011). [↑](#footnote-ref-97)
98. *Myrie*,855 F.3d at 513. [↑](#footnote-ref-98)
99. Id. at 515. [↑](#footnote-ref-99)
100. Id. at 518. [↑](#footnote-ref-100)
101. Id. at 517-18. [↑](#footnote-ref-101)
102. Exh. 6A, A- Aff. ¶ 7. [↑](#footnote-ref-102)
103. Exh. 6A, A- Aff. ¶ 7; Exh.7, Secretariat of Agriculture, Cattle, Urban Development, Fishery and Nutrition Termination letter. [↑](#footnote-ref-103)
104. I.J. at 1-5. [↑](#footnote-ref-104)
105. *Myrie*,855 F.3d at 518. [↑](#footnote-ref-105)
106. *Gomez-Zuluaga v. Atty. Gen. of U.S.*, 527 F.3d 330, 335-39 (3d Cir. 2008). [↑](#footnote-ref-106)
107. Id. at 351. [↑](#footnote-ref-107)
108. Id. [↑](#footnote-ref-108)
109. Exh. 7, April 2008 Decentralized Attorney of Investigation in Teopojuma Complaint; Exh. 6A, A- Aff. ¶ 8. [↑](#footnote-ref-109)
110. Exh. 6A, A- Aff. ¶ 8. [↑](#footnote-ref-110)
111. Tr. at 23. [↑](#footnote-ref-111)
112. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 68. [↑](#footnote-ref-112)
113. Exh. 8, 2012 National Citizens’ Observatory on Femicide Report at 68. [↑](#footnote-ref-113)
114. *Ghebrehiwot v. Atty. Gen. of U.S.*, 467 F.3d 344, 352 (3d Cir. 2006). [↑](#footnote-ref-114)
115. 8 U.S.C. § 1158(b)(1)(B)(i); *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). [↑](#footnote-ref-115)
116. I.J. at 3. [↑](#footnote-ref-116)
117. I.J. at 4. [↑](#footnote-ref-117)
118. See *Matter of A-B-*, 27 I&N Dec. at 339. [↑](#footnote-ref-118)
119. Tr. at 29. [↑](#footnote-ref-119)
120. Tr. at 29. [↑](#footnote-ref-120)
121. Tr. at 28; Tr. at 18. [↑](#footnote-ref-121)
122. Exh. 6A, A- Aff. ¶ 7. [↑](#footnote-ref-122)
123. I.J. at 3. [↑](#footnote-ref-123)
124. Tr. at 35. [↑](#footnote-ref-124)
125. Tr. at 35. See also *Gomez-Zuluaga v. Atty. Gen. of U.S.*, 527 F.3d 330 (3d Cir. 2008) (holding that it is petitioner’s escapee *status* that is likely to motivate the FARC to seek her and persecute her in the future even if she is no longer in prison). [↑](#footnote-ref-125)
126. *Gonzalez-Posadas v. Atty. Gen. U.S.*, 781 F.3d 677, 683 (3d Cir. 2015). [↑](#footnote-ref-126)
127. Id. at 686. [↑](#footnote-ref-127)
128. Id. at 688. [↑](#footnote-ref-128)
129. Exh. 6A, A- Aff. ¶ 7. [↑](#footnote-ref-129)
130. Tr. at 28-29. [↑](#footnote-ref-130)
131. Although the only particular social group proffered before the IJ was “Independent Professional Working Women,” and the BIA has recently held that applicants must set forth the relevant particular social groups before the IJ, *Matter of W-Y-C- & H-O-B-*, 27 I. & N. Dec. 189 (BIA 2018), we note that A- would also be eligible for withholding of removal due to her membership in other particular social groups, such as “Mexican Women,” and “Mexican Women in Relationships who are Unable to Leave.” [↑](#footnote-ref-131)