Docket No. 17-17002

IN THE

Supreme Court of the United States

October Term 2018

Ms. Leila MARCOS,

Petitioner,

v.

ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

On Writ of Certiorari
to the Thirteenth Circuit
Court of Appeals

BRIEF FOR THE PETITIONER

Counsel # 108
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QUESTIONS PRESENTED

I. WHETHER EVIDENCE OF GROUP-BASED, NON-SYSTEMATIC PERSECUTION THAT RESULTS IN A HIGHER LIKELIHOOD OF FUTURE PERSECUTION BECAUSE OF MEMBERSHIP IN A DISFAVORED GROUP CAN BE CONSIDERED IN DETERMINING WHETHER AN APPLICANT HAS ESTABLISHED A WELL-FOUNDED FEAR OF PERSECUTION UNDER THE IMMIGRATION AND NATIONALITY ACT WHEN SHE FACES RISK OF RAPE AND HARASSMENT BY SECURITY GUARDS IN ORDER TO GAIN ACCESS TO CLEAN WATER SUPPLIES?

II. UNDER THE REGULATIONS PROMULGATED BY THE EXECUTIVE BRANCH PURSUANT TO THE IMMIGRATION AND NATIONALITY ACT, SHOULD THE UNDEFINED, DISPUTED TERM "GOVERNMENT-SPONSORED" BE INTERPRETED BY THE BOARD OF IMMIGRATION APPEALS TO RESOLVE THE AMBIGUITY WHEN THE BURDEN OF PROOF RELIES ON THE INTERPRETATION OF THE TERM TO DETERMINE ASYLUM ELIGIBILITY?

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STATEMENT OF JURISDICTION

A statement of jurisdiction has been omitted in accordance with the rules of the UC Davis School of Law Asylum and Refugee Law National Moot Court Competition.

STATUTORY PROVISIONS

"The term 'refugee' means (A) any person who is outside any country of such person's nationality...who is unable or unwilling to return to, and is unable or unwilling to avail [] herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion…" 8 U.S.C. § 1101(42) (2018).

"The Attorney General shall have such authorities and functions under this Act…relating to the immigration and naturalization of aliens…The Attorney General shall establish such regulations…issues such instructions…review such administrative determinations in immigration proceedings, delegate such authority…" 8 U.S.C. § 1103(g)(1)-(2) (2018).

"The burden of proof is on the applicant to establish that [she] is a refugee, within the meaning of [8 U.S.C. § 1101(42)]. To establish that the applicant is a refugee within the meaning of such section, [she] must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant." 8 U.S.C. § 1158(b)(1)(B)(i) (2018).

STATEMENT OF THE CASE

I. Statement of the Facts

Before coming to the United States, Ms. Marcos endured the poverty-stricken living conditions on the island of Isda in the country of Basag, where she was repeatedly threatened and witnessed acts of violence against other ethnic-Timog women. R. at 4-6. Ms. Marcos eventually saved up enough money to buy a one-way plane ticket to the United States of America where she could apply for asylum in an effort to protect herself and escape the violent reality of living in Basag. R. at 9.

Global Warming

The country of Basag is split into two islands, Isda and Mayaman. R. at 2. The majority of residents on Isda are of the Timog ethnic group, while the majority of the residents on Mayaman are of the Hilagan ethnic group. *Id.* Due to the natural environmental protection the island of Isda creates, Mayaman is mostly dependent upon the tourism industry. *Id.* Isda also relies heavily upon the fishing industry. *Id.* Over time, the fishing industries were destroyed due to the effects of global warming. *Id.*

In addition to the devastating effects on the fishing industry, global warming directly impacted the country's clean water supply that prompted the Basag President to enter into a contract with Life Incorporated ("Life Inc.") to nationalize and protect the remaining water sources. R. at 3-4. Life Inc. is an American corporation tasked with maintaining and rebuilding water facilities in Basag, as well as providing and sourcing water to Basag's citizens. R. at 4. Life Inc. must also pay fees to the Basag government for the exclusive rights to the water facilities. *Id.* The contract indicates that the Basag government would provide military aid to Life Inc. if the water facilities were threatened. *Id.*

Civil Strife

A small group of Basag citizens known as the "Water Warriors" began to target Life Inc. and government facilities in an effort to undermine Life Inc. and push water resource control and accountability back on the government. *Id.* As a result, Life Inc. hired armed guards to protect the facilities. R. at 5. Many of the guards that were hired were Hilagan. *Id.* Between the guards hired by Life Inc. and the Basag military providing aid to Life Inc., several men and women have been killed after mistakenly being identified as Water Warriors. *Id.* More than half of the individuals were killed on the island of Isda. *Id.*

Violence Towards Timog Women

Ms. Marcos Marcos resided in Isda with her husband Bernardo. *Id.* Because of the water crisis on the island, Ms. Marcos was forced to bike several miles every three days to obtain clean water from the government-controlled water facilities on the island. R. at 4. While obtaining clean water, Ms. Marcos endured verbal and physical assault at the hands of Life Inc. guards. R. at 4-6. Ms. Marcos attempted to avoid the Life Inc. guards by going to different water facilities in the area, but that did not stop the harassment. *Id.* Ms. Marcos was first harassed by a guard at the water facility near her home. R. at 4. The Life Inc. guard told her that she could "get more water by having sex with [him]." *Id.* Ms. Marcos found the guard's comment to be a threat because she had heard about a woman in a nearby village who was raped at a Life Inc. facility by a guard after she was approached similarly just two weeks prior. *Id.* No action was taken against the guard or Life Inc. for the alleged rape. *Id.*

After being threatened, Ms. Marcos went to a different facility ten miles from her home, traveling twenty miles total. R. at 5. While traveling, Ms. Marcos came across a water well closer to her home, however, she witnessed a pregnant Isda-Timog woman being forced to

remove her shirt to prove that she was pregnant and not carrying bombs. *Id.* A few days later, while receiving water from the well that took twenty miles roundtrip to obtain, Ms. Marcos recognized the Life Inc. guard that previously propositioned her for sex. R. at 4-6. While she was retrieving the water, the guard whispered, "I am going to have my way with you, honey, whether you want it or not." R. at 5.

To avoid the guard that threatened her, Ms. Marcos started getting water from the well where she witnessed the Basag military guard giving the pregnant Isda-Timog woman a hard time. *Id.* While obtaining water from the checkpoint, a Life Inc. guard grabbed her backside and whistled, while the other guards laughed and whistled. *Id.* When Mr. Marcos learned that his wife was being consistently harassed by guards, he went to the checkpoint to confront the guards where he was shot by the guards before bringing him back to their home. R. at 6. When Ms. Marcos answered the door, the guard who had repeatedly threatened her was now standing at the door with her husband and now knew where she lived. *Id.* The guard winked and made a thrusting upward gesture with two fingers towards her when he was leaving. *Id.*

Relocating to Mayaman

After obtaining treatment, one of Mr. Marcos' fishing mates, Bayani Santos, allowed them to stay with him in his home on Mayaman. Facts at pg. 8-9. Bayani warned Ms. Marcos that some of the Life Inc. guards target the Isda-Timog women in Mayaman as well. Facts at pg. 9. He also told her that he had heard of an unmarried Isda-Timog woman recently becoming pregnant by unknown means. *Id.* A month later, Ms. Marcos also heard Life Inc. guards discussing raping a woman at a well in Mayaman. *Id.* Although Ms. Marcos was able to secure temporary work at a resort, neither she nor her husband were able to find permanent jobs, due a

combination of Mr. Marcos' gunshot wound injury from the Life Inc. guards, their status as poorer ethnic Isda-Timogs, and Ms. Marcos' fear of men working at the resort. *Id.*

II. Procedural History

On August 7, 2017, Ms. Marcos arrived at the San Francisco International Airport and was denied entry for presenting an expired passport. R. at 3. Ms. Marcos was taken to a correctional facility and subsequently filled out her application for asylum. *Id.*

During her hearing with the Immigration Judge ("IJ"), Ms. Marcos credibly testified that she was targeted for persecution because she was an ethnic Isda-Timog woman in Basag who had to collect water from Life Inc. for survival. *Id.* Ms. Marcos argued that she met her burden of establishing a well-founded fear of persecution because of the pattern of rape and harassment against women similarly situated in Basag. R. at 6. Although Ms. Marcos did not personally know anyone who was a victim of rape or sexual violence, she testified to a pattern of encounters with Life Inc. guards beginning on March 6, 2017 that establishes a reasonable fear of future harm. R. at 6-7. The IJ ultimately found that Ms. Marcos did not demonstrate a clear pattern or practice of rape and harassment against Timog women, however, she did establish membership in a disfavored group and that, combined with evidence of individual risk, gave rise to an objectively reasonable fear of persecution. R. at 7. Despite finding an objectively reasonable fear of persecution, the IJ denied Ms. Marcos' asylum application reasoning that she could avoid persecution by relocating to a different part of Basag. *Id.*

Ms. Marcos filed an appeal to the Board of Immigration Appeals ("BIA"). *Id.* The Department of Homeland Security ("DHS") similarly cross-appealed the IJ's determination that Ms. Marcos established a well-founded fear of persecution. *Id.* The BIA summarily affirmed the IJ's order, denying Ms. Marcos' asylum claim because she could have "reasonably relocated in

Basag." Facts at pg. 10. Ms. Marcos petitioned to the United States Court of Appeals for the Thirteenth Circuit for review of the BIA's asylum application denial. *Id.* Additionally, the DHS cross-appealed challenging the validity of the BIA's well-founded fear analysis. *Id.*

On March 12, 2018, the United States Court of Appeals for the Thirteenth Circuit found that Ms. Marcos established asylum eligibility under the "disfavored group" analysis. R. at 12. Additionally, the Thirteenth Circuit found that Life Inc. does not classify as a "government-sponsored" entity and affirmed the IJ's decision to shift the burden to Ms. Marcos. R. at 18. Ultimately, the court found Ms. Marcos failed to establish her burden of proof that internal relocation in Basag would not be reasonable. *Id.*

Ms. Marcos subsequently appealed to the United States Supreme Court. R. at 2. On October 12, 2018, the Court granted certiorari limited to the following issues: 1) whether a disfavored group analysis establishes a well-founded fear of persecution, and 2) whether the proper party established, through substantial evidence, that future persecution could be avoided by internal relocation. Facts at pg. 2.

SUMMARY OF THE ARGUMENT

The Supreme Court of the United States should affirm the Thirteenth Circuit's holding that Ms. Marcos established eligibility for asylum based on a well-founded fear of future persecution on account of her membership in a disfavored group. Although the Thirteenth Circuit correctly found that Ms. Marcos established a well-founded fear of future persecution, it erroneously affirmed the BIA's decision that Ms. Marcos did not qualify for asylum because she could reasonably relocate within her home country. This Court should reverse the lower court's decision because the court should have remanded the case back to the BIA to interpret the ambiguous term "government-sponsored" within the Immigration and Nationality Act ("Act")

before determining that Ms. Marcos bore the burden of proving that it would be unreasonable for her to relocate within her home country of Basag.

The Thirteenth Circuit correctly held that Ms. Marcos established eligibility for asylum based on a well-founded fear of future persecution on account of her membership in a disfavored group because the disfavored group analysis meets the statutory requirements of the Act because it allows evidence of non-systematic persecution to be considered for the purposes of establishing a well-founded fear of future persecution that is consistent with the intent and spirit of the Refugee Act of 1980. The disfavored group analysis is a factor that counterbalances the burden of proof of a well-founded fear of future persecution on an asylum applicant. It does not reduce the burden because she is still required to prove that she is a refugee within the statutory definition, including the proof of a nexus of a well-founded fear of future persecution on account of a protected ground. Further, the court properly found that Ms. Marcos demonstrated a well-founded fear of rape and assault based on her membership in the disfavored group of Isda-Timog women who must collect water from Life Inc. for survival.

The lower court erred in affirming the BIA's decision because it should have remanded the case back to the BIA to properly interpret the ambiguous term "government-sponsored" consistent with the Act. By imposing the court's own interpretation of the term "government-sponsored," the lower court erroneously found that Life Inc. acts more as a private actor rather than a "government-sponsored" entity, thus requiring Ms. Marcos to prove that internal relocation was unreasonable. By failing to remand the case to the BIA, the court set a potentially far-reaching precedent that has possible diplomatic consequences, rather than allowing the agency to interpret the term using their own expertise and authority delegated to them by the Attorney General of the United States. In the alternative, if this Court finds Life Inc. is not

government-sponsored, internal relocation is unreasonable because the social and cultural restraints of Timog women combined with Life Inc.'s far-reaching presence in Basag.

The Supreme Court of the United States should affirm that Thirteenth Circuit's decision that Ms. Marcos established eligibility for asylum based on a well-founded fear of future persecution on account of her membership in a disfavored group but should reverse the lower court's decision that Life Inc. is not a government-sponsored entity and that Ms. Marcos could have reasonably relocated within her home country. Ms. Marcos respectfully requests this Court to remand the case back to the BIA for further interpretation and proceedings.

STANDARD OF REVIEW

Legal questions regarding the requirement for establishing eligibility for asylum are reviewed *de novo*. *Abendini v. I.N.S.*, 971 F.2d 188, 190 (9th Cir. 1992). Since the disfavored group analysis is a legal question being reviewed to determine if it meets the statutory definition of asylum, *de novo* review is proper. Further, since the BIA affirmed the IJ's order without opinion, the court shall review the IJ's decision as the final agency determination. *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 848 (9th Cir. 2003).

The standard of review for the BIA's determination that Ms. Marcos did not establish eligibility for asylum is reviewed for substantial error. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184 (9th Cir. 2006). The IJ's fact determinations will "be upheld, provided they are supported by reasonable, substantial, and probative evidence on the record considered as a whole, such that no reasonable adjudicator would be compelled to conclude on to the contrary." *Anacassus v. Holder*, 602 F.3d 14, 18 (1st Cir. 2010).

ARGUMENT

I. THE COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT CORRECTLY HELD MS. MARCOS ESTABLISHED ELIGIBILITY FOR ASYLUM BASED ON A WELL-FOUNDED FEAR OF FUTURE PERSECUTION ON ACCOUNT OF HER MEMBERSHIP IN A DISFAVORED GROUP BECAUSE SHE SHOWED AN OBJECTIVELY REASONABLE FEAR OF FUTURE PERSECUTION CONSISTENT WITH THE ACT

The "disfavored group" analysis meets the statutory guidelines of asylum because it falls within the language and congressional intent of asylum in the Act. The Act affords the United States Attorney General discretionary power to grant asylum to any non-United States citizen who is physically present or arrives in the United States that meets the statutory definition of refugee. 8 U.S.C. § 1158(a)(1) (2018). The Act defines a refugee as any non-United States citizen who is unable or unwilling to return to her country of origin based on past persecution or a well-founded fear of future persecution on account of one of five protected grounds. 8 U.S.C. § 1101(a)(42) (2018). The five protected grounds are race, religion, nationality, membership in a particular social group ("PSG"), and political opinion. *Id.* Such burden requires establishing at least one central reason for her past persecution or a well-founded fear of future persecution based on one of five protected grounds. *Id.*

An applicant may qualify as a refugee by establishing past persecution in her native country. 8 C.F.R. § 208.13(b) (2018). Persecution must "rise above unpleasantness, harassment and even basic suffering." *Nelson v. I.N.S.*, 232 F.3d 258, 263 (1st Cir. 2000). An applicant that has established past persecution gives rise to the presumption of a well-founded fear of persecution. 8 C.F.R. § 208.13(b). However, since the IJ found Ms. Marcos suffered no past persecution and Ms. Marcos did not contest that finding, the only issue is whether she established a well-founded fear of future persecution. Facts at pg. 9 n.3.

According to the Code of Federal Regulations (C.F.R.), an individual has a well-founded fear of persecution in three instances. First, an individual has a well-founded fear of persecution in her native country based on a protected ground. 8 C.F.R. § 208.13 (b)(2)(i)(A). The Supreme Court has interpreted a "well-founded fear" to have both subjective and objective components. *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 430-31 (1987). The subjective component requires evidence of a "genuine" fear. *Hernandez-Ortiz v. I.N.S.*, 777 F.2d 509, 513 (9th Cir. 1985). The objective component requires showing "credible, direct, and specific evidence" on the record that supports a "reasonable fear" of persecution. *Rodriguez-Rivera v. I.N.S.*, 848 F.3d 998, 1002 (9th Cir. 1988) (per curiam). The second instance of a well-founded fear is if there is a reasonable possibility of suffering such persecution if the applicant were to return to her country. 8 C.F.R. § 208.13 (b)(2)(i)(B). "Even a ten-percent chance" of future persecution is enough to establish a well-founded fear. *Knezevic v. Ashcroft*, 367 F.3d 1206, 1212 (9th Cir. 2009). Finally, an applicant has a well-founded fear if she is unable or unwilling to return to her native country because of such fear. 8 C.F.R. § 208.13(b)(2)(i)(C).

In evaluating whether an applicant has met her burden of proving a well-founded fear of persecution, an IJ "shall not" require evidence that she will be "singled out individually for persecution" if she establishes there exists a "pattern or practice" of persecution of a group of persons similarly situated on account of a protected ground. 8 C.F.R. § 208.13(b)(2)(iii)(A)-(B). Additionally, the applicant must establish her identification with and inclusion with such group gives rise a reasonable fear of persecution. *Id.* These "pattern or practice" claims provide an alternative burden for individuals who are at risk of legitimate persecution but have not, themselves, been targeted. *Id.* Courts have generally found that a "pattern or practice" claims should be narrowly construed, requiring evidence of "systematic, pervasive, or an organized

effort to kill, imprison, or severely injure members of the protected group." *Halim v. Holder*, 755 F.3d 506, 512 (7th Cir. 2014). Due to the narrow constraints of showing systematic persecution of all of the members of the group, the Ninth Circuit recognized instances where an individual has an increased risk of persecution as a member of a "disfavored group." *Tampubolon v. Holder*, 610 F.3d 1056 (9th Cir. 2010). The disfavored group analysis allows applicants to provide evidence of group-based oppression to show a higher likelihood that she will be singled out for individualized persecution. *Sael v. Ashcroft*, 386 F.3d 922, 925 (9th Cir. 2004).

Conversely, other circuits reject the disfavored group analysis, erroneously stating that the Ninth Circuit improperly lowers the asylum standard. *See e.g. Kho v. Keisler*, 505 F.3d 50 (1st Cir. 2007); *Lie v. Ashcroft*, 396 F.3d 530 (3d Cir. 2005); *Firmansjah v. Gonzales*, 424 F.3d 598 (7th Cir. 2005). The Ninth Circuit maintains that the analysis does not lower the ultimate burden of proof for asylum claims. *Wakkary v. Holder*, 558 F.3d 1049, 1062 (9th Cir. 2009). The Thirteenth Circuit, however, correctly recognized relevant situations where non-systematic, group-based persecution could be used as evidence to establish a well-founded fear of persecution. *Sael*, 386 F.3d at 925.

The Supreme Court should affirm the Thirteenth Circuit's finding of a well-founded fear and formally adopt the disfavored group analysis for two reasons. First, the analysis fits within the text and spirit of the Act and the C.F.R. because it allows group-based evidence to be used as another factor of determining an increased individualized risk of persecution. Secondly, Ms. Marcos established a well-founded fear of persecution by providing evidence of participation in a disfavored group that places her at a greater risk of future persecution for asylum eligibility. Therefore, the disfavored group analysis should be formally adopted as a valid basis for establishing a well-founded fear of persecution and the Court should affirm the Thirteenth

Circuit's finding that Ms. Marcos established a well-founded fear of persecution as a member of a disfavored group.

A. The Disfavored Group Analysis Meets the Statutory Requirements of the Act Because it Allows Evidence of Non-Systematic Persecution to be Considered for the Purposes of Establishing a Well-Founded Fear of Future Persecution.

The Thirteenth Circuit's finding that Ms. Marcos established a well-founded fear of future persecution should be affirmed because evidence of a disfavored group is relevant and valid under the Act. Generally, to establish a well-founded fear, an applicant must demonstrate a particularized threat of persecution, in that she must be "singled out." *Kotasz v. I.N.S.*, 31 F.3d 847, 852 (9th Cir. 1994). Such particularized persecution is not enough when there is a "generalized or random possibility of persecution in [her] native country," moreover there must be evidence that she is at a "particular risk." *Vides-Vides v. I.N.S.*, 783 F.2d 1463, 1469 (9th Cir. 1986). The Ninth Circuit first recognized situations where membership in a disfavored group subjects the individual to a reasonable possibility of persecution that would satisfy the objective component of a well-founded fear by showing membership in the disfavored group. *Kotasz*, 31 F.3d at 852. The disfavored group analysis should be formally adopted for two reasons. First, it allows relevant evidence that counterbalances the burden of proof for non-systematic persecution that fits with real-world situations. Secondly, the disfavored group fits within the spirit and intent of the Act. Therefore, the disfavored group analysis should be formally recognized as valid for establishing a well-founded fear of persecution in asylum cases.

1. The Disfavored Group Analysis Allows Relevant, Group-Based Evidence to be Considered that Counterbalances the Burden of Proof in Establishing a Well-Founded Fear of Future Persecution.

The disfavored group analysis allows an adjudicator to consider relevant, group-based evidence in determining whether an asylum seeker establishes a well-founded fear of persecution

that does not improperly lower the burden of proof on the applicant. The circuits have emphasized that "pattern or practice" claims should only be used for extreme cases. *Diaz-Garcia v. Holder*, 609 F.3d 21, 29 (1st Cir. 2010). Recognizing these constraints, the Ninth Circuit acknowledged situations where membership in a disfavored group subjects the individual to a reasonable possibility of persecution that would satisfy the objective component of a well-founded fear. *Kotasz*, 31 F.3d at 852. A disfavored group is defined as a "'group of individuals in a certain country or part of a country, all of whom share a common, protected characteristic, many of whom are mistreated, and a substantial number of whom are persecuted' but who are 'not threatened by a pattern or practice of systematic persecution.'" *Tampubolon*, 610 F.3d at 1060 (quoting *Wakkary*, 558 F.3d at 1063).

The burden to establish a well-founded fear based on a disfavored group is evidence of 1) membership in the disfavored group, and 2) "an individualized risk of being singled out for persecution." *Sael*, 386 F.3d at 925. The two prongs operate in tandem, "thus the 'more serious and widespread the threat' to the group in general, 'the less individualized the threat of persecution needs to be.'" *Sael*, 386 F.3d at 925 (quoting *Mgoian v. I.N.S.*, 184 F.3d 1029, 1035 n.4 (9th Cir. 1999)). The Ninth Circuit emphasized that the "singled out" path is "not reserved solely for [] applicants whose would-be persecutors seek them out personally…rather…one's chances of being singled out from the general population and subjected to persecution is often strongly correlated with the [characteristics shared with the disfavored group]." *Wakkary*, 558 F.3d at 1062-63.

The Fourth and Eighth Circuits recognize the disfavored group as a valid vehicle for establishing a well-founded fear. *Chen v. I.N.S.*, 195 F.3d 198 (4th Cir. 1999); *Makonnen v. I.N.S.*, 44 F.3d 1378 (8th Cir. 1995). Conversely, the First, Third, and Seventh circuits have

rejected the disfavored group analysis. *See Kho*, 505 F.3d at 55-56 (rejecting the disfavored group analysis because it "creates a different threshold" of individualized showing), *Lie*, 396 F.3d at 530 n.4 (reasoning that the disfavored group analysis improperly lowers the standards of proof for individualized fear absent a pattern or practice), *Firmansjah*, 424 F.3d at 607 (rejecting the disfavored group analysis with no further explanation).

These circuits, however, have improperly interpreted the role of the disfavored group analysis as another relevant factor. The Ninth Circuit emphasized that the disfavored group analysis:

> "does not prescribe a lower-than-usual burden…the 'lesser' or 'comparatively low' burden…refers not to lower the ultimate standard, but to the lower proportion of specifically individualized evidence of risk, counterbalanced by a greater showing of group targeting, that an applicant must adduce to meet that ultimate standard under the regulations' 'individually singled out' rubric."

Wakkary, 558 F.3d at 1064. Additionally, the Ninth Circuit explains the disfavored group analysis simply allows evidence of membership in a disfavored group who have been targeted for persecution, but not systematically, as a factor in determining whether the applicant has established a well-founded fear. *Id.*

The Government will likely contend that adopting the disfavored group analysis will improperly lower the asylum burden and open the flood gates to "every member of the group…" *Ahmed v. Gonzales*, 467 F.3d 669, 675 (7th Cir. 2006). This proposition is erroneous because the disfavored group analysis still requires the applicant to bear the burden of proving that she is a refugee within the statutory definition, including proof of a nexus of a well-founded fear of persecution on account of a protected ground. Even though the First Circuit rejected the disfavored group analysis, it reasoned that "in evaluating each claim on its facts, it may be that evidence short of a pattern or practice will enhance an individualized showing of likelihood of a

future threat to the applicant's life or freedom." *Kho*, 505 F.3d at 55. The disfavored group analysis does not lower the burden required to establish an asylum claim, it merely allows individuals at risk for persecution the opportunity to present evidence to counterbalance the high threshold. Therefore, the Thirteenth Circuit Court of Appeals properly found that evidence of membership in a disfavored group meets the statutory requirements of showing a well-founded fear for determining asylum eligibility.

2. Evidence of Group-Based, Non-Systematic Persecution Fits within the Overall Spirit of the Act in Determining Whether an Asylum Applicant Established a Well-Founded Fear of Persecution.

The disfavored group analysis fits within the spirit of the Act and should be formally adopted by this Court. The United States used the United Nations' definition of a "refugee" when it passed the 1980 Refugee Act. *An Overview U.S. Refugee Law and Policy*, American Immigration Council, https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy. In addition to complying with international treaties, the purpose of establishing the Refugee Act rested in "welcoming homeless refugees to our shores…and statutory meaning to our national commitment to human rights." S. Rep. No. 96-256, at 1 (1979). After objection to the adversarial manner adjudication of the Immigration and Nationalization Service, the Attorney General issued regulations that included an alternative burden of proof to establish a well-founded fear of persecution through a "pattern or practice" of persecution against a group of persons similarly situated. Aliens and Nationality; Asylum and Withholding of Deportation Procedures, 55 Fed. Reg. 30,674 (July 27, 1990) (to be codified at 8 C.F.R. § 208.13).

As the Fourth Circuit noted, there are situations where "individual targeting and systematic persecution do not necessarily constitute distinct theories. Rather…some combination

of the two to establish a well-founded fear of persecution." *Chen*, 195 F.3d at 203-04. The disfavored group analysis is meant to address real-world persecution of groups of similarly situated persons that may otherwise be unable to prove a pattern of persecution of members of the entire group. As Ninth Circuit reasoned, using a historical example, that "it would not have been necessary for each individual Jew to await a personal visit...by Nazi storm troopers in order to show a well-founded fear of persecution." *Kotasz*, 31 F.3d at 852. This is particularly important in the real-world context, where people like Ms. Marcos, who are part of a group that is targeted, although not systematically, still face a legitimate fear of future persecution.

The Refugee Act recognized instances where an individual is unable or unwilling to return to their home country due to a threat of persecution and allowing evidence of group-based persecution fits within that overall scheme. The disfavored group analysis does not alter the regulations promulgated, it simply allows individuals like Ms. Marcos to have her entire case heard fairly. Ms. Marcos deserves to have her group-based evidence evaluated because it is within the spirit of the Refugee Act to welcome individuals who have been or will likely be persecuted. Therefore, the disfavored group analysis fits within the statutory scheme and spirit of the Act and should be formally adopted by this Court.

B. The Thirteenth Circuit Correctly Found That Ms. Marcos Demonstrated a Well-Founded Fear of Persecution Based on Her Membership in a Disfavored Group of Isda-Timog Women Who Have to Collect Water from Life Inc. for Survival.

The Thirteenth Circuit correctly found Ms. Marcos established a well-founded fear of persecution by establishing membership in the group of Isda-Timog women who are mistreated by Life Inc. guards and showing that her individualized risk of persecution is higher because of her membership in that disfavored group. Under the disfavored group analysis, Ms. Marcos bears the burden of establishing her membership in a disfavored group. The BIA has recognized that

the well-founded fear standard "contemplates the introduction of evidence regarding similarly situated persons to support an individual claim of persecution." *Matter of S-M-J-*, 21 I. & N. Dec. 722, 726 n.1 (BIA 1997). Here, Isda-Timog women bear the responsibility of traveling long distances to fetch water, which is controlled by Life Inc. guards, a majority of whom are ethnic Hilagan and regularly mistreat Timog women. R. at 12. Further, Ms. Marcos provided evidence that Life Inc. guards were required to undergo comprehensive sexual harassment training due to complaints of sexual violence toward Timog women seeking water from Life Inc. facilities. *Id.* Additionally, there is evidence of an "uptick" of attacks on women since the water crisis in Basag began. *Id.* Not all Mayaman women are at risk of sexual harassment at the hands of Life Inc. guards, only those similarly situated to Ms. Marcos, Timog women who must travel miles to retrieve water controlled by Life Inc. guards.

In addition to providing reports of violence toward Timog women, Ms. Marcos testified to three separate instances of sexual harassment at the hands of Life Inc guards while en-route to collect water, including one guard threatening to "have [his] way with [her]." R. at 4-5. After hearing four years of rumors about Life Inc. guards raping Timog women, a Life Inc. guard inappropriately touched her backside while the other guards laughed. R. at 5. The police nor government took any actions in response to the allegations of rape by Life Inc. guards. *Id.* A combination of reports of increased violence toward Timog women combined with Ms. Marcos' personal encounters of sexual harassment, verbally and physically, at the hands of Life Inc. guards clearly establishes Ms. Marcos' participation in a disfavored group of Timog women who are mistreated by Life Inc. guards.

Ms. Marcos must also establish that she is at individualized risk of being singled out for persecution. *Sael*, 386 F.3d at 925. The same guard that propositioned Ms. Marcos for sex on

March 6, 2017, threatened to have his way with her at a different water facility location. R. at 5. The mere fact that Ms. Marcos was singled out by the same guard on two sperate occasions shows an individualized risk of being singled out for persecution in the future. R. at 4-5. Since Ms. Marcos sufficiently established a serious and widespread threat of sexual harassment to Timog women who collect water for survival, that, combined with the testimony of her own experiences, demonstrate that she has an individual risked of being singled out for harm as a part of that disfavored group. Therefore, Ms. Marcos presented evidence sufficient to establish her membership in a disfavored group that puts her at a particularized risk of persecution sufficient to establish a well-founded fear of future persecution.

II. THE THIRTEENTH CIRCUIT COURT OF APPEALS ERRED BY AFFIRMING THE BIA'S DECISION BECAUSE IT SHOULD HAVE REMANDED THE CASE TO THE BIA TO DETERMINE THE PROPER MEANING OF "GOVERNMENT-SPONSORED" RATHER THAN IMPOSING ITS OWN STATUTORY INTERPRETATION THAT ERRONEOUSLY PLACED THE BURDEN OF PROVING UNREASONABLE INTERNAL RELOCATION ON MS. MARCOS.

The Thirteenth Circuit incorrectly interpreted the ambiguous term, "government-sponsored," within the regulations promulgated pursuant to the Act, which erroneously shifted the burden of proof onto Ms. Marcos to prove that internal relocation would be unreasonable. An applicant may establish asylum eligibility through one of two ways. 8 C.F.R. § 208.13(b)(1)-(2). The first option is by showing that she has suffered past persecution within her country. *Id.* The second option is by showing that she has a well-founded fear of future persecution if she returns to her country. *Id.* The question of who bears the burden of proof relies on the basis of the applicant's claim.

In cases such as this, where the applicant is basing her claim on a well-founded fear of future persecution, she is eligible for asylum if she has a fear of persecution in her country on account of race, religion, membership of a particular social group, or political opinion; if there is

reasonable possibility of suffering such persecution if she were to return to her country; she is unable or unwilling to return to her country because of such fear. *Id.* at § 208.13(b)(2)(i)(A)-(C). If the applicant could reasonably relocate to another part of her country, she does not have a well-founded fear of persecution. *Id.* at § 208.13(b)(2)(ii). The applicant bears the burden of proving that she has established a well-founded fear of persecution. *Id.* § 208.13(b)(2)(iii). When determining whether it is reasonable for her to relocate, the burden of proof may change depending on who the persecutor is claimed to be. *Id.* at § 208.13(b)(3)(i)-(ii). If the applicant has not established eligibility for asylum based on past persecution, then she bears the burden of proving that it would not be reasonable for her to relocate within her country. *Id.* However, if the applicant shows that the persecutor is a government or is government sponsored, it is presumed that it would not be reasonable for her to relocate. *Id.* In those instances, the DHS, again, may rebut that presumption, but the burden of proof would be on the DHS to prove that under all circumstances, it would be reasonable for her to relocate. *Id.*

In the case at hand, Ms. Marcos established that she has a well-founded fear of future persecution. The burden of proof to show that would not be reasonable to relocate would be on Ms. Marcos; however, Life Inc. is acting more as a government-sponsored entity, rather than a private actor. When the persecution is from the government, or a government-sponsored entity, the presumption is that it would not be reasonable to relocate; therefore, the burden of proof would be on the DHS to rebut that presumption. *Id.*

The Thirteenth Circuit erred for two reasonings. First, it failed to remand the case to the BIA to interpret the term "government-sponsored" within the statutory scheme of the Act and accompanying regulations. Secondly, the court erred by finding Life Inc. guards are private actors, such as a gang or domestic violence perpetrators, rather than a government entity. The

United States Supreme Court should reverse the Thirteenth Circuit's decision and remand to the BIA to define the ambiguous term "government-sponsored" in the Act. If this Court affirmed the lower court's decision to interpret the term "government-sponsored," this Court should still reverse the Thirteenth Circuit's finding that Life Inc. is not considered "government-sponsored" within the meaning of the Act because Life Inc. acts more like a government entity rather than a private actor. In the alternative, if this Court found that Life Inc. is not "government-sponsored," Ms. Marcos would bear the burden of proving that it would be unreasonable for her to internally relocate. It would be unreasonable for Ms. Marcos to internally relocate to another part of her home country to escape persecution because Life Inc. is not geographically limited, and she will continue to be persecuted based upon her identification as a Timog woman wherever she may relocate to within the country of Basag. Ms. Marcos respectfully requests the United States Supreme Court to reverse the decision of the Thirteenth Circuit and remand the case to the BIA.

A. The Thirteenth Circuit Erroneously Interpreted the Term "Government-Sponsored" in the Regulations Promulgated Pursuant to the Act Rather than Remanding it for the BIA to Interpret the Meaning of "Government-Sponsored."

The Thirteenth Circuit erred by interpreting the meaning of the term "government-sponsored" rather than remanding the case to the BIA to interpret the meaning of the ambiguous term. The Attorney General vested the BIA with the authority to consider and determine immigration cases and it is therefore the BIA's responsibility to properly interpret the Act and promulgated regulations. Because the BIA failed to interpret the meaning of the term "government-sponsored" within the Act and accompanying regulations, the United States Supreme Court should reverse the lower court's decision and remand the case to the BIA for proper interpretation of the term "government-sponsored" within the meaning of the Act.

In *Chevron*, the Court set forth the two-step test in reviewing an agency's construction of the statute which it administers. The first step is to determine whether Congress has directly spoken to the precise question at issue. *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984). If Congress' intent is clear, the Court does not go any further into the analysis. *Id.* The court and the agency must give effect to Congress' intent. *Id.* Conversely, if Congress has not directly spoken to the direct question at issue, the court cannot impose its own construction of the statute but must determine whether the agency's interpretation of the statute is a permissible construction of the statute. *Id.*

Under the Act, the legislature grants the Attorney General a substantial amount of control over immigration, including the authority to grant asylum to aliens. 8 U.S.C. § 1103(g)(1)-(2) (2018). Pursuant to that authority, the Attorney General delegated to the BIA the "discretion and authority conferred upon the Attorney General by law" in the course of "considering and determining cases before it." *Negusie v. Holder*, 555 U.S. 511, 517 (2009) (quoting 8 C.F.R. § 3.1(d)(1) (1998)). The BIA, in turn, has an important role and a great amount of authority regarding immigration. Unless overruled by the Attorney General, the decisions made by the BIA are considered precedential. 8 C.F.R. § 1003.1(d)(3)(ii) (2018). Under *Chevron*, the agency has the authority to interpret the statute and any ambiguities within the statute. 467 U.S. at 842. When the BIA fails to consider an issue, the court should remand "to give the BIA the opportunity to address the matter in the first instance in light of its own experience." *Negusie*, 555 U.S. at 517 (quoting *I.N.S. v. Ventura*, 537 U.S. 12,16-17 (2002)). In *Ventura*, this Court reaffirmed that a judicial judgment cannot be made to do service for an administrative judgement. 537 U.S. at 16 (quoting *S.E.C. v. Chenery Corp.*, 318 U.S. 80, 87, 88 (1943)).

Therefore, an appellate court should remand a case to an agency for decision of a matter that the statute has placed primarily in the hands of the agency. *Ventura*, 537 U.S. at 16.

Presently, the Thirteenth Circuit erroneously created its own interpretation of what is considered "government-sponsored." The Thirteenth Circuit held that "since no definition exists, deference is not required" and the court "can determine whether Life Inc. falls within the category of 'government-sponsored'" for the court's jurisdiction." R. at 15. The court reasoned that since the BIA has not yet given meaning to the term "government-sponsored" through the agency's process of "case-by-case adjudication", the court is permitted to impose their own interpretation. R. at 16. While under the *Chevron* analysis, a court may impose its own construction on the statute if the agency fails to interpret the ambiguity in the statute, this Court has previously held that when the BIA fails to interpret an ambiguous statute, "the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." *Ventura*, 537 U.S. at 16 (quoting *Chenery Corp.*, 332 U.S. at 196).

The Thirteenth Circuit further held that the IJ and the BIA both found that Ms. Marcos could reasonably relocate within her home country therefore they must have found Life Inc. not to be government sponsored. In reviewing the IJ's decision, the BIA failed to define what is considered "government-sponsored". If the BIA had interpreted what is considered to be "government-sponsored," the court would have been required to give deference to that interpretation if that interpretation was reasonable. *Chevron*, 467 U.S. at 842. Further, the Thirteenth Circuit would have been correct in affirming the BIA's denial of the asylum application by giving the BIA's interpretation deference. However, in this case, the BIA gave no definite interpretation of the term "government-sponsored" and should have the opportunity to

properly interpret the statute using their expertise. *Negusie*, 555 U.S. at 517 (quoting *Ventura*, 537 U.S. at 16-17).

To affirm the Thirteenth Circuit's decision to define "government-sponsored" is "disregarding the agency's legally-mandated role". *Ventura*, 537 U.S. at 17. Congress granted the Attorney General the authority to make asylum determinations and such delegation is important in the immigration context "where officials 'exercise especially sensitive political functions that implicate questions of foreign relations.'" *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999) (quoting *I.N.S. v. Abudu*, 485 U.S. 94, 110 (1988)). Determinations of asylum may affect the United States' relations with foreign countries. *Aguirre*, 526 U.S. at 425. The agency the Attorney General has delegated such authority to is best suited to make those determinations due to the possible diplomatic repercussions. *Id.*

The lower court's interpretation that Life Inc. is not a "government-sponsored" entity has the potential to create a far-reaching legal precedent because the agency has not yet interpreted that term within the statutory scheme of the Act. *Ventura*, 537 U.S. at 17. This potentially far-reaching precedent is troubling, as the court did not give a positive definition of what "government-sponsored" means. The lack of a positive definition creates difficulties for courts in reviewing similar cases. The BIA has not affirmatively interpreted the term "government-sponsored" and the Thirteenth Circuit has now created a precedent for other cases. This gives courts no guidance and could cause a lack in uniformity among the circuits regarding the sensitive context of asylum claims. The BIA is the proper authority to interpret the term "government-sponsored" because " the agency can bring its expertise to bear upon the matter; it can evaluate the evidence; it can make an initial determination; and, in doing so, it can, through

informed discussion and analysis, help a court later determine whether its decision exceeds the leeway that the law provides." *Id.*

The United States Supreme Court has held in previous immigration cases that remand is the proper course of action when the BIA has not spoken directly on the issue at hand. By remanding to let the BIA have the opportunity to interpret the ambiguous term, this Court will be allowing the BIA to fulfill their role and the courts will have more guidance on future cases. Therefore, this Court should reverse the Thirteenth Circuit's decision and remand the case to the BIA to properly interpret the definition of "government-sponsored" within the statutory scheme of the Act.

B. The Thirteenth Circuit Court of Appeals Erroneously Found Life Inc. Not to be "Government-Sponsored" When Determining Which Party Bore the Burden of Proving that Internal Relocation is Not Reasonable.

The Thirteenth Circuit erred by finding that Life Inc. is not a "government-sponsored" entity. National governments do not have geographical limits, so it is presumed that there are no safe locations within the country to relocate to. *Singh v. Moschorak*, 53 F.3d 1031, 1034 (9th Cir. 1995). Like a national government, Life Inc. also has a far-reaching presence within the country of Basag, making it difficult to find a location where Ms. Marcos would not likely be persecuted. The court also has the ability to take a variety of factors into consideration when determining the reasonableness for an applicant to relocate. 8 C.F.R. § 208.13(b)(3). Due to the social and cultural restraints on Timog women within the country of Basag, and Life Inc.'s nationwide presence, it would be unreasonable for Ms. Marcos to relocate.

The United States Supreme Court should reverse the decision of the Thirteenth Circuit for two reasons. First, Life Inc. is more comparable to a government entity rather than a private actor. Secondly, even if this Court found Life Inc. not to be "government-sponsored", it would

be unreasonable for Ms. Marcos to internally relocate. For these reasons, this United States Supreme Court should reverse the decision of the Thirteenth Circuit.

1. Life Inc. Acts More Like A Government Actor Rather than a Private Actor; Therefore, the DHS Bears the Burden of Rebutting the Presumption that it Would Not Be Reasonable for Ms. Marcos to Internally Relocate Within Her Home Country.

The Thirteenth Circuit erroneously imposed its own statutory construction of the term "government-sponsored" and found that Life Inc. acts more like a private actor, such as a gang of criminals rather than as a government entity. R. at 16. That decision consequently placed the burden of proving that internal relocation would be unreasonable on Ms. Marcos. Whether Life Inc. is considered to be "government-sponsored" must be determined to discern the proper party to bear the burden of proving that internal relocation is or is not reasonable for Ms. Marcos. 8 C.F.R. § 208.13(b)(3)(i). The decision of the Thirteenth Circuit should be reversed because Life Inc. acts more as a government entity rather than a private actor, in turn, correctly placing the burden of proof on the DHS to show that internal relocation is reasonable for Ms. Marcos.

The interpretation of the ambiguous term "government-sponsored" is vital in determining if the proper party bore the burden of proving whether internal relocation is reasonable for Ms. Marcos. If the persecutor is a government or is "government-sponsored", there is a rebuttable presumption that it would be unreasonable for her to return to her home country. 8 C.F.R. § 208.13(b)(3)(ii). The applicant does not need to prove that relocation would be unreasonable even "if necessary"; she is only required to prove that relocation would not be reasonable. *Eduard v. Ashcroft*, 379 F.3d 182, 193-94 (5th Cir. 2004). Conversely, if the applicant has not established past persecution and is basing her claim on a well-founded fear of future persecution, and the persecutor is not a government or government-sponsored, then the applicant bears the burden of proving that internal relocation would be unreasonable. 8 C.F.R. § 208.13(b)(3)(i). The

government of a country, or an entity that is government-sponsored, is far-reaching and not geographically limited. This creates the presumption that when the applicant is being persecuted by a government, or an entity that is government-sponsored, the persecution is also not geographically limited, making internal relocation unreasonable. *Moschorak*, 53 F.3d at 1034.

In *Moschorak,* the asylum applicant suffered repeated brutal beatings by the Indian military, which ultimately drove him to flee and seek refuge in the United States. *Id.* at 1033. The Ninth Circuit has recognized that an applicant fails to establish asylum eligibility where there is only a danger of persecution in a single village from guerrillas and no showing of such danger in other locations of the country. *Id.* The court, however, stated that "it has never been thought that there are safe places within a nation when it is the nation's government that has engaged in the acts of punishing opinion that have driven the victim to leave the country." *Id.*

Life Inc. is comparable to the government military in *Sing* because Life Inc. is not geographically limited and there would be no safe space within the country of Basag for Ms. Marcos. If Ms. Marcos' persecution was at the hands of the Water Warriors in Basag, the persecutor would undoubtedly be considered a nongovernmental actor because the Water Warriors are a private group of actors that the government is trying to control. The Water Warriors would be closest to the categorization of a gang. The Thirteenth Circuit erred in finding Life Inc. guards to also be acting as a gang because the government is assisting the Life Inc. guards in protecting the water sources and facilities from the Water Warriors. The government has a contract with Life Inc. requiring the company to provide and run the water facilities within Basag; however, the government has also included in that contract that they will provide military aid to Life Inc. if the water facilities were threatened. Facts at pg. 4. This shows that the government is acting in tandem with Life Inc. guards to protect the facilities against the attacks

from the Water Warriors, rather than working to control the Life Inc. guards, which might indicate that Life Inc. is, in fact, more comparable to a private actor.

Life Inc. has facilities all over the country of Basag, as water is a vital resource that the company was tasked with providing to the citizens of Basag. There is no indication that the Life Inc. guards would be unable to find Ms. Marcos or other Timog women in any location of the country. Further, Ms. Marcos testified to overhearing a conversation between Life Inc. guards, where one of the guards bragged about raping a woman who came to a well to obtain clean water. Facts at pg. 9. This shows that Life Inc. guards are far-reaching, similar to the government of a country.

The Thirteenth Circuit erroneously found Life Inc. to be more comparable to a private actor rather than a government-sponsored entity. Life Inc. is similar to a government in that it is not geographically limited. The country of Basag also has a contract with Life Inc. to work with them in protecting the water facilities by providing military aid. This shows that Life Inc. is more comparable to a government-entity rather than a private actor such as a gang or domestic violence. If the Supreme Court of the United States affirms the Thirteenth Circuit's decision to interpret the term "government-sponsored", this Court should find that Life Inc. is more comparable to a government entity and reverse the decision of the lower court.

2. Internal Relocation Would Be Unreasonable for Ms. Marcos if this Court Found Life Inc. Not to Be "Government-Sponsored."

The Thirteenth Circuit erred in finding that Ms. Marcos could reasonably relocate within her home country to avoid persecution because the court, along with the BIA and the IJ, failed to take into consideration the reasonableness of the relocation. To determine whether it would be reasonable for an applicant to relocate internally within their home country, the Court can take a broad range of factors into consideration. *Hagi-Salad v. Ashcroft*, 359 F.3d 1044, 1048 (8th Cir.

2004). This Court should reverse the Thirteenth Circuit's decision and find that if Life Inc. is determined not to be "government-sponsored," internal relocation within Ms. Marcos' home country is unreasonable because the social and cultural restraints on Timog women in the country of Basag make the persecution not geographically limited and therefore unreasonable.

The reasonableness of internal relocation within the applicant's home country is determined by considering whether the applicant would face other serious harm in the place of suggested relocation. *Knezevic*, 367 F.3d at 1214. The Court may take a variety of factors into consideration when deciding whether it would be reasonable for an applicant to relocate:

> "… adjudicators should consider, but are not limited to considering, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. Those factors . . . are not necessarily determinative of whether it would be reasonable for the applicant to relocate." 8 C.F.R. § 208.13(b)(3).

The first question to ask is whether the applicant could safely relocate within their home country. If the applicant can safely relocate, the second question is to ask whether it would be reasonable for them to do so. *Knezevic*, 367 F.3d at 1214. The applicant does not have to prove that the fear of being persecuted extends "to the whole territory of the refugee's country." *Singh v. Ilchert*, 63 F.3d 1501, 1511 (9th Cir. 1995).

In *Knezevic*, a family applied for asylum soon after arriving to the United States and alleged that they had suffered past persecution during the Civil War in Bosnia-Herzegovina and claimed that they had a well-founded fear of future persecution if they were to return to their home country. 367 F.3d at 1208. The Knezevics petitioned the appellate court after the BIA affirmed the IJ's denial of their application. *Id.* The Ninth Circuit found that the applicants had established past persecution and that they had a well-founded fear of future persecution. *Id.* at 1212-13. The

court then analyzed whether the Knezevics could safely relocate within their home country to avoid persecution. *Id.* at 1214.

The court first found that the Knezevics could safely relocate to a different part of their home country of Bosnia-Herzegovina. *Id.* The court then analyzed all of the factors to determine the reasonableness of relocation and found that it would not be reasonable for the Knezevics to relocate. *Id.* If the Knezevics were to relocate, they would have trouble finding employment and means to support themselves. *Id.* They no longer have a home, a business, personal possessions, and their family no longer live in Bosnia-Herzegovina. *Id.* Further, the quality of life in Bosnia-Herzegovina was inferior. *Id.* The court also noted that the IJ stated that the Knezevics could "probably" settle into the Serb-held areas of their home country if they returned; however, that determination shows that the IJ failed to take into consideration the factors of determining reasonableness that are set forth in the statute. *Id.* at 1214-15.

In *Knezevic*, the Ninth Circuit properly considered all of the factors to determine the reasonableness of the Knezevic family to relocate within their home country. *Id.* at 1214. Similarly, if Ms. Marcos were to return to the island of Isda, she would also have trouble finding permanent employment and she would continue to be harassed and threatened on the basis of her gender and her ethnicity. Notably, Ms. Marcos has been threatened by the same guard on more than one occasion and that guard knows where she lives in Isda. Facts at pg. 6-8. She has also been physically touched by a different guard while going to get water from a water storage facility. Facts at pg. 8. The island of Isda also has an inferior quality of life due to the effects of global warming to the environment and economy. Facts at pg. 2.

Before arriving in the United States, Ms. Marcos and her husband relocated to the island of Mayaman to get medical treatment for her husband after he was shot by Life Inc. guards for

confronting them about their treatment of Ms. Marcos. Facts at pg. 8. While there, Ms. Marcos had difficulties finding permanent employment due to her poorer status as an Isda-Timog woman. Facts at pg. 9. If Ms. Marcos were to return to the island of Mayaman, she would have difficulties being able to provide for herself and she would continue face the fear of persecution because the guards in Mayaman have also been known to target Isda-Timog women. Facts at pg. 8-9. Isda-Timog women also have difficulties assimilating with the population because of their poorer status and not being able to afford local clothing to make them fit in with the rest of the population. Facts at pg. 9.

The persecution by the Life Inc. guards is nationwide and Ms. Marcos is not likely to be able to avoid being persecuted just by simply relocating to another area of Basag because any location she might relocate to would still be subjected to obtaining water from the Life Inc. water facilities and guards. Water is necessary to survive, and to obtain it, the Timog women are in a powerless situation. The Timog women get harassed, threatened, and assaulted when going to obtain their family's water. If Ms. Marcos returns to Basag, it is only a matter of time until she is physically assaulted due to her ethnicity. This persecution is not geographically limited and will not end anytime soon due to the contract the country of Basag has with Life Inc. The Supreme Court of the United States should reverse the Thirteenth Circuit's decision and find that internal relocation would be unreasonable for Ms. Marcos because Life Inc. is far-reaching, and she will continue to be persecuted due to her Timog ethnicity regardless of where she relocated within Basag.

CONCLUSION

The United States Supreme Court should affirm the Thirteenth Circuit's finding that Ms. Marcos established eligibility for asylum based on a well-founded fear of future persecution

because of her membership in a disfavored group. The disfavored group analysis meets the statutory requirements of the Act and falls within the spirit and intent of the Act by allowing evidence of non-systematic persecution to be considered for the purposes of establishing a well-founded fear of future persecution. Additionally, Ms. Marcos demonstrated a well-founded fear of rape and assault based on her membership in the disfavored group of Isda-Timog women.

In contrast, the lower court erred in affirming the BIA's denial of asylum because the Thirteenth Circuit should have remanded the case back to the BIA to properly interpret the ambiguous term "government-sponsored." By imposing the court's own interpretation, the court incorrectly found that Life Inc. was not "government-sponsored," resulting in the burden of proof being placed on Ms. Marcos to prove that it would be unreasonable for her to internally relocate. If this Court affirms the lower court's finding that Life Inc. is not "government-sponsored," Ms. Marcos still has shown evidence that internal relocation would be unreasonable because of the social and cultural restraints on Timog women and the far-reaching presence of Life Inc. within Basag. For the foregoing reasons, Ms. Marcos respectfully requests the United States Supreme Court affirm the Thirteenth Circuit's finding of a well-founded fear of future persecution but reverse the finding that internal relocation is reasonable and remand to the BIA to properly interpret the term "government sponsored."