

No. 17-17002

IN THE SUPREME COURT OF THE UNITED STATES

Leila Marcos,

Petitioner,

-against-

Attorney General of the United States,

Respondent.

On Writ of Certiorari to the
Thirteenth Circuit Court of Appeals

BRIEF FOR PETITIONER

Team 109

QUESTION PRESENTED

- I. Whether the disfavored group analysis is the appropriate standard to determine if Marcos established her well-founded fear of persecution in her asylum claim.
- II. Whether the proper party bore the burden of proving by a preponderance of the evidence that future persecution could be avoided by internal relocation.

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	vii
STATEMENT OF JURISDICTION	vii
STATUTES INVOLVED	vii
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	5
ARGUMENT	7
I. MEMBERSHIP IN A DISFAVORED GROUP IS SUFFICIENT TO ESTABLISH WELL-FOUNDED FEAR OF PERSECUTION.	7
A. <u>Timog Women Living in the Basag Islands Who Are Subject to Rape and Harassment Are a Disfavored Social Group</u>	9
1. Marcos’ Social Group Share Common Immutable Characteristics.	10
2. Marcos’ Social Group is Visible Within Society	11
3. Marcos’ Social Group is Defined With Particularity.	13
B. <u>Well-Founded Fear Must Also Be Based on an Alien’s Subjective and Objective Fear of Future Persecution</u>	14
C. <u>This Court Should Adopt the Disfavored Group Standard as the Applicable Standard to Illustrate Well-Founded Fear</u>	16
II. THE RESPONDENT HAS NOT MET THEIR BURDEN OF PROVING THAT SAFE AND REASONABLE INTERNAL RELOCATION WITHIN BASAG IS POSSIBLE FOR MARCOS.	18
A. <u>Life Inc. is a Government-Sponsored Entity</u>	20
1. Life Inc. Resembles a Government-Sponsored Entity	20

2. *Chevron* Deference Applies and a Remand to the BIA is Necessary 23

B. Even if Life Inc. is Not a Government-Sponsored Entity, Marcos Has Met the Burden of Proving That She Could Not Avoid Future Persecution by Internally Relocating Within Basag 25

1. It is Not Possible for Marcos to Safely Relocate Within Basag 25

2. It is Not Reasonable for Marcos to Safely Relocate Within Basag 27

CONCLUSION 30

TABLE OF AUTHORITIES

CASES

Abedini v. INS, 971 F.2d 188 (9th Cir. 1992) 8

Ahmed v. Ashcroft, 348 F.3d 611 (7th Cir. 2003) 14

Ahmed v. Gonzales, 467 F.3d 669 (7th Cir. 2006). 17

Arboleda v. Att’y Gen., 434 F.3d 1220 (11th Cir. 2006). 26, 27

Benitez Ramos v. Holder, 589 F.3d 426 (7th Cir. 2009) 10

Blanco-Comarribas v. INS, 830 F.2d 1039 (9th Cir. 1987) 14

Boer-Sedano v. Gonzales, 418 F.3d 1082 (9th Cir. 2005) 20

Castillo-Villagra v. INS, 927 F.2d 1017 (9th Cir. 1992) 8

Cece v. Holder, 733 F.3d 662 (7th Cir. 2013)..... 10, 11, 17, 18

Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984)..... 23

Escobar v. Holder, 657 F.3d 537 (7th Cir. 2011)..... 10

Essohou v. Gonzales, 471 F.3d 518 (4th Cir. 2006). 28

Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993). 10, 11

Firmansjah v. Gonzales, 424 F.3d 598 (3d Cir. 2005) 17

Gambashidze v. Ashcroft, 381 F.3d 187 (3d Cir. 2004) 25

Gatimi v. Holder, 578 F.3d 611 (7th Cir. 2009)..... 10

Hagi-Salad v. Ashcroft, 359 F.3d 1044 (8th Cir. 2004)..... 24, 27

Hamzah v. Holder, 428 F. App’x. 551 (6th Cir. 2001) 17

Hartooni v. INS, 21 F.3d 336 (9th Cir. 1994) 20

Hoxha v. Ashcroft, 319 F.3d 1179 (9th Cir. 2003) 14

In Re Acosta, 19 I&N Dec. 211 (B.I.A. 1985)..... 9, 10

<u>INS v. Aguirre-Aguirre</u> , 526 U.S. 415 (1999)	23
<u>INS v. Cardoza-Fonseca</u> , 480 U.S. 421 (1987).....	8
<u>Jonaitiene v. Holder</u> , 660 F.3d 267 (7th Cir. 2011)	10
<u>Kaiser v. Ashcroft</u> , 390 F.3d 653 (9th Cir. 2004)	26
<u>Kasonso v. Holder</u> , 445 F. App'x. 76 (10th Cir. 2010).....	17
<u>Kho v. Keisler</u> , 505 F.3d 50 (1st Cir. 2007).....	17
<u>Kibinda v. Att’y Gen. of U.S.</u> , 477 F.3d 113 (3d Cir. 2007)	20
<u>Knezevic v. Ashcroft</u> , 367 F.3d 1206 (9th Cir. 2009).....	15
<u>Korablina v. INS</u> , 158 F.3d 1038 (9th Cir. 1998).	14
<u>Kotas v. INS</u> , 31 F.3d 847 (9th Cir. 1994).	8, 9, 17
<u>Koyo Seiko v. United States</u> , 36 F.3d 1565 (Fed. Cir. 1994).	20, 24
<u>Leila Marcos v. Att’y Gen. of the U.S.</u> , No. 18-0512 (13th Cir. 2018).	5, 22, 27
<u>Lopez-Galarza v. INS</u> , 99 F.3d 954 (9th Cir. 1996).....	14, 16
<u>Lukwago v. Ashcroft</u> , 329, F.3d 157 (3d Cir. 2003).....	10
<u>Makonnen v. INS</u> , 44 F.3d 1378 (8th Cir. 1995).	9, 17
<u>Matter of A-M-E- & J-G-U-</u> , 24 I&N Dec. 69 (BIA 2007).	11
<u>Matter of A-R-G-C-</u> , 26 I&N Dec. 388 (BIA 2014).	25
<u>Matter of C-A-</u> , 23 I&N Dec. 951 (BIA 2006).	11, 12, 13
<u>Matter of E-A-G-</u> , 24 I&N Dec. 591 (BIA 2008).	12
<u>Matter of S-E-G-</u> , 24 I&N Dec. 579 (BIA 2008).	12
<u>Melkonian v. Ashcroft</u> , 320 F.3d 1061 (9th Cir. 2003)	25, 27
<u>Mgoian v. INS</u> , 184 F.3d 1029 (9th Cir. 1998).....	9, 14, 15
<u>Negusie v. Holder</u> , 555 U.S. 511 (2009).	19, 24

<u>Oryakhil v. Mukasey</u> , 528 F.3d 993 (7th Cir. 2008).....	19, 25, 27
<u>Patel v. AG of the United States</u> , 259 F. App'x 511 (3d Cir. 2007).	19, 24
<u>Rivera-Barrientos v. Holder</u> , 666 F.3d 641 (10th Cir. 2012).....	10, 12, 13
<u>Sael v. Ashcroft</u> , 386 F.3d 922 (9th Cir. 2004).....	9
<u>Sepulveda v. Att'y Gen.</u> , 401 F.3d 1226 (11th Cir. 2005).....	26
<u>Siagian v. Holder</u> , 478 F. App'x. 201 (5th Cir. 2012).	17
<u>State v. Beaver Dam Area Dev. Corp.</u> , 752 N.W.2d 295 (Wis. 2008).....	20, 21
<u>Suyono v. Holder</u> , 530 F. App'x. 73 (2d Cir. 2013).	17
<u>Temu v. Holder</u> , 740 F.3d 887 (4th Cir. 2014).	10, 17
<u>Valdiviezo-Galdamez v. AG of the United States</u> , 663 F.3d 582 (3d Cir. 2011).	13
<u>Yanes-Estevez v. United States AG</u> , 389 F. App'x. 974 (11th Cir. 2010).....	17
<u>Yong Hao Chen v. United States INS</u> , 195 F.3d 198 (4th Cir. 1999).....	15
<u>Zhou Hau Zhu v. United States AG</u> , 703 F.3d 1303 (11th Cir. 2013).....	13, 19, 25

STATUTES

8 C.F.R. § 1003.1 (2019).....	24
8 C.F.R. § 208.13 (2019)	<i>passim</i>
8 U.S.C. § 1101 (2018)	<i>passim</i>
8 U.S.C. § 1158 (2018)	7

OTHER AUTHORITIES

Amnesty International, <u>Risking Rape to Reach a Toilet</u> , Amnesty International (last visited Jan. 31, 2019) https://www.amnesty.org/en/documents/afr32/006/2010/en/	22
<u>Federal Agencies Involved in Water Interests</u> , Water Education Foundation (last visited Jan. 31, 2019), https://www.watereducation.org/federal-agencies-involved-water-issues	21

Suvi Sojamo, Martin Keulertz, Jeroen Warner, John Anthony Allan, Virtual Water Hegemony: The Role of Agribusiness in Global Water Governance, 37 *Water International* 169, 169 (2014)
..... 22, 23

U.S. Government Global Water Strategy, USAID (last visited Jan 31. 2019),
<https://www.usaid.gov/what-we-do/water-and-sanitation/us-global-water-strategy> 21

OPINIONS BELOW

The citation for the Thirteenth Circuit Court of Appeals decision: Leila Marcos v. Attorney General of the United States, No. 18-0512 (13th Cir. 2018).

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. R 7(b)(ii) (2018).

STATUTES INVOLVED

8 C.F.R. § 1003.1(d)(ii)(3) (2019).

- (3) Scope of review.
 - (i) The Board will not engage in de novo review of findings of fact determined by an immigration judge. Facts determined by the immigration judge, including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the immigration judge are clearly erroneous.
 - (ii) The Board may review questions of law, discretion, and judgment and all other issues in appeals from decisions of immigration judges de novo.
 - (iii) The Board may review all questions arising in appeals from decisions issued by Service officers de novo.
 - (iv) Except for taking administrative notice of commonly known facts such as current events or the contents of official documents, the Board will not engage in fact finding in the course of deciding appeals. A party asserting that the Board cannot properly resolve an appeal without further fact finding must file a motion for

remand. If further fact finding is needed in a particular case, the Board may remand the proceeding to the immigration judge or, as appropriate, to the Service.

8 C.F.R. § 208.13 (b)(2) (2019).

- (b) Eligibility. The applicant may qualify as a refugee either because he or she has suffered past persecution or because he or she has a well-founded fear of future persecution.
- (2) Well-founded fear of persecution. (i) An applicant has a well-founded fear of persecution if:
 - (A) The applicant has a fear of persecution in his or her country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion;
 - (B) There is a reasonable possibility of suffering such persecution if he or she were to return to that country; and
 - (C) He or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear.
- (ii) An applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, if under all the circumstances it would be reasonable to expect the applicant to do so.
- (iii) In evaluating whether the applicant has sustained the burden of proving that he or she has a well-founded fear of persecution, the asylum officer or immigration judge shall not require the applicant to provide evidence that there is a reasonable possibility he or she would be singled out individually for persecution if:
 - (A) The applicant establishes that there is a pattern or practice in his or her country of nationality or, if stateless, in his or her country of last habitual residence, of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and
 - (B) The applicant establishes his or her own inclusion in, and identification with, such group of persons such that his or her fear of persecution upon return is reasonable.

8 C.F.R. § 208.13(b)(3) (2019).

- (3) Reasonableness of internal relocation. For purposes of determinations under paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2) of this section, 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 may, or may not, be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

- (i) In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecution is by a government or is government-sponsored.
- (ii) In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate.

8 U.S.C. § 1101(a)(42) (2018).

(a) As used in this Act--

- (42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or 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, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act [[8 USCS § 1157\(e\)](#)]) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

8 U.S.C. § 1158 (a)(1) (2018).

- (a) Authority to apply for asylum.
- (1) In general. Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 235(b) [8 USCS § 1225].

Basag Pen. Code § 4350 (a)(1) (2018).

Molestation is defined as any person who commits an act that subjects or exposes another person to unwanted or improper sexual advances or activity.

Basag Pen. Code § 4351 (2018).

Rape is committed by any person who: through force, threat, intimidation; acts upon a person deprived of reason or who is unconscious; or by grave abuse of authority, inserts his penis into another person's mouth or anal orifice; or who inserts any instrument or object, including penis, into the genital or anal orifice of another person.

- (d) Attempted rape is also punished.

STATEMENT OF THE CASE

Leila Marcos and her husband Bernardo are ethnically Timog and live on Northern Isda R. at 5. Isda and an adjacent island Mayaman make up the country of Basag. R. at 2. Historically, the Hilagan people lived on Mayaman and the Timog people lived on Isda. Id. Basag became independent of the Nation of Pulo and formed a unitary constitutional republic on May 12, 1954. Id. In the 1990's, Mayaman relied on tourism and Isda relied on a successful fishing industry. Id. Global warming and flooding destroyed Isda's once successful fishing industry. R. at 2-3. The destruction caused the Timog people of Isda to move to Mayaman. R. at 3. The Mayaman people were resistant to the new Isda people who were now moving to Mayaman. Id. The resistance caused the Isda-Timog people to have a difficult time fitting into the Mayaman culture. Id.

In 2011 with clean water becoming scarce, President Ferdinand Aquinto nationalized all water sources in Basag. Id. The more economically efficient island of Mayaman was able to create water facilities and protect water resources. Id. The poorer island of Isda could not protect the water resources as Mayaman did. Id. Isda faced government shut down of polluted wells, causing Timog people to relocate toward central Isda to gain access to fresh water. Id.

In 2013, the President of Basag signed a 30-year contract with Life Incorporated (Life Inc.) incorporated in Delaware, United States of America. R. at 3-4. The contract granted Life Inc. full control of maintaining and rebuilding water facilities on both islands of Basag. R. at 4. The liability clause of this contract did not require Life Inc. to comply with Basag laws. R. at 5 n.1. Breach of this contract would result in substantial financial liability for Basag. R. at 5. The contract also gave Life Inc. military aid supplied by the Basag government. R. at 4.

While Mayaman continued to be self-sustaining and prosperous, Isda became impoverished. Id. Timog people on Isda had very little access to clean water and did not have the

financial means to travel to other areas. Id. A group called the Water Warriors opposed the President's stance on the water crisis. Id. In June 2016, the Water Warriors began protesting outside of Life Inc. facilities. Id. In response, the Basag military tear gassed Life Inc. protesters. Id. The Water Warriors also went to Life Inc. facilities with homemade explosives. R. at 4-5. The majority of Basag's citizens are unsupportive of the Water Warriors. R. at 5. Life Inc. hired armed guards to combat the Water Warriors. Id. The armed guards were made up of natives of Mayaman, the Hilagan ethnic group. Id. The Basag military and Life Inc. guards killed more than 75 people. Id. The killings primarily occurred on Isda. Id. Presidential candidates are leery to have the Basag government re-control the water facilities. Id.

Marcos and her husband are directly affected by the water crisis in Isda. R. at 6. Marcos and Bernardo have moved two times in the last three years. Id. While Life Inc. rebuilds the water system, the only available water sources are through old scatter wells or Life Inc. storage facilities. Id. Women are the ones who primarily travel to collect water. Id. Marcos collects water every three days. Id. Marcos must bike a total of ten miles to get to the Life Inc. water storage facility. Id.

On March 6, 2017, when Marcos went to a Life Inc. water facility, Marcos was threatened by a guard. Id. The guard told Marcos that she could get more water if she had sex with him. Id. Marcos knew it was a threat because she heard that two weeks' prior, an Isda woman at another village was raped at a Life Inc. water storage facility by a guard. Id. In response to rape allegations, Life Inc. had its employees undergo sexual harassment training. R. at 6 n.2. Life Inc. issued a policy that any guard suspected of sexual assault would be terminated. Id. No action was taken against the guard for the alleged rape. Id. On March 9, 2017, Marcos found a newly metered well located fifteen miles from her home. R. at 6-7. At the well Marcos

witnessed a Basag soldier threaten a pregnant woman and ask her to lift up her shirt. R. at 7. The guard accused the pregnant woman of being a Water Warrior and forced her to remove her shirt to prove she was not hiding explosives. Id. Marcos recognized the woman and knew she was from a nearby village. Id.

On March 12, 2017, Marcos went back to the well and discovered that the Water Warriors destroyed the regulator, making it inoperable. Id. Due to the destruction of the well, Marcos had to travel back to the Life Inc. facility that she visited on March 6, 2017. Id. Marcos saw the same guard who threatened her on March 6. Id. The guard whispered to Marcos “I am going to have my way with you, honey, whether you want it or not.” Id. Marcos feared for her life after this incident. Id. Although she was scared, Marcos had to use the Life Inc. water facilities to get fresh water. Id.

On March 14, 2017, the metered well was repaired. Id. Marcos used the well for a short period of time before a heat wave impaired her ability to travel to procure water. Id. Due to the high temperatures, Life Inc. provided water access closer to the villages. Id. The new water check point was a 2-mile trip for Marcos. R. at 8. On April 5, 2017, a guard grabbed Marcos’ backside and whistled, while other guards laughed and also whistled. Id. On April 6, 2017, Marcos told her husband what she had experienced at the Life Inc. water facilities. Id. Upset, Bernardo went to the water checkpoint to find the guard who grabbed Marcos’ backside. Id. Bernardo confronted the guard and pulled out a knife, which resulted in the guard shooting Bernardo in the arm. Id. Life Inc. guards led a wounded Bernardo back home. Id. Marcos answered the door and recognized one of the guards as the guard who threatened her on March 6, 2017. Id. The guard winked at Marcos and made a thrusting upward gesture with two fingers towards Marcos. Id.

The night of April 6, 2017, Marcos and her husband took a fishing boat to Mayaman. Id. They stayed with Bernardo's fishing friend Bayani Santos. Id. Marcos told Bayani she feared for her safety if she had to return to Isda. Id. Bayani told Bernardo and Marcos that women did not have to travel far to get water. Id. Bayani warned Marcos that Life Inc. guards target Isda-Timog women, who sometimes stand out because of their poorer appearance R. at 8-9. Bayani did not see any violence to Isda-Timog women, but heard a rumor that an unmarried Isda-Timog woman recently became pregnant from unknown means. R. at. 9. Bayani suggested that Marcos change her appearance to look more like a local. Id. Bayani assured the couple that they would be safe in Mayaman as long as Marcos and Bernardo were not Water Warriors. Id.

Marcos and Bernardo had difficulty securing a permanent job due to Bernardo's injury. Id. Marcos was hesitant to work at nearby resorts, because she did not want to work with men. Id. Instead, Marcos worked at local shops and begged from tourists near resorts. Id. One night a group of Life Inc. guards were walking past Marcos. Id. Marcos quickly hid to avoid coming in contact with the guards. Id. Marcos heard one guard say "I cornered her by the well, and hit her until she submitted. Getting sex here is as easy as it is on Isda." Id.

In August of 2017, Marcos saved enough money to afford a one-way ticket for herself to the United States. Id. Bernardo stayed in Mayaman. Id. When Marcos arrived at a port of entry in the United States she filed for asylum. R. at 10. Marcos argued that her circumstances created a well-founded fear of future persecution, due to a pattern or practice of rape and harassment against similarly situated Timog women living in Basag. Id. While Marcos had not been a victim of rape or sexual violence, nor did she know anyone who had been a victim of rape or sexual violence, Marcos argued that the incident on April 5, 2017, in connection with the rumors of rape, gave her a reasonable fear of future harm. Id. There has been no substantial change to the

conditions in Basag since Marcos left on August 7, 2017. R. at 9.

After a hearing before the Immigration Judge (IJ), Marcos' asylum application was denied. R. at 10. The IJ determined that while she had established an objectively reasonable fear of future persecution, she could have avoided persecution by relocating within Basag. Id. Marcos appealed the IJ's decision to the Board of Immigration Appeals (BIA). Id. The BIA affirmed the IJ's opinion. Id. Marcos appealed to the United States Court of Appeals for the Thirteenth Circuit for review of the BIA's denial of asylum and the government cross-appealed the validity of the BIA's well-founded fear analysis. Id. The Thirteenth Circuit adopted the disfavored group analysis and found that Marcos established a well-founded fear of persecution. However, the court denied her asylum claim as it determined that Marcos did not prove her burden that it would not be reasonable for her to internally relocate. Leila Marcos v. Att'y Gen. of the U.S., No. 18-0512 (13th Cir. 2018). The Supreme Court of the United States granted certiorari. R. at 10.

SUMMARY OF THE ARGUMENT

Marcos has established a valid claim for asylum based upon her well-founded fear of persecution, and the unreasonableness to relocate within her country. An alien's membership in a disfavored social group can establish their well-founded fear of persecution. Timog women in Basag who are subject to harassment and rape are a disfavored group, to which Marcos belongs. A social group must share immutable characteristics, be visible within society and be defined with particularity. Marcos' social group are all women, of the Timog ethnicity who live in Basag. Furthermore, the women within the social group all share experiences of being harassed and raped by Life Inc. guards at Life Inc. facilities, which further speaks to the group's immutability.

The social group in question are visible, as women are predominantly the ones who collect water at the Life Inc. facilities. The Isda-Timog women visibly stand out on Mayaman because of their appearance. Marcos' social group is defined with particularity. Citizen's within Basag are able to identify the individual members who make up the social group of Timog women subject to harassment and rape.

Further, the disfavored group analysis is the proper standard to determine a well-founded fear of persecution. Even with a circuit split, the Supreme Court should adopt the disfavored group analysis as it is intelligible that aliens who share immutable characteristics, may be persecuted on account of their shared characteristics. The lower court in this case accepted the disfavored group analysis to establish Marcos' well-founded fear of persecution.

The respondent has not met their burden of proving that safe and reasonable relocation in Basag is possible for Marcos. The party who bears the burden for the internal relocation analysis, is solely dependent on the definition of the term 'government-sponsored.' If Life Inc. is deemed government-sponsored, internal relocation is presumed unreasonable and the respondent has the burden of proving internal relocation is reasonable. Since the term 'government-sponsored' is undefined, and the BIA neglected to define the term, this case should be remanded so the BIA can properly define 'government-sponsored.'

The BIA should find that Life Inc. is a government-sponsored entity as Life-Inc. resembles a government-sponsored entity. Life Inc.'s control over a natural resource gives Life Inc. immense power in Basag. Life Inc.'s 30-year contract with Basag gives Life Inc. exclusive control over water maintenance. Water is one of the most important resource to sustain life, and the government is traditionally the entity in control of its maintenance. The liability clause in the contract states that if Life Inc. breaks Basag laws, there is no breach of contract. Further, the

Basag military provides support for protecting Life Inc. facilities. It is also known that the Basag government does not want to take back control of water maintenance in Basag, and that a breach of contract would lead to substantial liability for the country. Basag is unwilling and unable to control Life Inc.

Even if Life Inc. was not considered a government-sponsored entity, Marcos has met her burden to prove that reasonable and safe internal relocation in Basag is not possible. Marcos has already tried to relocate from Isda to Mayaman and over heard a Life Inc. guard on Mayaman outline his acts of rape and harassment. Because Life Inc. facilities are on both islands of Basag, Marcos cannot escape the persecution she fears.

It is not reasonable for Marcos to safely internally relocate within Basag because Life Inc. guards are prevalent throughout both islands. Marcos cannot escape their persecution, as procuring clean water at Life Inc. facilities is unavoidable.

ARGUMENT

I. MEMBERSHIP IN A DISFAVORED GROUP IS SUFFICIENT TO ESTABLISH WELL-FOUNDED FEAR OF PERSECUTION.

Any alien who presents themselves at a port of entry upon their arrival into the United States, is eligible to apply for asylum. 8 U.S.C. § 1158(a)(1) (2018). For an individual to be eligible to receive asylum they must prove that they are a refugee under 8 U.S.C. § 1101(a)(42) (2018):

[t]he term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or 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

De novo standard of review is used in determining if an alien legally meets the requirements of

asylum eligibility. Abedini v. INS, 971 F.2d 188, 190 (9th Cir. 1992). The issue before the Court is if the disfavored group analysis should be adopted in determining an alien's well-founded fear of persecution or if a higher level of individualized fear should be required. This issue does not require the Court to make any factual determinations, thus de novo review is appropriate.

In a judicial review, an alien must meet a high burden of proving that the BIA's decision in denying asylum was improper as, "the evidence he presented was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution." Kotasz v. INS, 31 F.3d 847, 851 (9th Cir. 1994). If a reviewing court determines that the BIA made an incorrect application of law, the reviewing court may vacate the denial of asylum and order the case to be remanded back to the BIA to make the proper determinations. Castillo-Villagra v. INS, 927 F.2d 1017, 1031 (9th Cir. 1992).

The Attorney General holds the power to grant asylum to an alien. Asylum is granted upon an alien's valid showing that they cannot return to their country because of their well-founded fear of persecution, based on a number of factors including an alien's membership within a social group. INS v. Cardoza-Fonseca, 480 U.S. 421, 423 (1987). Congress amended the Refugee Act of 1980 to include the phrase "well-founded fear of persecution." Id. at 434. Congress did so intentionally in order to align United States Immigration Law with the United Nations Protocol relating to refugees. Id. at 436. Following Congress' alignment to the United Nations Protocol, in 1990 the Immigration and Nationality Act incorporated proof of group membership in order to establish an alien's well-founded fear of persecution. Kotasz v. INS, 31 F.3d 847, 852 (9th Cir. 1994). An asylum officer may not require an alien to show their individualized well-founded fear of persecution if that alien can establish that there is a pattern or practice of persecution based on membership in a group, and that the alien is a member of the

group, making her fear reasonable. 8 C.F.R. § 208.13 (b)(2)(C) (2019). An alien holds the burden to establish their well-founded fear of persecution, based on a preponderance of the evidence. In Re Acosta, 19 I&N Dec. 211, 215 (BIA 1985).

The Thirteenth Circuit's adoption of the disfavored group analysis should be affirmed as the standard an asylum applicant must meet to establish their well-founded fear of persecution. Marcos has established that she is a member of a disfavored group, Timog women living in the Basag Islands who are subject to rape and harassment. Due to Marcos' membership in a disfavored group, combined with Marcos' subjective and objective fear of persecution, Marcos can establish a well-founded fear of persecution.

A. Timog Women Living in the Basag Islands Who Are Subject to Rape and Harassment Are a Disfavored Social Group.

This Court should adopt the Thirteenth Circuit's holding that membership in a disfavored group is the appropriate standard to illustrate fear of persecution. Ordinarily, an alien is required to show individualized fear differing from any harm the general population may face. Mgoian v. INS, 184 F.3d 1029, 1035 (9th Cir. 1998). However, if an alien can establish that they are a member of a social group and the group faces a pattern or practice of being persecuted, particularized fear of persecution is likely met. Id. The higher the severity of group persecution, the higher the risk to all members of a social group. Kotasz, 31 F.3d at 853. A requirement of persecution to each member of a social group would be unreasonable to determine an alien's pattern or practice of persecution. Makonnen v. INS, 44 F.3d 1378, 1383 (8th Cir. 1995). Once a social group is proven to be systemically targeted, and once an alien can show they are a member of that social group, a low level of individualized risk is required. Sael v. Ashcroft, 386 F.3d 922, 927 (9th Cir. 2004).

The court has created a three-part test in order to determine the qualifications for a social

group under 8 U.S.C. § 1101(a)(42)(A). Temu v. Holder, 740 F.3d 887, 892 (4th Cir. 2014).

First, members of the group “must share a common immutable characteristic . . . that members of the group cannot change, or should not be required to change.” Id. A common characteristic includes sex, color, or some unifying past experience. Rivera-Barrientos v. Holder, 666 F.3d 641, 648 (10th Cir. 2012). Next, the social group must be visible within the public. Temu, 740 F.3d at 892. Lastly, the group must be defined with particularity so that members of the group are easily distinguishable. Id.

1. Marcos’ Social Group Share Common Immutable Characteristics.

An immutable characteristic must be shared by all members of the social group. Id. An immutable characteristic can also include familial ties, sexual orientation, association to a controversial group and association to a group with socially adverse viewpoints. Cece v. Holder, 733 F.3d 662, 669 (7th Cir. 2013). Case law has established that sex is a characteristic that unifies group members. Fatin v. INS, 12 F.3d 1233, 1239 (3d Cir. 1993). Further, an immutable characteristic can be a shared experience or past status. In Re Acosta 19 I. & N. Dec. at 233. A shared experience can include past membership in a criminal organization, Gatimi v. Holder, 578 F.3d 611, 614 (7th Cir. 2009), Ugandan child soldiers who fled enslavement, and torture, Lukwago v. Ashcroft, 329, F.3d 157, 178 (3d Cir. 2003), or former gang members who have turned to religion. Benitez Ramos v. Holder, 589 F.3d 426, 428-29 (7th Cir. 2009) (cited in Cece, 578 F.3d at 670).

A social group cannot solely rely on a shared experience of past harm. Jonaitiene v. Holder, 660 F.3d 267, 271-72 (7th Cir. 2011). However, a shared experience of past harm does not disqualify a validly defined social group. Escobar v. Holder, 657 F.3d 537, 547 (7th Cir. 2011). In Cece, the appeals court found that the petitioner shared immutable characteristics

within her social group which including being (1) young, (2) Albanian, (3) women, (4) living alone. 578 F.3d at 672. Similarly, in Fatin, the court found that (1) Iranian, (2) women, (3) who found their country's gender-specific laws offensive and (4) who did not wish to comply with them, constituted immutable characteristics. 12 F.3d 1233, 1241.

Marcos meets her requirements of establishing her group's immutable characteristic. First, Timog and women, are two separate immutable characteristics. One cannot control their ethnicity nor can one control their sex. Next, the location of living in Basag also forms an immutable characteristic. Similar to Cece, one's location can speak to immutability. Lastly, being subjected to rape and harassment is a unifying shared experience that is also immutable.

Due to Life Inc's. monopoly over the water system in Basag, Marcos and other Timog women must use Life Inc.'s facilities to procure water. Women are the ones who mostly collected water as men work in local businesses or fisheries. Id. The record indicates that women, and not men, were harassed and raped by Life Inc. guards at Life Inc. water facilities. R. at 6-8. Marcos herself was directly warned that Life Inc. guards target Timog women who are easily identifiable by their appearance. R. at 9. Marcos has established a multitude of immutable characteristics that are commonly shared among her social group.

2. Marcos' Social Group is Visible Within Society.

Visibility of a social group is determined within the country the alien is fleeing. Matter of A-M-E- & J-G-U-, 24 I&N Dec. 69, 74 (BIA 2007). While past harm is not a requirement of visibility, past harm is pertinent in showing a group's visibility. Id. Whether or not a group is visible, must be shown in two ways. Matter of C-A-, 23 I&N Dec. 951, 957 (BIA 2006). The first factor is if the alien's society would view the immutable characteristic of an individual as a trait belonging to a social group. Id. For instance, an individual belonging to a group of

informants was not seen as satisfying the first prong of visibility. Matter of E-A-G-, 24 I&N Dec. 591, 594-95 (BIA 2008). Second, the community must be able to identify an individual as a member of the distinct social group. Matter of S-E-G-, 24 I&N Dec. 579, 586 (BIA 2008)

Examples under prong two include:

Filipino's of Mixed Filipino-Chinese ancestry; young women of a particular tribe who were opposed to female genital mutilation; persons listed by the government as having the status of homosexual; former members of the national police; former military leaders; landowners; families.

Matter of C-A-, 23 I&N Dec. at 960. The visibility test does not have a strict requirement that one's trait be easily recognizable, but rather that one's trait be potentially identifiable, "either because it is evident or because the information defining the characteristic is publicly accessible." Rivera-Barrientos, 666 F.3d at 652. The circuits are split on their acceptance of the BIA's use of the visibility test. The Seventh Circuit is against the test whereas the First, Second, Eighth, Ninth, Tenth and Eleventh Circuit's accept the visibility test. Id. at 652-53

Marcos is visibly apparent within her country of Basag. Marcos' sex and ethnicity are highly visibly within society. Marcos and her social group are also visible because women are predominantly the ones collecting water at Life Inc. facilities. R. at 6. Lastly, Marcos was warned by Bayani, a local of Mayaman, that women were targeted by Life Inc. guards because Isda-Timog women, "sometimes stand out due to their poorer appearance and financial inability to buy local clothing." R. at 8-9. Further, the groups past harm also speaks to their visibility. Marcos was told by a guard that she could get more water if she had sex with him. R. at 6. Marcos also heard an Isda woman in another village was raped at a Life Inc. facility by a guard. Id. Marcos witnessed a Life Inc. guard threaten a pregnant woman and force her to lift up her shirt to ensure she was not hiding explosives. R. at 7. On March 6, Marcos was told by a guard "I am going to have my way with you, honey, whether you want it or not." Id. On April 6, a Life

Inc. guard grabbed Marcos' backside and whistled. R. at 8. Under the Basag Pen. Code § 4350 (a)(1), unwanted touching constitutes molestation. Marcos also overheard a guard state that he cornered a woman by a well and hit her until she submitted to have sex with her. R. at 9. All of these instances exemplify past persecution experienced by the social group of Timog women who are harassed and raped by Life Inc. guards.

3. Marcos' Social Group is Defined With Particularity.

Finally, a group must be defined with particularity. The definition must be specific enough to create a standard for deciding who is within the group. Valdiviezo-Galdamez v. AG of the United States, 663 F.3d 582, 600 (3d Cir. 2011). The BIA defines particularity as "whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized in the society in question, as a discrete class of persons." Id. The definition 'non-criminal informants' was not shown to be defined with particularity. Matter of C-A-, 23 I&N Dec. at 957. The BIA held that Honduran men who resisted gang recruitment was not a social group defined with particularity. Whereas in Rivera-Barrientos, "El Salvadoran women between the ages of 12 and 25 who have resisted gang recruitment" was considered a social group defined with particularity. 666 F.3d at 650.

Marcos' social group is defined with particularity, similar to the social group found in Rivera-Barrientos. Marcos' social group of Timog women living in Basag who are subject to rape and harassment, is defined with particularity. Evidence that the social group is defined with particularity and therefore visible within society is seen when Bayani tells Marcos that Life Inc. guards target Isda-Timog women. R. at 8-9. Bayani, a member of Mayaman society, believes Marcos to be in the distinct social group as evidenced by his cautionary advice.

Marcos is clearly a member of the distinct social group of women who are raped and

harassed. While she herself has not been raped, she has been harassed and molested specifically because she is a Timog woman, who needs to collect water at Life Inc. water storage facilities. Marcos' immutable characteristics, her visibility and her shared experience of harassment establishes that (1) she is a member of a disfavored social group, and (2) the social group is targeted on account of their immutability.

B. Well-Founded Fear Must Also Be Based on an Alien's Subjective and Objective Fear of Future Persecution.

Marcos has met her statutory burden of establishing her well-founded fear of persecution according to 8 U.S.C. § 1101(a)(42)(A). For an alien to establish a well-founded fear of persecution their fear must be, "both subjectively genuine and objectively reasonable to qualify for asylum." Korablina v. INS, 158 F.3d 1038, 1044 (9th Cir. 1998). Persecution is defined as "the infliction of suffering or harm upon those who differ (in race, religion, or political opinion) in a way regarded as offensive." Hoxha v. Ashcroft, 319 F.3d 1179, 1182 (9th Cir. 2003). Mere threats without further action does not prove past persecution. Ahmed v. Ashcroft, 348 F.3d 611, 616 (7th Cir. 2003). However, "past threats and violence may establish a sufficient individualized risk, even if they did not rise to the level of persecution." Hoxha, 319 F.3d at 1184. Also, rape can illustrate persecution if there is evidence that the rape occurred on account of a characteristic listed in 8 U.S.C. § 1101(a)(42)(A). Lopez-Galarza v. INS, 99 F.3d 954, 959 (9th Cir. 1996).

The subjective component of well-founded fear is met when an individual believes that they fear persecution. Mgoian, 184 F.3d at 1035. Individualized fear of persecution is established through credible testimony. Blanco-Comarribas v. INS, 830 F.2d 1039, 1042 (9th Cir. 1987). The objective component is shown in one of two ways; either through a showing of past persecution, or a showing of future persecution. Mgoian, 184 F.3d 1029 at 1035. An alien does

not have to prove individual persecution to satisfy the objective prong if the alien can establish a pattern or practice of persecution to members of a social group, and further, the alien is a member of that social group. Id.

An individual can show the objective component by illustrating that a “reasonable person in like circumstances would fear persecution.” Yong Hao Chen v. United States INS, 195 F.3d 198, 202 (4th Cir. 1999). Lastly, the past or future persecution must be based on one of the grounds established in 8 U.S.C. § 1101(a)(42)(A). Mgoian, 184 F.3d 1029 at 1035. A well-founded fear can be established if one faces a less than 50% chance of the persecution taking place should the applicant return to their country. Id. at 203. However, a mere 10% chance of future persecution is sufficient to meet one’s burden Knezevic v. Ashcroft, 367 F.3d 1206, 1212 (9th Cir. 2009).

Here, Marcos has subjectively and objectively established that she fears future persecution should she remain in Basag. First, Marcos subjectively feared she would be hurt if she were to remain in Isda or Mayaman. Marcos has been harassed while trying to collect water at Life Inc.’s water storage facility. R. at 6. On March 6, 2017, a guard at Life Inc. water facility told Marcos she could get more water if she had sex with him. Id. Marcos knew the guard’s proposal was a threat as she heard that an Isda woman from another village was raped by a guard at a Life. Inc. facility. Id. On March 9, 2017, at different Life Inc. facility, Marcos watched as a guard forced a pregnant woman to lift her shirt to ensure she was not concealing explosives. R. at 7. On March 12, 2017, at the same facility she visited on March 9, a guard whispered in Marcos’ ear “I am going to have my way with you, honey, whether you want it or not.” Id. After this encounter the record explicitly states, Marcos “feared for her safety, but knew she had to continue to use Life Inc. facilities in order to procure water.” Id. On April 5, 2017, Leila was

molested when a guard grabbed her backside. R. at 8. After fleeing from Basag to the United States, Marcos feared that she would be targeted if she were forced to return to Basag. R. at 8-9. Marcos has met her burden of establishing she subjectively feared persecution at the hands of the guards working at Life Inc. facilities.

Marcos' has also met her burden of establishing an objective level of fear due to her membership in a disfavored social group. Marcos' social group has a pattern of being persecuted due to their membership in the social group. There are allegations that a Timog woman was raped by a guard at a Life Inc. water facility. R. at 6. Life Inc. guards have also bragged about raping a Timog woman by a well, by hitting her into submission. R. at 9. An unmarried Timog woman became pregnant by 'unknown' means. R. at 9. According to Lopez-Galarza, rape, if proved to be committed based on a characteristic listed in 8 U.S.C. § 1101 (a)(42)(A) can prove persecution. 99 F.3d at 959.

In addition to allegations of sexual assault, the multitude of harassment claims also speak to objectivity. A Life Inc. guard forced a pregnant woman to lift up her shirt to ensure she was not carrying explosives. R. at 7. A Life Inc. guard grabbed Marcos' backside and whistled, with other guards joining in on the laughter. R. at 8. When Marcos and Bernardo arrived to Mayaman a local man warned Marcos that the Life Inc. guards target Isda-Timog women due to their visibly poorer appearance. R. at 9.

Marcos has also established that it was subjectively and objectively reasonable to fear that she would be targeted and raped by a Life Inc. guard should she remain on the islands of Basag.

C. This Court Should Adopt the Disfavored Group Standard as the Applicable Standard to Illustrate Well-Founded Fear.

This Court should adopt the Ninth Circuit's disfavored group analysis which allows an

alien to establish an objective level of fear of persecution upon a showing of membership within a disfavored group. The disfavored group analysis was first visible in the Ninth Circuit case of Kotasz v. INS, decided in 1994:

group membership itself subjects the alien to a reasonable possibility of persecution, so that he or she will be able to satisfy the objective component of the well-founded fear standard simply by proving membership in the targeted group.

31 F.3d 847, 852 (9th Cir. 1994). The circuit courts are currently split on their acceptance of the Ninth Circuit's disfavored group analysis. The circuits in favor of the group analysis are the Fourth Circuit, Temu v. Holder, 740 F.3d at 892, Eighth Circuit, Makonnen v. INS, 44 F.3d at 1383, and the Ninth Circuit. The circuits who have rejected the disfavored group analysis are the First Circuit, Kho v. Keisler, 505 F.3d 50, 55 (1st Cir. 2007), Third Circuit, Firmansjah v. Gonzales, 424 F.3d 598, 607 (3d Cir. 2005), and the Seventh Circuit, Ahmed v. Gonzales, 467 F.3d 669, 675 (7th Cir. 2006).

The Second, Fifth, Sixth, Tenth, and Eleventh Circuit's have acknowledged the disfavored group analysis, but have not formally adopted nor rejected the theory. Suyono v. Holder, 530 F. App'x. 73, 75 (2d Cir. 2013); Siagian v. Holder, 478 F. App'x. 201, 203 (5th Cir. 2012); Hamzah v. Holder, 428 F. App'x, 551, 557 n.3. (6th Cir. 2001); Kasonso v. Holder, 445 F. App'x. 76, 80 (10th Cir. 2010); Yanes-Estevez v. United States AG, 389 F. App'x. 974, 979 n.1. (11th Cir. 2010). The D.C. Circuit is silent on the issue.

While the respondent may argue for a higher showing of individualized fear in order to avoid a surge of asylum grants, the circuit courts have already considered the issue, and have found that other mechanisms are in place to avoid a flood gate of asylum claims. The Seventh Circuit considered how large social groups affect an alien's claim for asylum. Cece v. Holder, 733 F.3d 662. The court in Cece considered a number of historically large social groups such as

the seven-hundred thousand Tutsis people living in Rwanda, and the nearly six million Jews killed by the Nazi's and found that "it would be antithetical to asylum law to deny refuge to a group of persecuted individuals who have valid claims merely because too many have valid claims." Id. at 675.

The Seventh Circuit also rejected the Sixth Circuit's argument that the increase in the size of a social group diminishes the groups recognition. Id. Further, membership in a particular group to illustrate persecution is a valid standard, as the court has a mechanism to avoid an influx of asylum claims. Id. The alien still must establish the requirements under 8 U.S.C. § 1101(a)(42)(A), she has a well-founded fear of persecution because of a specific characteristic, and she unable to or unwilling to return to her country. Id.

The disfavored group analysis should be the standard used by all courts in the United States. The analysis allows the applicant to show their fear of persecution based upon their group membership, as it is likely that aliens who share immutable characteristics, may be persecuted on account of their shared characteristics. The Thirteenth's Circuit's acceptance of the disfavored group analysis should be affirmed.

II. THE RESPONDENT HAS NOT MET THEIR BURDEN OF PROVING THAT SAFE AND REASONABLE INTERNAL RELOCATION WITHIN BASAG IS POSSIBLE FOR MARCOS.

Once a well-founded fear of persecution has been established, internal relocation analysis is the next step. The party that has the burden of proof depends on the nature of the persecution. For the current case, the party who has the burden of proof is wholly dependent on the definition of the term 'government sponsored':

In cases in which the persecutor is a government or is government-sponsored . . . it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the

evidence that, under all the circumstances, it would be reasonable for the applicant to relocate.

8 C.F.R. § 208.13(b)(3)(ii) (2019). If Life Inc. is deemed government-sponsored, it is presumed that internal relocation is unreasonable, and the respondent must rebut this presumption by going through the internal relocation analysis. If Life Inc. is not deemed a government-sponsored entity, “the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate” 8 C.F.R. § 208.13(b)(3)(i) (2019). Since the burden of proof for internal relocation analysis is reliant on whether the persecutor is government-sponsored or not, the term ‘government-sponsored’ should be analyzed.

Chevron deference applies in this case, since the BIA, the administration that deals with immigration and asylum issues, is best suited to define the term ‘government-sponsored’ for its future cases. The term ‘government-sponsored’ in 8 C.F.R. § 208.13(b)(3) is ambiguous as both parties are interpreting the term differently as it pertains to Life Inc. The definitive definition of the term has not been provided by the BIA. Since there are multiple interpretations of the term ‘government-sponsored’, the BIA should be the agency to define it. See Negusie v. Holder, 555 U.S. 511, 517 (2009). This case should be remanded to the BIA to define the term ‘government-sponsored.’ See Patel v. AG of the United States, 259 F. App’x 511, 513 (3d Cir. 2007).

Even if Life Inc. is not deemed a government-sponsored agency, Marcos meets her burden of proving that it is neither possible, nor reasonable for her to internally relocate within Basag safely. Oryakhil v. Mukasey, 528 F.3d 993, 998 (7th Cir. 2008). The standard of review for internal relocation analysis is de novo. Zhou Hau Zhu v. United States AG, 703 F.3d 1303, 1312 (11th Cir. 2013).

A. Life Inc. is a Government-Sponsored Entity.

For asylum cases, the terms ‘government-sponsored’ and ‘quasi-government’ are used interchangeably throughout the circuit courts. The terms ‘government-sponsored’, and ‘quasi-government’ have not been defined by the BIA and are an integral component of the analysis for asylum cases. If the case is not remanded to the BIA, the term should be given its plain meaning. Koyo Seiko v. United States, 36 F.3d 1565, 1571 (Fed. Cir. 1994). Reviewing courts are not meant to define these terms on their own. Id. A plain meaning of the term should be used for the definition. Id. A plain meaning of ‘government-sponsored’ does exist, and using this definition, Life Inc. should be deemed a government-sponsored entity.

1. Life Inc. Resembles a Government-Sponsored Entity.

Persecution by an entity does not have to be conducted directly by the government itself, as long as it was conducted “by forces the government is unable or unwilling to control.” Kibinda v. Attorney General of U.S., 477 F.3d 113, 119 (3d Cir. 2007). Life Inc. does not need to have the full reach of the government to be deemed government-sponsored. Persecutory acts by a single governmental or quasi-governmental official are sufficient to establish state action. See Boer-Sedano v. Gonzales, 418 F.3d 1082, 1088 (9th Cir. 2005). Acts by an individual persecutor, who is an employee of a government-sponsored entity, can lead to the persecution being deemed government-sponsored. Proof of discrimination against a group to which the petitioner belongs, is always a relevant factor in determining asylum claims. See Hartooni v. INS, 21 F.3d 336, 341 (9th Cir. 1994).

In Beaver, an area development non-profit corporation, was exclusively tasked with promoting economic development within the city. State v. Beaver Dam Area Dev. Corp., 752 N.W.2d 295, 299 (Wis. 2008). Two of the twelve board members for the corporation were

members of the government, the rest were private individuals. Id. The city and the corporation entered into a contract, where the city agreed to provide the corporation with office space, office equipment, clerical support, and funds for economic development if needed. Id. at 300. The corporation did not conduct its meetings in city facilities. Id. at 299. The State filed a complaint claiming that the corporation was a quasi-governmental corporation, which would make them subject to open meeting laws and public record laws. Id. at 300. The circuit court held in favor of the corporation, but on appeal, the court of appeals held that the corporation was a quasi-governmental entity based on the statutory interpretation of state statutes for open meeting and public record laws. Id. at 301.

Similarly, Life Inc. should also be deemed as a quasi-governmental or government-sponsored entity because Life Inc. is strongly entangled with the government of Basag. Life Inc. maintains all the water in Basag, which is a task traditionally left for the government. In the United States, there are numerous federal agencies, environmental protection agencies, state and federal legislative committees, and other government organizations tasked with maintaining water. Federal Agencies Involved in Water Interests, Water Education Foundation (last visited Jan. 31, 2019), <https://www.watereducation.org/federal-agencies-involved-water-issues>. The United States government also created a global water strategy to outline the government's strategic objectives involving water and water crises. U.S. Government Global Water Strategy, USAID (last visited Jan 31. 2019), <https://www.usaid.gov/what-we-do/water-and-sanitation/us-global-water-strategy>. Life Inc., incorporated out of Delaware, United States, signed a 30-year contract with the government of Basag to exclusively maintain, manage and rebuild Basag's water facilities. R. at 3. The Basag government also provides military aid to Life Inc. as well. R. at 4.

Life Inc. is more tied to the government than the corporation in Beaver. If the contract with Life Inc. were to breach, it would result in substantial liability for the country. R. at 5. The contract also has a liability clause that states that violation of Basag law does not constitute breach of contract. R. at 5. This points to Basag being unwilling and unable to control Life Inc. as the liability clause incentivizes Life Inc.'s continued control, regardless of their actions. Life Inc. has the power to remain in Basag until 2043, even if they were to violate all of Basag's laws.

Although Basag has provided citizens with civil and criminal remedies for rape and molestation (R. at 5 n.1), there are no statistics on how effective these remedies are. It is also extremely common for crimes of rape to go unreported for fear of backlash in third world countries, especially when access to basic human needs are controlled by the persecutors. Amnesty International, Risking Rape to Reach a Toilet, Amnesty International (last visited Jan. 31, 2019) <https://www.amnesty.org/en/documents/afr32/006/2010/en/>. Statistics from the United Nations state that there have been numerous reports of non-consensual sexual interactions in Basag from Life Inc. between 2013 and 2017. Leila Marcos v. Att'y Gen. of the U.S., No. 18-0512 (13th Cir. 2018) at 4. There are also no statistics in the record to determine if the Basag government has charged Life Inc. employees criminally or civilly for their actions. Two weeks prior to March 6, 2017, an Isda woman was allegedly raped by a Life Inc. guard. R. at 6. The Basag government assured citizens that guards suspected of sexual assault would be terminated, but no action was taken against the guard who was suspected of the alleged rape. R. at 6.

Life Inc. should also be deemed a government-sponsored entity because water companies in third world countries have both power and influence that rival the government. Global food and water crises have shed light on the role corporations play in global water insecurity. Suvi Sojamo, Martin Keulertz, Jeroen Warner, John Anthony Allan, Virtual Water Hegemony: The

Role of Agribusiness in Global Water Governance, 37 *Water International* 169, 169 (2014).

Corporations that deal with water internationally have been described as having a water hegemony, due to the fact that their control over water has such a profound effect over countries and their people. *Id.* at 175. Large corporations that deal with water internationally have major leverage politically because they control basic essentials that people cannot live without. *Id.* Declaring that Life Inc. is not government-sponsored is dangerous, as it could have a profound effect on asylum cases in the future, where water insecurity is a factor. Basag is unable and unwilling to control Life Inc. due to the sheer power Life Inc. has in the country.

2. *Chevron* Deference Applies and a Remand to the BIA is Necessary.

Chevron deference applies and a remand to the BIA is necessary. Once the case is remanded to the BIA, the BIA should define the term ‘government-sponsored’ for future cases, as well as deem Life Inc. as a government-sponsored entity. *Chevron* deference states:

If . . . the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction of the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on permissible construction of the statute.

Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 843 (1984). The BIA’s decision is not based on a permissible construction of the statute, as the BIA has determined internal relocation is possible for Marcos, without defining the term ‘government-sponsored’ from 8 C.F.R. § 208.13(b)(3), which is integral for the analysis. The Supreme Court recognized the role of the BIA and determined that *Chevron* deference principles definitely apply. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 424 (1999). Since *Chevron* applies, the court cannot impose their own construction of the term ‘government-sponsored’ and it shall be given no deference.

The term ‘government-sponsored’ in the 8 C.F.R. § 208.13(b)(3) is ambiguous, with both parties relying on different interpretations of the term. The definitive definition of the term has not been provided by the BIA and therefore has gone undefined. “Undefined terms in a statute are deemed to have their ordinary meaning.” Koyo Seiko, 36 F.3d at 1571. Since there could be multiple interpretations of the term ‘government-sponsored’, the BIA should be the agency to define it. See Negusie, 555 U.S. at 517. This case should be remanded to the BIA to define the term ‘government-sponsored.’ See Patel, 259 F. App’x at 513.

In Hagi-Salad, the BIA determined that the petitioner did not have an asylum claim, while disregarding the reasonableness standard set forth in 8 C.F.R. § 208.13(b)(3). Hagi-Salad v. Ashcroft, 359 F.3d 1044, 1049 (8th Cir. 2004). The BIA did not interpret C.F.R. § 208.13(b)(3) and overlooked it altogether in their analysis. Id. The court held that the BIA decision was an error of law, which precluded it from affirming the BIA’s decision. Id. The case was remanded as the court determined the petitioner was entitled to have his asylum claim considered under the proper analysis. Id.

Likewise, the BIA in the current case has denied an asylum claim, while overlooking a key aspect of the analysis. The internal relocation analysis cannot be done without defining the term ‘government-sponsored.’ The term is integral to the analysis, as the burden shifts based on if an entity is considered government-sponsored or not. The case should be remanded back to the BIA so they can properly define what a government-sponsored entity is.

Like Hagi-Salad, since there has been an error of law, the standard of review in this case is de novo. For the BIA, all issues involving questions of law, discretion and judgement are de novo. 8 C.F.R. § 1003.1(d)(ii)(3) (2019). The ambiguity of a term in a statute is a question of law. Whether a group is considered a ‘disfavored group’ for purposes of asylum, has also been

determined as a question of law by the BIA. Matter of A-R-G-C-, 26 I&N Dec. 388, 390 (BIA 2014). The standard of review for internal relocation analysis is de novo. Zhou Hau Zhu v. United States AG, 703 F.3d 1303, 1312 (11th Cir. 2013).

B. Even if Life Inc. is Not a Government-Sponsored Entity, Marcos Has Met the Burden of Proving That She Could Not Avoid Future Persecution by Internally Relocating Within Basag.

The relocation standard asks (1) whether safe relocation is possible and if (2) whether it would be reasonable for the applicant to safely relocate. Oryakhil, 528 F.3d at 998. The mere fact that an alien could escape a particular group of persecutors by relocating internally does not necessarily mean that internal relocation is ‘reasonable.’” Melkonian v. Ashcroft, 320 F.3d 1061, 1069 (9th Cir. 2003). Just because it is within the realm of possibility that someone could escape and relocate, does not mean that is the standard petitioners must reach for the internal relocation analysis.

To further expand on the standard for internal relocation, the internal relocation inquiry is a two-part inquiry: (1) will relocation allow an alien to successfully escape the persecution and (2) is relocation reasonable in the light of a variety of factors. Gambashidze v. Ashcroft, 381 F.3d 187, 192 (3d Cir. 2004). Internal relocation for asylum is done on a case by case basis and a variety of factors are taken into consideration.

1. It is Not Possible for Marcos to Safely Relocate Within Basag.

The first consideration for the internal relocation analysis is, “(1) whether safe relocation is possible” Oryakhil, 528 F.3d at 998. This element is based on if the petitioner can be safely relocated, not if the petitioner can be relocated at all. Even if relocation is possible, that does not mean that safe relocation is possible. See Melkonian, 320 F.3d at 1069. When a persecutory presence has influence throughout a country, internal relocation should not be

deemed viable. See Sepulveda v. Att’y Gen., 401 F.3d 1226, 1232 (11th Cir. 2005) (where the court held that an IJ erred in holding that internal relocation was viable and that the persecutory presence was minimal, when evidence of reports supported the fact that the persecutory presence was throughout the country).

In Kaiser, petitioner received life-threatening phone calls while in cities located at the opposite ends of Pakistan. Kaiser v. Ashcroft, 390 F.3d 653, 659 (9th Cir. 2004). It was determined that because of this, the petitioner could not relocate safely anywhere within Pakistan. Id. at 660. The court held that the petitioner met the burden of proving that internal relocation would be unsafe. Id. The fact that petitioner lived safely in other parts of Pakistan previously was not determinative, as the periods of safety happened before the life-threatening phone calls began. Id.

Similarly, it is not possible for Marcos to relocate within Basag, because Life Inc. has a controlling presence on the entirety of Basag’s islands. Although Life Inc. is not a violent political party, Life Inc. has complete control over water maintenance in Basag. Since Basag is currently experiencing water scarcity, Life Inc., with their exclusivity over water in Basag, are in a position of immense power within the country. Water is one of the most essential resources to sustain life and well-being, and Life Inc. is in a prime position to abuse their power and use it against the locals. Marcos cannot safely relocate from Isda to Mayaman, because Life Inc. has control of the water in the entire country of Basag.

In Arboleda, the BIA determined that internal relocation was reasonable for the petitioner, by relying on an inaccurate report that stated the persecuting entity did not function countrywide. Arboleda v. Att’y Gen., 434 F.3d 1220, 1222 (11th Cir. 2006). Additional reports provided by the petitioner showed that the persecutors had influence nation-wide. Id. at 1224.

The court held that the BIA erred, as sufficient weight was not given to the fact that the petitioner had relocated and was still being threatened. Id.

Similarly, in our case, there are United Nations reports that account for non-consensual sexual interactions between Life Inc. and Timog women from 2013 to 2017, which corroborate with Marcos' fear of rape. Leila Marcos v. Att'y Gen. of the U.S., No. 18-0512 (13th Cir. 2018) at 4. These reports revealed that rape has a profound effect on Timog women, in Isda as well as Mayaman, which would not make it possible for Marcos to relocate safely within Basag Id. Like in Arboleda, sufficient weight should be given to the fact that Marcos has already tried to relocate within Basag and is experiencing the same problems. Although Marcos will not have to walk as many miles in Mayaman to collect water, she still fears that she will be raped by a Life Inc. guard. During her first month in Mayaman, Marcos overheard a Life Inc. guard say that "getting sex here is just as easy as it is on Isda." R. at 9. This statement by a Life Inc. guard is a testament to the fact that Marcos, a Timog women, is not safe on either Isda or Mayaman. The fact that Marcos did relocate, still heard the same rumors of rape and harassment, and heard a Life Inc. guard himself admit to his behavior of rape on Mayaman, this is enough to conclude that safe internal relocation is not possible.

2. It is Not Reasonable for Marcos to Safely Relocate Within Basag.

The second consideration for internal relocation analysis is, "(2) whether it would be reasonable for the applicant to safely relocate." Oryakhil, 528 F.3d at 998. The mere fact that an alien could escape a particular group of persecutors by relocating internally does not mean that internal relocation is 'reasonable.' See Melkonian, 320 F.3d at 1069. Just because relocation would spare the persecution that was the basis of the claim, the relocation could still be unreasonable, as there are a broad range of relevant factors. Hagi-Salad, 359 F.3d at 1048.

Many factors for internal relocation analysis can be considered:

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 familial ties.

8 C.F.R. § 208.13(b)(3) (2019). “Those factors may, or may not, be relevant depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.” Id.

In Essohou, the petitioner, who was a member of a democratic movement in the Congo, was captured and beaten by the Cobras, a paramilitary group that opposed the movement. Essohou v. Gonzales, 471 F.3d 518, 521 (4th Cir. 2006). The petitioner escaped and fled to many different districts within the Congo, narrowly evading the Cobras. Id. After fleeing, the petitioner had stayed in a village in the Congo and was able to avoid detection from the Cobras for twenty months. Id. The Cobras eventually came to the village, and petitioner left the country for asylum. Id. The IJ denied petitioners application, claiming that internal relocation was reasonable, as the petitioner “was able to live undisturbed for 20-plus months.” Id. The court reversed the IJ’s decision, holding that although petitioner was able to live assault-free for a time, petitioner was living in constant fear for her life, thus safe relocation was not reasonable. Id. at 522.

The current case is similar to Essohou, in that just because an altercation has not yet occurred in another area of the country, does not mean that the individual is reasonably safe. In the current case, Marcos is part of the disfavored group of Timog women who are constantly being harassed and raped by the guards of Life Inc. Marcos has heard many rumors of Life Inc. guards raping women in Basag. R. at 6. On March 6, 2017, Marcos was verbally threatened with a proposition for sex. R. at 6. On March 12, 2017, a guard told Marcos, “I am going to have my

way with you, honey, whether you want it or not,” R. at 7. April 6, 2017, Marcos was molested by a Life Inc. guard, as per Basag Pen. Code § 4350 (a)(1) while on the island of Isda. R. at 8. The next day Marcos and her husband fled to Mayaman fearing for her safety. R. at 8. While on Mayaman, Marcos was told about how Life Inc guards. treated Timog women, and that rape was still prevalent in the area. R. at 9. Marcos then overheard a Life Inc. guard state, “I cornered her by the well, and hit her until she submitted. Getting sex here is as easy as it is on Isda.” R. at 9. All of these facts point to the unreasonableness of Marcos being able to safely relocate within Basag.

Marcos cannot reasonably relocate within Basag, as the same issues exist on both islands. Marcos did not just assume that rape was prevalent throughout the country of Basag, she physically relocated and found out that persecution by Life Inc. guards was still prevalent. It is also evident that Life Inc. guards are not exclusively stationed to be on one island or another. It is entirely possible for the guards on Isda who have given Marcos and her husband trouble in the past, to seek out and target Marcos in Mayaman.

Based on the factors in 8 C.F.R. § 208.13(b)(3), internal relocation is unreasonable for Marcos. Life Inc. controls the economic and political climate of Basag, due to their exclusivity in water maintenance. Timog women on both Isda and Mayaman experience the same issues of persecution on behalf of Life Inc. R. at 9. There is a prevalence of sexual assault on behalf of Life Inc. guards. R. at 4. Marcos belongs to the Timog group of women, who are targeted in Basag. R. at 9. The Timog women have a low social status as they are regarded as the poorer ethnic group. R. at 3. Timog women also have a difficult time integrating to the culture on Mayaman. R. at 3. Based on these factors, safe internal relocation within Basag is unreasonable for Marcos.

CONCLUSION

For the reasons stated above, the petitioner respectfully requests that the Court affirm the Thirteenth Circuit's acceptance of the disfavored group analysis. The petitioner also requests that the Court reverse the lower courts holding as it pertains to the internal relocation analysis and remand the case to the BIA to define the term 'government-sponsored.'

Respectfully Submitted,

Team 109