

Center for Gender & Refugee Studies

University of California Hastings College of the Law

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Hardy, Liam P. (OLC)

From: Hardy, Liam P. (OLC)
Sent: Monday, April 23, 2018 1:10 PM
To: Hamilton, Gene (OAG)
Cc: (b)(6) per OLC (OLC)
Subject: RE: Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

Yes, that works. We'll come down at 1:30.

From: Hamilton, Gene (OAG)
Sent: Monday, April 23, 2018 12:59 PM
To: Hardy, Liam P. (OLC) <(b) (6)>
Cc: (b)(6) per OLC (OLC) (b) (6) >
Subject: RE: Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

Can we do 1:30?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hardy, Liam P. (OLC)
Sent: Monday, April 23, 2018 12:35 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: (b)(6) per OLC (OLC) <(b) (6)>
Subject: RE: Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

Gene – We're free all afternoon starting at 1:30. What time works for you?

From: Hamilton, Gene (OAG)
Sent: Monday, April 23, 2018 12:00 PM
To: Hardy, Liam P. (OLC) (b) (6) >; Harris, Sarah (OLC) (b) (6) >
Subject: RE: Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

If y'all have time to discuss today, I'd be happy to run through a few preliminary issues.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hardy, Liam P. (OLC)
Sent: Monday, April 23, 2018 11:23 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Harris, Sarah (OLC) (b) (6) >
Subject: RE: Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

Thanks Gene!

From: Hamilton, Gene (OAG)
Sent: Monday, April 23, 2018 11:13 AM
To: Hardy, Liam P. (OLC) <(b) (6)>; Harris, Sarah (OLC) <(b) (6)>
Subject: FW: Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Friday, April 20, 2018 6:40 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

From: Kelly, Christopher S
Sent: Friday, April 20, 2018 6:38:18 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Cc: bwinograd@irac.net; Martin, George R
Subject: Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

To Whom It May Concern:

Attached please find the U.S. Department of Homeland Security's Brief on Certification to the Attorney General in the cases of (b)(6). See *Matter of A-B-*, 27 I&N Dec. 227 (A.G. 2018). The original will be mailed, in triplicate, to the Office of the Attorney General. A copy will be mailed directly to the respondent's co-counsel, who is copied on this message.

Thank you for your attention to this matter.

Best regards,

Christopher S. Kelly
Chief, [Immigration Law and Practice Division](#)
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street, SW, Stop 5900
Washington, DC 20536-5900
Direct Line: (b) (6)
iPhone: (b) (6)
Email: (b)(6)(b)(7)(C) per ICE

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Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, April 27, 2018 8:50 AM
To: Harris, Sarah (OLC); Hardy, Liam P. (OLC)
Subject: FW: Amicus Brief in Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)
Attachments: NIJC Amicus Brief_Matter of A-B-, 27 I&N Dec. 227_A.G 2018_final as file....pdf

Amicus for A-B-

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Thursday, April 26, 2018 5:26 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: Amicus Brief in Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

From: Ashley Huebner
Sent: Thursday, April 26, 2018 5:25:11 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Subject: Amicus Brief in Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

Please find attached the brief of Amicus Curiae the National Immigrant Justice Center, filed in response to the Attorney General's certification of *Matter of A-B-*, 27 I&N Dec. 227 (A.G. 2018). Per the Attorney General's instructions, a copy of the brief was sent in triplicate to the Office of the Attorney General today via FedEx.

Ashley Huebner, Managing Attorney
Pronouns: she/her
National Immigrant Justice Center
A HEARTLAND ALLIANCE Program
208 S. LaSalle Street, Suite 1300, Chicago, IL 60604
T: 312.660.1303 | F: 312.660.1505 | E: ahuebner@heartlandalliance.org
www.immigrantjustice.org | [Facebook](#) | [Twitter](#)

Contribute to NIJC and provide critical legal services to families this coming year! www.immigrantjustice.org/donate

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Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, April 27, 2018 8:53 AM
To: Hardy, Liam P. (OLC); Harris, Sarah (OLC)
Subject: FW: BRIEF OF AMICUS CURIAE DAVID B. GARDNER
Attachments: BRIEF OF AMICUS CURIAE DAVID B. GARDNER.pdf

Amicus for A-B-

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Thursday, April 26, 2018 7:35 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: BRIEF OF AMICUS CURIAE DAVID B. GARDNER

From: Veronica Hernandez
Sent: Thursday, April 26, 2018 7:33:48 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Cc: David Gardner
Subject: BRIEF OF AMICUS CURIAE DAVID B. GARDNER

Dear Official,

Please find attached "Brief Of Amicus Curiae of David B. Gardner" for the Matter of A-B. Thank you.

Thank you,

Veronica M. Hernandez
Attorney at Law

Law Offices of David B. Gardner, Inc.
8889 W. Olympic Blvd., Suite 200
Beverly Hills, CA 90211
Tel. (323) 653-4514
Fax. (323) 978-5932
VeronicaH@americanimmigrationlaw.com

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Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, April 27, 2018 5:19 PM
To: Harris, Sarah (OLC); Hardy, Liam P. (OLC)
Subject: FW: Amicus Brief in Matter of A-B-
Attachments: Imm Law Profs amicus brief Matter of A-B- final.pdf

Amicus in A-B-

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Friday, April 27, 2018 4:04 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: Amicus Brief in Matter of A-B-

From: Anju Gupta
Sent: Friday, April 27, 2018 4:02:06 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Subject: Amicus Brief in Matter of A-B-

To Whom It May Concern:

In accordance with the *Matter of A-B-*, 27 I. & N. Dec. 227 (AG 2018), decision, I am attaching a Brief of Amici Curiae Immigration Law Professors. I have also sent three copies of the brief via FedEx. Please let me know if you need anything further from me.

Sincerely,

Anjum Gupta
Professor of Law
Director, Immigrant Rights Clinic
Rutgers School of Law - Newark
123 Washington Street
Newark, NJ 07102
anjum.gupta@rutgers.edu

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, April 27, 2018 5:23 PM
To: Harris, Sarah (OLC); Hardy, Liam P. (OLC)
Subject: FW: Amicus Brief in Matter of A-B-
Attachments: A-B- Brief Amici Brief HIRC, AILA, Human Rights First, KIND.pdf

Amicus in A-B-

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Friday, April 27, 2018 4:08 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: Amicus Brief in Matter of A-B-

From: Cicconi, Martine
Sent: Friday, April 27, 2018 4:05:26 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Cc: Anker, Deborah; Schulman, Steven
Subject: Amicus Brief in Matter of A-B-

Hello,

Attached, please find an *amici* brief on behalf of the Harvard Immigration and Refugee Clinical Program, the American Immigration Lawyers Association, Human Rights First, and Kids in Need of Defense in *Matter of A-B-*. Per the Attorney General's Interim Decision of March 7, 2018, 27 I & N Dec. 227 (A.G. 2018), three paper copies were sent today to the Department of Justice.

Thank you.

Martine Cicconi

Martine E. Cicconi

AKIN GUMP STRAUSS HAUER & FELD LLP

1333 New Hampshire Avenue, N.W. | Washington, DC 20036-1564 | USA | Direct: [+1 202.887.4478](tel:+12028874478) | Internal: [24478](tel:+12028874478)
Fax: +1 202.887.4288 | mcicconi@akingump.com | akingump.com | [Bio](#)

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Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, April 27, 2018 5:26 PM
To: Hardy, Liam P. (OLC); Harris, Sarah (OLC)
Subject: FW: In the Matter of A-B-
Attachments: Brief of Tahirih Justice Center et al..PDF

Amicus in A-B-

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Friday, April 27, 2018 4:27 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: In the Matter of A-B-

From: Luby, Sophia
Sent: Friday, April 27, 2018 4:25:44 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Subject: In the Matter of A-B-

To whom it may concern:

Please find attached the brief of Tahirih Justice Center, the Asian Pacific Institute on Gender-Based Violence, ASISTA Immigration Assistance, and Casa de Esperanza as amici curiae in support of Respondent A-B-. True and correct copies of this brief were served by Federal Express.

Sincerely,
Sophia Luby

Sophia Luby
Associate

McDermott Will & Emery LLP | The McDermott Building | 500 North Capitol Street, N.W. | Washington, DC 20001
Tel +1 202 756 8758 | Fax +1 202 756 8087
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Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, April 27, 2018 5:31 PM
To: Hardy, Liam P. (OLC); Harris, Sarah (OLC)
Subject: FW: MATTER OF A-B-: BRIEF AMICI CURIAE OF SIXTEEN FORMER IMMIGRATION JUDGES AND MEMBERS OF THE BOARD OF IMMIGRATION APPEALS
Attachments: Brief Amici Curiae of Sixteen Former Immigration Judges and Members of the Board of Immigration Appeals.pdf

[Amicus in A-B-](#)

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Friday, April 27, 2018 4:55 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: MATTER OF A-B-: BRIEF AMICI CURIAE OF SIXTEEN FORMER IMMIGRATION JUDGES AND MEMBERS OF THE BOARD OF IMMIGRATION APPEALS

From: Kiernan, Megan B.
Sent: Friday, April 27, 2018 4:53:22 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Cc: Kirk, Ronald; Ahmed, Amer S.; Madduri, Lali; Glover, Chelsea G.
Subject: MATTER OF A-B-: BRIEF AMICI CURIAE OF SIXTEEN FORMER IMMIGRATION JUDGES AND MEMBERS OF THE BOARD OF IMMIGRATION APPEALS

To whom it may concern,

We respectfully submit the attached Brief Amici Curiae of Sixteen Former Immigration Judges and Members of the Board of Immigration Appeals Urging Vacatur of Referral Order and In Support of Respondent.

We have also sent three copies of the attached document by U.S. first-class mail on April 27, 2018 to the following address:

United States Department of Justice
Office of the Attorney General, Room 5114
950 Pennsylvania Avenue, NW
Washington, DC 20530

Best,

Megan B. Kiernan

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.955.8542 • Fax +1 202.831.6026
MKiernan@gibsondunn.com • www.gibsondunn.com

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Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, April 27, 2018 5:32 PM
To: Harris, Sarah (OLC); Hardy, Liam P. (OLC)
Subject: FW: Matter of A-B-: Amicus Curiae Brief of the Immigration Reform Law Institute
Attachments: Matter of A-B-_Final.pdf

Amicus in A-B-

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Friday, April 27, 2018 4:59 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: Matter of A-B-: Amicus Curiae Brief of the Immigration Reform Law Institute

From: Elizabeth Hohenstein
Sent: Friday, April 27, 2018 4:57:04 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Cc: Chris Hajec
Subject: Matter of A-B-: Amicus Curiae Brief of the Immigration Reform Law Institute

Good Afternoon,

Please see the attached amicus curiae brief of the Immigration Reform Law Institute in *Matter of A-B-*. If you have any questions, please don't hesitate to contact me.

Very Respectfully,

Elizabeth Hohenstein
Staff Counsel



25 Massachusetts Ave. NW, Suite 335
Washington, DC 20001
Tel: (202) 232-5590
Fax: (202) 464-3590
www.irli.org

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Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, April 27, 2018 5:37 PM
To: Harris, Sarah (OLC); Hardy, Liam P. (OLC)
Subject: FW: Matter of A-B- Amicus Filing -- Innovation Law Lab
Attachments: Innovation Law Lab Amicus Curiae Brief (00710190xAC78D).pdf

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Friday, April 27, 2018 5:01 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: Matter of A-B- Amicus Filing -- Innovation Law Lab

From: Nadia Dahab
Sent: Friday, April 27, 2018 4:58:48 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Cc: Stephen Manning
Subject: Matter of A-B- Amicus Filing -- Innovation Law Lab

Please see attached brief of amicus curiae Innovation Law Lab for consideration in Matter of A-B-. The attached brief is accompanied by the required proof of service and meets all requirements set forth in the Attorney General's March 7 and March 30 orders relating to this matter. See 27 I&N Dec. 227 (A.G. 2018); 27 I&N Dec. 247 (A.G. 2018).

Thank you,

Nadia Dahab
Nadia Dahab
ndahab@stollberne.com

Stoll Berne 209 SW Oak St., Suite 500
Portland, OR 97204

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Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, April 27, 2018 5:46 PM
To: Hardy, Liam P. (OLC); Harris, Sarah (OLC)
Subject: FW: Amicus Brief
Attachments: Amicus Brief.PDF

Amicus in A-B-

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Friday, April 27, 2018 5:25 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: Amicus Brief

From: Robert Thomas
Sent: Friday, April 27, 2018 5:22:52 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Cc: Simona A. Agnolucci; Bevan A. Dowd
Subject: Amicus Brief

Attached please find an Amicus Brief regarding the *Matter of A-B-*, Respondent. This is the Brief of Amici Curiae The Catholic Legal Immigration Network, Inc.; Benedictine Sisters of the Federation of St. Scholastica; Conference of Benedictine Prioresses; Conference of Major Superiors of Men; HIAS; Lutheran Immigration and Refugee Service; National Council of Jewish Women; National Justice for Our Neighbors; Unitarian Universalist Service Committee; United Methodist Immigration Task Force; and World Relief. Thank you for your consideration.

Robert Thomas

Legal Secretary
Keker, Van Nest & Peters LLP
633 Battery Street
San Francisco, CA 94111-1809
(b) (6) direct | 415 391 5400 main
rthomas@keker.com | keker.com

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, April 27, 2018 7:04 PM
To: Hardy, Liam P. (OLC); Harris, Sarah (OLC)
Subject: Fwd: FW:
Attachments: image001.png; ATT00001.htm; image002.png; ATT00002.htm; image003.png; ATT00003.htm; image004.png; ATT00004.htm; image005.png; ATT00005.htm; image006.png; ATT00006.htm; Matter of A-B- Amicus Brief (edited).pdf; ATT00007.htm

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Begin forwarded message:

From: "AGCertification (SMO)" <ex_agcertification@jmd.usdoj.gov>
Date: April 27, 2018 at 6:10:38 PM EDT
To: "Hamilton, Gene (OAG)" <ghamilton@jmd.usdoj.gov>, "McHenry, James (EOIR)" <James.McHenry@EOIR.USDOJ.GOV>, "King, Jean (EOIR)" <Jean.King@EOIR.USDOJ.GOV>, "Carr, Donna (EOIR)" <Donna.Carr@EOIR.USDOJ.GOV>, "Carr, Donna (EOIR)" <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW:

From: Eric Brown
Sent: Friday, April 27, 2018 6:09:24 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Subject:

To Whom It May Concern,

Please find attached a request to appear as *amici curiae* and a brief addressing the issues presented in *Matter of A-B-*. Three copies of the attached document have been sent via mail to the mailing address specified by the U.S. Attorney General.

Regards,

Eric Brown, Attorney

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, April 27, 2018 8:46 PM
To: Hardy, Liam P. (OLC); Harris, Sarah (OLC)
Subject: FW:
Attachments: Matter of A-B- Amicus Brief (edited).pdf

Might be a duplicate.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Friday, April 27, 2018 7:28 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW:

From: Eric Brown
Sent: Friday, April 27, 2018 7:26:35 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Subject:

To Whom It May Concern,

Please find attached a request to appear as *amici curiae* and a brief addressing the issues presented in *Matter of A-B-*. Three copies of the attached document have been sent via mail to the mailing address specified by the U.S. Attorney General.

Regards,

Eric Brown, Attorney



GONZALEZ OLIVIERI LLC
IMMIGRATION LAW FIRM, HOUSTON, TEXAS

2200 Southwest Freeway
Suite 550. Houston, TX 77098-4709
☎ : 713.481.3040 / Fax: 713.588.8683

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Awards for Excellence



Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, April 30, 2018 6:31 PM
To: Hardy, Liam P. (OLC); Harris, Sarah (OLC)
Subject: FW: In the Matter of A-B-
Attachments: Corrected Brief of Tahirih Justice Center et al.pdf

Revised amicus

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Monday, April 30, 2018 5:48 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: In the Matter of A-B-

From: Hageman, Eric
Sent: Monday, April 30, 2018 5:44:57 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Subject: RE: In the Matter of A-B-

To whom it may concern:

Please find attached the corrected brief of Tahirih Justice Center, the Asian Pacific Institute on Gender-Based Violence, ASISTA Immigration Assistance, and Casa de Esperanza as amici curiae in support of Respondent A-B-. This corrected brief redacts the last name of an asylum recipient and corrects a minor factual error, that the same asylum recipient experienced violence in El Salvador, when in fact, she experienced violence in Honduras. True and correct copies of this corrected brief were served by Federal Express.

Yours,
Eric Hageman

Eric Hageman
Associate

McDermott Will & Emery LLP | The McDermott Building | 500 North Capitol Street, N.W. | Washington, DC 20001
Tel +1 202 756 8756 | Fax +1 202 756 8087

[Website](#) | [vCard](#) | [Email](#) | [Twitter](#) | [LinkedIn](#) | [Blog](#)

From: Luby, Sophia
Sent: Friday, April 27, 2018 4:26 PM
To: AGCertification@usdoj.gov
Subject: In the Matter of A-B-

Subject: In the Matter of A-B

To whom it may concern:

Please find attached the brief of Tahirih Justice Center, the Asian Pacific Institute on Gender-Based Violence, ASISTA Immigration Assistance, and Casa de Esperanza as amici curiae in support of Respondent A-B-. True and correct copies of this brief were served by Federal Express.

Sincerely,
Sophia Luby

Sophia Luby
Associate

McDermott Will & Emery LLP | The McDermott Building | 500 North Capitol Street, N.W. | Washington, DC 20001
Tel +1 202 756 8758 | Fax +1 202 756 8087

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Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, May 1, 2018 10:03 PM
To: Hardy, Liam P. (OLC); Harris, Sarah (OLC)
Subject: FW: Brief of Amici Curiae, Matt of L-A-B-R- et al., 27 I&N Dec. 245 (A.G. 2018)
Attachments: Matter of LABR - Amicus Brief.pdf

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Tuesday, May 1, 2018 6:40 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: Brief of Amici Curiae, Matt of L-A-B-R- et al., 27 I&N Dec. 245 (A.G. 2018)

From: Jones, Stanton
Sent: Tuesday, May 1, 2018 6:38:49 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Cc: Trina Realmuto; Karolina Walters; Konkeli, Kaitlin
Subject: Brief of Amici Curiae, Matt of L-A-B-R- et al., 27 I&N Dec. 245 (A.G. 2018)

To the Office of the Attorney General:

In response to the Attorney General's referral decision in the above-captioned matter, attached please find the Brief of *Amici Curiae* the American Immigration Council, Her Justice, Immigrant Defense Project, Northwest Immigrant Rights Project, and Southern Poverty Law Center Urging Vacatur of Referral Order or Recusal.

Three hard copies of the brief are being sent today via FedEx to the address listed in the referral order.

Regards,
Stanton

R. Stanton Jones
Arnold & Porter
601 Massachusetts Ave., NW | Washington | DC 20001-3743
T: +1 202.942.5563 | F: +1 202.942.5999
stanton.jones@arnoldporter.com | www.arnoldporter.com

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Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, May 4, 2018 5:17 PM
To: Hardy, Liam P. (OLC); Harris, Sarah (OLC)
Subject: FW: DHS Reply to Amicus Curiae Briefs - Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)
Attachments: DHS Reply to Amicus Curiae Briefs in Matter of A-B- (May 4, 2018).pdf

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: AGCertification (SMO)
Sent: Friday, May 4, 2018 4:16 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>; Carr, Donna (EOIR) <Donna.Carr@EOIR.USDOJ.GOV>
Subject: FW: DHS Reply to Amicus Curiae Briefs - Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

From: Lapid, Ronald
Sent: Friday, May 4, 2018 4:13:47 PM (UTC-05:00) Eastern Time (US & Canada)
To: AGCertification (SMO)
Cc: bwinograd@irac.net; Martin, George R
Subject: DHS Reply to Amicus Curiae Briefs - Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

To Whom It May Concern:

Attached please find the U.S. Department of Homeland Security's Reply to Amicus Curiae Briefs in the case of (b)(6). See *Matter of A-B-*, 27 I&N Dec. 227 (A.G. 2018); see also *Matter of A-B-*, 27 I&N Dec. 247 (A.G. 2018) (denying request for suspension of briefing schedules but granting, in part, the parties' request for an extension of the briefing deadline). The original will be mailed, in triplicate, to the Office of the Attorney General, and a copy mailed directly to the respondent's co-counsel, who is copied on this message.

Thank you for your attention to this matter.

Best regards,

Ronald Lapid

Ronald Lapid
Deputy Chief, [Immigration Law and Practice Division](#)
Office of the Principal Legal Advisor
DHS | U.S. Immigration and Customs Enforcement

500 12th Street, S.W., 9th Floor | Washington, DC 20536

202.732.3382 (Office) | (b) (6) Mobile

(b) (6)

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Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Friday, May 11, 2018 4:20 PM
To: Hamilton, Gene (OAG)
Subject: Re: DHS Brief to the AG in Matter of A-B-.pdf

Thx!

Sent from my iPhone

On May 11, 2018, at 3:54 PM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:

<DHS Brief to the AG in Matter of A-B-.pdf>

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, May 11, 2018 5:36 PM
To: Engel, Steven A. (OLC)
Subject: RE: DHS Brief to the AG in Matter of A-B-.pdf

Thanks

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Engel, Steven A. (OLC)
Sent: Friday, May 11, 2018 5:35 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: DHS Brief to the AG in Matter of A-B-.pdf

I put in a call to Mitnick. Will let you know when we connect.

From: Hamilton, Gene (OAG)
Sent: Friday, May 11, 2018 3:54 PM
To: Engel, Steven A. (OLC) (b) (6)
Subject: DHS Brief to the AG in Matter of A-B-.pdf

From: Center for Immigration Studies <center=cis.org@mail54.us4.mcsv.net> on behalf of Center for Immigration Studies <center@cis.org>
Sent: Sunday, May 13, 2018 4:51 PM
To: Cutrona, Danielle (OAG)
Subject: Immigration Opinions, 5/13/18

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Immigration Opinions, 5/13/18

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This email includes a wide range of views, provided for educational purposes. Inclusion does not constitute an endorsement by the Center for Immigration Studies.

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- [19. "DHS Secretary to Democratic Senator: Fighting Illegal Immigration Is Not a 'Philosophy,' It's the Law," Matt Vespa](#)
- [20. "No More Central American Caravans for Mexico," Silvio Canto, Jr.](#)

- [21.](#) "Central American Migrants Aren't Seeking Asylum, They're Activists Challenging US Sovereignty," A.J. Louderback
- [22.](#) "Anti-Illegal Immigration Lawyers Come to Trump's Defense, 'Long Overdue'," Paul Bedard
- [23.](#) "Old Muhammad Had A Farm, Jihad, Jihad, Jihad...Oh!," Ann Coulter
- [24.](#) "A Texas Lawsuit Killed One Obama Immigration Policy. Can the Same Strategy Defeat DACA?," Emma Platoff
- [25.](#) "USA Today Bending the Immigration Facts to Fit the Open-Borders Narrative," Matt O'Brien
- [26.](#) "Hispanics Score Under Trump," Steve Cortes
- [27.](#) "Sessions' Answer on "Separating Families" Is Both Brutal and True," Jazz Shaw
- [28.](#) "America Is Becoming a Sanctuary Country, Where's the Wall?," InvestmentWatch Blog
- [29.](#) "Wedding Bells for Illegal Immigrants at U.S. CourthouseWedding Bells for Illegal Immigrants at U.S. Courthouse," Howie Carr
- [30.](#) "State Department Shuts Out Kids From Summer Jobs," Joe Guzzardi
- [31.](#) "Slipping Backwards on Immigration Get on It, Mr. President!," John Derbyshire
- [32.](#) "Disastrous April Employment Report Immigrants Steal All Trump's New Jobs, Depress American Wages.," E.S. Rubenstein
- [33.](#) "DHS Decision on Hondurans Fits Disturbing Pattern on Immigration," Stuart Anderson
- [34.](#) "Trump Promised to Reshape America. He's Already Told One Million Immigrants Who Had Legal Protections to Get Out.," Elise Foley
- [35.](#) "Trump Drops a Bombshell on Immigration, and No One Bothers to Report It," MarketWatch.com
- [36.](#) "Immigrants in the U.S. Illegally Make Us Safer," Steve Chapman
- [37.](#) "'Damn This President!' Maxine Waters Fails to Serve Teamsters Red Meat in Unleashed Tirade," BizPac Review
- [38.](#) "Why Trump is Manufacturing an Immigration Crisis," Fareed Zakaria
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- [41.](#) U.K.: "The Tories Want You to Think Their New Data Protection Bill Is Empowering," Chrisann Jarrett

1.

Kelly States Obvious Truths, Leftists Go Crazy

By Mark Krikorian

The Corner at National Review Online, May 11, 2018

<https://www.nationalreview.com/corner/john-kelly-illegal-immigration-comments-not-racist/>

White House Chief of Staff John Kelly spoke with John Burnett of NPR yesterday on a wide variety of topics. A large part of the interview addressed immigration, in the course of which Kelly said:

The vast majority of the people that move illegally into the United States are not bad people. They're not criminals. They're not MS-13. Some of them are not. But they're also not people that would easily assimilate into the United States into our modern society. They're overwhelmingly rural people in the countries they come from fourth, fifth, sixth grade educations are kind of the norm. They don't speak English, obviously that's a big thing. They don't speak English. They don't integrate well, they don't have skills. They're not bad people. They're coming here for a reason. And I sympathize with the reason. But the laws are the laws. But a big name of the game is deterrence.

Obvious facts, you might think. But then, if you're reading this, you're probably not a leftist because to leftists, it was like swearing in church. *ThinkProgress* called it a "racist rant," Splinter called it a "racist rant," a *New York Daily News* columnist called it a "racist rant" and, for variety, *Rolling Stone* called the remarks "racist comments," Karen Tumulty called it "know-nothingism," and the Plum Line decried Kelly's "terrible immigration lies." There are plenty more, but you get the idea.

What planet are these people living on? The Census Bureau's 2014 Current Population Survey shows that at least half of immigrants (legal and illegal) from Mexico, Honduras, Guatemala, and El Salvador have less than a high-school education (Table 27); illegal immigrants specifically have even lower levels of educational attainment. The OECD's PIAAC test finds that 63 percent of all Hispanic immigrants score "below basic" in English, which is often defined as "functionally illiterate" (compared to 23 percent of non-Hispanic immigrants, most of them from Asia and Africa).

In a modern economy, those with little education and a poor grasp of English, however hard-working, will struggle to earn enough to support themselves and their families. That's why at least half of immigrants from Mexico and Central America are in or nearly in poverty, defined as 200 percent of the poverty level, which is where welfare eligibility kicks in (Table 10). Consequently, the Census Bureau's Survey of Income and Program Participation shows that 72 percent of households headed by immigrants (legal and illegal) from Mexico and Central America use one or more means-tested welfare program (Figure 2). Even among households headed by illegal immigrants specifically (from all countries), whose access to welfare is more limited, more than 60 percent receive welfare (Table 1).

As Kelly stressed, none of this reflects on an immigrant's moral worth as a child of God. It's not even necessarily a function of their countries of origin; immigrants from Asia and Africa do better than those from Latin America not due to any innate superiority but because those who move here tend to be better prepared to succeed in a modern, post-industrial, knowledge-based economy.

That's why immigration policy both the selection of legal immigrants and the enforcement of our laws has to be based on the conditions of *today*, not the horse-and-buggy world of your grandpa from Palermo or your great-grandma from County Mayo. Nineteenth-century sentimentalism is no basis for a 21st-century federal immigration program.

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2.

DACA Job Discrimination or Cherry-Picking for Class Action Lawsuits?

By Dan Cadman

CIS Immigration Blog, May 10, 2018

A Brazilian recipient of DACA (Deferred Action for Childhood Arrivals) is suing Bank of America (BoFA) after it declined to hire him as a "wealth manager" despite his educational qualifications. There are several interesting angles to the story.

...

So did he have a right to the job? On its face, the quick answer may be yes (let me strongly

emphasize the word "may"), if indeed the circumstances are as he claims and there aren't any hidden facts not in evidence. But think about the job he wanted: wealth management advisor. That's the person you rely on to manage your funds on a long-term basis to ensure that they grow. Given the type of responsibilities entailed, wouldn't potential employers be right to measure two equally poised and qualified candidates by their employment staying power, where one candidate's right to work might end precipitously in the not-distant future?

These days, financial advisors aren't just for the well-heeled. Many companies, and even federal and state governments, have substituted pension plans with matching-contribution plans (like 401(k)) that rely on stock and bond portfolios to produce the money needed to fund your retirement. Those plans rely in turn on companies like Allied and BofA to do the actual day-to-day business of managing tens (or hundreds) of billions of dollars in investments of ordinary folks who will need that money when they age out of the workforce. People like you and me.

Do you really want companies to be relying on an individual who may not be there in six months or a year? What kinds of decisions is he making with your investments in the interim if he suspects he may not be there for the long term? Will they be wise? Will he care if they are or not, especially if DACA is ordered ended by the Supreme Court and his personal life is in turmoil?

...

<https://cis.org/Cadman/DACA-Job-Discrimination-or-CherryPicking-Class-Action-Lawsuits>

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3.

Rein in the Executive Branch's Unlimited Authority to Grant Work Permits

By Dan Cadman

CIS Immigration Blog, May 9, 2018

...

Certainly a key reason is that TPS is inevitably wedded to the grant of work authorization — the theory being that if you're going to allow an alien in the United States from one of the affected countries to stay in the country under color of law, then you might as well allow him or her to work. But the work becomes the end goal. It's no secret that some countries, such as El Salvador, have become dependent on remittances sent home to relatives by TPS-registered aliens here.

The theory of granting work permits sounds good, but the irony is that many of those who benefited from TPS when it was originally granted oh-so-many years ago were in the United States illegally to begin with. They had no permission to work then, but, *voilà!*, the godsend of an earthquake, a hurricane, an epidemic descends (horrible for those back home, but oh well), TPS is granted, work permits are handed out, and they are home free, quite likely for many years given the government's track record.

...

<https://cis.org/Cadman/Rein-Executive-Branchs-Unlimited-Authority-Grant-Work-Permits>

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4.

Revisiting Asylum Law in the Context of Domestic Violence Victims

By Dan Cadman

CIS Immigration Blog, May 8, 2018

Shortly after the attorney general announced he was reviewing a case (Matter of A-B-) involving grants of asylum for victims of domestic abuse, the Center published a blog post in which I expressed my view that asylum was an inappropriate form of relief.

Not long after that, my colleague Jessica Vaughan was contacted by a reporter seeking to speak with me to discuss my post in the context of the amicus briefs filed with the attorney general. Although he didn't specifically say so, I'm sure the reporter was trying to figure out whether I understood that the argument, at least by proponents of granting asylum, wasn't about domestic violence per se, but about whether gender specifically, women who suffered domestic abuse fit within the definition of "membership in a particular social group".

I do understand, but believe that's a logical cul-de-sac and think it's worth explaining why. For that reason, I'm reproducing my response to the journalist here:

...

<https://cis.org/Cadman/Revisiting-Asylum-Law-Context-Domestic-Violence-Victims>

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5.

Beware of Immigration Provisions in International Agreements

By Dan Cadman

CIS Immigration Blog, May 8, 2018

My colleague Nayla Rush recently wrote about the draft United Nations (UN) Global Compact on Refugees that is being considered by members of that body, including the United States.

As Rush pointed out, although the U.S. withdrew from the companion Global Compact for Safe, Orderly and Regular Migration, it has not yet done so with the Global Compact on Refugees, even though there are cogent reasons to do so before its formal consideration in September of this year.

Nations should always be cautious about ceding their sovereign alternatives especially as regards immigration in any form in the context of bilateral, multilateral, or international treaties. Doing so can have significant adverse impact on their foreign and domestic policies.

...

By way of example, consider the conduct of the supra-national European Union (EU) toward its member states. In the past three years, it has been forced to confront a disastrous influx of 1.5 million (and climbing) "irregular" arrivals instigated by the foolish words of German Chancellor Angela Merkel (see here and here). The result has been terrorism, instability, increased crime, and acknowledged no-go zones in urban pockets heavily dominated by unassimilated populations of immigrants.

And how has the EU reacted? With increasingly heavy-handed threats against those nations that have resisted its attempts to force them to share Germany's burden, even though it was Germany's chancellor who triggered the human tidal wave. Its latest move is to declare its intent to withhold critical infrastructure and other key funding to the recalcitrant holdouts because they apparently value their sovereignty over the EU's self-declared "shared values".

...

<https://cis.org/Cadman/Beware-Immigration-Provisions-International-Agreements>

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6.

[How Can You Have a Guaranteed Jobs Program Without Strict Immigration Enforcement?](#)

By Dan Cadman

CIS Immigration Blog, May 7, 2018

...

Others are better positioned to lay out the pros and cons of such a position economically and socially; that's beyond my purview. But one thing that's puzzling me is this: on the most fundamental level, how can it work when the Democratic Party has shown itself allergic to any and all forms of immigration control and enforcement?

When anti-immigration-control liberals adamantly oppose something as modest as universal E-Verify or other employment verification processes to ensure that Americans are actually the recipients of jobs, exactly who will end up on the job-receiving-end of such a massive taxpayer-funded scheme that would make the \$787 billion recession bail-out of 2009 look miniscule by comparison?

Note, for instance, that Numbers USA has assigned Sanders, Booker, and Gillibrand immigration grades of D, F-, and F-, respectively, putting them at the bottom of the heap because of their lack of interest in, and often enough outright hostility toward, immigration controls of any kind. That doesn't bode well for a jobs scheme for American workers.

...

<https://cis.org/Cadman/How-Can-You-Have-Guaranteed-Jobs-Program-Without-Strict-Immigration-Enforcement>

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7.

[New Immigration Court Statistics Released](#)

By Andrew R. Arthur

CIS Immigration Blog, May 10, 2018

...

The total number of pending cases continues to rise. As of the date those statistics were released, there were 697,777 cases pending before the approximately 334 immigration judges in the immigration courts, or just less than 2,090 cases per judge. That said, however, total case

completions were up in FY 2017 to 169,150, as compared to 153,133 in FY 2016. Through the first two quarters of FY 2018, the immigration courts had completed 92,009 cases; if this trend holds, the immigration courts will complete more than 184,000 cases this fiscal year.

While this completion rate is off of the historical average, it reveals a reversal of the downward trend in case completions that had been occurring since FY 2008, with the exception of a slight uptick in FY 2015, from a 10-year low that occurred in FY 2014 (when the courts completed only 152,901 cases). That exception was likely related to the "surge" of unaccompanied alien children (UACs) and family units that occurred that year, and which drew off immigration court resources.

Also notable within those statistics is the increase in the asylum denial rate. That denial rate went from 22.56 percent in FY 2016 to 33.51 percent in FY 2017, an almost 50 percent increase in one year. The denial rate for the first two quarters of FY 2018 shows a similar increase in asylum denials (41.82 percent), an almost 25 percent increase over FY 2017. Most significantly, however, the actual number of asylum denials for the first two quarters of FY 2018 (11,937) is already greater than the number of denials in FY 2016 (11,736). This increase in denials likely reflects the decrease in the number of administratively closed asylum cases.

...

<https://cis.org/Arthur/New-Immigration-Court-Statistics-Released>

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8.

Asylum Fraud and Tax Fraud, All in One Case

By Andrew R. Arthur

CIS Immigration Blog, May 9, 2018

In a press release issued on April 27, 2018, the U.S. Attorney's Office for the Western District of Texas detailed the conviction in sentencing of two Nigerian nationals for their roles in a Stolen Identity Refund Fraud (SIRF) scheme. That case underscores the more serious consequences of asylum fraud in the United States.

The defendants in that case entered the United States illegally and applied for asylum, claiming to be from Sudan. As the U.S. Attorney's Office explains it:

...

The non-asylum fraud aspect of that case was rather straightforward. The defendants, among other means, used cleaning services that they operated in the Austin, Texas, area to obtain the personal identification information (PII) of their victims in the United States. Specifically, they "loot[ed]" offices that they cleaned for PII. "Among the locations victimized" through the scheme "were medical facilities, where patient files were stolen," as well as "the ARC Pooled Trust of Greater Austin, which helps provide Financial Security Services to people with developmental and physical disabilities."

There are many significant points to be made about this case. First, the case makes it clear that even aliens who are unsuccessful in their fraudulent asylum claims can still game the asylum system to remain in the United States.

...

<https://cis.org/Arthur/Asylum-Fraud-and-Tax-Fraud-All-One-Case>

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9.

U.S. to Prosecute Parents Entering Illegally with Children

An unpopular but necessary step

By Andrew R. Arthur

CIS Immigration Blog, May 8, 2018

...

The population of aliens entering illegally has changed dramatically in recent years. According to the Department of Homeland Security (DHS), prior to 2011, 90 percent of all arriving aliens were single adult males, while today some 40 percent of arriving aliens are families and children. While there is significant crime and disorder in the countries from which most of those aliens come, the loopholes that I described in that Backgrounder have encouraged that shift.

DHS reported in February that more than 167,000 aliens in family units were apprehended by CBP between FY 2016 and the date of that publication, nearly all of whom were released into the interior of the United States "because of judicially-imposed constraints on" the authority of U.S. Immigration and Customs Enforcement (ICE) "to detain the entire family units as a result of recent rulings in the Flores consent decree litigation." As I explained in the Backgrounder, the Flores agreement, "which was originally signed in 1997, has now been read to create a presumption in favor of the release of all alien minors, even those alien minors who arrive with their parents."

This policy change is a significant (and likely unpopular) step for DHS to take, but it is absolutely crucial not only to reducing the flow of parents and their children (or their purported children) entering the United States illegally, but also to protecting those foreign nationals from the predations of alien smugglers.

...

<https://cis.org/Arthur/US-Prosecute-Parents-Entering-Illegally-Children>

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10.

Two Reasons to Amend the Public Charge Ground of Inadmissibility

Protecting the taxpayers and the disadvantaged

By Andrew R. Arthur

CIS Immigration Blog, May 7, 2018

...

This history clarifies the rationale behind the public charge rule: The United States has always been a country both of opportunity and of immigrants, but there is an expectation that foreign nationals who come to this country "pull their own weight", that is, be able to support themselves as well as any family members they bring.

There are strong reasons supporting this rule. Gallup released a poll in 2012 that revealed that 150 million adults around the world, nearly one in 30 of the planet's inhabitants, would immigrate to the United States if they had the chance. The reasons are obvious, but worth stating: the United States has a dependable system of justice, a comparatively good education system (with notable exceptions), the best health care in the world, and a robust attachment to the rule of law (again, with notable exceptions).

The largest proportions of individuals who would immigrate to this country, however, come from some of the poorest countries in the world.

...

<https://cis.org/Arthur/Two-Reasons-Amend-Public-Charge-Ground-Inadmissibility>

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11.

Former Disney Workers Abandon Legal Fight on H-1Bs

By John Miano

CIS Immigration Blog, May 10, 2018

.....

For an honest debate on H-1B, we need to argue over the true intent of H-1B as enacted by Congress:

The purpose of the H-1B program is to provide employers cheap foreign labor to replace American workers.

No other statement of purpose is consistent with what Congress has put into law.

The sleazy behavior of the Disney management and the unsuccessful legal challenges to it demonstrate that the H-1B program is not fixable because it is not broken.

The H-1B program is not being abused; the H-1B program itself is abusive and needs to be completely discarded.

...

<https://cis.org/Miano/Former-Disney-Workers-Abandon-Legal-Fight-H1Bs>

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12.

Wall Street Journal Describes Foreign 'Student' Work Program, but Omits \$2 Billion Taxpayer

Subsidy

By David North

CIS Immigration Blog, May 11, 2018

There's a government program that rewards American employers for *not* hiring American college grads for hiring foreign alumni instead by draining about \$2 billion a year from the government trust funds for the elderly (Medicare and Social Security) to pay those employers.

It is the Optional Practical Training program.

...

There was not a word about the fact that there are no payroll taxes when employers hire recent foreign college grads; were the employer to hire a recent U.S. college grad both the boss and the worker would as we all do chip in our payroll taxes. These taxes, at about 8.25 percent on both the employer and the worker, support the two named trust funds as well as the federal share of the unemployment insurance program.

The *WSJ* headline mentions "students". One may have warm and fuzzy feelings about students, but the beneficiaries are not students, they are alien alumni, and their employers.

Let's look at this at this from the point of view of an employer facing two equally talented prospects for a job, both recent college grads, both science majors, both available at, say \$50,000 a year, and both legally able to work in the United States. One is a former foreign student still here on his student visa and the other is a citizen (or a green-card holder.)

If the employer hires the citizen, and pays her \$50,000 a year for three years without a raise, that will cost the employer \$150,000 in wages, and \$38,250 in payroll taxes, for a total of \$188,250. If he hires the foreign "student" the total would be only \$150,000.

...

<https://cis.org/North/Wall-Street-Journal-Describes-Foreign-Student-Work-Program-Omits-2-Billion-Taxpayer-Subsidy>

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13.

California Visa Mill Gets Accreditation, but with Caveats

By David North

CIS Immigration Blog, May 8, 2018

...

NPU's extension came with one major and one minor caveat. The more important one was its length; it was given till the end of this year, a period of a little more than eight months; most ACICS extensions are for five years. The lesser one was a "compliance warning" about the lack of some required reports.

ACICS is about to make another accreditation decision regarding what used to be a large visa mill, Virginia International University, in Fairfax, Va. I have been told by ACICS's president that this decision will be made known by May 12.

VIU is one of the three Gulen-related higher education institutions in the nation. They are part of the conservative Muslim cult led by the self-exiled Turkish cleric, Fethullah Gulen. We gather, informally, that the school has suffered financial reverses recently and has laid off several members of its staff. Its current website shows that in the year ending December 7, 2017, its student body plummeted from 1,021 students to 410. It has been ordered by the Virginia state regulatory agency to sign a "teach-out agreement" with another university, to allow its students to transition should it lose its license.

...

<https://cis.org/North/California-Visa-Mill-Gets-Accreditation-Caveats>

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14.

The Border Patrol Needs a Few Good Writers

By David North

CIS Immigration Blog, May 7, 2018

Like many law enforcement agencies, the Border Patrol's press releases are needlessly wooden. They routinely leave out colorful detail, often use excess verbiage, and are often badly written, as a recent press release from U.S. Customs and Border Protection (CBP, which includes the Border Patrol) makes clear.

...

Getting back to the CBP press release, let's examine the second paragraph as my tough old city editor at the Newark (N.J.) Star-Ledger would have done. Its current text reads as follows:

On April 23, 2018, Border Patrol agents assigned to the Laredo Sector Marine Unit rescued two subjects in distress found struggling to stay afloat in the Rio Grande River near Zacate Creek. The two subjects were pulled on board the marine vessel and treated by an Emergency Medical Technician. The two subjects were determined to be from the country of Mexico.

My old boss, using a profanity of two, would have objected to the use of the phrase "two subjects" three times in four lines of type. He would have struck as extraneous "in distress". He would have been derisive about the stilted phrase "were determined to be from the country of Mexico." He would have suggested that "were pulled" and "[was] treated" be replaced by active, not passive, verbs. He would have demanded to know the approximate ages and the gender of those rescued. He would want some detail about how the duo got into this jam and what happened to them later. He would have eliminated the year 2018. And he would have snorted at the term "marine vessel" meaning "boat".

...

My suggestion that the Border Patrol recruit a couple of good writers, and perhaps a good editor, is not made in a vacuum. As I reported earlier, it has issued a contract worth a third of a billion dollars to a consulting firm to recruit more agents. A tiny portion of those funds could be used to find the needed writers among those currently on the Border Patrol staff, or outside the agency.

To close on a more upbeat note, I should add that CBP has started issuing some of its press releases in Spanish; this is long overdue, and totally appropriate as it is the language spoken by 90-plus percent of those seeking to cross the southern border illegally.

Given my inadequate Spanish I asked my colleague Kausha Luna to look over some of the releases in that language. She said that the Spanish was correct, but that they looked like they had simply been translated from the English-language originals.

...

<https://cis.org/North/Border-Patrol-Needs-Few-Good-Writers>

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15.

Congressional Hearing: Iranian Sleeper Cells Threaten U.S.

So many hearings, so little action.

By Michael Cutler

FrontPageMag.com, May 11, 2018

...

A succession of hearings conducted in both the Senate and House of Representatives have also focused on the threats posed to America and Americans by international terrorists. I have testified before a number of those hearings and I have raised concerns about sleeper agents and how they have exploited vulnerabilities in the immigration system.

My recently published booklet, Immigration Fraud, Lies That Kill explores the issue of immigration fraud in great detail, particularly where such fraud undermines national security and public safety, facilitating the entry and embedding of sleeper agents.

My recent article, Jihadis and Drug Cartels At Our Border focused on the threats posed to American national security by the presence of terrorists in Latin America primarily in terror training camps in the Tri-Border Region of Brazil operated by Hamas and Hezbollah and likely includes members of al-Qaeda and perhaps ISIS and by the constant flow of Iranian Quds Forces into Caracas, Venezuela from Tehran.

According to information provided by expert witnesses at the hearing, globally, Hezbollah and Iranian Quds Forces are comprised of more than an astounding 200,000 well-trained, well-equipped and "battle-hardened" members.

Yet, inexplicably, America's borders still serve as little more than "speed bumps" to human traffickers and drug smugglers (often these criminals are one and the same). We continue to have an ever-expanding Visa Waiver Program that should have been terminated the afternoon of September 11, 2001 and an abject lack of resources to enforce the immigration laws from within the interior of the United States, while Sanctuary Cities Endanger - National Security and Public Safety.

...

<https://www.frontpagemag.com/fpm/270141/congressional-hearing-iranian-sleeper-cells-michael-cutler>

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16.

DACA Ruling: Judicial Travesty Obstructs Presidential Authority

Fed. Judge Bates' ruling ignores facts and national security.

By Michael Cutler

FrontPageMag.com, May 7, 2018

...

Judge Bates' ruling ignores the indisputable fact that DACA was created by Obama's Executive Order and not by legislation. Judge Bates apparently believes that Executive Orders must extend beyond the administration of the president who issued those Executive Orders, even when the new president disagrees with them. Bates' ruling obstructs President Trump's ability to implement his policies.

...

News coverage about DACA has failed to report on that which I have noted in my commentary, but has become a conduit for the dissemination of propaganda and the disingenuous claims made by the Obama administration, parading those falsehoods as supposed facts.

Mainstream media coverage and discussions about DACA have ignored how the Obama administration perverted the discretionary authority inherent in deferred action, for humanitarian purposes, to create a de facto temporary amnesty program, conferring lawful immigrant status on nearly 800,000 illegal aliens, who may not even be children but actually middled-aged.

By denying President Trump the right to terminate DACA, Judge Bates apparently seeks to legitimize Obama's DACA Executive Order, treating it as law, when in reality DACA co-opted Congress' unique legislative authority.

America is a nation of laws, not Executive Orders.

...

<https://www.frontpagemag.com/fpm/270074/daca-ruling-judicial-travesty-obstructs-michael-cutler>

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17.

Taxing Remittances Can Build the Wall

By Daniel John Sobieski

American Thinker, May 5, 2018

...

Why is the country whose oppression they are allegedly fleeing helping them leave? The answer is remittances, the money sent back home by so-called "migrants." Asylum is in large part a colossal scam designed to provide Latin American countries with both a safety valve and a cash cow of foreign exchange. In 2017, remittances sent back to Honduras totaled \$4.33 billion and make up a significant part of the Honduran economy:

...

Talk about a trade imbalance. We import alleged asylum-seekers and other illegal aliens, and they

send home billions sucked out of a benevolent U.S. government and economy.

Trump's wall would do a lot to stop this, but the question is how to pay for it. One U.S. congressman has suggested a way to get Mexico to pay for it, and Honduras, and Guatemala, and the rest of them:

...

https://www.americanthinker.com/articles/2018/05/tax_remittances_can_build_the_wall.html

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18.

The DHS Continues to Facilitate 'Caravan' Invasion Against Trump's Wishes

Even a wall won't stop our bad policies.

By Daniel Horowitz

Conservative Review, May 8, 2018

...

Trump is not wrong about the need for Congress to act. Conservatives like Jim Jordan need to raise hell in Congress and use Jordan's potential run for speaker to shame their leadership every day for not making the protection of our sovereignty against an illegal invasion the number one priority. It's not as if they are busy reforming health care. However, somebody needs to send a memo to the president and make him understand that what is going on now is the fault of DHS policies, not our laws..

President Trump needs to understand that if he doesn't countermand his own administration's policies, even if he builds a border wall between points of entry, it won't help. Automatic admission and catch-and-release will incentivize hundreds of thousands more from Central America to come here and simply knock on the door, be processed, and be released into our schools and communities. They don't need to trespass our border or climb over a wall to fleece the American taxpayer if his DHS is willingly opening the doors at the ports of entry. This is already happening.

...

<https://www.conservativereview.com/articles/dhs-continues-facilitate-caravan-invasion-trumps-wishes/>

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19.

DHS Secretary to Democratic Senator: Fighting Illegal Immigration Is Not a 'Philosophy,' It's the Law

By Matt Vespa

Townall.com, May 9, 2018

Call it what you want, but is this not a window into how far left Democrats have gone on immigration? Fighting illegal immigration is a philosophy? Well, that's what Sen. Patty Murray (D-WA) said in a brief, but heated exchange with Department of Homeland Security Secretary Kirstjen Nielsen, who

testified before the Senate Homeland Security Appropriations Subcommittee yesterday.

Sen. Murray wanted to know if DHS was exploring alternative methods other than detention to save taxpayer dollars concerning pregnant women who are caught at the border. Nielsen said that they utilize ankle bracelets, but added that if a pick up repeat offenders of those crossing into the U.S. illegally, or have been charged with a crime worthy of prosecution, they turn them over the marshals. That ends any option for so-called alternative methods to detention. It's when the DHS secretary reiterated that it's illegal to enter the U.S. illegally that Murray got snippy (via NTK Network):

...

<https://townhall.com/tipsheet/mattvespa/2018/05/09/dhs-secretary-to-democratic-senator-fighting-illegal-immigration-is-not-a-philo-n2478838>

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20.

No More Central American Caravans for Mexico

By Silvio Canto, Jr.

American Thinker, May 8, 2018

...

2. Central Americans have very little to contribute to Mexico. They are generally poor and would simply compete with Mexico's poor for jobs. Some may stay in the country and could create problems with Mexicans.

3. Mexico does not want to get the reputation that it is inviting people flow to the U.S.

Mexico's southern border strategy is interesting in another way. The Mexicans are not flooding the border with soldiers. Instead, they are using federal agents and checkpoints to do the same thing. The benefit of this approach is that they don't have to answer questions about militarizing their border at the same time that they oppose the U.S. doing something similar.

...

https://www.americanthinker.com/blog/2018/05/no_more_central_american_caravans_for_mexico.html

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21.

Central American Migrants Aren't Seeking Asylum, They're Activists Challenging US Sovereignty

By A.J. Louderback

TheHill.com, May 7, 2018

...

As the group's name suggests, Pueblos Sin Fronteras believes that anybody has the right to enter any nation (most especially the United States) whenever they want to and that we have a legal and

moral obligation to let them in so long as they don't show up in tanks.

The clear objectives of Pueblos Sin Fronteras are to exploit the humanitarian policies of the United States and to take advantage of our asylum system that was carefully crafted to protect the oppressed, not reward opportunists.

The United States is under no legal or moral obligation to allow politically motivated organizations to use our humanitarianism and our legal system as a weapon in their assault on our national sovereignty. The real intent of the organizers is to get caravan members into the United States because they know that, once in the country, it will be extremely difficult for the government to ever remove them. To achieve this end, Pueblos Sin Fronteras along with "legal aid" groups are openly coaching the migrants about what they need to say to immigration officials in order to make a facially valid asylum claim.

...

<http://thehill.com/opinion/immigration/386503-central-american-migrants-arent-seeking-asylum-theyre-activists>

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22.

Anti-Illegal Immigration Lawyers Come to Trump's Defense, 'Long Overdue'

By Paul Bedard

Washington Examiner, May 7, 2018

...

Called "Attorneys United for a Secure America," the three-month-old initiative already has showed its muscle in fights involving the president's travel ban and war on sanctuary cities.

"This is about making the immigration system work for Americans again. For too long I think we've been concerned about how it's working for other people," said attorney Sarah R. Rehberg, who heads up the project for the Washington-based Immigration Reform Law Institute.

Her emerging network of lawyers is an answer to the dozens of pro-immigration groups and legal teams who have pushed for open borders and demanded sympathetic policies for illegal immigrants and who have fought Trump's crackdown.

"This is long overdue," she said in an interview. "It's been tough. The opposition has been attacking everything that this administration does left and right. Now we're hopeful that cooler heads may prevail at the U.S. Supreme Court, but until then of course it's going to be an uphill battle," Rehberg said.

...

<https://www.washingtonexaminer.com/washington-secrets/anti-immigration-lawyers-come-to-trumps-defense-long-overdue>

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23.

Old Muhammad Had A Farm, Jihad, Jihad, Jihad...Oh!

By Ann Coulter

Human Events Online, May 10, 2018

...

Howling about their need for illegal aliens to harvest “highly perishable crops” in 1986, farmers demanded a special amnesty for farm workers. As a result, we got the Agricultural Amnesty Act and, with it, not one but two of the 1993 World Trade Center bombers.

The blast killed six Americans and injured more than a thousand. On the plus side, strawberries that day cost a nickel less than in 1985.

One farm worker was Mahmud Abouhalima, or “Mahmud the Red,” as he was known in the terrorist community. Basically your stock farm character, straight out of Norman Rockwell. He was among the 100,000 farm workers to apply for amnesty from the gently waving wheatfields of Midtown Manhattan.

A cabdriver, Mahmud had never been anywhere near a crop. His agronomic experience consisted of driving the getaway car for Rabbi Meir Kahane’s assassin. (The assailant initially got into the wrong taxi. Even terrorists can’t tell one Arab cab driver from the next.)

...

<http://humanevents.com/2018/05/10/old-muhammad-had-a-farm-jihad-jihad-jihad-oh/>

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24.

A Texas Lawsuit Killed One Obama Immigration Policy. Can the Same Strategy Defeat DACA?

By Emma Platoff

The Texas Tribune, May 7, 2018

...

Trump promised in September that he’d put an end to DACA, saying Congress needed to pass legislation if it wanted to protect the status of child immigrants. But a trio of federal court rulings have so far stymied his efforts. Though Texas’ lawsuit challenges the federal government, if it succeeds, it would bring the president the outcome he’s said he wants.

With its eyes on that win, Texas has taken up the same legal arguments it successfully used last time. Texas and its allies again claim that Obama didn’t have the power to enact DACA but used an executive action to create a program they say could be enacted lawfully only by Congress. And the suit against DACA appears poised to follow DAPA’s three-stop path through the federal courts, going first to a district court that ruled against DAPA, then to an appellate court that also ruled against DAPA, and finally reaching resolution at the U.S. Supreme Court, which last time dead-locked in a 4-4 tie that left Texas’ DAPA win in place.

The judges on those courts are mostly the same, save for one newcomer at the U.S. Supreme Court who, experts say, is likely to be sympathetic to Texas’ argument.

Still, the circumstances are different. DAPA would have included an estimated 4 million immigrants, while DACA covers several hundred thousand. And DAPA was controversial from the start, whereas DACA “Dreamers” have by now won the favor of much of the country. Nearly 60 percent of Texans support it, according to an October University of Texas/Texas Tribune poll. And even U.S. Sen. John Cornyn, a former Texas attorney general and one of the most powerful Republicans in Congress, has said the lawsuit is “not a solution.”

...

<https://www.texastribune.org/2018/05/07/texas-lawsuit-daca-dapa-ken-paxton/>

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25.

USA Today Bending the Immigration Facts to Fit the Open-Borders Narrative

By Matt O'Brien

ImmigrationReform.com, May 9, 2018

...

Those women whose removal was deferred by U.S. Immigration and Customs Enforcement were only allowed to remain in the United States pursuant to the Obama administration's “Priority Enforcement Program” (PEP). However, the PEP was of dubious legality and did not (because it could not) confer any permanent protection on anyone. In essence, it was an exercise of governmental discretion, which could be withdrawn at any time. But USA Today omits those essential details, instead stating that one of the women was “spared deportation in 2014 by an executive order.”

So, for the sake accuracy, *USA Today* probably should have called its article something like, “Women with Extensive History of Violating U.S. Immigration Law Likely to Be Deported in Accordance with Relevant Statutes.” But the paper's editors probably didn't like that, because it doesn't fit the mainstream media's false narrative that American immigration policies are cruel and oppressive.

...

<https://immigrationreform.com/2018/05/09/usa-today-bending-immigration-facts-fit-open-borders-narrative/>

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26.

Hispanics Score Under Trump

By Steve Cortes

Real Clear Politics, May 9, 2018

...

"For communities of color, the new administration's focus on immigration enforcement undoubtedly improves the prospects for American working-class citizens who no longer have to constantly compete in the wage markets against an unending flood of illegal workers. Perhaps for this reason, polling done by a liberal survey organization at the University of California shows that nearly 60

percent of respondents in deeply blue California believe that increasing deportations is very or somewhat important. Nationally, Hispanic Americans believe by a 2-to-1 margin that immigration enforcement is too lax as opposed to too strict."

...

https://www.realclearpolitics.com/articles/2018/05/09/hispanics_score_under_trump_136998.html

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27.

Sessions' Answer on "Separating Families" Is Both Brutal and True

By Jazz Shaw

HotAir.com, May 9, 2018

...

"If you are smuggling a child, then we will prosecute you and that child will be separated from you as required by law," Sessions said earlier Monday in Scottsdale, Ariz. "If you don't like that, then don't smuggle children over our border."

...

I'll confess that I've been waiting a while to hear some common sense like this coming from the executive branch of our government. Crossing the border illegally is a crime. When people commit other crimes such as robbery, assault or murder, the perpetrators who are sent to prison sometimes have families, including children. You don't hear anyone demanding they get a pass so they won't be separated from their kids. To borrow a line from the Baretta theme song, *don't do the crime if you can't do the time*. (Some of you younger readers may have to go Google that one.)

Sessions went on to remind any potential visitors that our border is not open and if you desire entry, *"Make your claim. Wait your turn."* He finished up with another bit of cold, hard truth, telling the audience that *we cannot take everyone on this planet who is in a difficult situation*.

...

<https://hotair.com/archives/2018/05/09/sessions-answer-separating-families-brutal-true/>

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28.

America Is Becoming a Sanctuary Country, Where's the Wall?

InvestmentWatch Blog, May 11, 2018

...

If this trend continues, according to the report from the Washington Times, within 5 to 10 years,

considering the way it's been exponentially proliferating and expanding (the sanctuary movement that is), we're going to have the entire US become a sanctuary country. If you want to see how fast this movement has exploded and taken off, according to the Fair Report, as shown in the Washington Times piece: much of this occurred under President Barrack Hussein Obama, i.e. the Dear Leader, Hope and Change et al. When he came to power, there were less than 30 jurisdictions who declared themselves sanctuary cities/town or whatever. There are now over 564, with the big ones being California, a full sanctuary state, officially, together with New York and Illinois, which are de facto sanctuary states, and of course, Massachusetts, in which sanctuary cities are now spreading like wild-fire.

So, if this trend continues, we are now going to become a sanctuary country in less than 10 years. This is how fast this cancer is proliferating. It is now, at this point, almost unstoppable, unless we say: enough is enough, basta! If you ask me, this is one of the main reasons Donald Trump became POTUS in 2016, because we are now facing a historic invasion (there's no other word for it) from the South. We have at least 12 to 20 million illegal immigrants in our country (officially), but the real number I think is closer to 40 million, but let that go. And they are still pouring in. The latest example was the Central American migrant caravan, which just came right across the border (WHERE IS THAT DAMN' WALL TRUMP?), and many of them are now in the US, while others are getting processed for asylum; and so, President Trump, at a meeting with his cabinet a few days ago, called out and in fact criticized his current Homeland Security secretary Nielsen, saying (correctly) that she failed to secure our border and also failed to prevent the migrant caravan from crossing the border. He basically told her: either you shape up or you ship out. According to multiple media reports, she drew up a resignation letter, was about to hand Trump the letter, then decided against it, because she felt humiliated by the way Trump had publically called her out in front of the entire cabinet, or something along these lines.

...
<http://www.investmentwatchblog.com/america-is-becoming-a-sanctuary-country-wheres-the-wall/>

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29.

Wedding Bells for Illegal Immigrants at U.S. Courthouse

By Howie Carr

The Boston Herald, May 6, 2018

...

So you read about this illegal immigrant from El Salvador, Jaime Antonio Alvarez Figueroa. He's locked up at the Plymouth House of Correction after his arrest for drunk driving with no license (stop me if you've heard this one before).

Suddenly he decides to marry his girlfriend, Tatiana Chavez Vanegas, who is seeking "asylum."

The alleged drunk driver's lawyer wrote to the judge: "It is important for his immigration case because he will be granted derivative asylum status should Ms. Chavez Vanegas be granted asylum" and remain together.

There is of course another way they can remain together just go back to El Salvador and support themselves. No problemo.

But no, this alleged drunk-driving jailbird illegal immigrant is desperate to become a “derivative asylee” you know, like the Tsarnaevs, the Muslim terrorists who bombed the Boston Marathon. Those derivative asylees were so oppressed by living on welfare all those years that they couldn’t return to their Third World homeland, except to get terrorist training for six months at a time.

...

http://www.bostonherald.com/news/columnists/howie_carr/2018/05/howie_carr_wedding_bells_for_illegal_immigrants_at_us_courthouse?utm_medium=socialflow&utm_source=facebook

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30.

State Department Shuts Out Kids From Summer Jobs

By Joe Guzzardi

USA Today, May 4, 2018

With summer just weeks away, teenagers and college students looking for seasonal employment will have to compete with the annual influx of international workers.

...

Because international students pay an average of about \$1,100 in fees to private organizations that sponsor their participation in the program, the program generates well over \$100 million in annual revenues for those organizations. Participants pay out millions more in visa fees to the State Department, and in travel expenses to and from the U.S. In the end, sponsors pay government dues to be part of the program; students pay the fees associated with the program and their own roundtrip travel expenses; employers pay nothing. Many unsuspecting SWTs return home disillusioned, often with little money saved.

The State Department’s failure to oversee its own program has led to multiple instances of exploitation, like last year’s Myrtle Beach case. Ten Dominican Republic college students were promised jobs at an Italian ice shop, plus adequate accommodations, but ended up keeping house and living in a bed bug-infested motel. Similar abuses have been documented in Virginia, Michigan, Pennsylvania and Mississippi.

Last year, The Wall Street Journal reported the Trump administration is considering reducing the number of visas issued under SWT. And as usual when employment-based visas are scrutinized with an eye toward cutting the total granted, businesses cry foul and falsely predict that without cheap foreign labor they’ll go bankrupt.

...

<https://www.usatoday.com/story/opinion/columnists/2018/05/04/column-joe-guzzardi/580705002/>

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31.

Slipping Backwards on Immigration — Get on It, Mr. President!

By John Derbyshire

VDare.com, May 11, 2018

...

More bad news: Headline from the Washington Times, May 3rd: Illegal Immigration Surges 230 Percent In April On Southwest Border. That's 230 percent over April last year.

There was a big lull in border-jumpers after Trump's inauguration. Illegal aliens assumed that the new U.S. administration would clamp down firmly on illegal crossings.

Nobody assumes that now. The southern border is as wide-open as ever. The Border Patrol says it nabbed 38,234 border jumpers in April. The *Washington Times* says 75 percent of them were given "catch and release," which means they're here, in your town and mine. Seventy-five percent of 38,234 is 28,675.

...

<https://www.vdare.com/articles/john-derbyshire-slipping-backwards-on-immigration-get-on-it-mr-president>

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32.

Disastrous April Employment Report — Immigrants Steal All Trump's New Jobs, Depress American Wages.

Border Wall, Moratorium Needed Now More Than Ever

By Edwin S. Rubenstein

VDare.com, May 7, 2018

...

In April, for the fourth straight month, immigrant displacement of American workers and the immigrant workforce (legal and illegal) both surged, more than reversing that gains that appeared to be evident by the end of 2017 — what we then optimistically saw as an emerging "Trump Effect." Simultaneously, it is now clear that illegal immigration is also surging again. The one bright spot: this utterly discredits lying MSM attempts to downplay illegal immigration in the face of backlash to the Pueblos Sin Fronteras caravan and President Trump's fierce reaction. Nevertheless, it is now clear that only vastly stronger executive action, and above all legislation, can stem the Historic American Nation's dispossession via non-traditional immigration.

...

<https://www.vdare.com/articles/national-data-disastrous-april-employment-report-immigration-steal-trump-s-all-new-jobs-depress-american-wages-border-wall-moratorium-needed-now-more-than-ever>

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33.

DHS Decision on Hondurans Fits Disturbing Pattern on Immigration

By Stuart Anderson
Forbes.com, May 5, 2018

...
Removing Hondurans with U.S.-born children to an unsafe country will separate families and achieve no supportable policy objective. No economists believe forcing 50,000 people out of the country will “free up” jobs for U.S. workers, as some immigration critics may argue. There is no such thing as a fixed number of jobs. When new people enter the labor force, they create additional jobs through consumer spending, entrepreneurship and encouraging increased investment. U.S. economic growth is harmed by a stark reality: Many U.S. employers cannot find enough workers to grow. There are “73 counties in the United States with unemployment rates of 2 percent or lower,” reported the *Washington Post* last June.

The decision to end Temporary Protected Status for Hondurans was based on antipathy towards the foreign-born. It was not the first such decision by the administration and, unfortunately, it is unlikely to be the last.

...
<https://www.forbes.com/sites/stuartanderson/2018/05/05/dhs-decision-on-hondurans-fits-disturbing-pattern/#159330ff178f>

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34.

Trump Promised to Reshape America. He’s Already Told One Million Immigrants Who Had Legal Protections to Get Out.

They built lives in the U.S. with the government’s OK, and now they face an uncertain future.

By Elise Foley
Huffington Post, May 5, 2018

...
If they stay without authorization, TPS and DACA recipients could be caught up in a deportation system that is increasingly sweeping up people without criminal records. The Trump administration has said repeatedly that no one is exempt from enforcement and that it won’t look the other way if it finds another undocumented immigrant while looking for one of its targets. About 17 percent of the people deported from the interior of the country last year were noncriminals, a massive jump from the year before, when people without criminal convictions made up 8 percent of the removals from the interior.

As the Trump administration works to expel immigrants from the U.S., it is working to make it harder for new immigrants to enter the country.

...
https://www.huffingtonpost.com/entry/trump-tps-daca_us_5aecbb97e4b0c4f1932282a0

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35.

Trump Drops a Bombshell on Immigration, and No One Bothers to Report It

MarketWatch.com, May 7, 2018

...

“And we do need people coming into our country,” Trump said. “You know, at 3.9% unemployment, we need people coming in. But I will tell you this, we want people to come into our country on the basis of merit.”

Reporters’ jaws didn’t exactly drop at the remark. You won’t find it in the accounts of the speech by the Associated Press, CBS News or the New York Times.

That could be because Trump has long supported a merit-based immigration system, and derided the U.S. lottery system. That’s not new.

...

So what does this new stance mean? Is Trump doing a U-turn on immigration?

Of course not.

He did, after all, spend a good chunk of his time in Cleveland complaining about the existing legal-immigration system. He’ll continue to use both the legal- and illegal-immigration situations as what supporters would say are legitimate policy concerns or as critics would call a wedge issue.

That said, an evolving policy position is still notable. Trump seems to have moved the goalposts in the direction of more rather than less migration on what he would accept in the event the ever-difficult issue of immigration reform ever gets tackled by Congress.

...

<https://www.marketwatch.com/story/trump-drops-a-bombshell-on-immigration-and-no-one-bothers-to-report-it-2018-05-07>

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36.

Immigrants in the U.S. Illegally Make Us Safer

By Steve Chapman

The Chicago Tribune, May 9, 2018

...

In 1990, there were about 3.5 million foreigners living in this country illegally, and the national murder rate was 9.4 per 100,000 people. When the population of immigrants here illegally peaked at 12.2 million in 2007, the murder rate was 5.6 per 100,000 a decline of 40 percent and it has fallen more since then.

Far from generating crime, this group appears to suppress it. A groundbreaking new state-by-state study covering 1990 to 2014 by sociologists Michael Light of the University of Wisconsin at Madison and Ty Miller of Purdue in the journal *Criminology* concludes that “undocumented immigration over this period is generally associated with decreasing violence.”

In another study, Light, Miller and Brian Kelly (also of Purdue) found that “increased undocumented

immigration was significantly associated with reductions in drug arrests, drug overdose deaths, and DUI arrests.”

The question Light and his colleagues examined, he told me, is: “Does undocumented immigration make us less safe?” The answer: “No.” If anything, he says, the evidence “suggests the opposite.”

...

<http://www.chicagotribune.com/news/opinion/chapman/ct-perspec-chapman-immigrants-crime-ms-13-sessions-trump-0510-20180509-story.html>

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37.

‘Damn This President!’ Maxine Waters Fails to Serve Teamsters Red Meat in Unleashed Tirade
BizPac Review, May 8, 2018

...

After a lengthy rant about protecting unions, Waters inexplicably dove in to the topic of immigration. Conveniently leaving out the key word “illegal,” Waters incorrectly stated that immigrants were almost exclusively coming to the U.S. from Mexico and slammed President Trump for being a racist divider.

“America must be for all of the people. All of the time,” she declared, eliciting weak applause.

Right there Waters showed her true colors by lumping in foreign invaders with American citizens who just want to work. Union members should ask themselves if they want to compete with illegal aliens for jobs and help foot the bill for their housing, food, and education. Or, is it time to put America and Americans First

...

<https://www.bizpacreview.com/2018/05/08/damn-this-president-maxine-waters-fails-to-serve-teamsters-red-meat-in-unleashed-tirade-632539>

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38.

Why Trump is Manufacturing an Immigration Crisis

By Fareed Zakaria

The Arizona Daily Star, May 5, 2018

...

And yet, Trump is unrelenting in his attacks on these destitute, defenseless people. He demonizes them, describing them as threats to America, symbols of the lawlessness and violence that supposedly pervade the country. (In fact, violent crime in America is down by 66 percent since the early 1990s.)

Why is he doing this? The most likely answer is that he is searching for a strategy for the upcoming midterm elections, which are looking grim for Republicans, who have little to talk about. There is no

trillion-dollar infrastructure program. The new tax law is unpopular, seen as largely a giveaway to corporations and the rich. It has not boosted economic growth as promised. Health care is now even more complex, given the partial repeal of Obamacare.

...

http://tucson.com/opinion/national/fareed-zakaria-why-trump-is-manufacturing-an-immigration-crisis/article_acbd2a58-8ccb-5221-9c12-5cbff012dc83.html

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39.

America's Appalling About-Face on Refugees

By Edward Morrissey

The Week, May 8, 2018

...

Critics of the law raise a good point when scoffing at the use of "temporary" status to effectively provide permanent emigration. Decisions to provide safe haven and work permits on longer-term bases should require more prudence and more certainty. The law's initial proviso for an 18-month safe-haven status should be enough to determine whether conditions require a longer-term approach, and therefore to provide support for transitioning out of temporary status to a formal immigration process. Unfortunately, Congress has allowed succeeding administrations to shirk fixing this problem in the system responsibly.

But here's the key point: None of this offers any justification for the administration's appalling decision to threaten to kick out so many people after some 20 years of legal residency here.

...

We should absolutely fix the broken TPS system. But there must be a better transitional process than just giving 18 months' notice to its expiration. Given that we helped create this issue, shouldn't we provide for a fast-track system for those in TPS beyond a certain number of years? That seems especially true for those who have demonstrated a commitment to America in both assimilation and industry.

...

http://theweek.com/articles/771952/americas-appalling-aboutface-refugees?utm_campaign=newsletter&utm_source=afternoon&utm_medium=05_08_18-article_6-771952

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40.

Now Immigrants Are Being Harassed on the Witness Stand in California Courtrooms

By Scott Wiener And George Gascón

The Sacramento Bee, May 7, 2018

...

Before the 2016 election, a study found that 70 percent of undocumented immigrants and 44 percent

of all Latinos were less likely to contact law enforcement authorities if they were a victim of a crime for fear that police would ask them or people they know about their immigration status. After the election, it got even worse: During the first six months of Donald Trump's tenure as president, as he filled the airwaves with anti-immigrant rhetoric, reporting of domestic violence among San Francisco's Latino population dropped 18 percent compared to the same time period in 2016.

These stories, these statistics, and the era of immigration agents stalking undocumented immigrants in our courthouses are terrifying and make our communities less safe. That is why we partnered to propose Senate Bill 785, which prevents the disclosure of people's immigration status in court when that status is irrelevant to the case.

Someone's status should not be exploited at the expense of public safety, and we do not want witnesses and victims to be fearful that coming forward to report crimes or to testify in court will result in the reckless exposure of their immigration status.

Under SB 785, attorneys are prohibited from asking a witness about his or her immigration status unless the attorney first seeks a ruling from the judges (outside of a public courtroom) that the witness's immigration status is relevant to the case. If the judge rules that immigration status is relevant and admissible, it can then be raised in open court.

...

<http://www.sacbee.com/opinion/california-forum/article210594384.html>

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41.

The Tories Want You to Think Their New Data Protection Bill is Empowering – But Its 'Immigration Exemption' Will Make Life Hell for People Like Me

If the immigration exemption becomes law, I will lose my right to know when my GP and other trusted public services hand my data over to the Home Office for 'immigration control' reasons
By Chrisann Jarrett

The Independent (U.K.), May 8, 2018

...

This is because the government's Data Protection Bill meant to give us all more power over our personal information includes an "immigration exemption". This enables state bodies and other organisations to share people's confidential data without them having the right to know this is happening, or to object all for "effective immigration control".

The proposal is vaguely worded so no one really knows the full extent of what it will mean in practice. But, as Liberty says, we can be sure it would create a two-tier system where some of us have rights because of where we were born while others don't.

It is a clumsy attempt to clamp down on illegal migrants, as part of the government's hostile environment. But Home Office record-keeping is so inaccurate all migrants would be at risk including those who have lived in the UK most of their lives and have lawful status. I know this from personal experience.

...

<https://www.independent.co.uk/voices/data-protection-bill-immigration-home-office-privacy-intrusion->

[a8340826.html](#)

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<https://cis.us4.list-manage.com/track/click?u=11002b90be7384b380b467605&id=9dab3416db&e=082830d5d5>

<https://cis.us4.list-manage.com/track/click?u=11002b90be7384b380b467605&id=b6fb7cddc2&e=082830d5d5>

<https://cis.us4.list-manage.com/track/click?u=11002b90be7384b380b467605&id=960dfd4bb4&e=082830d5d5>

<https://cis.us4.list-manage.com/track/click?u=11002b90be7384b380b467605&id=2d8d383aad&e=082830d5d5>

<https://cis.us4.list-manage.com/track/click?u=11002b90be7384b380b467605&id=9c7d7a453f&e=082830d5d5>

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Morning Shift

From: Morning Shift
Sent: Tuesday, May 22, 2018 10:13 AM
To: Cutrona, Danielle (OAG)
Subject: POLITICO's Morning Shift: #MeToo without class action — Blue states brace for Janus — Bigger border wall request

By Ted Hesson | 05/22/2018 10:00 AM EDT

With help from Andrew Hanna and Sabrina Rodriguez

#METOO WITHOUT CLASS ACTION: "The Supreme Court, dealing a potential blow to the #MeToo movement against sexual harassment, ruled that employers can require as a condition of employment that workers waive their rights to participate in class action lawsuits," POLITICO's Andrew Hanna and Josh Gerstein report. The ruling means workers subject to such clauses can sue only as individuals.

The justices didn't directly address sexual harassment, which typically is fought in individual lawsuits rather than in class actions. But the ruling seems likely to strengthen the lower courts' inclination to judge as fully in accordance with existing law the type of mandatory arbitration clause that disallows *individual* legal action by workers against their employers — such as the one that for decades kept silent a tidal wave of sexual-harassment allegations at Fox News. "When harassment cases are shunted into mandatory arbitration that allows employers to hide patterns of harassment under the rug," said Emily Martin, general counsel for the National Women's Law Center, "it allows harassers to continue to harm individual after individual."

The ruling reduced the reach of the 1935 National Labor Relations Act by rejecting the argument, embraced since 2012 by the NLRB, that the protections the NLRA afforded "concerted activity" extended to class-action lawsuits. "This court has never read a right to class actions into the NLRA," Justice Neil Gorsuch wrote in the 5-4 majority opinion, "and for three quarters of a century neither did the National Labor Relations Board." But in a dissent, Justice Ruth Bader Ginsburg invoked "the reality that sparked the NLRA's passage: Forced to face their employers without company, employees ordinarily are no match for the enterprise that hires them. Employees gain strength, however, if they can deal with their employers in numbers."

Unions and allies blasted the decision and urged Congress to amend federal labor law to reverse it. A September report by the left-leaning Economic Policy Institute found that the share of workers subject to mandatory arbitration agreements more than doubled after 2000 and now exceeds 55 percent. "This case is about more than just workers' ability to get justice in a sexual harassment or discrimination case," said Celine McNicholas, EPI's director of labor law and policy. "It's about workers' ability to take collective action in a whole host of workplace issues." More [here](#). Read the opinion [here](#) and EPI's report on mandatory arbitration [here](#).

GOOD MORNING! It's Tuesday, May 22, and this is Morning Shift, POLITICO's daily tipsheet on employment and immigration policy. Send tips, exclusives and suggestions to thesson@politico.com, ikullgren@politico.com, ahanna@politico.com, and tnoah@politico.com. Follow us on Twitter at [@tedhesson](https://twitter.com/tedhesson), [@AndrewBHanna](https://twitter.com/AndrewBHanna), [@IanKullgren](https://twitter.com/IanKullgren) and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

POLITICO and the South China Morning Post are partnering to expand coverage of U.S.-China relations. Read our note from POLITICO Editor-in-Chief John Harris and Editor Carrie Budoff Brown to [learn more](#).

BLUE STATES BRACE FOR JANUS: "Blue state lawmakers are waging a preemptive strike against an anticipated U.S. Supreme Court decision that could decimate the power of public-sector unions across the nation," POLITICO's Katherine Landergan and Andrew Hanna report.

"**New York and New Jersey officials** are pursuing an end-run around *Janus v. AFSCME*, a case that could give government workers across all states the option of declining to pay union fees even if they benefit from that union's contract negotiations," the pair report. "Pro- and anti-union partisans alike anticipate the court is likely to rule against the unions — a decision that labor leaders fear will shrink their bank accounts and, in turn, their power.

"**The play by these states** is pretty simple," POLITICO reports. "Beef up public-employee union's ability to recruit and retain members in an effort to counteract the chunk of revenue loss these unions expect." More [here](#).

BIGGER BORDER WALL REQUEST: President Donald Trump will seek at least \$2.2 billion for a border wall in fiscal year 2019, POLITICO's John Bresnahan and Rachael Bade report. That's up from the \$1.6 billion included in the administration's budget proposal. "Trump has repeatedly threatened to shut down the government this September if he doesn't get a chunk of funding for the wall project, which would likely cost \$25 billion to complete," Bresnahan and Bade report. "But Democrats remain opposed to the border wall, and House GOP leaders are in danger of losing control over their moderate members due to a fight over [Dreamers]." More [here](#).

Trump discussed border security with five Republican governors over dinner at the White House Monday evening, the Associated Press reports. In attendance were Arkansas Gov. Asa Hutchinson, Arizona Gov. Doug Ducey, Mississippi Gov. Phil Bryant, New Mexico Gov. Susana Martinez, and South Carolina Gov. Henry McMaster. Homeland Security Secretary Kirstjen Nielsen [tweeted](#) that she attended the gathering, thanking the governors for "helping to deploy the @USNationalGuard to support @DHSgov." More [here](#).

Related read: "Are human-smuggling cartels at the U.S. border earning \$500 million a year?" from the Washington Post's Glenn Kessler. Find it [here](#).

NLRB BACKS BOEING MICRO-UNIT: An NLRB regional director ordered a union election for a sub-group of employees at the Boeing Company, despite a December [decision](#) by the federal labor board that narrowed the circumstances under which micro-units could be created. The case involves approximately 180 flight readiness technicians and inspectors who want to organize as a separate bargaining unit. Boeing accused the group of being a "gerrymandered, fractured unit," but Regional Director John Doyle [concluded](#) that the employees "share a sufficiently distinct community of interest" and ordered a union election on May 31. This marks the [second time](#) this month that a regional director upheld a micro-unit, in spite of the NLRB's December ruling. The two rulings may further spur [efforts](#) by NLRB General Counsel Peter Robb to demote and reduce the influence of regional directors, whom the business community regards as too pro-labor.

REFUGEES STICK AROUND: A report released today by the Tent Partnership for Refugees and the Fiscal Policy Institute found refugees were more likely than other workers to stay at a job. Nineteen of 26 employers surveyed (73 percent) reported a higher retention rate for refugees. Still, employers will

likely find it harder in the future to hire refugees: Trump set the refugee ceiling at 45,000 in fiscal year 2018, the lowest level in decades. Read the report [here](#).

THE ASYLUM SEEKER IN 'MATTER OF A-B': NPR's Joel Rose interviewed a Salvadoran immigrant at the center of a case that could decide whether domestic abuse and other crime victimization qualifies as grounds for asylum. Attorney General Jeff Sessions in March elected to intervene in her case, which examines whether being the victim of a crime amounts to membership in a "particular social group." The decision has the potential to overturn years of asylum case law, according to advocates.

The unnamed woman in the case, known as the [Matter of A-B](#), hadn't previously spoken to the media, but she shared her story with NPR. She allegedly fled an abusive husband in El Salvador and claimed asylum in Texas four years ago. She won an appeal of her asylum claim after it was denied by a North Carolina judge, but the original judge has refused to grant her asylum, NPR reports. Now Sessions will decide the outcome. Listen to the story [here](#).

FOX TALKS NAZI GERMANY, WAGES: Former Mexican President Vicente Fox will speak at the National Press Club today about the competing forces of globalism and nationalism. Fox, an outspoken (and [sometimes profane](#)) Trump adversary, reiterated Monday to a group of POLITICO reporters his previous comparison of the current U.S. administration with Nazi Germany. "[Trump] says it's the migrants who are taking our jobs," Fox said, and observed that Hitler made economic arguments against Jews.. "They started kicking Jews out of Germany and they're starting to kick out migrants out of the United States."

Fox also touched on whether Mexico should raise certain wages as part of a reworked NAFTA pact. (Mexico's minimum wage is roughly \$4.50 a day.) He backed the general concept, but disagreed with the U.S. position that a wage hike should be included in the revised agreement. "There's one great idea out of all this mess, which is salaries," he said. "I'm convinced that Mexico needs to improve salaries, but salaries are not improved by decree or executive orders. Jobs are not created by decrees or executive orders."

The U.S. required in its latest NAFTA demands that a certain percentage of a car be produced by workers earning at least \$15 an hour. Mexican negotiators and auto manufacturers have repeatedly rejected the inclusion of wages in the agreement. The press club event begins at 12:30 p.m. Find more info [here](#).

WEEK AHEAD:

Sanders to Disneyland: Sen. [Bernie Sanders](#) (I-Vt.) will attend an event Saturday with Disneyland workers at River Church Arena in Anaheim, Calif. A survey [released](#) in February found that workers at Disneyland, billed as "the happiest place on earth," receive low pay and struggle to find housing. Labor unions have gathered 21,000 signatures for a ballot initiative that would require large companies in the Anaheim resort area to pay \$15 an hour by 2019.

FORMER ENGINEER SUES UBER: "A former engineer at Uber sued the company on Monday, claiming that co-workers sexually harassed her during her time at the ride-hailing service and that its human resources department failed to act on her complaints," Daisuke Wakabayashi reports in the New York Times. "In the lawsuit, Ingrid Avendaño, who joined Uber in 2014 and left last year, also said that despite receiving praise for her work, she was denied promotions or pay increases in retaliation for reporting misconduct at the company." More [here](#).

NYC PLANS UBER WAGE RULES: The New York City Taxi and Limousine Commission plans to issue

NYC PLANS OVER WAGE RULES: THE NEW YORK CITY TAXI AND LIMOUSINE COMMISSION plans to issue within the next two months rules governing rideshare driver wages and pay transparency. The Independent Drivers Guild, a quasi-union for drivers, petitioned the regulatory body to move ahead with rulemaking. "New York City could be the first in the nation to set a livable wage rule that applies to drivers for apps like Uber and Lyft," said Jim Conigliaro, the guild's founder.

THE DIFFERENCE A DAY MAKES: The NYC-based Immigrant Defense Project heads to Albany today to petition state lawmakers to adopt a bill that would reduce the maximum sentence for a serious misdemeanor to 364 days, down from 365. The change would mean the misdemeanor crime would no longer be considered an "aggravated felony" under federal immigration law, which would give immigration judges the power to exercise discretion in such cases.

PERCEPTION OF IMMIGRANTS WARMS: The percentage of people who think new immigrants make positive economic and cultural contributions climbed under President Trump, according to a survey released last week by the Bucknell Institute for Public Policy. The survey, conducted from March 26 to April 1, found the percentage of people who think new immigrants have a positive impact on overall economic growth in the United States rose 13 percent compared with survey results from July 2016.

The poll also found that strong majorities of respondents view new immigrants as hardworking (86 percent), ambitious (81 percent), and intelligent (71 percent). Roughly one-third of those surveyed (35 percent) said new immigrants are violent. The question of immigrants and crime surfaced last week when Trump called some undocumented immigrants "animals," a comment he [later said](#) referred specifically to members of the MS-13 street gang. (The White House [doubled down](#) on Trump's "animals" rhetoric on Monday.) Read the survey [here](#).

BLANKENSHIP EYES THIRD-PARTY BID: "West Virginia coal baron and former prisoner Don Blankenship announced on Monday that he plans to launch a long-shot third-party Senate bid after finishing a distant third in this month's Republican primary," POLITICO's Alex Isenstadt reports. "Blankenship said he would run in the general election as the Constitution Party nominee. But he would need to overcome a 'sore loser' law in West Virginia that prevents failed candidates in a main-party primary from re-filing to run in the general election under another party's banner." Blankenship served a one-year prison sentence in connection with the Upper Big Branch Mine disaster, a coal-dust explosion that killed 29 people in 2010. More [here](#).

COFFEE BREAK:

- "Australia's immigration solution: small-town living," from [The New York Times](#)
- "An immigration debate distinct from economic realities," from [The Wall Street Journal](#)
- "Kansas man pleads guilty to hate-crime charges," from [The Wall Street Journal](#)
- "Blake Farenthold may have been hired illegally at his new lobbyist job," from [HuffPost](#)
- "California rebukes Trump with health care push for immigrants," from [POLITICO](#)
- "The number of 401(k) millionaires hits a new high," from [The Washington Post](#)

THAT'S ALL FOR MORNING SHIFT.

To view online:

<https://www.politico.com/newsletters/morning-shift/2018/05/22/metoo-without-class-action-225496>

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Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Saturday, June 2, 2018 10:03 PM
To: Hamilton, Gene (OAG)
Cc: Hardy, Liam P. (OLC)
Subject: Re: (b)(6)

Great. Thx!

Sent from my iPhone

On Jun 2, 2018, at 9:32 PM, Hamilton, Gene (OAG) <gghamilton@jmd.usdoj.gov> wrote:

Hey y'all,

Thanks for the chance to review. Here are some thoughts/suggestions from me. Happy to discuss at any point— (b)(5)

Thanks again!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Engel, Steven A. (OLC)
Sent: Friday, June 1, 2018 11:14 PM
To: Hamilton, Gene (OAG) <gghamilton@jmd.usdoj.gov>
Cc: Hardy, Liam P. (OLC) (b)(6)
Subject: (b)(6)

Gene: here is the current draft, if you want to see where are. Comments welcome. (b)(5)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Best, Steve

<6-1-18 Matter of A-B- - gph edits.docx>

Davis, May M. EOP/WHO

From: Davis, May M. EOP/WHO
Sent: Sunday, June 3, 2018 12:38 PM
To: Hamilton, Gene (OAG)
Subject: RE: List
Attachments: Border Security Timeline Taskings 5.31.xlsx

This is a draft, but this is what I'm working with. (Is a little dated because still shows last week.)

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Saturday, June 2, 2018 10:17 PM
To: Davis, May M. EOP/WHO <May.Davis@who.eop.gov>
Subject: RE: List

That's a great question. I don't have a good answer.

Thank you!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Davis, May M. EOP/WHO <May.Davis@who.eop.gov>
Sent: Saturday, June 2, 2018 10:16 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: List

Why are you working so late! I'll share a draft with you tomorrow.

Sent from my iPhone

On Jun 2, 2018, at 10:14 PM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

Hi May,

I hope your weekend is going well. At the PCC, you mentioned having a grand list of due-outs from the various ongoing PCs, PCCs, weekly calls, etc. Do you think it's ready for sharing anytime soon? I'm just trying to make sure that we're tracking all of our various assignments so that we can be responsive.

Thank you!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Sunday, June 3, 2018 9:21 PM
To: Zadrozny, John A. EOP/WHO; Walk, John EOP/WHO; Mizelle, Chad R. EOP/WHO; Wold, Theo J. EOP/WHO; Gavoor, Aram A. EOP/WHO; Morgen, Hunter M. EOP/WHO; Foley, David A. EOP/WHO
Subject: RE: DOJ Press Distro

Sure. I can only provide information on what is already out there and in the public domain. The two he has ruled on already (one with a decision, one with a vacation) are:

- [Matter of E-F-H-L-](#)
 - o Here is the underlying [decision](#) from 2014 that the AG vacated.
- [Matter of \(b\) \(6\)](#)
 - o Administrative closure is no longer available in immigration courts

Here are the two cases with forthcoming decisions:

- [Matter of A-B-](#)
 - o Here is the published [AG order](#) rendering decisions on a variety of procedural motions from DHS, the respondent, and amici in the case.
- [Matter of L-A-B-R-](#)

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Zadrozny, John A. EOP/WHO (b) (6)
Sent: Sunday, June 3, 2018 9:09 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Walk, John EOP/WHO (b) (6) >; Mizelle, Chad R. EOP/WHO (b) (6) >; Wold, Theo J. EOP/WHO (b) (6) >; Gavoor, Aram A. EOP/WHO (b) (6) >; Morgen, Hunter M. EOP/WHO (b) (6) >; Foley, David A. EOP/WHO (b) (6) >
Subject: RE: DOJ Press Distro

Thanks, Gene.

Related item: Do you have a running list of the BIA decisions that the Attorney General has reversed or adjusted? (b) (5)

[REDACTED]

JZ

w: (b) (6)

c: (b) (6)

Non-responsive records

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, June 5, 2018 8:42 AM
To: Hardy, Liam P. (OLC)
Cc: Engel, Steven A. (OLC); Koffsky, Daniel L (OLC); Gannon, Curtis E. (OLC); Harris, Sarah (OLC)
Subject: RE: (b)(6)

Got it. Thank you very much! We'll have feedback by COB today.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hardy, Liam P. (OLC)
Sent: Tuesday, June 5, 2018 8:34 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) <saengel@jmd.usdoj.gov>; Koffsky, Daniel L (OLC) <dkoffsky@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) <cegannon@jmd.usdoj.gov>; Harris, Sarah (OLC) <saharris@jmd.usdoj.gov>
Subject: (b)(6)

Gene,

Please find attached the revised draft of the (b)(6) opinion. While the other components are reviewing, we will proceed with a formal cite check.

Thanks,
Liam

Liam P. Hardy
Deputy Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
(202) 514-2046

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, June 5, 2018 2:12 PM
To: Hardy, Liam P. (OLC)
Subject: FW: 2018.06.05 Matter of A-B- (b)(6) AG Opinion (002)
Attachments: AG Order No. (b) (6), (b) (5) pdf; AG Order No. (b) (6), (b) (5) pdf; AG Order No. (b) (6), (b) (5) pdf; AG Order No. (b) (6), (b) (5) pdf; AG Order No. (b) (6), (b) (5) pdf
Importance: High

FYI

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Stewart, Scott G. (CIV)
Sent: Tuesday, June 5, 2018 2:11 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: FW: 2018.06.05 Matter of A-B- (b)(6) AG Opinion (002)
Importance: High

Gene – my folks' review is still underway, but given the tight timing I want to pass along the below point

(b) (5)

(b) (5)

(b) (5)

(b) (5)

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, June 5, 2018 5:10 PM
To: Stewart, Scott G. (CIV)
Subject: Re: 2018.06.05 Matter of A-B- (b)(6) AG Opinion (002)

Forgot to say, thank you

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 5, 2018, at 2:10 PM, Stewart, Scott G. (CIV) <(b)(6) per CIV> wrote:

Duplicative records



Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, June 5, 2018 2:29 PM
To: Champoux, Mark (OLP)
Subject: Re: Strategic plan updates from OAG

Maybe next week?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 5, 2018, at 2:23 PM, Champoux, Mark (OLP) <mchampoux@jmd.usdoj.gov> wrote:

Thanks.

MC

(202) 514-6131

From: Hamilton, Gene (OAG)
Sent: Tuesday, June 5, 2018 2:15 PM
To: Champoux, Mark (OLP) <mchampoux@jmd.usdoj.gov>; Bumatay, Patrick (OAG) <pbumatay@jmd.usdoj.gov>; Morrissey, Brian (OAG) <bmorrissey@jmd.usdoj.gov>
Subject: RE: Strategic plan updates from OAG

AG's decision in Matter of A-B- should be coming this week.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Champoux, Mark (OLP)
Sent: Tuesday, June 5, 2018 11:17 AM
To: Bumatay, Patrick (OAG) <pbumatay@jmd.usdoj.gov>; Morrissey, Brian (OAG) <bmorrissey@jmd.usdoj.gov>
Cc: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Strategic plan updates from OAG

Great – thanks. Just trying to make sure we're not missing anything critical.

MC

(202) 514-6131

From: Bumatay, Patrick (OAG)
Sent: Tuesday, June 5, 2018 11:16 AM

To: Morrissey, Brian (OAG) <bmorrissey@jmd.usdoj.gov>; Champoux, Mark (OLP) <mchampoux@jmd.usdoj.gov>
Cc: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Strategic plan updates from OAG

Same. I passed some along to Mary Daly.

From: Morrissey, Brian (OAG)
Sent: Tuesday, June 5, 2018 11:12 AM
To: Champoux, Mark (OLP) <mchampoux@jmd.usdoj.gov>
Cc: Bumatay, Patrick (OAG) <pbumatay@jmd.usdoj.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Strategic plan updates from OAG

No additions from me.

On Jun 5, 2018, at 11:10 AM, Champoux, Mark (OLP) <mchampoux@jmd.usdoj.gov> wrote:

Brian, Gene, Patrick,

If you have inputs for this, please pass them along at your earliest convenience. The initial June strategy coordination meeting is today late afternoon, and the inputs from OAG are always very helpful to have.

Thanks,

MC

(202) 514-6131

From: Whitaker, Matthew (OAG)
Sent: Thursday, May 31, 2018 2:31 PM
To: Bumatay, Patrick (OAG) <pbumatay@jmd.usdoj.gov>; Cutrona, Danielle (OAG) <dcutrona@jmd.usdoj.gov>; Tucker, Rachael (OAG) <ratucker@jmd.usdoj.gov>; Morrissey, Brian (OAG) <bmorrissey@jmd.usdoj.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Barnett, Gary E. (OAG) <gebarnett@jmd.usdoj.gov>
Cc: Champoux, Mark (OLP) <mchampoux@jmd.usdoj.gov>
Subject: Strategic plan updates from OAG

OAG,

Please fill in important initiatives, deliverables, events, and plans for June in the attached document and send to Mark Champoux by the end of the week if possible. These are helpful as we coordinate plans and priorities across the components for the upcoming month.

-Matt

<Deliverables.June.2018.05.29.v2.docx>

McHenry, James (EOIR)

From: McHenry, James (EOIR)
Sent: Tuesday, June 5, 2018 5:33 PM
To: Hamilton, Gene (OAG)
Subject: RE: 2018.06.05 Matter of A-B- (b)(6) AG Opinion (002)
Attachments: 2018.06.05 Matter of A-B- (b)(6) AG Opinion (003).docx

Suggested edits attached.

(b) (5)

From: Hamilton, Gene (OAG)
Sent: Tuesday, June 05, 2018 8:42 AM
To: McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; Stewart, Scott G. (CIV) (b)(6) per CIV >; Percival, James (OASG) <jpercival@jmd.usdoj.gov>; Wall, Jeffrey B. (OSG) <jbwall@jmd.usdoj.gov>; Kneedler, Edwin S (OSG) <ekneedler@jmd.usdoj.gov>; Wetmore, David H. (ODAG) <dhwetmore@jmd.usdoj.gov>
Subject: 2018.06.05 Matter of A-B- (b)(6) AG Opinion (002)
Importance: High

DELIBERATIVE

Hi everyone,

Please see the attached *draft* AG decision in *Matter of A-B-* (b) (5)

For your situational awareness, OLC is concurrently doing a cite cleanup and working on various other formatting issues—so no need to worry about those.

Thank you in advance,

Gene

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, June 5, 2018 5:36 PM
To: Hardy, Liam P. (OLC)
Subject: Re: 2018.06.05 Matter of A-B- ((b)(6)) AG Opinion (003).docx

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

> On Jun 5, 2018, at 5:35 PM, Hardy, Liam P. (OLC) ((b)(6)) > wrote:
>
> Thanks Gene. We'll start on the headnotes now.
>
> -----Original Message-----
> From: Hamilton, Gene (OAG)
> Sent: Tuesday, June 5, 2018 5:34 PM
> To: Hardy, Liam P. (OLC) ((b)(6)) >
> Subject: 2018.06.05 Matter of A-B- ((b)(6)) AG Opinion (003).docx
>
> From EOIR. They also suggest that we do the headnotes in advance
>

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, June 5, 2018 7:19 PM
To: Morrissey, Brian (OAG)
Subject: FW: 2018.06.05 Matter of A-B- ((b)(6)) AG Opinion (002)
Attachments: 2018.06.05 Matter of A-B- ((b)(6)) AG Opinion (002).docx
Importance: High

I forgot to send this to you earlier. Sorry!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hamilton, Gene (OAG)
Sent: Tuesday, June 5, 2018 8:42 AM
To: McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; Scott G. Stewart (CIV) ((b)(6) per CIV) Percival, James (OASG) <jpercival@jmd.usdoj.gov>; Wall, Jeffrey B. (OSG) (jwall@jmd.usdoj.gov) <jwall@jmd.usdoj.gov>; Kneedler, Edwin S (OSG) <ekneedler@jmd.usdoj.gov>; David H. Wetmore (ODAG) (dhwetmore@jmd.usdoj.gov) <dhwetmore@jmd.usdoj.gov>
Subject: 2018.06.05 Matter of A-B- ((b)(6)) AG Opinion (002)
Importance: High

Duplicative Records

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, June 6, 2018 9:07 AM
To: Engel, Steven A. (OLC)
Cc: Hardy, Liam P. (OLC)
Subject: Re: RE:

Great! For situational awareness (b) (5)

(b) (5)

Probably too much detail for y'all, but figured it would make sense to share the thinking right now.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

> On Jun 6, 2018, at 8:48 AM, Engel, Steven A. (OLC) (b) (6) > wrote:

>

> Sure. (b) (5)

>

> -----Original Message-----

> From: Hamilton, Gene (OAG)

> Sent: Wednesday, June 6, 2018 8:42 AM

> To: Hardy, Liam P. (OLC) (b) (6)

> Cc: Engel, Steven A. (OLC) (b) (6) >

> Subject:

>

> I pinged OSG for any edits to (b)(6) (b) (5)

(b) (5)

(b) (5) Workable for you all?

>

> Gene P. Hamilton

> Counselor to the Attorney General

> U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, June 6, 2018 5:34 PM
To: Hardy, Liam P. (OLC)
Subject: FW: 2018.06.05 Matter of A-B- ((b)(6)) AG Opinion (002) (6.6.18)
Attachments: 2018.06.05 Matter of A-B- ((b)(6)) AG Opinion (002) (6.6.18).docx

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Morrissey, Brian (OAG)
Sent: Wednesday, June 6, 2018 5:33 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: 2018.06.05 Matter of A-B- ((b)(6)) AG Opinion (002) (6.6.18)

Gene, Thanks again for sharing this. As I said, ((b)(5)) Attached are a handful of minor comments to take or leave, however you see fit. Good luck getting this finalized and over the finish line.

Brian

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, June 6, 2018 5:34 PM
To: Morrissey, Brian (OAG)
Subject: RE: 2018.06.05 Matter of A-B- (b)(6) AG Opinion (002) (6.6.18)

Thank you!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Morrissey, Brian (OAG)
Sent: Wednesday, June 6, 2018 5:33 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: 2018.06.05 Matter of A-B- (b)(6) AG Opinion (002) (6.6.18)

Gene, Thanks again for sharing this. As I said, (b) (5). Attached are a handful of minor comments to take or leave, however you see fit. Good luck getting this finalized and over the finish line.

Brian

Percival, James (OASG)

From: Percival, James (OASG)
Sent: Wednesday, June 6, 2018 6:09 PM
To: Hamilton, Gene (OAG)
Subject: RE: 2018.06.05 Matter of A-B- (b)(6) AG Opinion (002)

Hey Gene,

What is the status of this? (b) (5)
(b) (5)

—
James H. Percival
Counsel
Office of the Associate Attorney General
Department of Justice
Office: 202-616-1589
Mobile: (b) (6)

From: Hamilton, Gene (OAG)
Sent: Tuesday, June 5, 2018 8:42 AM
To: McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; Stewart, Scott G. (CIV) <sstewart@CIV.USDOJ.GOV>; Percival, James (OASG) <jpercival@jmd.usdoj.gov>; Wall, Jeffrey B. (OSG) <jbwall@jmd.usdoj.gov>; Kneedler, Edwin S (OSG) <ekneedler@jmd.usdoj.gov>; Wetmore, David H. (ODAG) <dhwetmore@jmd.usdoj.gov>
Subject: 2018.06.05 Matter of A-B- (b)(6) AG Opinion (002)
Importance: High

Duplicative Records

Hardy, Liam P. (OLC)

From: Hardy, Liam P. (OLC)
Sent: Thursday, June 7, 2018 9:32 AM
To: Hamilton, Gene (OAG)
Cc: Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Koffsky, Daniel L (OLC)
Subject: RE: (b)(6)

Will do. Thanks Gene.

From: Hamilton, Gene (OAG)
Sent: Thursday, June 7, 2018 9:26 AM
To: Hardy, Liam P. (OLC) (b)(6) >
Cc: Engel, Steven A. (OLC) (b)(6) >; Gannon, Curtis E. (OLC) (b)(6) >
Koffsky, Daniel L (OLC) (b)(6) >
Subject: RE: (b)(6)

I would also like for us to add (b)(5)

(b)(5)

Writing this quickly so that's not perfect, but please let me know what you think.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hamilton, Gene (OAG)
Sent: Wednesday, June 6, 2018 11:56 PM
To: Hardy, Liam P. (OLC) (b)(6) >
Cc: Engel, Steven A. (OLC) (b)(6) >; Gannon, Curtis E. (OLC) (b)(6) >
Koffsky, Daniel L (OLC) (b)(6) >
Subject: RE: (b)(6)

Actually, I went ahead and put in some comment bubbles and a few in line edits (b)(5)

Thanks again,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

U.S. Department of Justice

From: Hamilton, Gene (OAG)
Sent: Wednesday, June 6, 2018 11:21 PM
To: Hardy, Liam P. (OLC) <(b) (6)>
Cc: Engel, Steven A. (OLC) <(b) (6)>; Gannon, Curtis E. (OLC) <(b) (6)>;
Koffsky, Daniel L (OLC) <(b) (6)>
Subject: RE: (b)(6)

Thanks very much, Liam.

I don't know that (b) (5)

(b) (5)

I'll be in the office until about 10 in the morning and will send y'all some more thoughts early.

Thanks again for everything!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hardy, Liam P. (OLC)
Sent: Wednesday, June 6, 2018 10:32 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) <(b) (6)>; Gannon, Curtis E. (OLC) <(b) (6)>;
Koffsky, Daniel L (OLC) <(b) (6)>
Subject: (b)(6)

Gene,

Please find attached the latest draft of the (b)(6) opinion incorporating all of the edits and comments from EOIR, OIL, OAG, and OSG. Also attached is a redline showing all of the changes from the draft you circulated to the components.

(b) (5)

(b) (5)

Please let me know if there is anything else that you need for tomorrow morning. We will continue finalizing the opinion and preparing the Exec Sec package.

Thanks,
Liam

Liam P. Hardy
Deputy Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice

(b) (6)

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Thursday, June 7, 2018 10:15 AM
To: Hardy, Liam P. (OLC)
Cc: Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Koffsky, Daniel L (OLC)
Subject: RE: (b)(6)

Thank you!!!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hardy, Liam P. (OLC)
Sent: Thursday, June 7, 2018 10:14 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) (b)(6); Gannon, Curtis E. (OLC) (b)(6);
Koffsky, Daniel L (OLC) (b)(6) >
Subject: RE: (b)(6)

Gene:

Please find attached a revised draft of the (b)(6) opinion that incorporates your edits and James' email. Also attached is a redline that shows the changes from the draft I sent you last night. Let me know if there is anything else you need at this time.

Thanks,
Liam

From: Hamilton, Gene (OAG)
Sent: Thursday, June 7, 2018 9:26 AM
To: Hardy, Liam P. (OLC) <(b)(6)>
Cc: Engel, Steven A. (OLC) <(b)(6)> Gannon, Curtis E. (OLC) (b)(6);
Koffsky, Daniel L (OLC) <(b)(6)>
Subject: RE: (b)(6)

Duplicative records

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Thursday, June 7, 2018 6:06 PM
To: Wetmore, David H. (ODAG)
Subject: 2018.06.07 Matter of A-B- ((b)(6)) AG Opinion.docx
Attachments: 2018.06.07 Matter of A-B- ((b)(6)) AG Opinion.docx; ATT00001.txt

To help with your review in case the package isn't to you yet

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Thursday, June 7, 2018 8:20 PM
To: Hamilton, Gene (OAG)
Cc: Hardy, Liam P. (OLC)
Subject: Re: (b)(6)

Sure!

Sent from my iPhone

On Jun 7, 2018, at 8:16 PM, Hamilton, Gene (OAG) <g.hamilton@jmd.usdoj.gov> wrote:

Thank you, Steve!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 7, 2018, at 6:14 PM, Engel, Steven A. (OLC) (b)(6) > wrote:

The attached reflects edits from me (b)(5)

[REDACTED]

Copying Gene, in case he is reading/reviewing the latest.

From: Hardy, Liam P. (OLC)
Sent: Thursday, June 7, 2018 10:14 AM
To: Hamilton, Gene (OAG) <g.hamilton@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) (b)(6); Gannon, Curtis E. (OLC)
(b)(6); Koffsky, Daniel L (OLC) (b)(6)
Subject: RE: (b)(6)

Duplicative records

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Friday, June 8, 2018 8:38 AM
To: Hamilton, Gene (OAG)
Cc: Hardy, Liam P. (OLC)
Subject: Re: (b)(6)

Should be fine. We are finalizing the pieces this am, on our end.

We happened to meet the DAG yesterday. So they know this is coming.

Sent from my iPhone

On Jun 8, 2018, at 8:15 AM, Hamilton, Gene (OAG) <gghamilton@jmd.usdoj.gov> wrote:

Good morning, y'all,

Any updates as to timing on your end? Want to synchronize on the following:

(b) (5)

He is booked up this morning, so he will not likely be in a place to sign before the afternoon (and at that, it would likely be late afternoon Eastern time based on time zones).

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Engel, Steven A. (OLC)
Sent: Friday, June 8, 2018 12:09 AM
To: Hamilton, Gene (OAG) <gghamilton@jmd.usdoj.gov>
Cc: Hardy, Liam P. (OLC) (b)(6)
Subject: Re: (b)(6)

Great.

Sent from my iPad

On Jun 8, 2018, at 12:01 AM, Hamilton, Gene (OAG) <gghamilton@jmd.usdoj.gov> wrote:

(b)(5)

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, June 8, 2018 10:44 AM
To: Engel, Steven A. (OLC); Hardy, Liam P. (OLC)
Subject: RE: (b)(6)
Attachments: 2018.06.07 Matter of A-B- ((b)(6)) AG Opinion +sae gph.docx

I like them all. (b) (5)

Thank you!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Engel, Steven A. (OLC)
Sent: Friday, June 8, 2018 9:48 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Hardy, Liam P. (OLC) (b) (6) >
Subject: RE: (b)(6)

The attached reflects the rest of my tightening edits.

From: Hamilton, Gene (OAG)
Sent: Friday, June 8, 2018 12:02 AM
To: Engel, Steven A. (OLC) (b) (6) >; Hardy, Liam P. (OLC) (b) (6) >
Subject: RE: (b)(6)

(b) (5)

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Engel, Steven A. (OLC)
Sent: Thursday, June 7, 2018 8:15 PM
To: Hardy, Liam P. (OLC) (b) (6) >
Cc: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: (b)(6)

Duplicative records

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, June 8, 2018 4:59 PM
To: Hardy, Liam P. (OLC)
Subject: Re: (b)(6) headnotes

These all look great. (b) (5)

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 8, 2018, at 2:47 PM, Hardy, Liam P. (OLC) (b) (6) > wrote:

Gene – Please find attached a draft of the headnotes for *Matter of A-B*-. (b) (5)

(b) (5)

Thanks,
Liam

<2018.06.08 Matter of A-B- Draft Headnotes.docx>

Hardy, Liam P. (OLC)

From: Hardy, Liam P. (OLC)
Sent: Friday, June 8, 2018 7:43 PM
To: Hamilton, Gene (OAG)
Cc: Engel, Steven A. (OLC)
Subject: RE: (b)(6)

Yes, it will slide under the door.

From: Hamilton, Gene (OAG)
Sent: Friday, June 8, 2018 7:42 PM
To: Hardy, Liam P. (OLC) <(b)(6)>
Cc: Engel, Steven A. (OLC) <(b)(6)>
Subject: Re: (b)(6)

I am checking to see if there is anyone else in the office right now. Will they slide under my door?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 8, 2018, at 6:40 PM, Hardy, Liam P. (OLC) <(b)(6)> wrote:

Nope. Is there another secure place where I can leave it for you?

From: Hamilton, Gene (OAG)
Sent: Friday, June 8, 2018 7:38 PM
To: Hardy, Liam P. (OLC) <(b)(6)>
Cc: Engel, Steven A. (OLC) <(b)(6)>
Subject: Re: (b)(6)

Thanks! Is my office open?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 8, 2018, at 6:35 PM, Hardy, Liam P. (OLC) <(b)(6)> wrote:

Gene,

I have the packet with Steve's signatures. I couldn't find anyone in the DAG's office. What should I do with it? I'm attaching PDFs of the packet in case you want to send anyone an electronic copy to review.

Thanks,
Liam

From: Engel, Steven A. (OLC)
Sent: Friday, June 8, 2018 7:16 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Hardy, Liam P. (OLC) (b) (6) >
Subject: Re: (b)(6)

I just signed off.

Sent from my iPhone

On Jun 8, 2018, at 7:08 PM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:

I know y'all were slammed today, but do you know what the status is of the package?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 8, 2018, at 2:42 PM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:

That is fine. Thanks! (b) (5)

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 8, 2018, at 1:37 PM, Engel, Steven A. (OLC) (b) (6) wrote:

Just in time for the 3:30 pm report, we just received some additional redlines from OSG. (b) (5)

[REDACTED]

From: Hamilton, Gene (OAG)
Sent: Friday, June 8, 2018 2:42 PM
To: Hardy, Liam P. (OLC) (b) (6)
Cc: Engel, Steven A. (OLC) (b) (6)

(b) (6)

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 8, 2018, at 12:41 PM, Hardy, Liam P.
(OLC) (b) (6) wrote:

Gene – We're very close to the
end of long review process
that we perform for AG
opinions. We expect to put
the Exec Sec folder on Steve's
desk for signature around 3:30
eastern.

From: Hamilton, Gene (OAG)
Sent: Friday, June 8, 2018 2:08
PM
To: Engel, Steven A. (OLC)
(b) (6)
Hardy, Liam P. (OLC)
(b) (6)
Subject: Re: (b)(6)

Just wanted to do a status
check

Gene P. Hamilton
Counselor to the Attorney
General
U.S. Department of Justice

On Jun 8, 2018, at 8:44 AM,
Hamilton, Gene (OAG)
<ghamilton@jmd.usdoj.gov>
wrote:

Duplicative records

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, June 8, 2018 11:23 PM
To: Bolitho, Zachary (ODAG)
Subject: Re: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

> On Jun 8, 2018, at 11:18 PM, Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov> wrote:

>

> (b) (5)

>

> Sent from my iPhone

>

>> On Jun 8, 2018, at 8:41 PM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:

>>

>> True

>>

>> Gene P. Hamilton

>> Counselor to the Attorney General

>> U.S. Department of Justice

>>

>>> On Jun 8, 2018, at 7:41 PM, Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov> wrote:

>>>

>>> (b) (5)

>>>

>>> Sent from my iPhone

>>>

>>>> On Jun 8, 2018, at 8:36 PM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:

>>>>

>>>> Thanks! (b) (5)

>>>>

>>>> Gene P. Hamilton

>>>> Counselor to the Attorney General

>>>> U.S. Department of Justice

>>>>

>>>>> On Jun 8, 2018, at 7:34 PM, Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov> wrote:

>>>>>

>>>>> I will check with the DAG. He leaves for a trip to Canada on Sunday and will be gone until Wednesday. (b) (5)

>>>>>

>>>>>

>>>>> Sent from my iPhone

////// sent from my iPhone

>>>>>

>>>>> On Jun 8, 2018, at 7:47 PM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:

>>>>>

>>>>> For context, (b) (5)

>>>>>

>>>>> Gene P. Hamilton

>>>>> Counselor to the Attorney General

>>>>> U.S. Department of Justice

>>>>>

>>>>> On Jun 8, 2018, at 6:39 PM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:

>>>>>

>>>>> Here is an electronic copy of the submission that will be going through exec sec

>>>>>

>>>>> <2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf>

>>>>>

>>>>>

>>>>> Gene P. Hamilton

>>>>> Counselor to the Attorney General >>>>> U.S. Department of Justice

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Sunday, June 10, 2018 9:19 AM
To: Hamilton, Gene (OAG)
Cc: Hardy, Liam P. (OLC)
Subject: Re: (b)(6)

Ok, cool. Defer to Liam on headnotes.

Sent from my iPad

On Jun 10, 2018, at 9:14 AM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:

Yes, they should. I will give a reminder after I talk to the boss today.

I think so, but the timing will depend on what the boss wants to do. I will definitely let y'all know. Do we have a word version of the final opinion that includes our headnotes?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 10, 2018, at 9:12 AM, Engel, Steven A. (OLC) <(b)(6)> wrote:

(b)(5)

Will it be released publicly tomorrow am?

Sent from my iPad

On Jun 8, 2018, at 7:48 PM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:

Thank you!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 8, 2018, at 6:46 PM, Hardy, Liam P. (OLC) <(b)(6)> wrote:

Done. It is on the floor in your office.

Have a safe trip home,
Liam

From: Hamilton, Gene (OAG)
Sent: Friday, June 8, 2018 7:44 PM
To: Hardy, Liam P. (OLC) <(b)(6)>
Cc: Engel, Steven A. (OLC) <(b)(6)>
Subject: Re: (b)(6)

That works! Thanks.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 8, 2018, at 6:40 PM, Hardy, Liam P. (OLC) <(b)(6)> wrote:

Nope. Is there another secure place where I can leave it for you?

Duplicative records

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Sunday, June 10, 2018 10:02 AM
To: O'Malley, Devin (OPA); Flores, Sarah Isgur (OPA)
Subject: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf
Attachments: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf;
ATT00001.txt

This is the final draft he will be considering FYSA and planning purposes

Hardy, Liam P. (OLC)

From: Hardy, Liam P. (OLC)
Sent: Sunday, June 10, 2018 2:11 PM
To: Hamilton, Gene (OAG); Engel, Steven A. (OLC)
Subject: RE: (b)(6)
Attachments: 2018.06.08 Matter of A-B- Draft Headnotes (02).docx; 2018.06.08 Matter of A-B- AG Opinion (Exec Sec).docx

Gene –

Word versions of the final AG opinion and our suggested headnotes attached. Please let me know if there is anything else we can provide.

Thanks,
Liam

From: Hamilton, Gene (OAG)
Sent: Sunday, June 10, 2018 10:14 AM
To: Engel, Steven A. (OLC) (b)(6)
Cc: Hardy, Liam P. (OLC) (b)(6)
Subject: Re: (b)(6)

Great. Thanks (b)(5)

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 10, 2018, at 9:18 AM, Engel, Steven A. (OLC) (b)(6) wrote:

Ok, cool. Defer to Liam on headnotes.

Duplicative records



Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Sunday, June 10, 2018 4:14 PM
To: O'Malley, Devin (OPA)
Attachments: 2018.06.08 Matter of A-B- Draft Headnotes (02).docx

These are the headnotes that we will likely use, in case they are helpful to you.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Sunday, June 10, 2018 4:27 PM
To: Hardy, Liam P. (OLC)
Cc: Engel, Steven A. (OLC)
Subject: RE: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Thank you!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hardy, Liam P. (OLC)
Sent: Sunday, June 10, 2018 4:26 PM
To: Hamilton, Gene (OAG) <gghamilton@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) <(b) (6)>
Subject: RE: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Gene,

Clean and redlined revised draft responding to the DAG's edits attached. Let me know if you need anything else.

Thanks
Liam

From: Hardy, Liam P. (OLC)
Sent: Sunday, June 10, 2018 3:47 PM
To: Hamilton, Gene (OAG) <gghamilton@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) <(b) (6)>
Subject: Re: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Making them now.

Sent from my iPhone

On Jun 10, 2018, at 3:15 PM, Hamilton, Gene (OAG) <gghamilton@jmd.usdoj.gov> wrote:

I am on my way to the office to discuss with him now, so if the edits can be made in the next little while, that would be excellent

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 10, 2018, at 3:13 PM, Engel, Steven A. (OLC) (b) (6) wrote:

See below. A few edits from the DAG.

Liam, can you fold these in?

(b) (5)

Sent from my iPad

Begin forwarded message:

From: "Rosenstein, Rod (ODAG)" <rrosenstein@jmd.usdoj.gov>
Date: June 10, 2018 at 2:42:40 PM EDT
To: "Engel, Steven A. (OLC)" (b) (6)
Cc: "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>, "Bolitho, Zachary (ODAG)" <zbolitho@jmd.usdoj.gov>
Subject: Re: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Steve —

Given the limited time, I want to flag for consideration (b) (5)

(b) (5)

(b) (5)

On Jun 8, 2018, at 9:08 PM, Bolitho, Zachary (ODAG)
<zbolitho@jmd.usdoj.gov> wrote:

Sir,

Attached is the final version of the immigration AG
opinion, which will come through Exec Sec on Monday
morning. (b) (5)

[REDACTED]

Thanks,
Zac

Sent from my iPhone

Begin forwarded message:

From: "Hamilton, Gene (OAG)"
<ghamilton@jmd.usdoj.gov>
Date: June 8, 2018 at 7:39:16 PM EDT
To: "Bolitho, Zachary (ODAG)"
<zbolitho@jmd.usdoj.gov>, "Wetmore,
David H. (ODAG)"
<dhwetmore@jmd.usdoj.gov>
Subject: 2018.06.08 Matter of A-B- AG
Opinion and Order FINAL to Exec
Sec.pdf

Here is an electronic copy of the submission
that will be going through exec sec

<2018.06.08 Matter of A-B- AG Opinion and Order
FINAL to Exec Sec.pdf>

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Sunday, June 10, 2018 4:35 PM
To: Bolitho, Zachary (ODAG)
Subject: RE: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Got it, thanks. They made the edits and I'm working on printing now.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Bolitho, Zachary (ODAG)
Sent: Sunday, June 10, 2018 4:35 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: FW: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

FYSA.

From: Rosenstein, Rod (ODAG)
Sent: Sunday, June 10, 2018 2:43 PM
To: Engel, Steven A. (OLC) <(b) (6)>
Cc: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov>
Subject: Re: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Duplicative records

Hardy, Liam P. (OLC)

From: Hardy, Liam P. (OLC)
Sent: Sunday, June 10, 2018 5:12 PM
To: Hamilton, Gene (OAG)
Cc: Engel, Steven A. (OLC)
Subject: Re: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Sounds good. Thank you.

On Jun 10, 2018, at 4:52 PM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:

Just in case he wants to sign it sooner than later, I added (b) (5)

[REDACTED]

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hardy, Liam P. (OLC)
Sent: Sunday, June 10, 2018 4:26 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) (b) (6) >
Subject: RE: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Duplicative records

[REDACTED]

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Monday, June 11, 2018 11:58 AM
To: Hamilton, Gene (OAG); Hardy, Liam P. (OLC)
Subject: RE: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Are we all set on this?

From: Hamilton, Gene (OAG)
Sent: Monday, June 11, 2018 11:28 AM
To: Hardy, Liam P. (OLC) (b) (6); Engel, Steven A. (OLC) (b) (6)
Subject: RE: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Here's the version I printed that is with him now.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hardy, Liam P. (OLC)
Sent: Monday, June 11, 2018 11:17 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Engel, Steven A. (OLC) (b) (6) v>
Subject: RE: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Good by me.

From: Hamilton, Gene (OAG)
Sent: Monday, June 11, 2018 11:17 AM
To: Hardy, Liam P. (OLC) (b) (6); Engel, Steven A. (OLC) (b) (6)
Subject: RE: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Good with these. Are y'all okay if I print?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hardy, Liam P. (OLC)
Sent: Monday, June 11, 2018 11:09 AM
To: Engel, Steven A. (OLC) (b) (6); Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Gene – I fixed one nit in the attached.

From: Engel, Steven A. (OLC)
Sent: Monday, June 11, 2018 11:01 AM

To: Hamilton, Gene (OAG) <gghamilton@jmd.usdoj.gov>; Hardy, Liam P. (OLC) (b) (6) >
Subject: RE: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

I spoke with the AG this morning, and (b) (5)

(b) (5)

I attach those edits as redlines. If this works for you guys, please accept the edits and use this version as the latest (final?) version of the opinion.

From: Hamilton, Gene (OAG)
Sent: Sunday, June 10, 2018 4:52 PM
To: Hardy, Liam P. (OLC) (b) (6)
Cc: Engel, Steven A. (OLC) <(b) (6)>
Subject: RE: 2018.06.08 Matter of A-B- AG Opinion and Order FINAL to Exec Sec.pdf

Duplicative records

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, June 11, 2018 1:07 PM
To: McHenry, James (EOIR)
Cc: Engel, Steven A. (OLC)
Subject: Final for Posting
Attachments: 2018.06.10 Matter of A-B- AG Opinion - FINAL.docx; 2018.06.08 Matter of A-B- Headnotes.docx

Word versions. He has signed.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, June 11, 2018 1:07 PM
To: Golden, Melissa (OLC)
Cc: Hughes, Richard (OLC); Pham, Thanh (JMD)
Subject: RE: Matter of A-B- AG Order No. 4189-2018

Thank you!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Golden, Melissa (OLC)
Sent: Monday, June 11, 2018 1:04 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Hughes, Richard (OLC) (b) (6); Pham, Thanh (JMD) <tpham@jmd.usdoj.gov>
Subject: Matter of A-B- AG Order No. 4189-2018

Dear Gene:

Attached, please find the scanned AG Order. As discussed, please bring over the Exec Sec control sheet as soon as one exists;-)

Sincerely,
Melissa Golden, Esq.
Lead Paralegal and FOIA Specialist
Office of Legal Counsel
Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, June 11, 2018 1:20 PM
To: O'Malley, Devin (OPA); Flores, Sarah Isgur (OPA)
Attachments: Signed version.pdf

Signed version, not for dissemination, but for your awareness. EOIR is working on formatting a version for posting.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Parker-Bissex, Rachel (OASG)

From: Parker-Bissex, Rachel (OASG)
Sent: Monday, June 11, 2018 1:44 PM
To: O'Malley, Devin (OPA); Barnett, Gary E. (OAG); Hamilton, Gene (OAG)
Cc: Bolitho, Zachary (ODAG); Prior, Ian (OPA); Flores, Sarah Isgur (OPA)
Subject: RE: APPROVAL: Matter of A-B Statement

Fine.

-----Original Message-----

From: O'Malley, Devin (OPA)
Sent: Monday, June 11, 2018 1:43 PM
To: Barnett, Gary E. (OAG) <gebarnett@jmd.usdoj.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov>; Parker-Bissex, Rachel (OASG) <racparker@jmd.usdoj.gov>; Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: APPROVAL: Matter of A-B Statement

ZB- I assume you are still good?

Rachel- Any edits on your end?

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353-8763
Cell: (b) (6)

-----Original Message-----

From: Barnett, Gary E. (OAG)
Sent: Monday, June 11, 2018 1:16 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>; Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov>; Parker-Bissex, Rachel (OASG) <racparker@jmd.usdoj.gov>; Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Re: APPROVAL: Matter of A-B Statement

Ok

> On Jun 11, 2018, at 1:10 PM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:

>

> I am fine with it.

>

> Gene P. Hamilton

> Counselor to the Attorney General
> U.S. Department of Justice
>
> -----Original Message-----
> From: Barnett, Gary E. (OAG)
> Sent: Monday, June 11, 2018 12:55 PM
> To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
> Cc: Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov>; Parker-Bissex, Rachel (OASG) <racparker@jmd.usdoj.gov>; Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
> Subject: Re: APPROVAL: Matter of A-B Statement
>

> (b) (5)

> If gene(cc'd) is good with it, then I'm fine.
>

>> On Jun 11, 2018, at 12:41 PM, O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov> wrote:

>> (b) (5)

>> (b) (5)

>>
>> Devin M. O'Malley
>> Department of Justice
>> Office of Public Affairs
>> Office: (202) 353-8763
>> Cell: (b) (6)

>> -----Original Message-----

>> From: Bolitho, Zachary (ODAG)
>> Sent: Monday, June 11, 2018 12:30 PM
>> To: Barnett, Gary E. (OAG) <gebarnett@jmd.usdoj.gov>; O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
>> Cc: Parker-Bissex, Rachel (OASG) <racparker@jmd.usdoj.gov>; Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
>> Subject: RE: APPROVAL: Matter of A-B Statement
>>

>> Good point by Gary (b) (5)

>> -----Original Message-----

>> From: Barnett, Gary E. (OAG)
>> Sent: Monday, June 11, 2018 12:26 PM
>> To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
>> Cc: Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov>; Parker-Bissex, Rachel (OASG) <racparker@jmd.usdoj.gov>; Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
>> Subject: Re: APPROVAL: Matter of A-B Statement

>>
>> (b) (5)
>>
>> (b) (5)
.
>>
>>> On Jun 11, 2018, at 11:56 AM, O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov> wrote:
>>>
>>> AG about to sign the decision and we've announced it in his speech this AM. Can we get sign on
before lunch is over?
>>>
>>> Devin M. O'Malley
>>> Department of Justice
>>> Office of Public Affairs
>>> Office: (202) 353-8763
>>> Cell: (b) (6)
>>>
>>>
>>> -----Original Message-----
>>> From: O'Malley, Devin (OPA)
>>> Sent: Monday, June 11, 2018 11:25 AM
>>> To: Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov>; Parker-Bissex, Rachel (OASG)
<racparker@jmd.usdoj.gov>; Barnett, Gary E. (OAG) <gebarnett@jmd.usdoj.gov>
>>> Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
>>> Subject: RE: APPROVAL: Matter of A-B Statement
>>>
>>> Yes. (b) (5)
>>>
>>> (b) (5)
.
>>>
>>> (b) (5)
.
>>>
>>> Devin M. O'Malley
>>> Department of Justice
>>> Office of Public Affairs
>>> Office: (202) 353-8763
>>> Cell: (b) (6)
>>>
>>> -----Original Message-----
>>> From: Bolitho, Zachary (ODAG)
>>> Sent: Monday, June 11, 2018 10:29 AM
>>> To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>; Parker-Bissex, Rachel (OASG)
<racparker@jmd.usdoj.gov>; Barnett, Gary E. (OAG) <gebarnett@jmd.usdoj.gov>
>>> Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
>>> Subject: RE: APPROVAL: Matter of A-B Statement
>>>
>>> Have these been approved by OLC?

>>>

>>> -----Original Message-----

>>> From: O'Malley, Devin (OPA)

>>> Sent: Monday, June 11, 2018 10:11 AM

>>> To: Parker-Bissex, Rachel (OASG) <racparker@jmd.usdoj.gov>; Barnett, Gary E. (OAG)

<gebarnett@jmd.usdoj.gov>; Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov>

>>> Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>

>>> Subject: Re: APPROVAL: Matter of A-B Statement

>>>

>>> Bumping up

>>>

>>> Sent from my iPhone

>>>

>>>> On Jun 11, 2018, at 7:03 AM, O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov> wrote:

>>>>

>>>> Headnotes attaches. Reviewed by Gene and James:

>>>>

>>>> (b) (5)

>>>>

>>>> <2018.06.08 Matter of A-B- Draft Headnotes (02).docx>

>>>>

>>>>

>>>> Sent from my iPhone

Bolitho, Zachary (ODAG)

From: Bolitho, Zachary (ODAG)
Sent: Monday, June 11, 2018 2:45 PM
To: O'Malley, Devin (OPA); Barnett, Gary E. (OAG); Hamilton, Gene (OAG)
Cc: Parker-Bissex, Rachel (OASG); Prior, Ian (OPA); Flores, Sarah Isgur (OPA)
Subject: RE: APPROVAL: Matter of A-B Statement

Ok

-----Original Message-----

From: O'Malley, Devin (OPA)
Sent: Monday, June 11, 2018 1:43 PM
To: Barnett, Gary E. (OAG) <gebarnett@jmd.usdoj.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov>; Parker-Bissex, Rachel (OASG) <racparker@jmd.usdoj.gov>; Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: APPROVAL: Matter of A-B Statement

ZB- I assume you are still good?

Rachel- Any edits on your end?

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353-8763
Cell: (b) (6)

-----Original Message-----

From: Barnett, Gary E. (OAG)
Sent: Monday, June 11, 2018 1:16 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>; Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov>; Parker-Bissex, Rachel (OASG) <racparker@jmd.usdoj.gov>; Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Re: APPROVAL: Matter of A-B Statement

Duplicative records

U.S. Department of Justice

From: U.S. Department of Justice
Sent: Monday, June 11, 2018 3:12 PM
To: Hamilton, Gene (OAG)
Subject: Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018)

(1) *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014) is overruled. That decision was wrongly decided and should not have been issued as a precedential decision.

(2) An applicant seeking to establish persecution on account of membership in a "particular social group" must demonstrate: (1) membership in a group, which is composed of members who share a common immutable characteristic, is defined with particularity, and is socially distinct within the society in question; and (2) that membership in the group is a central reason for her persecution. When the alleged persecutor is someone unaffiliated with the government, the applicant must also show that her home government is unwilling or unable to protect her.

(3) An asylum applicant has the burden of showing her eligibility for asylum. The applicant must present facts that establish each element of the standard, and the asylum officer, immigration judge, or the Board has the duty to determine whether those facts satisfy all of those elements.

(4) If an asylum application is fatally flawed in one respect, an immigration judge or the Board need not examine the remaining elements of the asylum claim.

(5) The mere fact that a country may have problems effectively policing certain crimes or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim.

(6) To be cognizable, a particular social group must exist independently of the harm asserted in an application for asylum.

(7) An applicant seeking to establish persecution based on violent conduct of a private actor must show more than the government's difficulty controlling private behavior. The applicant must show that the government condoned the private actions or demonstrated an inability to protect the victims.

(8) An applicant seeking asylum based on membership in a particular social group must clearly indicate on the record the exact delineation of any proposed particular social group.

(9) The Board, immigration judges, and all asylum officers must consider, consistent with the regulations, whether internal relocation in the alien's home country presents a reasonable alternative before granting asylum.



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U.S. Department of Justice

From: U.S. Department of Justice
Sent: Monday, June 11, 2018 3:20 PM
To: gene.hamilton@usdoj.gov
Subject: Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018)

<https://www.justice.gov/eoir/page/file/1070866/download>

(1) *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014) is overruled. That decision was wrongly decided and should not have been issued as a precedential decision.

(2) An applicant seeking to establish persecution on account of membership in a "particular social group" must demonstrate: (1) membership in a group, which is composed of members who share a common immutable characteristic, is defined with particularity, and is socially distinct within the society in question; and (2) that membership in the group is a central reason for her persecution. When the alleged persecutor is someone unaffiliated with the government, the applicant must also show that her home government is unwilling or unable to protect her.

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O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Monday, June 11, 2018 3:37 PM
To: Hamilton, Gene (OAG); McHenry, James (EOIR)
Subject: FW: MATTER OF A-B | ATTORNEY GENERAL JEFF SESSIONS' OPINION: TEST

This ok? It's up, so I need to get this out.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353-8763
Cell: (b) (6)

From: Sutton, Sarah E. (OPA)
Sent: Monday, June 11, 2018 3:06 PM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Cc: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>; Leonard, Catherine (OPA) <cleonard@jmd.usdoj.gov>
Subject: FW: MATTER OF A-B | ATTORNEY GENERAL JEFF SESSIONS' OPINION: TEST

Test!

From: USDOJ-Office of Public Affairs <USDOJ-OfficeofPublicAffairs@public.govdelivery.com>
Sent: Monday, June 11, 2018 3:03 PM
To: Sutton, Sarah E. (OPA) <sesutton@jmd.usdoj.gov>
Subject: MATTER OF A-B | ATTORNEY GENERAL JEFF SESSIONS' OPINION: TEST

(b) (5)

(b) (5)



Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, June 11, 2018 5:36 PM
To: McHenry, James (EOIR)
Subject: Fwd: Matter of A-B- Formatting Edits
Attachments: Matter of A-B- Formatting Edits.pdf; ATT00001.htm

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Begin forwarded message:

From: (b)(6) per OLC (OLC)" <(b) (6)>
Date: June 11, 2018 at 4:53:27 PM EDT
To: "Hamilton, Gene (OAG)" <gghamilton@jmd.usdoj.gov>
Cc: "Hardy, Liam P. (OLC)" (b) (6)
Subject: Matter of A-B- Formatting Edits

In reviewing the published version of Matter of A-B-, I noticed a few formatting errors we might want to change (I know we corrected a few things after (b) (6) was posted). I have made margin notes, but for reference my changes are:

- Non-breaking hyphens for M-E-V-G- on page 5 of the pdf (pg. 320)
- Non-breaking hyphens for A-R-C-G- on page 6 of the pdf (pg. 321)
- Hard space between § and 1103(a)(1) on page 8 of pdf (pg. 323)
- Hard space between § and 1103(g)(2) on page 9 of pdf (pg. 324)
- Change "Fed. Appx." to "F. App'x" on page 19 of pdf (pg. 334)
- Keep "VI." section header on same page as beginning on conclusion body text on pp 30–31 of pdf (pp. 345–46)

(b)(6) per OLC
Attorney-Adviser, Office of Legal Counsel
U.S. Department of Justice, RFK (b) (6)
O: (b) (6) | M: (b) (6)
S: (b) (6)

Matter of A-B-, Respondent

Decided by Attorney General June 11, 2018

U.S. Department of Justice
Office of the Attorney General

(1) *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014) is overruled. That decision was wrongly decided and should not have been issued as a precedential decision.

(2) An applicant seeking to establish persecution on account of membership in a “particular social group” must demonstrate: (1) membership in a group, which is composed of members who share a common immutable characteristic, is defined with particularity, and is socially distinct within the society in question; and (2) that membership in the group is a central reason for her persecution. When the alleged persecutor is someone unaffiliated with the government, the applicant must also show that her home government is unwilling or unable to protect her.

(3) An asylum applicant has the burden of showing her eligibility for asylum. The applicant must present facts that establish each element of the standard, and the asylum officer, immigration judge, or the Board has the duty to determine whether those facts satisfy all of those elements.

(4) If an asylum application is fatally flawed in one respect, an immigration judge or the Board need not examine the remaining elements of the asylum claim.

(5) The mere fact that a country may have problems effectively policing certain crimes or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim.

(6) To be cognizable, a particular social group must exist independently of the harm asserted in an application for asylum.

(7) An applicant seeking to establish persecution based on violent conduct of a private actor must show more than the government’s difficulty controlling private behavior. The applicant must show that the government condoned the private actions or demonstrated an inability to protect the victims.

(8) An applicant seeking asylum based on membership in a particular social group must clearly indicate on the record the exact delineation of any proposed particular social group.

(9) The Board, immigration judges, and all asylum officers must consider, consistent with the regulations, whether internal relocation in the alien’s home country presents a reasonable alternative before granting asylum.

BEFORE THE ATTORNEY GENERAL

On March 7, 2018, I directed the Board of Immigration Appeals (“Board”) to refer for my review its decision in this matter, see 8 C.F.R. § 1003.1(h)(1)(i), and I invited the parties and any interested amici to submit briefs addressing questions relevant to that certification. *Matter of A-B-*, 27 I&N Dec. 227 (A.G. 2018). Specifically, I sought briefing on whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable “particular social group” for purposes of an application for asylum or withholding of removal.

For the reasons set forth in the accompanying opinion, I vacate the Board’s December 6, 2016 decision and remand this case to the immigration judge for further proceedings. Consistent with the test developed by the Board over the past several decades, an applicant seeking to establish persecution on account of membership in a “particular social group” must satisfy two requirements. First, the applicant must demonstrate membership in a group, which is composed of members who share a common immutable characteristic, is defined with particularity, and is socially distinct within the society in question. And second, the applicant’s membership in that group must be a central reason for her persecution. When, as here, the alleged persecutor is someone unaffiliated with the government, the applicant must show that flight from her country is necessary because her home government is unwilling or unable to protect her.

Although there may be exceptional circumstances when victims of private criminal activity could meet these requirements, they must satisfy established standards when seeking asylum. Such applicants must establish membership in a particular and socially distinct group that exists independently of the alleged underlying harm, demonstrate that their persecutors harmed them on account of their membership in that group rather than for personal reasons, and establish that the government protection from such harm in their home country is so lacking that their persecutors’ actions can be attributed to the government. Because *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), recognized a new particular social group without correctly applying these standards, I overrule that case and any other Board precedent to the extent those other decisions are inconsistent with the legal conclusions set forth in this opinion.

OPINION

The Immigration and Nationality Act (“INA”) authorizes the Attorney General to grant asylum if an alien is unable or unwilling to return to her country of origin because she has suffered past persecution or has a well-

founded fear of future persecution on account of “race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1)(a), (b)(i). A recurring question in asylum law is determining whether alleged persecution was based on their membership in a “particular social group.” Over the past thirty years, this question has recurred frequently before the Board and the courts of appeals, and the standard has evolved over time.

The prototypical refugee flees her home country because the government has persecuted her—either directly through its own actions or indirectly by being unwilling or unable to prevent the misconduct of non-government actors—based upon a statutorily protected ground. Where the persecutor is not part of the government, the immigration judge must consider both the reason for the harm inflicted on the asylum applicant and the government’s role in sponsoring or enabling such actions. An alien may suffer threats and violence in a foreign country for any number of reasons relating to her social, economic, family, or other personal circumstances. Yet the asylum statute does not provide redress for all misfortune. It applies when persecution arises on account of membership in a protected group and the victim may not find protection except by taking refuge in another country.

The INA does not define “persecution on account of . . . membership in a particular social group.” The Board first addressed the term in *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985), where it interpreted a “particular social group” in a manner consistent with the other four grounds of persecution identified in section 1101(a)(42)(A)—race, religion, nationality, or political opinion. *Id.* The Board concluded that a “particular social group” required a “group of persons all of whom share a common, immutable characteristic” that “the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *Id.* The Board noted that the “shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances, it might be a shared past experience such as former military leadership or land ownership.” *Id.*

In *Matter of R-A-*, 22 I&N Dec. 906, 917–23 (BIA 1999) (en banc), the Board considered whether a victim of domestic violence could establish refugee status as a member of a particular social group consisting of similarly situated women. The Board held that the mere existence of shared circumstances would not turn those possessing such characteristics into a particular social group. *Id.* at 919. Rather, the members of a particular social group must not merely share an immutable characteristic, but must also be recognized as a distinct group in the alien’s society, *id.* at 918–19, and the persecution must be motivated by membership in that social group, *id.* at 919–22. Attorney General Reno vacated that decision for reconsideration in

light of a proposed regulation, *see* 22 I&N Dec. 906, 906 (A.G. 2001), but no final rule ever issued, and the case was eventually resolved in 2009 without further consideration by the Board. Despite the vacatur of *R-A-*, both the Board and the federal courts have continued to treat its analysis as persuasive.

In the years after *Matter of R-A-*, the Board refined the legal standard for particular social groups. By 2014, the Board had clarified that applicants for asylum seeking relief based on “membership in a particular social group” must establish that their purported social group is “(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.” *Matter of M-E-V-G*, 26 I&N Dec. 227, 237 (BIA 2014). Applicants must also show that their membership in the particular social group was a central reason for their persecution. *See* 8 U.S.C. § 1158(b)(1)(B)(i); *Matter of W-G-R-*, 26 I&N Dec. 208, 224 (BIA 2014). Where an asylum applicant claims that the persecution was inflicted by private conduct, she must also establish that the government was unable or unwilling to protect her. *See, e.g., Acosta*, 19 I&N Dec. at 222.

Later that year, the Board decided *A-R-C-G-*, which recognized “married women in Guatemala who are unable to leave their relationship” as a particular social group—without performing the rigorous analysis required by the Board’s precedents. 26 I&N Dec. at 389; *see id.* at 390–95. Instead, the Board accepted the concessions by the Department of Homeland Security (“DHS”) that the respondent suffered harm rising to the level of past persecution, that she was a member of a qualifying particular social group, and that her membership in that group was a central reason for her persecution. *Id.* at 395.

I do not believe *A-R-C-G-* correctly applied the Board’s precedents, and I now overrule it. The opinion has caused confusion because it recognized an expansive new category of particular social groups based on private violence. Since that decision, the Board, immigration judges, and asylum officers have relied upon it as an affirmative statement of law, even though the decision assumed its conclusion and did not perform the necessary legal and factual analysis. When confronted with asylum cases based on purported membership in a particular social group, the Board, immigration judges, and asylum officers must analyze the requirements as set forth in this opinion, which restates and where appropriate, elaborates upon, the requirements set forth in *M-E-V-G* and *W-G-R-*.

In this matter, the immigration judge initially denied the respondent’s asylum claim, which arises out of allegations of domestic abuse suffered in El Salvador. In reversing the immigration judge’s decision, the Board did little more than cite *A-R-C-G-* in finding that she met her burden of

establishing that she was a member of a particular social group. In addition to failing meaningfully to consider that question or whether the respondent's persecution was on account of her membership in that group, the Board gave insufficient deference to the factual findings of the immigration judge.

For these and other reasons, I vacate the Board's decision and remand for further proceedings before the immigration judge consistent with this opinion. In so doing, I reiterate that an applicant for asylum on account of her membership in a purported particular social group must demonstrate: (1) membership in a particular group, which is composed of members who share a common immutable characteristic, is defined with particularity, and is socially distinct within the society in question; (2) that her membership in that group is a central reason for her persecution; and (3) that the alleged harm is inflicted by the government of her home country or by persons that the government is unwilling or unable to control. *See M-E-V-G-*, 26 I&N Dec. at 234-44; *W-G-R-*, 26 I&N Dec. at 209-18, 223-24 & n.8. Furthermore, when the applicant is the victim of private criminal activity, the analysis must also "consider whether government protection is available, internal relocation is possible, and persecution exists countrywide." *M-E-V-G-*, 26 I&N Dec. at 243.

Generally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum.¹ While I do not decide that violence inflicted by non-governmental actors may never serve as the basis for an asylum or withholding application based on membership in a particular social group, in practice such claims are unlikely to satisfy the statutory grounds for proving group persecution that the government is unable or unwilling to address. The mere fact that a country may have problems effectively policing certain crimes—such as domestic violence or gang violence—or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim.

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I.

The respondent, a native and citizen of El Salvador, entered the United States illegally and was apprehended by U.S. Customs and Border Protection agents in July 2014. After being placed in removal proceedings, the respondent filed an application for asylum and withholding of removal under

¹ Accordingly, few such claims would satisfy the legal standard to determine whether an alien has a credible fear of persecution. *See* 8 U.S.C. § 1225(b)(1)(B)(v) (requiring a "significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title [8 U.S.C. § 1158]").

the INA, 8 U.S.C. §§ 1158, 1231(b)(3), and for withholding of removal under the regulations implementing the United Nations Convention Against Torture.

The respondent claimed that she was eligible for asylum because she was persecuted on account of her membership in the purported particular social group of “El Salvadoran women who are unable to leave their domestic relationships where they have children in common” with their partners. *Matter of A-B-*, Decision Denying Asylum Application at *8, (Immig. Ct. Dec. 1, 2015). The respondent asserted that her ex-husband, with whom she shares three children, repeatedly abused her physically, emotionally, and sexually during and after their marriage. *Id.* at *2–3).

In December 2015, the immigration judge denied all relief and ordered the respondent removed to El Salvador. The immigration judge denied the respondent’s asylum claim for four independent reasons: (1) the respondent was not credible; (2) the group in which she claimed membership did not qualify as a “particular social group” within the meaning of 8 U.S.C. § 1101(a)(42)(A); (3) even if it did, the respondent failed to establish that her membership in a social group was a central reason for her persecution; and (4) she failed to show that the El Salvadoran government was unable or unwilling to help her. *Id.* at *4–15. The respondent appealed the immigration judge’s decision to the Board.

In December 2016, the Board reversed and remanded with an order to grant the respondent asylum after the completion of background checks. *Matter of A-B-*, (BIA Dec. 8, 2016). The Board found the immigration judge’s adverse credibility determinations clearly erroneous. *Id.* at *1–2. The Board further concluded that the respondent’s particular social group was substantially similar to “married women in Guatemala who are unable to leave their relationship,” which the Board had recognized in *Matter of A-R-C-G-*, 26 I&N Dec. at 390. *A-B-* at *2. Moreover, the Board held that the immigration judge clearly erred in finding that the respondent could leave her ex-husband, and that the respondent established that her ex-husband persecuted her because of her status as a Salvadoran woman unable to leave her domestic relationship. *Id.* at *2–3. Finally, the Board determined that the El Salvadoran government was unwilling or unable to protect the respondent. *Id.* at *3–4.

In August 2017, the immigration judge issued an order purporting to certify and administratively return the matter to the Board in light of intervening developments in the law.² *Matter of A-B-*, Decision and Order

² As explained in my order of March 30, *Matter of A-B-*, 27 I&N Dec. 247, 248–49 (A.G. 2018), the immigration judge’s *sua sponte* order purporting to certify the matter back to the Board was procedurally defective because the immigration judge had not issued any

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of Certification, (Immig. Ct. Aug. 18, 2017). The immigration judge observed that several courts of appeals had recently held that domestic-violence victims failed to prove their entitlement to asylum based on membership in particular social groups. *See id.* at *2–3 (citing *Fuentes-Erazo v. Sessions*, 848 F.3d 847, 853 (8th Cir. 2017); *Cardona v. Sessions*, 848 F.3d 519, 523 (1st Cir. 2017); *Marikasi v. Lynch*, 840 F.3d 281, 291 (6th Cir. 2016); *Vega-Ayala v. Lynch*, 833 F.3d 34, 40 (1st Cir. 2016)). The immigration judge thus believed that the precedents relied upon by the Board in its December 2016 decision were no longer good law. *A-B-* at *3–4 (Immig. Ct. Aug. 18, 2017).

In particular, the immigration judge cited the Fourth Circuit’s opinion in *Velasquez v. Sessions*, 866 F.3d 188 (4th Cir. 2017), which denied the petition for review on the ground that the alien had not established that her alleged persecution was on account of her membership in a particular social group. *A-B-* at *3–4 (Immig. Ct. Aug. 18, 2017) (citing *Velasquez*, 866 F.3d at 197). Distinguishing *A-R-C-G-* because of DHS’s concessions there, 866 F.3d at 195 n.5, the court in *Velasquez* reiterated that “[e]vidence consistent with acts of private violence or that merely shows that an individual has been the victim of criminal activity does not constitute evidence of persecution on a statutorily protected ground.” *Id.* at 194 (quoting *Sanchez v. U.S. Att’y Gen.*, 392 F.3d 434, 438 (11th Cir. 2004)). The court further noted, “the asylum statute was not intended as a panacea for the numerous personal altercations that invariably characterize economic and social relationships.” *Id.* at 195 (quoting *Saldarriaga v. Gonzales*, 402 F.3d 461, 467 (4th Cir. 2005)).

In a concurrence, Judge Wilkinson reiterated that the particular social groups protected from persecution under the asylum statute must be understood in the context of the other grounds for protection, which concern specific segments of the population who are marginalized or subjected to social stigma and prejudice. *Id.* at 198 (Wilkinson, J., concurring). Noting that victims of private violence were “seizing upon the ‘particular social group’ criterion in asylum applications,” Judge Wilkinson considered the example of applicants who claim to be the victims of gang violence. Aliens seeking asylum on that basis “are often not ‘exposed to more violence or human rights violations than other segments of society,’ and ‘not in a substantially different situation from anyone who has crossed the gang, or who is perceived to be a threat to the gang’s interests.’” *Id.* at 199 (quoting *Matter of S-E-G-*, 24 I&N Dec. 579, 587 (BIA 2008)). He recognized that the Board “has previously explained that ‘victims of gang violence come from all segments of society, and it is difficult to conclude that any “group,”

decision for the Board to review. Neither the immigration judge nor the Board has taken any other actions in this matter since the Board issued its December 2016 decision.

as actually perceived by the criminal gangs, is much narrower than the general population.” *Id.* (quoting *M-E-V-G-*, 26 I&N Dec. at 250). The pervasive nature of this violent criminality, in Judge Wilkinson’s view, suggested that membership in a purported particular social group “is often not a central reason for the threats received, but rather is secondary to a grander pattern of criminal extortion that pervades petitioners’ societies.” *Id.*

On March 7, 2018, pursuant to 8 C.F.R. § 1003.1(h)(1)(i), I directed the Board to refer this matter to me for my review. I invited the parties and any interested amici to submit briefs on the following question:

Whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable “particular social group” for purposes of an application for asylum or withholding of removal.

A-B-, 27 I&N Dec. at 227. After certifying this case, I received party submissions from the respondent and DHS and twelve amicus briefs.

II.

As a threshold matter, I address the respondent’s procedural objections concerning my authority to review this case and the certification procedure.

A.

The respondent argues that I lack the authority to certify the Board’s decision because it did not reacquire jurisdiction following its remand to the immigration judge. In the respondent’s view, the Attorney General’s authority to certify and review immigration cases is restricted to cases over which the Board expressly retains jurisdiction, excluding any cases that have been remanded for further proceedings. This restrictive interpretation of my jurisdiction finds no support in the law.

Under the INA, “[t]he Attorney General enjoys broad powers with respect to ‘the administration and enforcement of [the INA itself] and all other laws relating to the immigration and naturalization of aliens.’” *Blanco de Belbruno v. Ashcroft*, 362 F.3d 272, 279 (4th Cir. 2004) (quoting 8 U.S.C. § 1103(a)(1)); see also *Henderson v. INS*, 157 F.3d 106, 126 (2d Cir. 1998) (“[T]he extraordinary and pervasive role that the Attorney General plays in immigration matters is virtually unique.”); *Matter of D-J-*, 23 I&N Dec. 572, 573–74 & n.3 (A.G. 2003) (describing Attorney General’s review authority under 8 U.S.C. § 1226(a)). The INA grants the Attorney General the authority to “review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the

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Attorney General determines to be necessary for carrying out" his duties related to the immigration and naturalization of aliens. 8 U.S.C. § 1103(g)(2). This authority includes the power to refer cases for my review, see 8 C.F.R. § 1003.1(h)(1), which the First Circuit has called an "unfettered grant of authority," *Xian Tong Dong v. Holder*, 696 F.3d 121, 124 (1st Cir. 2012). Nothing in the INA or the implementing regulations precludes the Attorney General from referring a case for review simply because the Board has remanded the case for further proceedings before an immigration judge.

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It is likewise irrelevant that there has not been a final decision from the Board either granting or denying relief. The relevant federal regulation states: "The Board shall refer to the Attorney General for review of its decision all cases that . . . the Attorney General directs the Board to refer to him." 8 C.F.R. § 1003.1(h)(1). Nothing in section 1003.1(h) requires, or even suggests, that the only Board "decisions" the Attorney General can review are *final* decisions that definitively grant or deny relief to a respondent. Nor do the applicable regulations or the INA define "decision" as a "final" decision. See *id.* § 1001.1 (defining terms in the relevant chapter); 8 U.S.C. § 1101 (defining terms under the Act).

B.

Both the respondent and certain amici also raise due process concerns with my certification of this matter. They argue principally that my certification improperly bypassed the Board and deprived it of the opportunity to consider the certified question in the first instance. The Board exercises "only the authority provided by statute or delegated by the Attorney General," *Matter of Castro-Tum*, 27 I&N Dec. 271, 282 (A.G. 2018), and the regulations allow the Attorney General to certify any case that is before the Board or where it has rendered a decision, 8 C.F.R. § 1003.1(h). In any event, the respondent has already received full and fair opportunities to present her asylum claim before both the immigration judge and the Board. After those proceedings, both the immigration judge and the Board issued written decisions that analyzed the validity of the respondent's proposed particular social group and whether the respondent qualified for asylum on that ground.

The respondent also argues that the certification violated her due process rights because alleged "irregularities" in the certification "reflect prejudgment of her claim and lack of impartiality, in contravention of her right to a full and fair hearing by a neutral adjudicator."³ There is no basis

³ The only alleged "irregularity" cited by respondent is the notion that "[g]iven that Respondent's case was not under active consideration by Judge Couch or the Board at the time of the Attorney General's referral order, it is not clear how the Attorney General

to this claim. The respondent and some amici complain that I have advanced policy views on immigration matters as a U.S. Senator or as Attorney General, but the statements they identify have no bearing upon my ability to faithfully discharge my legal responsibilities in this case. I have made no public statements regarding the facts of respondent's case, and I have no "personal interest in the outcome of the proceedings." *Strivers v. Pierce*, 71 F.3d 732, 741 (9th Cir. 1995).

Nor is there any requirement that an administrator with significant policymaking responsibilities withdraw from "interchange and discussion about important issues." *Ass'n of Nat'l Advertisers, Inc. v. FTC*, 627 F.2d 1151, 1168 (D.C. Cir. 1979). As the Supreme Court has held, a decision maker need not be "disqualified simply because he has taken a position, even in public, on a policy issue related to the dispute, in the absence of a showing that he is not 'capable of judging a particular controversy fairly on the basis of its own circumstances.'" *Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 493 (1976) (quoting *United States v. Morgan*, 313 U.S. 409, 421 (1941)). If policy statements about immigration-related issues were a basis for disqualification, then no Attorney General could fulfill his or her statutory obligations to review the decisions of the Board.

III.

I turn now to the question of whether, and under what circumstances, being a victim of private criminal activity constitutes persecution on account of membership in a particular social group.⁴

A.

An applicant for asylum bears the burden of establishing that she "is a refugee within the meaning of section 1101(a)(42)(A)" of the INA. 8 U.S.C. § 1158(b)(1)(A), (B)(i). Under that definition, the applicant must demonstrate that she is an alien outside her country of nationality "who is

became aware of Respondent's case." Respondent's Opening Br. at 18 n.5. The Attorney General has the express authority under the INA to review "administrative determinations in immigration proceedings." 8 U.S.C. § 1103(g)(2). The suggestion that there is something "irregular" about my exercise of that authority is meritless.

⁴ The respondent in this case also applied for withholding of removal under 8 U.S.C. § 1231(b)(3) and for protection under the United Nations Convention Against Torture ("CAT"), see 8 C.F.R. § 1208.16(c). Because the Board sustained the respondent's appeal as to her asylum claim, the Board did not address the immigration judge's denial of her applications for withholding of removal or for CAT protection. See *A-B-* at *4 (BIA). My opinion addresses only respondent's asylum claim. On remand, the immigration judge may consider any other issues remaining in the case.

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.” *Id.* § 1101(a)(42)(A). Here, the respondent claims that she is eligible for asylum because of persecution she suffered on account of her purported membership in a particular social group—“El Salvadoran women who are unable to leave their domestic relationships where they have children in common” with their partners.

As the Board and the federal courts have repeatedly recognized, the phrase “membership in a particular social group” is ambiguous. *Matter of Acosta*, 19 I&N Dec. at 232–33; *Matter of M-E-V-G-*, 26 I&N Dec. at 230; *Matter of W-G-R-*, 26 I&N at 209; *see also, e.g., Ngugi v. Lynch*, 826 F.3d 1132, 1138 (8th Cir. 2016); *Gonzalez v. U.S. Att’y Gen.*, 820 F.3d 399, 404 (11th Cir. 2016); *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1083 (9th Cir. 2013) (en banc); *Mayorga-Vidal v. Holder*, 675 F.3d 9, 17 (1st Cir. 2012); *Valdiviezo-Galdamez v. U.S. Att’y Gen.*, 663 F.3d 582, 612 (3d Cir. 2011). Neither the INA nor the implementing regulations define “particular social group.”⁵ “The concept is even more elusive because there is no clear evidence of legislative intent.” *Valdiviezo-Galdamez*, 663 F.3d at 594. As then-Judge Alito noted for the court, “[r]ead in its broadest literal sense, the phrase is almost completely open-ended. Virtually any set including more than one person could be described as a ‘particular social group.’ Thus, the statutory language standing alone is not very instructive.” *Fatin v. INS*, 12 F.3d 1233, 1238 (3d Cir. 1993) (Alito, J.).

The Attorney General has primary responsibility for construing ambiguous provisions in the immigration laws. *M-E-V-G-*, 26 I&N Dec. at 230; *see also* 8 C.F.R. § 1003.1(g). The INA provides that the “determination and ruling by the Attorney General with respect to all questions of law shall be controlling.” 8 U.S.C. § 1103(a)(1). The Attorney General’s reasonable construction of an ambiguous term in the Act, such as “membership in a particular social group,” is entitled to deference. *See Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005); *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984); *see also Negusie v. Holder*, 555 U.S. 511, 516 (2009)

⁵ One of Congress’s primary purposes in passing the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102, was to implement the principles agreed to in the United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967; for the United States Nov. 1, 1968), as well as the United Nations Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (entered into force Apr. 22, 1954)). *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 436–37 (1987). The Protocol offers little insight into the definition of “particular social group,” which was added to the Protocol “as an afterthought.” *Acosta*, 19 I&N Dec. at 232.

(“Consistent with the rule in *Chevron* . . . , the BIA is entitled to deference in interpreting ambiguous provisions of the INA.”); *id.* at 525 (Scalia, J., concurring) (citing *Chevron* and agreeing that “the agency is entitled to answer” whether the alien is statutorily barred from receiving asylum); *Aguirre-Aguirre*, 526 U.S. at 425 (“judicial deference to the Executive Branch is especially appropriate in the immigration context where officials exercise especially sensitive political functions that implicate questions of foreign relations” (quotations omitted)). Thus, every court of appeals to have considered the issue has recognized that the INA’s reference to the term “particular social group” is inherently ambiguous and has deferred to decisions of the Board interpreting that phrase.⁶

The Supreme Court has “also made clear that administrative agencies are not bound by prior judicial interpretations of ambiguous statutory interpretations, because there is ‘a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows.’” *Matter of R-A-*, 24 I&N Dec. 629, 631 (A.G. 2008) (quoting *Brand X*, 545 U.S. at 982 (internal quotation and citations omitted)). “A court’s prior judicial construction of a statute trumps an agency construction otherwise entitled to *Chevron* deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion.” *Brand X*, 545 U.S. at 982.

B.

In a number of opinions spanning several decades, the Board has articulated and refined the standard for persecution on account of membership in a “particular social group” so that this category is not boundless. The Board first interpreted the term in *Matter of Acosta*, 19 I&N Dec. at 233. Applying the canon of *ejusdem generis*, the Board concluded that the phrase “particular social group” should be construed in a manner consistent with the other grounds for persecution in the statute’s definition of refugee: race, religion, nationality, and political opinion. *Id.* Noting that each of these terms describes “a characteristic that either is beyond the power

⁶ See, e.g., *Reyes v. Lynch*, 842 F.3d 1125, 1135 (9th Cir. 2016); *Gonzalez*, 820 F.3d at 404; *Zaldana Menijar v. Lynch*, 812 F.3d 491, 498 (6th Cir. 2015); *Cantarero v. Holder*, 734 F.3d 82, 85 (1st Cir. 2013); *Cece v. Holder*, 733 F.3d 662, 668–69 (7th Cir. 2013) (en banc); *Orellana-Monson v. Holder*, 685 F.3d 511, 520 (5th Cir. 2012); *Lizama v. Holder*, 629 F.3d 440, 446 (4th Cir. 2011); *Ngengwe v. Mukasey*, 543 F.3d 1029, 1033 (8th Cir. 2008); *Niang v. Gonzales*, 422 F.3d 1187, 1199 (10th Cir. 2005); *Ucelo-Gomez v. Mukasey*, 509 F.3d 70, 72 (2d Cir. 2007); *Fatin*, 12 F.3d at 1238–39 (3d Cir. 1993).

of an individual to change or is so fundamental to individual identity or conscience that it ought not be required to be changed,” the Board concluded that persecution on account of membership in a particular social group must similarly mean “persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic.” *Id.* The Board stated that this definition “preserve[d] the concept that refuge is restricted to individuals who are either unable by their own actions, or as a matter of conscience should not be required, to avoid persecution.” *Id.* at 234.

In 1999, the Board, sitting *en banc*, considered for the first time “whether the repeated spouse abuse inflicted on the respondent makes her eligible for asylum as an alien who has been persecuted on account of her membership in a particular social group.” *R-A-*, 22 I&N Dec. at 907. In a thorough, well-reasoned opinion, the Board first looked to the plain language of the INA to determine whether Congress intended the Act to provide asylum to battered spouses who are leaving marriages to aliens having no ties to the United States. *Id.* at 913–14. Finding no definitive answer in the language of the statute, the Board “look[ed] to the way in which the other grounds in the statute’s ‘on account of’ clause operate.” *Id.* at 914. Following that “significant guidance,” the Board concluded that *R-A-* was not eligible for asylum for two reasons. First, her claimed social group—“Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination”—did not qualify as a “particular social group” under the INA. *Id.* at 917–18. And second, even if it did qualify, she failed to show a sufficient nexus between her husband’s abuse and her membership in that social group. *Id.* at 923.

The Board first observed that the purported social group appeared “to have been defined principally, if not exclusively, for purposes of this asylum case, and without regard to the question of whether anyone in Guatemala perceives this group to exist in any form whatsoever.” *Id.* at 918. The Board found “little or no relation [of the purported social group] to the way in which Guatemalans might identify subdivisions within their own society or otherwise might perceive individuals either to possess or to lack an important characteristic or trait.” *Id.* The Board reasoned that for a social group to be viable for asylum purposes, there must be some showing of how the immutable characteristic shared by the group is understood in the alien’s home country so that the Board can “understand that the potential persecutors in fact see persons sharing the characteristic as warranting suppression or the infliction of harm.” *Id.*

The Board held that a “particular social group” should be recognized and understood to be a societal faction or a recognized segment of the population

in the alien's society. *R-A-*, 22 I&N Dec. at 918. The Board found that *R-A-* had "shown neither that the victims of spouse abuse view themselves as members of this group, nor, most importantly, that their male oppressors see their victimized companions as part of this group." *Id.* Without such a showing, the Board concluded that "if the alleged persecutor is not even aware of the group's existence, it becomes harder to understand how the persecutor may have been motivated by the victim's 'membership' in the group to inflict the harm on the victim." *Id.* at 919.

In addition to holding that *R-A-*'s proposed group did not qualify as a "particular social group," the Board also held that she had not shown the persecution was "on account of" her membership in the group. *Id.* at 920; see 8 U.S.C. § 1101(a)(42)(A). Even if the Board were to accept the respondent's proposed social group, she "has not established that her husband has targeted and harmed [*R-A-*] because he perceived her to be a member of this particular social group." *R-A-*, 22 I&N Dec. at 920. *R-A-*'s husband targeted her "because she was his wife, not because she was a member of some broader collection of women, however defined, whom he believed warranted the infliction of harm." *Id.*

On January 19, 2001, Attorney General Reno summarily vacated *R-A-* and directed the Board to stay consideration of the case pending final publication of a proposed rule offering guidance on the definitions of "persecution" and "membership in a particular social group" and what it means to be "on account of" a protected characteristic. *R-A-*, 22 I&N Dec. at 906; see also 65 Fed. Reg. 76,588, 76,588 (Dec. 7, 2000). No final rule ever issued, however. In September 2008, Attorney General Mukasey lifted the stay and directed the Board to reconsider the case in light of intervening Board and judicial decisions. *Matter of R-A-*, 24 I&N Dec. 629, 630 (A.G. 2008). In December 2009, before the Board issued an opinion, *R-A-* and DHS jointly stipulated that she was eligible for asylum, resolving the case. See *A-R-C-G-*, 26 I&N Dec. at 391–92 n.12.

Despite its vacatur, both the Board and federal courts have continued to rely upon *R-A-*. In 2014, the Board stated that the 1999 opinion's "role in the progression of particular social group claims remains relevant." *M-E-V-G-*, 26 I&N Dec. at 231 n.7. In 2013, the Ninth Circuit recognized that although "*R-A-* was later vacated[,] . . . litigants and other courts have relied heavily upon its analysis." *Henriquez-Rivas*, 707 F.3d at 1090 n.11. And in 2011, the Third Circuit quoted *R-A-* at length because "*R-A-* is so important to the claim before us here." *Valdiviezo-Galdamez*, 663 F.3d at 596–97 & n.8.

In the years since *R-A-*, the Board has refined its interpretation of "particular social group" on a case-by-case basis. In *Matter of C-A-*, 23 I&N Dec. 951, 959 (BIA 2006), *aff'd sub nom. Castillo-Arias v. U.S. Att'y Gen.*,

446 F.3d 1190 (11th Cir. 2006), the Board held that a cognizable “particular social group” should generally be “easily recognizable and understood by others to constitute social groups.” In *S-E-G-*, 24 I&N Dec. at 584, the Board defined the “particularity” requirement 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.” In *Matter of E-A-G-*, 24 I&N Dec. 591, 594 (BIA 2008), the Board further explained that “the extent to which members of a society perceive those with the characteristic in question as members of a social group—is of particular importance in determining whether an alien is a member of a claimed particular social group.”

In 2014, the Board issued a pair of complementary precedential opinions, *M-E-V-G-* and *W-G-R-*, clarifying what is necessary to establish a particular social group. In those cases, the Board held that an asylum applicant claiming membership in a particular social group must “establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.” *M-E-V-G-*, 26 I&N Dec. at 234, 237; *see also W-G-R-*, 26 I&N Dec. at 212. The Board explained that those applicants also bear the burden of showing that their membership was a central reason for their persecution, and that their home government was “unable or unwilling to control” the persecutors. *W-G-R-*, 26 I&N Dec. at 224 & n.8.

Again echoing *R-A-*, the Board explained that the requirement that a group be socially distinct “considers whether those with a common immutable characteristic are set apart, or distinct, from other persons within the society in some significant way. In other words, if the common immutable characteristic were known, those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it.” *M-E-V-G-*, 26 I&N Dec. at 238. Members of a particular social group will generally understand their own affiliation with that group, as will other people in their country. *Id.* To be socially distinct, a particular social group “must be perceived as a group by society.” *Id.* at 240.

M-E-V-G- also clarified that “a group’s recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor.” *Id.* at 242. The Board explained that to do otherwise would create two significant problems. First, it would conflate the inquiry into whether a “particular social group” is cognizable under the INA with the separate and distinct requirement that the persecution be “on account of” membership. *Id.* Second, defining a particular social group from the perspective of the persecutor would contradict the Board’s prior holding that a social group may not be defined exclusively by the fact that its members

have been subjected to harm. *Id.* (citing *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007)).

Finally, the Board explained that this definition did not abrogate or depart from *Acosta*, 19 I&N Dec. 211, or the Board's other decisions, but rather clarified how the definition of "particular social group" had developed through case-by-case adjudication. See *W-G-R-*, 26 I&N Dec. at 212; *M-E-V-G-*, 26 I&N Dec. at 244-47.

C.

Although the Board has articulated a consistent understanding of the term "particular social group," not all of its opinions have properly applied that framework. Shortly after *M-E-V-G-* and *W-G-R-*, the Board decided *A-R-C-G-*, 26 I&N Dec. 388, which held that "married women in Guatemala who are unable to leave their relationship" could constitute a particular social group, *id.* at 392. Importantly, the Board based its decision on DHS's concessions that: (1) *A-R-C-G-* suffered harm rising to the level of past persecution; (2) *A-R-C-G-*'s persecution was on account of her membership in a particular social group; and (3) *A-R-C-G-*'s particular social group was cognizable under the INA. *Id.* at 392-95. In fact, the only legal question not conceded by DHS was whether, under applicable Eighth Circuit law, the Guatemalan government was unwilling or unable to control her husband. *Id.* at 395; see also *Gutierrez-Vidal v. Holder*, 709 F.3d 728, 732 (8th Cir. 2013) (asylum applicant must show that assaults were either condoned by the government or were committed by private actors that the government was unwilling or unable to control). The Board declined to answer that question, electing instead to remand for further proceedings.

Because of DHS's multiple concessions, the Board performed only a cursory analysis of the three factors required to establish a particular social group. The Board concluded that *A-R-C-G-*'s purported particular social group was "composed of members who share the common immutable characteristic of gender," and that "marital status can be an immutable characteristic where the individual is unable to leave the relationship." *A-R-C-G-*, 26 I&N Dec. at 392-93. With respect to particularity, the Board observed that the terms defining the group—"married," "women," and "unable to leave the relationship"—had commonly accepted definitions within Guatemalan society. *Id.* at 393. And finally, with respect to social distinction, the Board cited evidence that Guatemala has a "culture of machismo and family violence," and that although Guatemala's criminal laws that prohibit domestic violence, "enforcement can be problematic because the National Civilian Police often failed to respond to requests for

assistance related to domestic violence.” *Id.* at 394 (quotation marks omitted).

Subsequent Board decisions, including the decision certified here, have read *A-R-C-G-* as categorically extending the definition of a “particular social group” to encompass most Central American domestic violence victims. Like *A-R-C-G-*, these ensuing decisions have not performed the detailed analysis required. For instance, the Board’s decision in this case offered only the conclusory statement that the respondent’s proposed group was “substantially similar to that which we addressed in *Matter of A-R-C-G-*,” and that the “totality of the evidence, including the 2014 El Salvador Human Rights Report, establishes that the group is sufficiently particular and socially distinct in El Salvadoran Society.” *A-B-* at *2. The Board’s entire analysis of the respondent’s proposed particular social group consisted of only two sentences. *Id.* Other Board opinions have similarly treated *A-R-C-G-* as establishing a broad new category of cognizable particular social groups. *See, e.g., Matter of D-M-R-* (BIA June 9, 2015); *Matter of E-M-* (BIA Feb. 18, 2015).

By contrast, several courts of appeals have expressed skepticism about *A-R-C-G-*. In *Velasquez v. Sessions*, the Fourth Circuit concluded that the petitioner’s asylum claim concerned personal, private conflict rather than persecution on a protected ground. 866 F.3d at 197. The court distinguished *A-R-C-G-* “because, there, the Government conceded that the mistreatment suffered by the alien was, at least for one central reason, on account of her membership in a cognizable particular social group.” 866 F.3d at 195 n.5 (quotation marks and alterations omitted). In *Fuentes-Erazo*, the Eighth Circuit declined to approve a particular social group of “Honduran women in domestic relationships who are unable to leave their relationships” after distinguishing *A-R-C-G-* because there “the petitioner’s actual membership in the proposed particular social group was undisputed.” 848 F.3d at 853. And in *Jeronimo v. U.S. Attorney General*, 678 F. App’x 796 (11th Cir. 2017), the Eleventh Circuit denied the asylum application of a woman who claimed membership in a group of “indigenous women who live with a domestic partner and who suffer abuse and cannot leave safely from that domestic partner relationship.” *Id.* at 802–03. The court recognized that in *A-R-C-G-*, “DHS had conceded the petitioner had suffered past persecution and the persecution was because of membership in a particular social group.” *Id.* at 802.⁷

⁷ Other appellate courts have resisted attempts to expand *A-R-C-G-*’s reach. *See, e.g., Menjivar-Sibrian v. U.S. Att’y Gen.*, ___ F. App’x ___, 2018 WL 1415126, at *1 (11th Cir. Mar. 22, 2018) (“women abused by her partner she cannot control” is not a cognizable social group where defining attribute of proposed group is having suffered persecution);

IV.

A-R-C-G- was wrongly decided and should not have been issued as a precedential decision. DHS conceded almost all of the legal requirements necessary for a victim of private crime to qualify for asylum based on persecution on account of membership in a particular social group.⁸ To the extent that the Board examined the legal questions, its analysis lacked rigor and broke with the Board's own precedents.

A.

The Board should not have issued *A-R-C-G-* as a precedential opinion because DHS conceded most of the relevant legal questions. Precedential opinions of the Board are binding on immigration judges and guide the resolution of future cases. See 8 C.F.R. § 1003.1(d)(1) (“[T]he Board, through precedent decisions, shall provide clear and uniform guidance to the Service, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations.”). Yet the parties in *A-R-C-G-* decided significant legal issues on consent, and such concessions should not set precedential rules. Many of the issues that DHS conceded—such as the “existence of [the proposed] particular social group in Guatemala”—effectively stipulated key legal questions.

Solorzano-De Maldonado v. Sessions, ___ F. App'x ___, 2018 WL 1192988, at *1 (5th Cir. Mar. 7, 2018) (“single women living alone targeted by gangs for sexual abuse” does not constitute a socially distinct group in Salvadoran society); *Perez-Rabanales v. Sessions*, 881 F.3d 61, 66 (1st Cir. 2018) (finding that purported social group of “Guatemalan women who try to escape systemic and severe violence but who are unable to receive official protection” lacked particularity and social distinction”); *Vega-Ayala*, 833 F.3d at 39 (“Being in an intimate relationship with a partner who views you as property is not an immutable characteristic.”).

⁸ In *Matter of L-E-A-*, 27 I&N Dec. 40 (BIA 2017), the Board similarly used key concessions by DHS to recognize a particular social group that might not have withstood the rigorous legal analysis required by Board precedent. The respondent and DHS “agree[d] that the immediate family unit of the respondent’s father qualifies as a particular social group” and “that if family membership is a central reason for persecuting an asylum applicant, nexus may be established.” *Id.* at 42. There is reason to doubt that a nuclear family can comprise a particular social group under the statute. See, e.g., *Thomas v. Gonzales*, 409 F.3d 1177, 1192 (9th Cir.) (en banc) (Rymer, J., dissenting), *rev’d*, 547 U.S. 183 (2005). Although the validity of the particular social group analysis in *Matter of L-E-A-* is beyond the scope of this opinion, the case reflects another instance where the Board purported to decide significant legal questions based upon concessions by the parties, rather than the appropriate legal analysis.

But “[p]arties may not stipulate to the legal conclusions to be reached by the court.” *TI Fed. Credit Union v. DelBonis*, 72 F.3d 921, 928 (1st Cir. 1995) (internal quotation marks and alterations omitted); *see also Swift & Co. v. Hocking Valley Ry. Co.*, 243 U.S. 281, 289 (1917) (“If the stipulation is to be treated as an agreement concerning the legal effect of admitted facts, it is obviously inoperative; since the court cannot be controlled by agreement of counsel on a subsidiary question of law.”). The same principle has long applied before the Board. *Matter of A-*, 4 I&N Dec. 378, 384 (BIA 1951); *see also Sagastume v. Holder*, 490 F. App’x 712, 715–16 (6th Cir. 2012) (holding that immigration judge did not err in denying voluntary departure even though the parties had stipulated that the petitioner would qualify for such relief because “[p]arties cannot stipulate around a statutory requirement”). Given the decision’s significant limitations in guiding future decisionmakers, the Board should not have designated *A-R-C-G-* as a precedential decision.

B.

Had the Board properly analyzed the issues, then it would have been clear that the particular social group was not cognizable. The Board’s approach in *A-R-C-G-* was contrary to the appropriate way that the Board has in the past, and must in the future, approach such asylum claims. By accepting DHS’s concessions as conclusive, the Board in *A-R-C-G-* created a misleading impression concerning the cognizability of similar social groups, and the viability of asylum claims premised upon persecution on account of membership in such groups.

1.

In *A-R-C-G-*, DHS conceded that *A-R-C-G-* was a member of a “cognizable” social group that was both particular and socially distinct. *Id.* at 392–95. The Board thus avoided considering whether *A-R-C-G-* could establish the existence of a cognizable particular social group without defining the group by the fact of persecution. *M-E-V-G-*, 26 I&N Dec. at 232; *W-G-R-*, 26 I&N Dec. at 215; *see also Perez-Rabanales v. Sessions*, 881 F.3d 61, 67 (1st Cir. 2018); *Rreshpja v. Gonzales*, 420 F.3d 551, 556 (6th Cir. 2005); *Jonaitiene v. Holder*, 660 F.3d 267, 271 (7th Cir. 2011); *Castillo-Arias v. U.S. Att’y Gen.*, 446 F.3d 1190, 1198 (11th Cir. 2006); *Moreno v. Lynch*, 628 Fed. Appx. 862, 865 (4th Cir. 2015).

To be cognizable, a particular social group *must* “exist independently” of the harm asserted in an application for asylum or statutory withholding of removal. *M-E-V-G-*, 26 I&N Dec. at 236 n.11, 243; *W-G-R-*, 26 I&N Dec.

→ F. App’x

at 215; *Perez-Rabanales*, 881 F.3d at 67; *Lukwago v. Ashcroft*, 329 F.3d 157, 172 (3d Cir. 2003). If a group is defined by the persecution of its members, then the definition of the group moots the need to establish actual persecution. For this reason, “[t]he individuals in the group must share a narrowing characteristic other than their risk of being persecuted.” *Rreshpja*, 420 F.3d at 556 (“If the group with which Rreshpja is associated is defined noncircularly—i.e., simply as young attractive Albanian women—then any young Albanian woman who possesses the subjective criterion of being ‘attractive’ would be eligible for asylum in the United States.”). *A-R-C-G-* never considered that “married women in Guatemala who are unable to leave their relationship” was effectively defined to consist of women in Guatemala who are victims of domestic abuse because the inability “to leave” was created by harm or threatened harm.

In accepting DHS’s concession that this proposed particular social group was defined with particularity, the Board limited its analysis to concluding that the terms used to describe the group—“married,” “women,” and “unable to leave the relationship”—have commonly accepted definitions within Guatemalan society. *A-R-C-G-*, 26 I&N Dec. at 393. But that misses the point. To say that each term has a commonly understood definition, standing alone, does not establish that these terms have the requisite particularity in identifying a distinct social group as such, or that people who meet all of those criteria constitute a discrete social group. A particular social group must not be “amorphous, overbroad, diffuse, or subjective,” and “not every ‘immutable characteristic’ is sufficiently precise to define a particular social group.” *M-E-V-G-*, 26 I&N Dec. at 239. The Board’s scant analysis did not engage with these requirements or show that *A-R-C-G-*’s proposed group was “defined by characteristics that provide a clear benchmark for determining who falls within the group.” *M-E-V-G-*, 26 I&N Dec. at 239.

Social groups defined by their vulnerability to private criminal activity likely lack the particularity required under *M-E-V-G-*, given that broad swaths of society may be susceptible to victimization. For example, groups comprising persons who are “resistant to gang violence” and susceptible to violence from gang members on that basis “are too diffuse to be recognized as a particular social group.” *Constanza v. Holder*, 647 F.3d 749, 754 (8th Cir. 2011); *see also, e.g., S-E-G-*, 24 I&N Dec. at 588; *Lizama v. Holder*, 629 F.3d 440, 447 (4th Cir. 2011); *Larios v. Holder*, 608 F.3d 105, 109 (1st Cir. 2010); *Lushaj v. Holder*, 380 F. App’x 41, 43 (2d Cir. 2010); *Barrios v. Holder*, 581 F.3d 849, 855 (9th Cir. 2009). Victims of gang violence often come from all segments of society, and they possess no distinguishing characteristic or concrete trait that would readily identify them as members of such a group.

Particular social group definitions that seek to avoid particularity issues by defining a narrow class—such as “Guatemalan women who are unable to leave their domestic relationships where they have children in common”—will often lack sufficient social distinction to be cognizable as a distinct social group, rather than a description of individuals sharing certain traits or experiences. *See R-A-*, 22 I&N Dec. at 918 (holding that R-A- failed to show that her claimed social group “is a group that is recognized and understood to be a societal faction, or is otherwise a recognized segment of the population, within Guatemala”). A particular social group must avoid, consistent with the evidence, being too broad to have definable boundaries and too narrow to have larger significance in society.

DHS similarly admitted that *A-R-C-G-*’s proposed particular social group was socially distinct by conceding that it was cognizable. *A-R-C-G-*, 26 I&N Dec. at 392. In support of that concession, the Board cited evidence that Guatemala has a “culture of machismo and family violence” and that, although Guatemala has laws in place to prosecute domestic violence crimes, “enforcement can be problematic because the National Civilian Police often failed to respond to requests for assistance related to domestic violence.” *Id.* at 394 (quotation marks omitted).⁹ The Board provided no explanation for why it believed that that evidence established that Guatemalan society perceives, considers, or recognizes “married women in Guatemala who are unable to leave their relationship” to be a distinct social group. But the key thread running through the particular social group framework is that social groups must be classes recognizable by society at large. *See W-G-R-*, 26 I&N Dec. at 217 (“To have the ‘social distinction’ necessary to establish a particular social group, there must be evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.”). Membership in a particular tribe or clan within a society is an instructive example: those distinctions often constitute a “particular social group” because that is a “highly recognizable, immutable characteristic” that makes members recognized in society as a group. *In re H-*, 21 I&N Dec. 337, 342–43 (BIA 1996). By contrast, there is significant room for doubt that Guatemalan society views these women, as horrible as their personal circumstances may be, as members of a distinct group in society, rather than each as a victim of a particular abuser in highly individualized circumstances.

⁹ On this point, I note that conclusory assertions of countrywide negative cultural stereotypes, such as *A-R-C-G-*’s broad charge that Guatemala has a “culture of machismo and family violence” based on an unsourced partial quotation from a news article eight years earlier, neither contribute to an analysis of the particularity requirement nor constitute appropriate evidence to support such asylum determinations.

2.

In *A-R-C-G-*, DHS also conceded that the respondent established that she had suffered past persecution. 26 I&N Dec. at 392. It can be especially difficult, however, for victims of private violence to prove persecution because “[p]ersecution is something a *government* does,” either directly or indirectly by being unwilling or unable to prevent private misconduct. *Hor v. Gonzales*, 400 F.3d 482, 485 (7th Cir. 2005) (emphasis in original). Persecution under the asylum statute “does not encompass all treatment that our society regards as unfair, unjust, or even unlawful or unconstitutional.” *Fatin*, 12 F.3d at 1240.

Board precedents have defined “persecution” as having three specific elements. First, “persecution” involves an intent to target a belief or characteristic. See *Matter of L-E-A-*, 27 I&N Dec. 40, 44 n.2 (BIA 2017) (citing *Acosta*, 19 I&N Dec. at 222). Yet private criminals are motivated more often by greed or vendettas than by an intent to “overcome [the protected] characteristic of the victim.” *Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996). For example, in *R-A-*, R-A-’s husband targeted her “because she was his wife, not because she was a member of some broader collection of women, however defined, whom he believed warranted the infliction of harm.” 22 I&N Dec. at 920.

Second, the level of harm must be “severe.” *Matter of T-Z-*, 24 I&N Dec. 163, 172–73 (BIA 2007). Private violence may well satisfy this standard, and I do not question that A-R-C-G-’s claims of repugnant abuse by her ex-husband were sufficiently severe.

Third, the harm or suffering must be “inflicted either by the government of a country or by persons or an organization that the government was unable or unwilling to control.” *Acosta*, 19 I&N Dec. at 222. The Board declined to address this prong of the analysis, instead remanding to the immigration judge for further proceedings to determine whether the Guatemalan government was unwilling or unable to control A-R-C-G-’s ex-husband.

An applicant seeking to establish persecution based on violent conduct of a private actor “must show more than ‘difficulty . . . controlling’ private behavior.” *Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005) (quoting *Matter of McMullen*, 17 I&N Dec. 542, 546 (BIA 1980)). The applicant must show that the government condoned the private actions “or at least demonstrated a complete helplessness to protect the victims.” *Galina v. INS*, 213 F.3d 955, 958 (7th Cir. 2000); see also *Hor*, 400 F.3d at 485. The fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime, any more than it would in the United States. There may be many reasons why a particular crime is not successfully investigated and

prosecuted. Applicants must show not just that the crime has gone unpunished, but that the government is unwilling or unable to prevent it.

3.

Finally, DHS conceded the nexus requirement by agreeing that persecution suffered by A-R-C-G- “was, for at least one central reason, on account of her membership in a cognizable particular social group.” *A-R-C-G-*, 26 I&N Dec. at 392, 395. This conclusion simply does not follow from the facts of that case or similar cases. Establishing the required nexus between past persecution and membership in a particular social group is a critical step for victims of private crime who seek asylum. *See R-A-*, 22 I&N Dec. at 920–23. Yet the Board did not evaluate the conclusion that A-R-C-G- was persecuted “on account of” her status as a married woman in Guatemala who was unable to leave her relationship.

Normally, an alien seeking asylum bears the burden of establishing a nexus between the alleged persecution and one of the five statutory grounds for asylum. *See* 8 U.S.C. § 1158(b)(1)(B)(i); *Tamara-Gomez v. Gonzales*, 447 F.3d 343, 349 (5th Cir. 2006). “If the ill-treatment was motivated by something other than one of these five circumstances, then the applicant cannot be considered a refugee for purpose of asylum.” *Zoarab v. Mukasey*, 524 F.3d 777, 780 (6th Cir. 2008). “In analyzing ‘particular social group’ claims” the Board’s decisions “require that the persecution or well-founded fear of persecution be on account of, or, in other words, because of, the alien’s membership in that particular social group.” *R-A-*, 22 I&N Dec. at 920. The focus in determining whether an alien was persecuted “on account of” her group membership is on “the persecutors’ motives”—why the persecutors sought to inflict harm. *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). Reasons incidental, tangential, or subordinate to the persecutor’s motivation will not suffice. *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007).

The nexus requirement is critically important in determining whether an alien established an asylum claim. That requirement is “where the rubber meets the road” because the “importance of the ‘on account of’ language must not be overlooked.” *Cece*, 733 F.3d at 673. “Although the category of protected persons [within a particular group] may be large, the number of those who can demonstrate the required nexus likely is not.” *Id.* Indeed, a “safeguard against potentially innumerable asylum claims” may be found “in the stringent statutory requirements for all asylum seekers.” *Id.* at 675.

When private actors inflict violence based on a personal relationship with a victim, then the victim’s membership in a larger group may well not be

“one central reason” for the abuse.¹⁰ See, e.g., *Zoarab*, 524 F.3d at 781 (“Courts have routinely rejected asylum applications grounded in personal disputes.”). A criminal gang may target people because they have money or property within the area where the gang operates, or simply because the gang inflicts violence on those who are nearby. See, e.g., *Constanza*, 647 F.3d at 754. That does not make the gang’s victims persons who have been targeted “on account of” their membership in any social group.

Similarly, in domestic violence cases, like *A-R-C-G-*, the Board cited no evidence that her ex-husband attacked her because he was aware of, and hostile to, “married women in Guatemala who are unable to leave their relationship.” Rather, he attacked her because of his preexisting personal relationship with the victim. See *R-A-*, 22 I&N Dec. at 921 (“the record does not reflect that [R-A-’s] husband bore any particular animosity toward women who were intimate with abusive partners, women who had previously suffered abuse, or women who happened to have been born in, or were actually living in, Guatemala”). When “the alleged persecutor is not even aware of the group’s existence, it becomes harder to understand how the persecutor may have been motivated by the victim’s ‘membership’ in the group to inflict the harm on the victim.” *Id.* at 919.

4.

In *A-R-C-G-*, the Board recognized that it had a duty to evaluate “any claim regarding the existence of a particular social group in a country . . . in the context of the evidence presented regarding the particular circumstances in the country in question,” 26 I&N Dec. at 392, but it did not adequately observe that duty. Although the immigration judge had previously denied *A-R-C-G-*’s applications, the Board accepted, with little or no analysis, DHS’s concessions to the contrary on nearly every legal issue. By doing so, the Board recognized a new category of asylum claims that did not satisfy the requirements set forth by the Board’s precedent.

¹⁰ Even if mistreatment is suffered at the hands of a government official, there is no nexus between the purported persecution and one of the grounds for asylum if the dispute is a “purely personal matter.” *Matter of Y-G-*, 20 I&N Dec. 794, 799 (BIA 1994); see also, e.g., *Marquez v. INS*, 105 F.3d 374, 380–81 (7th Cir. 1997) (concluding that a commercial dispute with a Philippine military officer was “apolitical”); *Iliev v. INS*, 127 F.3d 638, 642 (7th Cir. 1997) (holding that a dispute with a Bulgarian secret service agent over employment was “personal, not political”). The Board has recognized this principle for decades, including in cases involving threats of domestic violence. See *Matter of Pierre*, 15 I&N Dec. 461, 463 (BIA 1975) (holding that a husband’s threats against his wife were “strictly personal,” even though he was a Haitian government official, and, thus, she did not establish persecution).

Future social group cases must be governed by the analysis set forth in this opinion.

V.

Having overruled *A-R-C-G-*, I must vacate the Board's December 2016 decision in this case as well. The Board's cursory analysis of the respondent's social group consisted of a general citation to *A-R-C-G-* and country condition reports. Neither immigration judges nor the Board may avoid the rigorous analysis required in determining asylum claims, especially where victims of private violence claim persecution based on membership in a particular social group. Such claims must be carefully analyzed under the standards articulated in this opinion and in past Board decisions, such as *M-E-V-G-* and *W-G-R-*.

An asylum applicant has the burden of showing her eligibility for asylum, 8 C.F.R. § 208.13(a), which includes identifying a cognizable social group and establishing group membership, persecution based on that membership, and that the government was unwilling or unable to protect the respondent. The respondent must present facts that undergird *each* of these elements, and the asylum officer, immigration judge, or the Board has the duty to determine whether those facts satisfy all of the legal requirements for asylum.

Of course, if an alien's asylum application is fatally flawed in one respect—for example, for failure to show membership in a proposed social group, *see Guzman-Alvarez v. Sessions*, 701 F. App'x 54, 56–57 (2d Cir. 2017)—an immigration judge or the Board need not examine the remaining elements of the asylum claim. *See, e.g., Perez-Rabanales*, 881 F.3d at 67 (“That ends this aspect of the matter. The petitioner's failure to satisfy both the particularity and the social distinctiveness requirements defeats her attempt to qualify as a refugee through membership in a particular social group.”).

Having subjected the Board's decision to plenary review, I also address several additional errors and outline other general requirements relevant to all asylum applications to provide guidance to the Board and immigration judge on remand.

A.

First, the Board erred in finding several of the immigration judge's factual and credibility determinations to be “clearly erroneous.”

Under Department regulations, the Board may not engage in fact-finding on appeals (except for taking administrative notice of commonly known facts). 8 C.F.R. § 1003.1(d)(3)(iv). Furthermore, the Board may “not engage

in *de novo* review of findings of fact determined by an immigration judge,” and the immigration judge’s factual findings, “including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the immigration judge are clearly erroneous.” *Id.* § 1003.1(d)(3)(i); *see also Turkson v. Holder*, 667 F.3d 523, 527 (4th Cir. 2012) (noting that “[t]his rule stems from a sensible understanding of the roles and abilities of the two bodies”). Notably, “where credibility determinations are at issue, . . . ‘even greater deference’ must be afforded to the [immigration judge]’s factual findings.” *Rodriguez v. Holder*, 683 F.3d 1164, 1171 (9th Cir. 2012) (quoting *Anderson, v. Bessemer City*, 470 U.S. 564, 575 (1985)). The Board may find an immigration judge’s factual findings to be clearly erroneous only if they are “illogical or implausible,” or without “support in inferences that may be drawn from the facts in the record.” *Id.* at 1170 (quoting *Anderson*, 470 U.S. at 577).

Furthermore, the Board “cannot, under a clear error standard of review, override or disregard evidence in the record” or rely “simply on its own interpretation of the facts.” *Ridore v. Holder*, 696 F.3d 907, 917 (9th Cir. 2012). If the Board disagrees with an immigration judge’s factual findings, a “conclusory pronouncement” that the findings were erroneous “does not constitute clear error review.” *Id.* While the Board purported to apply the “clear error” standard in this case, I cannot simply “rely on the Board’s invocation of the clear error standard.” *Rodriguez*, 683 F.3d at 1170. My task is to determine whether the Board “faithfully employed the clear error standard or engaged in improper *de novo* review” of the immigration judge’s factual findings. *Id.*

1.

Here, the Board admitted that the immigration judge identified discrepancies and omissions in the respondent’s testimony, but discounted the adverse credibility determination on various grounds including that the supportive affidavits were due greater weight, that the respondent sufficiently explained some discrepancies, and that the discrepancies did not ultimately undermine the respondent’s account. In so doing, the Board failed to give adequate deference to the credibility determinations and improperly substituted its own assessment of the evidence.

When an asylum applicant makes inconsistent statements, the immigration judge is uniquely advantaged to determine the applicant’s credibility, and the Board may not substitute its own view of the evidence on appeal. *See Xiao Ji Chen v. U.S. Dep’t of Justice*, 471 F.3d 315, 334 (2d Cir. 2006) (“[W]here the [immigration judge]’s adverse credibility finding is based on specific examples in the record of inconsistent statements by the

asylum applicant about matters material to his claim of persecution, or on contradictory or inherently improbable testimony regarding such matters, a reviewing court will generally not be able to conclude that a reasonable adjudicator was compelled to find otherwise.” (quotation omitted)). Under the REAL ID Act, “[t]here is no presumption of credibility” in favor of an asylum applicant. Pub. L. No. 109-13, div. B, §§ 101(a)(3), 119 Stat. 231, 303 (2005) (codified at 8 U.S.C. § 1158(b)(1)(B)(iii)). Furthermore, the identified inconsistencies do not have to be related to an applicant’s core asylum claim to support an adverse credibility determination: “Considering the totality of circumstances, and all relevant factors, a trier of fact may base a credibility determination on . . . the consistency between the applicant’s or witness’s written and oral statements . . . , the internal consistency of each such statement, [and] the consistency of such statements with other evidence of record . . . , *without regard* to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other factor.” *Id.* (emphasis added). “[O]missions, inconsistent statements, contradictory evidence, and inherently improbable testimony are appropriate bases for making an adverse credibility determination,” and the existence of “only a few” such issues can be sufficient to make an adverse credibility determination as to the applicant’s entire testimony regarding past persecution. *Djadjou v. Holder*, 662 F.3d 265, 273–74 (4th Cir. 2011).

2.

The Board further erred in concluding that the immigration judge’s factual findings concerning the respondent’s ability to leave her relationship and El Salvador’s ability to protect her were clearly erroneous. *A-B-* at *3. In support of his findings, the immigration judge cited evidence that the respondent was able to divorce and move away from her ex-husband, and that she was able to obtain from the El Salvadoran government multiple protective orders against him.¹¹ Although the Board questioned the significance of these facts in light of other evidence, it did not establish that the immigration judge’s conclusions were “illogical or implausible,” or without support from the record. *See Rodriguez*, 683 F.3d at 1170.

Instead, the Board substituted its view of the evidence for that of the immigration judge, again violating the standard of review applicable to the factual determinations of immigration judges.

¹¹ The immigration judge’s findings that the respondent was able to leave her relationship on the basis of her divorce and her ability to move from the home she shared with her ex-husband, and that she was able to obtain some measure of government protection, are supported by case law considering other particular social group claims. *See, e.g., Menjivar-Sibrian*, 2018 WL 1415126, at *1; *Vega-Ayala*, 833 F.3d at 39.

B.

The Board also erred when it found that the respondent established the required nexus between the harm she suffered and her group membership. Whether a purported persecutor was motivated by an alien's group affiliation "is a classic factual question," *Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 247–48 (4th Cir. 2017) (internal quotation marks omitted), which the Board may overturn only if "clearly erroneous."

The Board stated that "the record indicates that the ex-husband abused [the respondent] from his position of perceived authority, as her ex-husband and the father of her children." *A-B-* at *3. From this, the Board held, in a conclusory fashion, that the "record as a whole supports a finding that the respondent's membership in the particular social group of 'El Salvadoran women who are unable to leave their domestic relationship where they have children in common' is at least one central reason that he ex-husband abused her." *Id.* While citing the standard of review, the Board did not apply it in summarily dismissing the immigration judge's findings. Moreover, the Board's legal analysis was deficient. The Board, required to find "clear error" of a factual finding, pointed to no record evidence that respondent's husband mistreated her in any part "on account of" her membership in the particular social group of "El Salvadoran women who are unable to leave their domestic relationship where they have children in common." The Board cited no evidence that her husband knew any such social group existed, or that he persecuted wife for reasons unrelated to their relationship. There was simply no basis in the Board's summary reasoning for overturning the immigration judge's factual findings, much less finding them clearly erroneous.

C.

The Board also erred when it overruled the immigration judge's finding that the respondent failed to demonstrate that the government of El Salvador was unable or unwilling to protect her from her ex-husband. This inquiry too involved factual findings to which the Board did not give proper deference. No country provides its citizens with complete security from private criminal activity, and perfect protection is not required. In this case, the respondent not only reached out to police, but received various restraining orders and had him arrested on at least one occasion. *See A-B-* at *14–15 (Immig. Ct. Dec. 1, 2015).

For many reasons, domestic violence is a particularly difficult crime to prevent and prosecute, even in the United States, which dedicates significant

resources to combating domestic violence. *See, e.g.*, Office of Justice Programs, U.S. Dep't of Justice, *Extent, Nature, and Consequences of Intimate Partner Violence* (2000). The persistence of domestic violence in El Salvador, however, does not establish that El Salvador was unable or unwilling to protect A-B- from her husband, any more than the persistence of domestic violence in the United States means that our government is unwilling or unable to protect victims of domestic violence. In short, the Board erred in finding, contrary to the record and the immigration judge's findings, that El Salvador was unable or unwilling to protect A-B- and that she thus had no choice but to flee the country.

D.

The Board, immigration judges, and all asylum officers should consider the following points when evaluating an application for asylum. First, an applicant seeking asylum or withholding of removal based on membership in a particular social group must clearly indicate, on the record and before the immigration judge, the exact delineation of any proposed particular social group. *See Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 190–91 (BIA 2018); *Matter of A-T-*, 25 I&N Dec. 4, 10 (BIA 2009). The immigration judge has a responsibility to “ensure that the specific social group being analyzed is included in his or her decision,” as it critical to the Board’s “appellate review that the proposed social group is clear and that the record is fully developed.” *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. at 191. The Board must also remember that it cannot sustain an asylum applicant’s appeal based on a newly articulated social group not presented before or analyzed by the immigration judge. *Id.* at 192; *see also, e.g., Baltti v. Sessions*, 878 F.3d 240, 244–45 (8th Cir. 2017) (finding no jurisdiction to review a newly defined social group because the claim based on “membership in that narrowed social group” had not been raised below); *Duarte-Salagosa v. Holder*, 775 F.3d 841, 845 (7th Cir. 2014) (declining to address a particular social group raised for the first time on appeal).

Furthermore, the Board, immigration judges, and all asylum officers must consider, consistent with the regulations, whether internal relocation in the alien’s home country presents a reasonable alternative before granting asylum. Asylum applicants who have “not established past persecution . . . 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 government-sponsored.” 8 C.F.R. § 1208.13(b)(3)(i). An immigration judge, “in the exercise of his or her discretion, shall deny the asylum application of an alien found to be a refugee on the basis of past persecution” if it is “found by a preponderance of the evidence” that “the applicant could avoid future

persecution by relocating to another part of the applicant's country of nationality, . . . and under all the circumstances, it would be reasonable to expect the applicant to do so." *Id.* § 1208.13(b)(1)(i). Beyond the standards that victims of private violence must meet in proving refugee status in the first instance, they face the additional challenge of showing that internal relocation is not an option (or in answering DHS's evidence that relocation is possible). When the applicant has suffered personal harm at the hands of only a few specific individuals, internal relocation would seem more reasonable than if the applicant were persecuted, broadly, by her country's government.

Finally, there are alternative proper and legal channels for seeking admission to the United States other than entering the country illegally and applying for asylum in a removal proceeding. The asylum statute "is but one provision in a larger web of immigration laws designed to address individuals in many different circumstances," and "[t]o expand that statute beyond its obviously intended focus is to distort the entire immigration framework." *Velasquez*, 866 F.3d at 199 (Wilkinson, J., concurring). Aliens seeking a better life in America are welcome to take advantage of existing channels to obtain legal status before entering the country. In this case, A-B- entered the country illegally, and when initially apprehended by Border Patrol agents, she stated that her reason for entering the country was "to find work and reside" in the United States. Aliens seeking an improved quality of life should seek legal work authorization and residency status, instead of illegally entering the United States and claiming asylum.¹²

VI.

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¹² Asylum is a discretionary form of relief from removal, and an applicant bears the burden of proving not only statutory eligibility for asylum but that she also merits asylum as a matter of discretion. 8 U.S.C. §§ 1158(b)(1), 1229a(c)(4)(A)(ii); *see also Romilus v. Ashcroft*, 385 F.3d 1, 8 (1st Cir. 2004). Neither the immigration judge nor the Board addressed the issue of discretion regarding the respondent's asylum application, and I decline to do so in the first instance. Nevertheless, I remind all asylum adjudicators that a favorable exercise of discretion is a discrete requirement for the granting of asylum and should not be presumed or glossed over solely because an applicant otherwise meets the burden of proof for asylum eligibility under the INA. Relevant discretionary factors include, *inter alia*, the circumvention of orderly refugee procedures; whether the alien passed through any other countries or arrived in the United States directly from her country; whether orderly refugee procedures were in fact available to help her in any country she passed through; whether she made any attempts to seek asylum before coming to the United States; the length of time the alien remained in a third country; and her living conditions, safety, and potential for long-term residency there. *See Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987).

In reaching these conclusions, I do not minimize the vile abuse that the respondent reported she suffered at the hands of her ex-husband or the harrowing experiences of many other victims of domestic violence around the world. I understand that many victims of domestic violence may seek to flee from their home countries to extricate themselves from a dire situation or to give themselves the opportunity for a better life. But the “asylum statute is not a general hardship statute.” *Velasquez*, 866 F.3d at 199 (Wilkinson, J., concurring). As Judge Wilkinson correctly recognized, the Board’s recent treatment of the term “particular social group” is “at risk of lacking rigor.” *Id.* at 198. Nothing in the text of the INA supports the suggestion that Congress intended “membership in a particular social group” to be “some omnibus catch-all” for solving every “heart-rending situation.” *Id.*

I therefore overrule *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014) and all other opinions inconsistent with the analysis in this opinion, vacate the Board’s decision, and remand to the immigration judge for further proceedings consistent with this opinion.

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, June 11, 2018 6:59 PM
To: McHenry, James (EOIR)
Subject: FW: Matter of A-B- Formatting Edits

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: (b)(6) per OLC (OLC)
Sent: Monday, June 11, 2018 6:53 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Hardy, Liam P. (OLC) (b) (6) >
Subject: Re: Matter of A-B- Formatting Edits

There's also some needed hard spaces:

- between §§ and 1101(a)(42)(A) on page 318
- between § and 1003.1(h)(1)(i) on page 317
- between § and 1158 on footnote 1, page 320
- between § and 1101(a)(42)(A) on page 321

Sent from my iPhone

On Jun 11, 2018, at 4:53 PM, (b)(6) per OLC (OLC) <(b) (6)> wrote:

In reviewing the published version of Matter of A-B-, I noticed a few formatting errors we might want to change (I know we corrected a few things after (b) (6) was posted). I have made margin notes, but for reference my changes are:

- Non-breaking hyphens for M-E-V-G- on page 5 of the pdf (pg. 320)
- Non-breaking hyphens for A-R-C-G- on page 6 of the pdf (pg. 321)
- Hard space between § and 1103(a)(1) on page 8 of pdf (pg. 323)
- Hard space between § and 1103(g)(2) on page 9 of pdf (pg. 324)
- Change "Fed. Appx." to "F. App'x" on page 19 of pdf (pg. 334)
- Keep "VI." section header on same page as beginning on conclusion body text on pp 30–31 of pdf (pp. 345–46)