

June 15, 2018

TALKING POINTS ON THE ATTORNEY GENERAL'S JUNE 11 DECISION IN *MATTER OF A-B-*

On June 11, 2018, Attorney General Jeff Sessions issued a [decision in *Matter of A-B-*](#), concerning the application for asylum of a woman from El Salvador who had been raped, abused, and nearly killed by her husband. In his decision, the AG overturns the 2016 Board of Immigration Appeals' (BIA) decision in favor of granting asylum to Ms. B. The AG also overturns the BIA's 2014 precedent-setting decision in [Matter of A-R-C-G-](#), as well as the decisions of all other cases that disagree with his opinion in *A-B-*.

- 1) The AG's decision is legally improper.
 - a. He did not have the jurisdiction to certify the case to himself or to decide it in this manner. The case had been decided by the BIA and was pending before the immigration judge (IJ) for a final decision. The AG should not have taken a case off the desk of an IJ.
 - b. The decision was entered in order to restrict immigration, not to clarify or apply existing legal standards.
 - i. The poor legal reasoning of the decision, multiple misstatements of law, and rapid entry of the decision after voluminous submissions by the parties and amici curiae indicate that the outcome was preordained.
 - ii. The AG's disregard of the facts and evidence in Ms. B.'s case demonstrate that he simply chose Ms. B.'s case as a vehicle through which to issue a sweeping rule. A ruling so broad that overturns prior agency action and shifts policy affecting thousands should have been made via DHS rulemaking with public comment or Congressional action.
 - iii. The outcome is consistent with a host of policies implemented by the administration to reduce the number of immigrants given access to asylum protections, such as: the tightening of credible fear standards used to give individuals at the border a chance to apply; increased detention of asylum

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seekers; the refusal to admit individuals expressing fear at ports of entry; the prosecution of asylum seekers; and the separation of parents from children with the purpose of deterring asylum seekers.

2) The AG's decision misstates the law and was poorly reasoned.

- a. For example, in arguing that he has jurisdiction, the AG simply cites to a case he himself decided just weeks before.
- b. As another example, the AG states without citation in his introduction that in order for an applicant to demonstrate that her government could not or would not protect her from persecution, she must show that the harm "can be attributed to the government" – a precept that has no basis in law.
- c. The AG states that the carefully developed framework for "particular social group" outlined through decades of policy and litigation amounts to simply a "statement of shared characteristics," which it quite plainly does not.
- d. The AG also ignores the social and political conditions that may allow domestic violence to flourish without government protection. He states that "the mere fact that a country may have problems effectively policing certain crimes... cannot itself establish an asylum claim." He disregards the social norms and lack of political will that create an environment in which women can be seen as the property of their intimate partners and government agents such as police refuse to intervene to protect their rights.

3) The impact of the AG's decision is significant.

- a. In his decision, the AG attempts to negate more than two decades of painstakingly developed jurisprudence, beginning with the mid-1990s case *Matter of Kasinga*, which recognized that a woman fleeing female genital mutilation could qualify for asylum. His language about non-state persecutors, social group definitions, and even the purpose of asylum indicate that this is his desire. Whether this will stand after it is challenged through litigation and Congressional advocacy is an open question.
- b. It is still possible for individuals fleeing domestic and gender-based violence to apply and succeed in their asylum claims, provided they are able to enter the country and access the system. There are many arguments that were made prior to *A-R-C-G-* that can be raised again. However, many more cases are likely to be denied, and cases already taking 5-7 years will be pushed into appeals. This significantly disadvantages unrepresented women.
- c. This decision may deter women from seeking asylum and is likely to result in border agents turning away even more women and their children who need protection. Asylum officers who conduct screening interviews, called credible fear interviews, with women who make it past border agents will apply a much more stringent standard. This will have the have the impact of keeping some

women and their children who are fleeing gender-based violence out of the country.

- d. This decision is precedent that binds the BIA and IJs, and will remain so until Congress or the courts say otherwise. However, it is still important to message to clients, service seekers, funders, and media that we will continue to fight against the legitimacy of the ruling and make every argument possible for every client we serve.
- 4) Under U.S. and international law, our country is obligated to provide refuge to individuals who suffer persecution and are unable to avail themselves of protection in their home countries. However, these longstanding federal protections are currently being undermined, leaving the lives of thousands of families at risk.
- 5) The AG's decision is a shameful attempt to drag the United States back to an era in which women's rights weren't recognized as human rights, and when women fleeing horrific gender-based persecution were wrongfully denied protection.

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