No. 13-72682

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CARLOS ALBERTO BRINGAS-RODRIGUEZ,
aka Patricio Iron-Rodriguez,
Petitioner-Appellant,

v.

LORETTA E. LYNCH, Attorney General,

Respondent-Appellee.

On Petition for Rehearing or Rehearing En Banc
On Petition for Review of an Order of the Board of Immigration Appeals
Agency No. 200-821-303

MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF SUPPORTING PETITION FOR REHEARING OR REHEARING EN BANC

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Under Federal Rule of Appellate Procedure 29(a) and Ninth Circuit Rule 29-3, Amici Curiae Kids in Need of Defense, Tahirih Justice Center, and Women's Refugee Commission move for leave to file the concurrently submitted amicus brief in support of rehearing or rehearing en banc. Amici urge reconsideration of the panel's ruling, which imposes new, unwarranted requirements on asylum-seekers. Petitioner has consented to this filing, and the Government takes no position.

Amici represent immigrant women and children who have suffered sexual and domestic violence perpetrated by family and other non-state actors. They have subject-matter expertise in the impact of sexual and domestic violence on immigrant women and children seeking asylum in the United States. Amici submit this brief to provide this Court perspective on the dramatic implications of the panel's decision for vulnerable groups fleeing persecution.

Based on the foregoing, Amici seek permission from this Court to file the brief accompanying this motion.

Dated: February 22, 2016

s/ Charanya Krishnaswami
Charanya Krishnaswami

Counsel for Amici Curiae Kids in Need of Defense, Tahirih Justice Center, and Women's Refugee Commission

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BRIEF OF AMICI CURIAE KIDS IN NEED OF DEFENSE, TAHIRIH JUSTICE CENTER, AND WOMEN'S REFUGEE COMMISSION SUPPORTING REHEARING OR REHEARING EN BANC

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CORPORATE DISCLOSURE STATEMENT

All Amici Curiae are nonprofit corporations that issue no stock and are not controlled by any parent corporation or publicly held corporation.

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INTEREST OF AMICI CURIAE[1]

Amici Curiae Kids in Need of Defense, the Tahirih Justice Center, and the Women's Refugee Commission represent immigrant women and children who have suffered sexual and domestic violence perpetrated by family and other non-state actors. Amici have subject-matter expertise in the impact of sexual and domestic violence on immigrant women and children seeking asylum in the United States that bears directly on the published decision's dramatic implications for vulnerable groups fleeing persecution.

SUMMARY OF ARGUMENT

Women and children around the world experience domestic and sexual abuse at the hands of family and intimate partners at alarming rates. This violence is often perpetrated in the context of social norms bolstering the abuser's control over the victim and placing shame and blame upon victims instead of perpetrators. Even where laws exist to empower authorities to intervene, in practice, there is often complete impunity for domestic and sexual violence. For these and other reasons, domestic and sexual violence is grossly underreported worldwide.

The panel majority disregards this context by requiring asylum-seekers to present evidence, such as country conditions reports, that specifically addresses

[1] No party or party's counsel authored this brief in whole or in part or contributed money intended to fund preparing or submitting this brief. No person, other than the Amici, their members, or counsel, contributed money intended to fund preparing or submitting this brief.

police policies or practices in the particular town where the asylum-seekers suffered abuse to show the government is unable or unwilling to protect them. But the vast majority of victims of domestic and sexual violence cannot produce the laser-specific evidence the panel majority demands because of the underreporting of abuse, especially in rural areas. Compounding the effects of this Court's ruling in *Castro-Martinez v. Holder*, 674 F.3d 1073, 1081 (9th Cir. 2011), the panel majority "effectively requires" individual victims either to report domestic violence and sexual abuse to the authorities or to identify other specific, similar individuals who have done so to no avail to fill the evidentiary gap. Op. at 41 (Fletcher, J., dissenting); *see also* Pet. Mot. Reh'r at 6-9. Because these requirements pervert the very protection asylum law was created to provide, the decision is of exceptional importance and compels rehearing.

First, this Court has never before required victims to report their abuse to law enforcement to show government inability or unwillingness to protect. Requiring victims to report to law enforcement puts them at risk of retaliation at the hands of their abusers or unsympathetic government officials, senselessly re-traumatizes them, and isolates them from their communities. Even if fleeing victims wished to report, they may lack the information, resources, time, or capacity to do so.

Second, this Court has never required victims to identify other individuals who have suffered the same abuse in the same town and have fruitlessly reported to the same police. Indeed, such a task is nearly impossible and could expose victims and these other individuals to harm. Because the panel's decision undermines legal protections for women and children who have suffered persecution in the form of domestic and sexual abuse, it cannot stand.

ARGUMENT

I. The Panel Majority's De Facto Reporting Requirement is Dangerous, Unrealistic, and Contrary to Established Precedent.

A. The panel majority's reporting requirement subjects victims to renewed abuse, retraumatization, and isolation.

This Court has long held that asylum-seekers should not be required to report past abuse to the authorities to qualify for relief, *see, e.g.*, *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1057-58 (9th Cir. 2006), particularly when the victim is a child, *Castro-Martinez*, 674 F.3d at 1080-81.

Yet the panel majority undermines this longstanding recognition, penalizing victims for failing to report decades of domestic and sexual abuse, even abuse that began when they were just children. The panel majority's new rule is deeply unjust: by effectively requiring that victims report the horrors they have faced, it exposes them to retaliation by their abusers and government authorities, needlessly forces them to relive unspeakable trauma, and subjects them to social isolation.

i. As this Court has recognized, reporting abuse may be futile at best, and at worst can expose the victim to retaliation by government authorities.

The panel majority's new rule forces victims to report abuse to government authorities who at best will do nothing and at worst will retaliate against victims.

This Court has long recognized that "reporting persecution to government authorities is not essential to demonstrate that the government is unable or unwilling to protect" because it is often "futile." *Afiriye v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010). For example, in *Mousa v. Mukasey*, 530 F.3d 1025 (9th Cir. 2008), a case involving an asylum-seeker from Iraq who had suffered past political persecution and sexual abuse, the panel noted she was "fleeing a country where reported rapes often go uninvestigated" to explain her initial reluctance to disclose her rape. *Id.* at 1028.

Even worse, authorities may retaliate against victims if they report their abuse. For this reason, this Court has explained that the "imposition of [] a bright line [reporting] rule" for victims of rape "would indeed be troubling" because the police may have a "poor response" and attack the victim. *Reyes-Reyes v. Ashcroft*, 384 F.3d 782, 789 n.3 (9th Cir. 2004).[2] For example, in *Boer-Sedano v. Gonzales*, 418 F.3d 1082 (9th Cir. 2005), the IJ had "faulted" the petitioner, a gay man, for failing to

[2] Importantly, *Reyes-Reyes* made this statement with respect to rape and the LGBT community in Latin America, "observing that 'gay men with 'female' sexual identities . . . are a separate social entity within Latin American society' that is 'subjected to greater abuse than others.'" 384 F.3d at 789 n.3 (quoting *Hernandez-Montiel v. I.N.S.*, 225 F.3d 1084, 1089 (9th Cir. 2000)).

report that a police officer had raped him, *id.* at 1088. This Court rejected this reasoning and concluded the petitioner failed to report because he was "afraid," and this fear was "reasonable" because reporting could have exposed him to further abuse. *Id.* Similarly, in *In re S-A-*, 22 I. & N. Dec. 1328 (BIA 2000), the BIA "f[oun]d particularly significant" that the victim's reporting of her father's abuse to conservative authorities in Morocco "would be not only unproductive but potentially dangerous" given that the system of protection was "skewed" against the victim, *id.* at 1333.

ii. Requiring victims to report their abuse to ineffective government authorities needlessly forces them to relive their trauma.

By forcing victims to perform the empty ritual of reporting simply to prove doing so is ineffective, the new rule exposes them to needless retraumatization. Victims are haunted by lasting and indelible trauma, and the specter of past abuse is reanimated when they are made to recount it. Experts have described the process of recounting past abuse as "the psychological equivalent of having a scab torn off." *See* U.N. High Comm'r on Refugees, *Sexual Violence Against Refugees: Guidelines on Prevention and Response Geneva 1995* 32 (Mar. 8, 1995), http://www.unhcr.org/3b9cc26c4.pdf.

In the asylum context, this Court has recognized the "psychological harms rape causes," including "persistent fears, avoidance of situations that trigger memories of the violation, profound feelings of shame, difficulty remembering

events, [and] intrusive thoughts of the abuse." *Lopez-Galarza v. I.N.S.*, 99 F.3d 954, 962 (9th Cir. 1996) (internal citation and quotation marks omitted). The U.S. government's own guidance for asylum officers acknowledges the intense difficulty survivors face when reporting prior abuse, emphasizing that "[t]he survivor can actually relive sensory experiences, such as sounds, smells, and physical pain." U.S. Citizenship and Immigr. Servs., *Refugee Asylum and International Operations Directorate – Officer Training: Interviewing Survivors of Torture and Other Severe Trauma* § 9.1 (2012), http://www.uscis.gov/sites/default/files/USCIS/About%20Us/Directorates%20and%20Program%20Offices/RAIO/Interviewing%20-%20Survivors%20of%20Torture%20LP%20(RAIO).pdf. Because the experience of recounting abuse can be as psychologically painful as the abuse itself, forcing victims to report it just to demonstrate that doing so is futile cuts against the very purpose of asylum law.

iii. When victims report, they are often exposed to retaliation at the hands of their abusers.

Reporting exposes victims to retaliation by their abusers, who often exert significant power and control over them. Both this Court and the BIA have stated that threats to an asylum seeker's safety from within the home are a sufficient basis to exempt him or her from reporting. For example, in *Aguirre-Cervantes v. I.N.S.*, 242 F.3d 1169 (9th Cir. 2001), this Court granted asylum to a Mexican girl who had

not reported the abuse inflicted by her father. *Id.* at 1172-73.[3] When she attempted to seek shelter with her grandfather, "her father came after her and forced her to return with him," where he resumed the abuse. *Id.* He also "threatened to kill both her and her mother." *Id.* Similarly, in *In re S-A-* the asylum-seeker's father "heated a straight razor, and burned . . . portions of her thighs that had been exposed" when she wore a "somewhat short skirt" and also beat her for wearing lipstick. 22 I. & N. Dec. at 1329-30. The BIA found that if she "turn[ed] to governmental authorities for help, 'her circumstances may well have worsened." *Ornelas-Chavez*, 458 F.3d at 1057 (quoting *In re S-A-*, 22 I. & N. Dec. at 1335). The BIA credited her testimony that she feared her father and granted her asylum on that basis.[4] By discarding similar credible testimony that the petitioner here feared retaliation from his abusers if he reported his abuse, *see* Op. at 41 (Fletcher, J., dissenting), the panel majority creates an impossibly high evidentiary burden for women and children attempting to flee violence.

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[3] Following the Ninth Circuit's decision to rehear the case en banc, the parties agreed to reopen it before the BIA and the unanimous panel opinion was vacated. *See Aguirre-Cervantes v. I.N.S.*, 273 F.3d 1220 (9th Cir. 2001) (mem.).

[4] As discussed, the applicant's testimony in *In re S-A* was bolstered by the country report, 22 I. & N. Dec. at 1333, and by her aunt's supporting testimony, *id.* at 1332. But the court made clear that the applicant's testimony would have been sufficient without this corroboration. *Id.* at 1334 (citing *Matter of Mogharrabi*, 19 I. & N. Dec. 439, 445 (BIA 1987) ("The alien's own testimony may be in some cases the only evidence available, and it can suffice where the testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for his [or her] fear."). *See also infra* note 6 (discussing well-established precedent that corroborating evidence is not necessarily required).

iv. Victims frequently cannot safely report because of family pressure and community stigma regarding abuse.

Finally, the new reporting requirement overlooks the frequent lack of familial and communal support for victims of abuse. Family members often actively encourage victims not to report. For example, in *Aguirre-Cervantes*, the victim's mother—whom the father had brutally beaten while the mother was recovering from a cesarean-section, and whom the victim sought to protect—told the victim not to report the abuse to the police because her "father had the right to do with her what he wanted." 242 F.3d at 1172-73.

Likewise, cultural attitudes may hinder victims from reporting abuse. For example, a study of Mexican households revealed that discussing sexual abuse with family members—particularly abuse that occurred when the victim was a child—was "almost inconceivable" because victims "c[ould] never be sure about what the reaction of the family w[ould] be." Lucinda Ramos Lira et al., *Mexican American Women's Definitions of Rape and Sexual Abuse*, 21 Hispanic J. of Behavioral Sci. 235, 259 (1999), http://ocadvsa.org/wp-content/uploads/2014/04/Mexican-American-Womens-Definitions-of-Rape-and-Sexual-Abuse.pdf.

B. Vulnerable groups may not have the information, resources, time, or capacity to report abuses.

Even if victims wished to report their abuse, they often cannot do so. Vulnerable groups such as women and children may not have the information,

resources, time, or cognitive capacity to report the abuses while they flee for safety. It is thus unrealistic and unfair to make reporting a de facto prerequisite for asylum.

i. Victims frequently lack the information necessary to navigate reporting requirements and to deal with the collateral consequences of reporting.

Many women and children lack the information to navigate official, often complex, channels required to report abuse or to deal with the collateral consequences of reporting, and it is dangerous and unrealistic to make them do so while they flee for safety. Reporting abuse may involve judges, police, doctors, social workers, forensic evidence, and corroborating witnesses. *See, e.g.*, Patricia M. Hernandez, *The Myth of Machismo: An Everyday Reality for Latin American Women*, 15 St. Thomas L. Rev. 859, 872 (2003) (giving example of onerous multi-branch reporting requirements in Chile); Jennifer Gentile Long & Viktoria Kristiansson, *Taking A Process-Oriented Approach to Domestic Violence Prosecutions*, Prosecutor 14, 15 (2007) (discussing housing, financial, and custodial consequences of reporting, involving judges and social workers). As the dissent notes, children—especially young children—may not know how or to whom to report the abuse, particularly if their abusers are family members who ordinarily would be intermediaries with the police. Op. at 41 (Fletcher, J., dissenting). Confirming the legal significance of these information gaps, in *Aguirre-Cervantes*, this Court noted that the victim, who was a

child at the time the abuse began, "was not aware of any shelters, agencies[,] or children's services in Mexico that would help her." 242 F.3d at 1173.[5]

ii. Victims often lack the resources, access to transportation, and time needed to report abuses while they flee for safety.

Even when victims of domestic violence and sexual abuse know where, how, and to whom to report, they may lack the resources to do so. Abusers almost always have "complete" economic control over victims and ensure they have no "access to cash, checking accounts, or charge accounts," Martha F. Davis & Susan J. Kraham, *Protecting Women's Welfare in the Face of Violence*, 22 Fordham Urb. L.J. 1141, 1150-51 (1995), sometimes leaving victims so impoverished they can barely afford bus tickets to escape much less to reach the appropriate government office or hospital to report the abuse and provide forensic evidence should it be required, *see id.* at 1151 n. 55. Victims from rural areas or small towns who lack access to transportation, as many do, will find it virtually impossible to report their abuse to the authorities. Lisa R. Pruitt, *Place Matters: Domestic Violence and Rural Difference*, 23 Wis. J.L. Gender & Soc'y 347, 362 (2008). Victims also may not have the time to

[5] *Aguirre-Cervantes* also relied on country reports that few resources were available to domestic violence victims in another province, citing statistics that thirteen thousand children were "living on the streets of Mexico City," in many cases because they fled abuse. 242 F.3d at 1173. If the panel opinion stands, evidence about children in a neighboring region will be rendered irrelevant to the plight of children of the region in question.

report because they must "leave quickly and secretly" if they are monitored by abusers who isolate them from help. *See* Davis & Kraham, *supra*, at 1150-51.

iii. Children in particular lack the cognitive capacity to report the abuse in terms authorities understand.

Children especially may lack the ability to report abuses. Young children may not understand that they are being abused and are likely to be confused about the consequences of discussing it. Delphine Collin-Vézina et al., *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse*, 43 Child Abuse & Neglect 123, 129 (2015). The abuse may also retard cognitive and emotional development so that the child cannot report as he or she ages. *See* National Child Traumatic Stress Network, *Ages and Developmental Stages: Symptoms of Exposure*, http://www.nctsn.org/content/ages-and-developmental-stages-symptoms-exposure (last visited Feb. 22, 2016). The asylum officers' training guidelines specifically require them to consider the difficulty children may experience in reporting abuse: "The fact that a child did not seek protection in his or her country of origin does not necessarily undermine his or her case. The asylum officer must explore what, if any, means the child had of seeking protection." U.S. Citizenship and Immigr. Servs., *Guidelines for Children's Asylum Claims* 40 (2009), https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Guidelines-for-Childrens-Asylum-Claims-31aug10.pdf.

Even if the child can report, he or she may not be able to articulate what happened to the police "in the same way as adults," and, as a result, "may be more easily dismissed or not taken seriously by the officials concerned." U.N. High Comm'r on Refugees, *Guidelines on International Protection: Child Asylum Claims Under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees* ¶ 39 (HCR/GIP/09/08) (Dec. 22, 2009), http://www.unhcr.org/50ae46309.pdf.

II. Requiring Victims to Identify Other Individuals Who Have Suffered Similar Abuse May Endanger Both Groups and Is an Unfair and Unrealistic Evidentiary Burden.

As an alternative to reporting their own abuse, victims may present evidence that one or more other individuals informed the authorities of similar abuse to no avail. Yet the panel majority's new specificity requirements demand an excruciating degree of information that will convert asylum-seekers into human rights investigators, forcing them to scour their area—which could be a tiny rural town or the capital of an entire country—for the testimony of other victims or to obtain such information. Now, to establish that abuse suffered by other individuals is relevant to the victim's claim, the victim must reveal the other individuals' names and ages, explain the nature of the victim's relationship to the other individuals, and provide information "on how or to whom [these other individuals] reported their abuse." Op. at 15. The victim must also provide "evidence connecting

general police practices" in the state or city where the other individuals were abused with the "specific police practices" in the victim's "town." *Id.* For many victims, obtaining this evidence will prove impossible.[6] Further, these requirements may endanger both the asylum-seekers and the other individuals by identifying them.

A. Victims may be unable to uncover sufficiently detailed evidence from individuals who have suffered similar abuse.

i. Obtaining evidence from known victims of abuse is difficult given surveillance from abusers and problems interviewing trauma survivors.

Even under the most favorable circumstances—where the victim knows an individual of the same age in the same town who has suffered the same abuse and has fruitlessly reported the abuse to the authorities—obtaining evidence specific enough to meet the panel majority's requirements will be extremely difficult. First, the victim must safely communicate with the other victims about the abuse and reporting, a task that may be difficult to do if both individuals are monitored by their abusers. *See, e.g.*, *In re S-A-*, 22 I. & N. Dec. at 1330 (noting the abuser

[6] The panel majority's new evidentiary requirements are not only dangerous and unrealistic, but also contrary to circuit precedent that "an applicant cannot be turned down solely because he [or she] fails to provide evidence corroborating his [or her] testimony, where he [or she] does not have and cannot reasonably obtain the corroboration." *Aden v. Holder*, 589 F.3d 1040, 1045 (9th Cir. 2009). *Aden* noted the "inherent difficulty in providing corroborating evidence" when "the applicant is from a disfavored group or the corroboration would have to be from his [or her] persecutors." *Id.* It is difficult to imagine victims of child abuse, in particular, gathering alternate evidence under such circumstances.

"mark[ed] the soles of [the applicant]'s shoes with chalk and was thereby monitoring her activities"). Even if the asylum-seeker can meet with the other victim, he or she must then persuade that individual to provide details about his or her encounter with the police and police practices. An asylum-seeker is not a psychologist or a human rights investigator and is not trained to interview victims, who often fail to state crucial details or may give inconsistent stories if not asked the appropriate questions. *Cf.* Stuart L. Lustig, MD, MPH, *Symptoms of Trauma Among Political Asylum Applicants: Don't Be Fooled*, 31 Hastings Int'l & Comp. L. Rev. 725, 729 (2008) (noting that even trained professionals such as lawyers and doctors sometimes elicit conflicting statements from asylum-seekers).

ii. Obtaining evidence from unknown victims of abuse is still more difficult due to the veil of silence surrounding domestic and sexual violence and disincentives to cooperate.

Because domestic abuse and sexual violence are massively underreported, the asylum-seeker may not know any other victims of abuse. This problem is particularly likely to arise in rural areas or tight-knit communities where virtually no one comes forward and where women talk significantly less even to their friends about abuse. *See* Pruitt, *supra*, at 363-65. And an asylum-seeker is unlikely to have the resources or ability to coordinate with newspapers and NGOs that may have relevant information about domestic violence in a region, let alone a city or town. Finally, even if the asylum-seeker learns anecdotally about other individuals who

have suffered from similar abuse and reported it, there are profound disincentives for these individuals to cooperate with the asylum-seeker and to disclose the details of their abuse and reporting because of the risks to personal safety discussed in Section II.B.

iii. Obtaining evidence from other individuals once a victim has reached the United States is virtually impossible.

If a victim reaches the United States without first obtaining evidence from another individual who has suffered similar abuse, the logistical challenges he or she will face in doing so may be insurmountable. A victim in removal proceedings cannot leave the United States without abandoning his or her application for asylum, 8 C.F.R. § 245.2(a)(4)(ii) (2011), and, in some cases, may be detained, 8 C.F.R. § 236.1 (2007). Telephonic and electronic communication is expensive, requiring international phone calls or consistent access to an internet-enabled device.[7] Even when victims have access to a phone, the other abused individuals may not. For example, had another abused individual wished to contact the victim in *In re S-A-*, he or she would have been unable to do so as there the victim did not have a telephone at home and had to go to a pay phone if she wanted to make a

[7] These restrictions would deter most asylum-seekers who are detained from attempting the task. A district court recently granted class certification for detained immigrants in a lawsuit challenging limited access to phones that charge $ 0.25 per minute for intrastate calls (plus numerous additional fees), that automatically disconnect after fifteen minutes, that lack voicemail capability, and that do not receive incoming calls. *Lyon v. U.S. Immigration & Customs Enf't*, 308 F.R.D. 203, 207-08 (N.D. Cal. 2015).

call. 22 I. & N. Dec. at 1329-31. Because the victim's father forbade her to do that, the victim could not communicate the extent of the abuse to her aunt, who was unaware of her suicide attempts. *Id.* at 1329-30.

Use of paid brokers could also prove difficult, expensive, or ineffective. In 1993, a court deemed a broker's rate of $185 per hour "reasonable," *Nakamura v. Heinrich*, 17 C.I.T. 119, 121 (1993)—a sum today that would be prohibitively costly for most victims.[8]

B. Seeking evidence from other abused individuals risks identifying them and exposing them to retaliation.

Last, the panel majority's new specificity requirements may endanger the wellbeing of other victims of abuse in the quest to provide sufficient evidence. Victims may publicly identify these individuals, leaving them vulnerable to retaliation by their abusers. Even attempting to meet with and talk to other victims may expose them to further abuse.

Underreporting of abuse, as discussed, is the result of many factors including shame and guilt. Honor killings, where a victim is murdered, sometimes in a highly painful manner such as burning or live burial, are prevalent in many parts of the

[8] Unscrupulous brokers also purport to help victims and dupe them into spending large sums of money while doing nothing or even damaging victims' legitimate immigration prospects. *See*, *e.g.*, *Mozdzen v. Holder*, 622 F.3d 680, 682 (7th Cir. 2010) (discussing sting operation involving immigration broker and undercover immigration officer who provided fake immigration documents to immigrants in return for $12,000).

world. *See Mousa*, 530 F.3d at 1028 (noting if petitioner had reported abuse to authorities, she would have faced potential harm from her own family for "dishonor[ing]" them). Even in *In re S-A-*, in which the victim simply gave a young man directions outside her house, the mere act of speaking with another person—even *without* discussing abuse—was enough to cause the victim's father to beat them both, using his ring to hit the victim in the face. 22 I. & N. Dec. at 1329.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for rehearing or rehearing en banc, vacate the panel decision, and remand to the agency for further proceedings.

Dated: February 22, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5)(A) and (a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2011 in Baskerville 14-point font.

This brief complies with the type volume limitations of Fed. App. P. 29(d) and Cir. R. 29-2(c)(2) because it contains 4,107 words excluding the parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

Dated: February 22, 2016

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 22, 2016. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 22, 2016

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