



Protecting Immigrant
Women and Girls
Fleeing Violence

The Honorable Chuck Grassley
United States Senate
Chairman, Committee on the Judiciary

The Honorable Dianne Feinstein
United States Senate
Ranking Member, Committee on the Judiciary

VIA ELECTRONIC MAIL

June 14, 2018

RE: Decision by Attorney General Jeff Sessions in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018)

Dear Chairman Grassley, Ranking Member Nadler, and Members of the Committee,

The Tahirih Justice Center is the largest multi-city nonpartisan non-profit organization providing direct legal services and policy advocacy on behalf of immigrant women and girls fleeing gender-based violence. We have assisted over 25,000 individuals over the past 21 years. As you are aware, the Attorney General issued his decision on Monday, June 11 in *Matter of A-B-*, ordering that the Immigration Judge deny asylum to a Salvadoran woman who endured years of horrific domestic abuse.ⁱ

We write to respectfully request that you urge the Attorney General to immediately revoke his erroneous decision in *Matter of A-B-*. We further request that Congress engage in necessary oversight of the Departments of Justice and Homeland Security (DHS) to ensure that the decision is not implemented before adequate scrutiny and litigation are concluded. Asylum proceedings involving survivors of gender-based violence must be conducted in a lawful manner at all stages of adjudication and review, consistent with Section 101(a)(42)(A) of the Immigration & Nationality Act (INA), its legislative history, and the regulations governing the asylum process at 8 C.F.R. Section 208.

The definition of a “refugee” is set forth in Section 101(a)(42)(A) of the INA. The definition reflects Congress’ intentional codification of the *1951 United Nations (UN) Convention and 1964 Protocol Relating to the Status of Refugees (Convention)*.ⁱⁱ Those who are persecuted on account of one or more of the five enumerated grounds in the statute, including “membership in a particular social group,” can establish refugee status and thereby apply for asylum. As members of a particular social group, often targeted for persecution by non-state actors, survivors of gender-based violence such as the respondent in *Matter of A-B-* commonly establish asylum eligibility on this basis. Examples of persecution by non-state actors include domestic violence, sexual assault, forced marriage, and female genital mutilation/cutting.

Matter of A-B- seeks to severely restrict asylum eligibility for applicants who face persecution by non-state actors. The Attorney General improperly held that survivors of “violent conduct” by a “private actor” are now required to show more than the

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government's difficulty controlling such conduct. The applicant must show that the government "condoned the private actions or demonstrated an inability to protect the victims." The opinion further states that the harm feared must be "attributed to" the government.ⁱⁱⁱ This heightened standard is so narrow as to potentially disqualify life-threatening harm perpetrated by private actors from being considered persecution. Applicants targeted for FGMC or forced marriage by family or community members, for example, would be largely unable to show that such harm was attributable to their country's government or condoned by it, even where protection is plainly unavailable. While the decision not only overrules *Matter of A-R-C-G*, along with decades of well-settled judicial precedent,^{iv} it is arguably contrary to United States (US) international treaty obligations, the will of Congress, and the longstanding asylum regulations promulgated and retained by various administrations. It is noteworthy that DHS itself has long-held the position that survivors of domestic violence at the hands of non-state actors may qualify for asylum.^v

The US government and the UN have unequivocally interpreted the term "persecutor" to encompass two very distinct types of persecutors: state and non-state actors. The regulations pertaining to asylum at 8 C.F.R Section 208.13(b)(3)(i)&(ii) proscribe different burdens of proof depending on which type of persecutor is involved; a case involving a "government or government sponsored" persecutor benefits from the presumption that internal relocation is unreasonable, while a case involving a "non-government sponsored" persecutor does not. The UN makes this same distinction in the UNHCR guidelines interpreting Article 1A(2) of the Convention.^{vi} In addition, the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the Convention*, first published in 1979,^{vii} explicitly states that "[w]here serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection."^{viii} Once again, requiring that private acts of harm by persecutors are "attributed to" or "condoned by" the government impermissibly collapses the distinction between state and non-state sponsored persecution that the regulations, the INA, and the Convention clearly contemplate.

If allowed to stand, *Matter of A-B-* will reward violent abusers, while punishing traumatized survivors and putting their lives further at risk. This is far from what Congress intended in enacting our longstanding asylum laws. On behalf of the courageous women we serve, we appreciate your careful consideration of our requests. Please contact me at 571-356-9493 or archip@tahirih.org for further information.

Sincerely,



Archi Pyati
Chief of Policy

ⁱThe Attorney General certified *Matter of A-B-* to himself on March 7, 2018. See <https://www.justice.gov/eoir/page/file/1070866>.

ⁱⁱSee <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>; See also the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended in 8 U.S.C.); the Act amended the INA of 1952, Pub. L. No. 82-414, 66 Stat. 163.

ⁱⁱⁱ See <https://www.justice.gov/eoir/page/file/1070866> at 1 & 2.

^{iv} See <https://www.justice.gov/sites/default/files/eoir/legacy/2014/10/03/vol8no7.pdf>.

^v <https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/26/3811.pdf>.

^{vi}See <http://www.unhcr.org/publications/legal/3f28d5cd4/guidelines-international-protection-4-internal-flight-relocation-alternative.html>.

^{vii} The Refugee Act of 1980 was first introduced in 1979, the same year that the *Handbook* was published.

^{viii} See (g) agents of persecution at p. 12 of the *Handbook* at <http://www.unhcr.org/4d93528a9.pdf>.