

No. 19-2215
IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ANAYELY CAMPOS TAPIA,
Petitioner,

v.

ATTORNEY GENERAL OF THE UNITED STATES,
Respondent.

On Petition for Review of an Order of the
Board of Immigration Appeals

BRIEF FOR THE TAHIRIH JUSTICE CENTER ET AL.
AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

Julie Carpenter
Richard Caldarone*
Tahirih Justice Center
6402 Arlington Boulevard
Suite 300
Falls Church, VA 22042
(571) 282-6161
juliec@tahirih.org

R. Blake Chisam* (NY No. 2679975)
Samantha Anne Caesar (NY No. 5622683)
Fragomen, Del Rey, Bernsen & Loewy, LLP
1101 15th Street, NW,
Suite 700
Washington, DC 20005
(202) 223 5515
bchisam@fragomen.com
scaesar@fragomen.com

Counsel for Amicus Curiae

*Admitted to the Third Circuit Court of Appeals.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT.....	1
STATEMENT OF IDENTITIES AND INTEREST	2
INTRODUCTION.....	6
ARGUMENT	8
I. DOMESTIC VIOLENCE IS MOTIVATED BY SOCIAL, CULTURAL, AND PERSONAL FACTORS, AND EACH CAN BE, AND OFTEN IS, A CENTRAL REASON FOR PERSECUTION.....	8
A. Social and Cultural Norms Motivate Gender-Based Violence ...	9
B. A Personal Relationship Does Not Preclude Other Motivations for the Harm.....	14
C. The Attorney General’s Decision in <i>Matter of A-B</i> - Did Not Change the “One Central Reason” Standard	17
II. AS THIS CASE ILLUSTRATES, DOMESTIC VIOLENCE AGAINST PROFESSIONAL WOMEN IN MEXICO OFTEN STEMS FROM AN ANTI- FEMINIST BACKLASH.	18
A. Gender-Based Violence in Mexico Traces to Cultural Norms and an Anti-feminist Backlash.	19
CONCLUSION	25
CERTIFICATE OF COMPLIANCE.....	26
ELECTRONIC DOCUMENT CERTIFICATE.....	27
CERTIFICATE OF BAR ADMISSION	28
CERTIFICATE OF SERVICE.....	29

TABLE OF AUTHORITIES

Cases

<i>Aldana Ramos v. Holder</i> , 757 F.3d 9 (1st Cir. 2014)	16
<i>Bi Xia Qu v. Holder</i> , 618 F.3d 602 (6th Cir. 2010)	15, 16
<i>Bringas-Rodriguez v. Sessions</i> , 850 F. 3d 1051 (9th Cir. 2017)	16
<i>Canas-Segovia v. INS</i> , 970 F.2d 599 (9th Cir. 1992)	19
<i>Fatin v. I.N.S.</i> , 12 F.3d 1233 (3d Cir. 1993)	20
<i>Grace v. Whitaker</i> , 344 F. Supp. 3d 96 (D.D.C. 2018)	18
<i>Juan-Pedro v. Sessions</i> , 740 F. App'x 467 (6th Cir. 2018)	17
<i>Konan v. Atty. Gen. of U.S.</i> , 432 F.3d 497 (3d Cir. 2005)	18
<i>Matter of A-B-</i> , 27 I. & N. Dec. 316 (A.G. 2018)	7, 17, 18
<i>Matter of J-B-N & S-M-</i> , 24 I. & N. Dec. 208 (BIA 2007)	16
<i>Maza Menay v. INS</i> , 139 F.3d 759 (9th Cir. 1998)	19
<i>Nabulwala v. Gonzales</i> , 481 F.3d 1115 (8th Cir. 2007)	16
<i>Ndayshimiye v. Att'y Gen. U.S.</i> , 557 F.3d 124 (3d Cir. 2009)	15
<i>Parussimova v. Mukasey</i> , 555 F.3d 734 (9th Cir. 2009)	16
<i>Ravindran v. INS</i> , 976 F.2d 754 (1st Cir. 1992)	19
<i>Rivas-Martinez v. INS</i> , 997 F.2d 1143 (5th Cir. 1993)	19

Statutes

8 U.S.C. § 1158(b)(1)(B)(i)	8, 15, 19
-----------------------------------	-----------

Other Authorities

- Fatma Marouf, *Becoming Unconventional: Constricting the 'Particular Social Group' Ground for Asylum*, 44 N.C.J. Int'l L. 487, 513 (2019)...9
- Focusing on Prevention to Stop the Violence*, UN Women; Comisión Internacional Contra la Impunidad en Guatemala 10
- H. Eagly & L. L. Carli, *The female leadership advantage: An evaluation of the evidence*, *The Leadership Quarterly*, 2003 13
- Human Trafficking for Sexual Exploitation Purposes in Guatemala* (2016) 10
- Joline Doedens, *The Politics of Domestic Violence-Based Asylum Claims*, 22 *Duke J. Gender L. & Pol'y* 111 (2014)..... 20
- M. A. Genovese and Janie S. Steckenrider, *Women as Political Leaders: Studies in Gender and Governing* (2013)..... 21
- Mary Ann Dutton & Lisa A. Goodman, *Coercion in Intimate Partner Violence: Towards a New Conceptualization*, 52 *Sex Roles* 743, 743 (2005)9
- Memorandum from Phyllis Coven, Office of International Affairs, to All INS Asylum Officers and Headquarters Coordinators on Considerations for Asylum Officers Adjudicating Asylum Claims from Women (May 26, 1995)..... 20
- National Research Council, *Understanding Violence Against Women* (Nancy A. Crowell & Ann W. Burgess, eds. 1996) 10, 11
- Rafael Tovar y Lopez-Portillo, *Understanding the Role of Women as Leaders in Mexican Politics: Looking Back and Moving Forward*, University of San Diego Dissertation, 2016..... 21, 22

Rhonda Copelon, <i>Recognizing the Egregious in the Everyday: Domestic Violence as Torture</i> , 25 Colum. Hum. Rts. L. Rev. 291 (1994)	9
The Geneva Declaration, <i>Lethal Violence against Women and Girls</i>	10
U.N. Human Rights Council, <i>Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences</i>	11
U.N. Human Rights Council, <i>Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Mission to Afghanistan</i> 5, U.N. Doc. A/HRC/29/27/Add.3 (May 12, 2015).....	11
U.N. Secretary-General, <i>In-Depth Study on All Forms of Violence against Women</i> U.N. Doc A/61/122/Add. 1 (July 6, 2006).....	11
U.S. Dep’t of State, <i>Afghanistan 2018 Human Rights Report</i> (2018) ...	10, 12
U.S. Dep’t of State, <i>Burma 2018 Human Rights Report</i> (2018).....	12
U.S. Dep’t of State, <i>El Salvador 2018 Human Rights Report</i> (2018)	13
U.S. Dep’t of State, <i>Guatemala 2018 Human Rights Report</i> (2018).....	12
U.S. Dep’t of State, <i>Haiti 2018 Human Rights Report</i> (2018).....	13
U.S. Dep’t of State, <i>Kenya 2018 Human Rights Report</i> (2018).....	13
U.S. Dep’t of State, <i>Mexico 2018 Human Rights Report</i> (2018).....	13, 21
U.S. Dep’t of State, <i>Russia 2018 Human Rights Report</i> (2018)	12, 13
U.S. Dep’t of State, <i>Saudi Arabia 2018 Human Rights Report</i> (2018) ..	12

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for *amici curiae* certifies that *amici* are private, non-profit organization. No publicly held company holds more than 10% of the stock of any *amicus curiae*.

STATEMENT OF IDENTITIES AND INTEREST¹

The **Tahirih Justice Center** is the largest multi-city direct services and policy advocacy organization specializing in assisting immigrant women and girls who survive gender-based violence. In five cities across the country, Tahirih offers legal and social services to women and girls fleeing all forms of gender-based violence, including human trafficking, forced labor, domestic violence, rape and sexual assault, and female genital cutting/mutilation. Since its beginning in 1997, Tahirih has provided free legal assistance to more than 20,000 individuals, many of whom have experienced the significant psychological and neurobiological effects of that trauma. Through direct legal and social services, policy advocacy, and training and education, Tahirih protects immigrant women and girls and promotes a world where they can live in safety and dignity. Tahirih *amicus* briefs have been accepted in numerous federal courts across the country.

ASISTA Immigration Assistance (“ASISTA”) worked with Congress to create and expand routes to secure immigration status for

¹ All parties have consented to the filing of this amicus brief. See Fed. R. App. P. 29(a)(2). No counsel for a party authored this brief in whole or in part. No party, or counsel for a party, made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, their members, or their counsel made such a monetary contribution. See Fed. R. App. P. 29(a)(4)(E).

survivors of domestic violence, sexual assault, and other crimes.

ASISTA serves as liaison for Department of Homeland Security personnel charged with implementing the resulting laws. ASISTA also trains and provides technical support to local law-enforcement officials, judges, domestic violence and sexual assault advocates, and attorneys working with immigrant crime survivors. ASISTA has previously filed amicus briefs with the Supreme Court of the United States, this Court, and four other courts of appeals.

Asian Pacific Institute on Gender-Based Violence (formerly, Asian & Pacific Islander Institute on Domestic Violence) is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander communities. The Institute serves a national network of advocates and community-based service programs that work with Asian and Pacific Islander and immigrant survivors, and is a leader on providing analysis on critical issues facing victims of gender-based violence in the Asian and Pacific Islander and in immigrant communities. The Institute leads by promoting culturally relevant intervention and prevention, expert

consultation, technical assistance and training; conducting and disseminating critical research; and informing public policy.

The **National Alliance to End Sexual Violence** (“NAESV”) is the voice in Washington D.C. for the 56 state and territorial sexual assault coalitions and 1300 rape crisis centers working to end sexual violence and support survivors. NAESV advocates for the rights of all survivors, including those detained or held in custody for any reason. We also strongly support the use of responsible practices and policies within detention facilities to prevent victimization.

Casa de Esperanza National Latin @ Network for Healthy Families and Communities was founded in 1982 in Minnesota to provide emergency shelter for women and children experiencing domestic violence. In 2009, Casa de Esperanza launched the National Latin@ Network for Healthy Families and Communities, which is a national resource center focused on research, training, and technical assistance, and policy advocacy focused on preventing and addressing domestic violence in Latino and immigrant communities.

Public Counsel, based in Los Angeles, California, is the largest pro bono law firm in the nation. Its Immigrants’ Rights Project provides

direct representation to individuals seeking asylum before the Los Angeles Asylum Office, the Los Angeles Immigration Court, the Board of Immigration Appeals, and the U.S. Court of Appeals for the Ninth Circuit. Project attorneys co-taught a clinic representing asylum seekers at UCLA School of Law for over a decade, and they currently conduct trainings, litigate, and advocate for protections for asylum seekers.

INTRODUCTION

The causes of domestic violence are social. They are political. And they are personal.

The various reasons for domestic violence can, and often do, simultaneously sit at the core of domestic violence. An act of domestic violence is often merely a symptom, evidence of a culture that subjugates and suppresses women, especially those who express themselves as equals to men, as professionals, and as persons in their own right. Acts of domestic violence, particularly when they occur in a culture that elevates masculinity and fails to protect women from violence designed to keep them in their place, in turn become triggers for flight. And women who flee culturally normalized violence are in need of refuge from not just an abuser, but also from a society and a government that have both failed to protect them from violence and paved the way for that violence.

The Board of Immigration Appeals (“BIA”) decision before this Court ignores these well-settled conclusions. The BIA held, contrary to the evidence before it, that all domestic violence stems purely from personal motives. Decades of research shows the contrary: domestic

violence generally has roots in deep-seated cultural and social norms regarding the role of women. Moreover, an applicant who—like petitioner Anayely Campos Tapia—shows that domestic violence stems from this kind of mixture of motives is entitled to relief. And the Attorney General’s decision in *Matter of A-B-*, 27 I. & N. Dec. 316, 320 (A.G. 2018) does not alter that conclusion.

The BIA’s decision in this case also reflects a second error: Although the immigration judge (“IJ”) refused to examine any evidence regarding the claim brought by Ms. Campos Tapia that she was persecuted on account of her political opinion, the BIA held that the IJ adequately addressed her claim—and the BIA again based its reasoning on the erroneous holding that a personal relationship was the sole reason for the persecution.

This reasoning flips law and logic on their heads. The BIA decided, in essence, that the existence of a personal relationship cuts off further inquiry into whether protected grounds served as reasons for the abuser’s violent actions toward his wife. Under well-settled law, however, a domestic violence survivor must prove only that a protected ground was one of the central reasons for the abuse that she suffered.

Here, the record makes clear that Ms. Campos Tapia’s feminist beliefs, like her membership in a class of independent professional women, was a central motivation driving her abuser.

ARGUMENT

I. DOMESTIC VIOLENCE IS MOTIVATED BY SOCIAL, CULTURAL, AND PERSONAL FACTORS, AND EACH CAN BE, AND OFTEN IS, A CENTRAL REASON FOR PERSECUTION.

A domestic violence survivor, like anyone else who seeks the relief of asylum or withholding of removal in the United States, must demonstrate that she fears persecution in her home country on account of one or more protected grounds: race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1158(b)(1)(B)(i). In this case, the BIA upheld the IJ’s determination that Ms. Campos Tapia’s membership in the particular social group of “independent professional women in Mexico” was not a central reason for her abuse. The BIA based its holding on the decision in *Matter of A-B-*, 27 I. & N. Dec. 316, 320 (A.G. 2018) which the BIA apparently read as holding that domestic abuse is personal or private violence that can never be inflicted on account of a protected ground. The BIA’s rationale is substantively wrong and misconstrues *A-B-*.

A. Social and Cultural Norms Motivate Gender-Based Violence

Gender-based violence is not simply a private matter between a survivor and her abuser. Rather, domestic violence often represents a product of broader social dynamics.

Extensive research conducted over the past several decades conclusively rejects the notion that domestic violence is no more than a private matter based on personal animosity. *See, e.g.*, Mary Ann Dutton & Lisa A. Goodman, *Coercion in Intimate Partner Violence: Towards a New Conceptualization*, 52 *Sex Roles* 743, 743 (2005); Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 *Colum. Hum. Rts. L. Rev.* 291, 305 (1994); Fatma Marouf, *Becoming Unconventional: Constricting the ‘Particular Social Group’ Ground for Asylum*, 44 *N.C.J. Int’l L.* 487, 513 (2019); *see generally* Marisa Silenzi Cianciarulo, *Batterers As Agents of the State: Challenging the Public I Private Distinction in Intimate Partner Violence-Based Asylum Claims*, 35 *Harv. J. L. & Gender* 117, 137 (2012). It is equally clear that, the cultural norms surrounding gender in particular societies can foster domestic violence as an expression or enforcement of gender roles. *See, e.g.*, *Focusing on Prevention to Stop*

the Violence, UN Women; Comisión Internacional Contra la Impunidad en Guatemala, *Human Trafficking for Sexual Exploitation Purposes in Guatemala* 30 (2016) (“Human Trafficking in Guatemala”).²

For instance, in many countries marked by high levels of gender-based violence, men believe that their female partners belong to them and that women are properly the subject of their control. *Id.* This belief is often engrained in countries in which women are isolated and lack social support; where community attitudes tolerate and legitimize male violence; that have extreme social and economic disempowerment of women; that accept violence and gender stereotypes by patriarchal families and cultures; or that have religious beliefs and practices that tolerate or encourage gender-based violence. *Id.*; *see also, e.g.*, The Geneva Declaration, *Lethal Violence against Women and Girls*, 89 (discussing “patriarchal gender relations” and intimate partner femicide); National Research Council, *Understanding Violence Against Women* (Nancy A. Crowell & Ann W. Burgess, eds. 1996) (“*Understanding Violence Against Women*”); U.S. Dep’t of State, *Afghanistan 2018 Human Rights Report* 8 (2018).

² <https://www.refworld.org/docid/584aaeac4.html>.

In such countries and societies, men presume that they are entitled—or even obligated—to inflict physical, emotional and psychological harm on their female partners as a means of control. U.N. Secretary-General, *In-Depth Study on All Forms of Violence against Women* U.N. Doc A/61/122/Add. 1 (July 6, 2006) (“In-Depth Study”)³; *Understanding Violence Against Women*. Where the social norm is that men exercise ownership over women, the violence against women used to preserve that norm is seen as necessary. The belief is that society naturally operates that way.

The same social and cultural patterns that give rise to domestic and other gender-based violence allow abusers to act with impunity. Cultural and political authorities in countries with those patterns excuse or allow domestic violence based on their view of a woman’s subservient role. The authorities often attribute the abuse to a woman’s alleged disobedience of her husband. U.N. Human Rights Council, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Mission to Afghanistan* 5, U.N. Doc. A/HRC/29/27/Add.3 (May 12, 2015).⁴ And in many countries, such

³ <https://www.refworld.org/docid/484e58702.htm>1.

⁴ http://www.un.org/ga/search/view_doc.asp?symbol=AIHRC/29/27 / Add.3.

beliefs translate into the absence of laws against domestic violence, laws that are entirely inadequate to protect survivors, or facially adequate laws that are simply not enforced. *See, e.g.*, U.S. Dep’t of State, *Burma 2018 Human Rights Report* 37 (2018); U.S. Dep’t of State, *Guatemala 2018 Human Rights Report* 17 (2018); U.S. Dep’t of State, *Russia 2018 Human Rights Report* 43 (2018); U.S. Dep’t of State, *Saudi Arabia Human Rights Report* 42 (2018).

The result is that domestic violence permeates some countries’ cultures. For example, the State Department has concluded that domestic violence is a “serious problem” in Guatemala. U.S. Dep’t of State, *Guatemala 2018 Human Rights Report* 16 (2018).⁵ The State Department has also recognized that in Afghanistan, “millions of women continued to suffer abuse at the hands of their husbands, fathers, brothers, in-laws, armed individuals, parallel legal systems, and institutions of the state, such as the police and justice system.” U.S. Dep’t of State, *Afghanistan 2018 Human Rights Report* 30. In Saudi Arabia, domestic violence is believed to be “widespread.” U.S. Dep’t of State, *Saudi Arabia 2018 Human Rights Report* 44 (2018).⁶ And domestic

⁵ <https://www.state.gov/wp-content/uploads/2019/03/GUATEMALA-2018.pdf>

⁶ <https://www.state.gov/wp-content/uploads/2019/03/SAUDI-ARABIA-2018.pdf>

violence is a similarly serious problem in dozens of other countries around the world, including El Salvador, Kenya, Russia, Burma, and Haiti. See U.S. Dep't of State, *El Salvador 2018 Human Rights Report* 16 (2018)⁷; U.S. Dep't of State, *Kenya 2018 Human Rights Report* 23 (2018)⁸; U.S. Dep't of State, *Russia 2018 Human Rights Report* (2018)⁹; U.S. Dep't of State, *Burma 2018 Human Rights Report* 37 (2018)¹⁰; U.S. Dep't of State, *Haiti 2018 Human Rights Report* 19–20 (2018).¹¹

Mexico—the country in which Ms. Campos Tapia faced persecution—is a prime example of a nation with steeped in the cultural norms that lead to domestic violence. See U.S. Dep't of State, *Mexico 2018 Human Rights Report* 24-26 (2018). *Machismo* culture permeates Mexico and normalizes the oppression of women. H. Eagly & L. L. Carli, *The female leadership advantage: An evaluation of the evidence*, *The Leadership Quarterly*, 2003. Chauvinism dominates Mexican society and reinforces the belief that the proper role of a women is to be subservient to a man. *Id.*

⁷ <https://www.state.gov/wp-content/uploads/2019/03/EL-SALVADOR-2018.pdf>

⁸ <https://www.state.gov/wp-content/uploads/2019/03/Kenya-2018.pdf>.

⁹ <https://www.state.gov/wp-content/uploads/2019/03/RUSSIA-2018-HUMAN-RIGHTS-REPORT.pdf>

¹⁰ <https://www.state.gov/wp-content/uploads/2019/03/BURMA-2018.pdf>

¹¹ <https://www.state.gov/wp-content/uploads/2019/03/HAITI-2018.pdf>

The evidence about Mexico and other countries shows the truth about domestic violence: it is not, as the BIA believes, purely personal. Rather, it is a cultural epidemic that permeates societies around the world. Most strikingly, the BIA's assumption that any act of domestic violence experienced by any refugee is primarily motivated by the interpersonal dynamics between victim and abuser improperly ignores that, in many societies, the infliction of gender-based violence is seen as a given right. More generally, abusers are often motivated by factors, including the felt need to exercise dominance over a female partner in compliance with societal norms and expectations, that go beyond the mere existence of a personal relationship between abuser and survivor.

B. A Personal Relationship Does Not Preclude Other Motivations for the Harm.

Because domestic violence is not rooted solely in personal animus, the BIA's exclusion of survivors from refugee protection on the theory that their personal relationship excludes any other motivation contravenes longstanding interpretations of governing law.

A domestic violence survivor who seeks refuge in the United States must demonstrate that she fears persecution in her home country on the basis of one or more protected grounds: race, religion,

nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1158(b)(1)(B)(i). But one of these protected grounds need not be the sole, or even the dominant, reason for the persecution. Rather, Congress made clear that a protected ground must be “*at least* one central reason for persecuting the applicant.” *Id.* (emphasis added). The qualifier “at least” means that a protected ground need only be *one* of the reasons, and not *the* reason, much less *the one and only* reason, for inflicting harm. See *Ndayshimiye v. Att’y Gen. U.S.*, 557 F.3d 124, 129 (3d Cir. 2009); *Bi Xia Qu v. Holder*, 618 F.3d 602, 608 (6th Cir. 2010). (“[an applicant] need only show that [her persecutor] was motivated, at least in part, on account of an enumerated ground.”).

The Fourth Circuit reiterated this rule earlier this year. In *Alvarez Lagos v. Barr*, the Fourth Circuit proclaimed: “It is enough that the protected ground be ‘*at least one* central reason’ for the persecution, that is, one central reason, perhaps ‘intertwined’ with others.” 927 F.3d at 250. These multiple, “intertwined” motivations for persecution may be a combination of protected and non-protected grounds.

The fact that persecution may be motivated in part by a non-protected ground does not erase, or somehow swallow, the motivation to

inflict harm on the basis of a protected ground. *See Aldana Ramos v. Holder*, 757 F.3d 9, 18-19 (1st Cir. 2014) (stating that the statute “clearly contemplates the possibility that multiple motivations can exist, and that the presence of a non-protected motivation does not render an applicant ineligible for refugee status.”); *see also Bi Xia Qu v. Holder*, 618 F.3d at 608. To the contrary, a combination of factors that consists of a mix of protected and non-protected grounds may motivate a persecutor, and each factor may be a “central reason” for the infliction of the harm.¹² In particular, courts routinely find that the nexus requirement is satisfied in cases where a close personal relationship served as one of the motives for persecution. *See, e.g., Bringas-Rodriguez v. Sessions*, 850 F. 3d 1051,1056 (9th Cir. 2017) (persecution by family membership and neighbor on account of applicant perceived homosexuality); *Nabulwala v. Gonzales*, 481 F.3d 1115, 1117-18 (8th Cir. 2007) (applicant’s family sought to violently “change” her sexual orientation).

¹² A factor is considered a central reason for harm so long as it is a cause of the persecutors’ acts, *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2009) and plays more than “a minor role in the alien’s past mistreatment or fears of future mistreatment,” *Matter of J-B-N & S-M-*, 24 I. & N. Dec. 208 (BIA 2007).

Precisely the same logic applies in domestic violence cases. As shown above, a persecutor is likely to be motivated not just by the close personal relationship he shares with the survivor, but also by many other social and cultural factors that surround the idea of gender. The mere fact that a personal relationship may be a, or even a central, reason for domestic violence does not preclude the survivor from qualifying for asylum or withholding of removal in the United States.

C. The Attorney General’s Decision in *Matter of A-B* Did Not Change the “One Central Reason” Standard

Both the BIA and the IJ relied on the Attorney General’s decision in in *Matter of A-B* to support their nexus analyses. Both appear to have believed that under *A-B*-, the existence of a personal relationship between an abuser and a domestic-violence survivor precludes the possibility that another ground could also be a central reason for the harm. But that is not what the Attorney General’s decision says.

A-B- did not change the nexus analysis. *Alvarez Lagos v. Barr*, 927 F.3d 236, 250 n.2 (4th Cir. 2019) (stating that *Matter of A-B*- “does not purport to change the standards for measuring nexus.”); accord *Juan-Pedro v. Sessions*, 740 F. App’x 467, 472 n.1 (6th Cir. 2018); see also

Grace v. Whitaker, 344 F. Supp. 3d 96, 131 (D.D.C. 2018). *A-B-* expressly leaves open the possibility that domestic violence *will* be on account of a protected ground, and the decision emphasized that each claim must be evaluated on its own merits “in the context of the evidence presented.” *A-B-*, 27 I. & N. Dec. at 338-39. The IJ therefore applied, and the BIA accepted, an obviously wrong standard.

II. AS THIS CASE ILLUSTRATES, DOMESTIC VIOLENCE AGAINST PROFESSIONAL WOMEN IN MEXICO OFTEN STEMS FROM AN ANTI-FEMINIST BACKLASH.

The BIA’s erroneous categorical view that nexus can never exist in a domestic violence case also infects a second part of its decision. Ms. Campos Tapia submitted evidence that she feared persecution on the basis of her feminist political opinion. The IJ, however, failed to analyze that claim. That failure represents reversible error. *See Konan v. Atty. Gen. of U.S.*, 432 F.3d 497 (3d Cir. 2005). The BIA, however, validated the IJ’s failure by declaring, without more, that Ms. Campos Tapia failed to establish a nexus “to any protected ground.”

The BIA is again wrong. This Court has squarely held that feminism is a political opinion within the meaning of the INA, and feminism in Mexico has been met with a backlash of violence from

traditional *machismo* culture. Domestic violence in Mexico can therefore stem from both a personal relationship and feminist political opinion, just as it can stem from both a personal relationship and membership in a particular social group. And the undisputed record in this case shows that Ms. Campos Tapia suffered and feared persecution as a result of her feminist opinions.

A. Gender-Based Violence in Mexico Traces to Cultural Norms and an Anti-feminist Backlash.

Domestic-violence survivors, like anyone else fleeing persecution, are entitled to refuge in the United States if the persecution was on account of a political opinion. 8 U.S.C. § 1158(b)(1)(B)(i). A political opinion need not be shouted from the rooftops to qualify. To the contrary, even an opinion expressed non-verbally and in private will suffice. *Rivas-Martinez v. INS*, 997 F.2d 1143, 1147 (5th Cir. 1993); *see also Maza Menay v. INS*, 139 F.3d 759, 763 (9th Cir. 1998) (no need to participate in organized political activities). In fact, an applicant need not hold the political opinion at all; a claim can also be based on an opinion that persecutor imputes to the applicant. *See, e.g., Ravindran v. INS*, 976 F.2d 754, 760 (1st Cir. 1992); *Canas-Segovia v. INS*, 970 F.2d 599, 601-02 (9th Cir. 1992); *see also* Joline Doedens, *The Politics of*

Domestic Violence-Based Asylum Claims, 22 Duke J. Gender L. & Pol'y 111, 117 (2014).

As this Court held more than a quarter-century ago, “there is little doubt that feminism qualifies as a political opinion,” *Fatin v. I.N.S.*, 12 F.3d 1233, 1242 (3d Cir. 1993). The United States government has long agreed. A Memorandum from the Office of International Affairs to All INS Asylum Officers stated that an applicant who can demonstrate persecution “on account of her (or his) beliefs about the role and status of women in society could be eligible for refugee status on account of political opinion.” Memorandum from Phyllis Coven, Office of International Affairs, to All INS Asylum Officers and Headquarters Coordinators on Considerations for Asylum Officers Adjudicating Asylum Claims from Women (May 26, 1995) (on file with the Catholic University Law Review).

As shown above, Mexico is among the countries in which social and cultural norms encourage domestic violence. Much domestic violence in that country also has a more specific driver—a backlash to recent successes in advancing women’s rights and to actual or imputed feminist political opinions.

In recent years, Mexico has undergone vast political reform, with some policies requiring as much as fifty percent of women in leadership roles. See U.S. Dep't of State, *Mexico 2018 Country Report* 24-26 (2018) Rafael Tovar y Lopez-Portillo, *Understanding the Role of Women as Leaders in Mexican Politics: Looking Back and Moving Forward*, University of San Diego Dissertation, 2016, 61-63 (“*Women as Leaders in Mexican Politics*”). Such reforms have focused on improving gender equality, at least in the political sphere. But those same reforms naturally threaten the traditional balance of power between men and women, both in public and in private. After all, feminist movements stand in the face of machismo by directly confronting its preconceived notions and asserting instead that women are equal to men.

Unsurprisingly, then, uniform public support and acceptance of Mexico's gender reforms is still lacking. The long-existing machismo culture runs contrary to the new political notion that men and women should have the same opportunities. *Id.*; M. A. Genovese and Janie S. Steckenrider, *Women as Political Leaders: Studies in Gender and Governing* (2013). In fact, the increased inclusion of, and improved conditions for, women in the Mexican government has occasioned

backlash and violence in the home that is all but condoned by traditional Mexican social norms. See *“Women as Leaders in Mexican Politics”* at 61-63

Such violence, like other violence driven by social beliefs that women must be controlled, cannot seriously be seen as purely “personal” in nature. To be sure, some kind of personal relationship between a woman and her abuser must be present for domestic violence to occur. But the mere existence of that relationship cannot, and does not, eliminate animus toward women’s equality as a central motivation for the persecution.

Furthermore, the expression of a political opinion in Mexican culture is frequently non-demonstrative. In Mexico, women are likely to express their political opinions, regardless of their popularity or contentiousness, in passive ways. This is because Mexico is a country that has a “high context” culture. In contrast to “low context” cultures, which exist in countries like the United States, messaging in Mexico relies on indirect communication and subtle social cues rather than direct, verbal or written statements. *Women as Leaders in Mexican Politics*, at 63. Thus, a Mexican woman who, like Ms. Campos Tapia, is

economically independent and has both educational distinctions and career ambitions and achievements is likely to hold, or be believed to hold, feminist views.

In this case, Ms. Campos Tapia presented ample, undisputed evidence of persecution on this basis. CAR 136 (Tr.); CAR 354 (Aff. Pet'r). The evidence shows that her abuser persecuted her because he detested her economic and political success. *Id.* In fact, Ms. Campos Tapia's abuser physically beat her in front of her colleagues and in direct response to her professional and economic success. *Id.* And he did so because, taken in cultural context, her success served as a great embarrassment to him and a reversed traditional gender roles. It is therefore clear that the domestic violence Ms. Campos Tapia survived was *not* a purely private or personal matter.

* * *

The BIA's insistence that all domestic abuse is a purely personal matter ignores settled evidence and categorically excludes survivors from the refuge to which they are entitled. The BIA's view would also allow perpetrators to suppress, injure, and silence women with impunity. This Court should correct the BIA's faulty conclusion and

hold that Ms. Campos Tapia's status as an independent professional woman and her feminist beliefs were central reasons for her abuse.

CONCLUSION

For these reasons, this Court should reverse the decision of the BIA.

Respectfully submitted,

November 25, 2019

/s/ R. Blake Chisam
R. Blake Chisam (NY No. 2679975)
Samantha Anne Caesar (NY No. 5622683)
Fragomen, Del Rey, Bernsen & Loewy, LLP
1101 15th Street, NW, Ste. 700
Washington, DC 20005
P: +1 202 223 5515
F: +1 202 380 1095
bchisam@fragomen.com
scaesar@fragomen.com

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because the brief contains approximately 3,545 words, excluding the parts of the brief exempt by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook.

Dated: November 25, 2019
 Washington, DC

/s/ R. Blake Chisam
Counsel for Amicus Curiae

ELECTRONIC DOCUMENT CERTIFICATE

Pursuant to Third Circuit Local Appellate Rule 13.1(c), I hereby certify the text of the electronic brief is identical to the text in the paper copies.

The brief was scanned for viruses using Windows Defender Antivirus Version 1.305.2727.0 and no viruses were detected.

Dated: November 25, 2019 /s/ R. Blake Chisam
 Washington, DC *Counsel for Amicus Curiae*

CERTIFICATE OF BAR ADMISSION

Pursuant to Third Circuit Local Appellate Rule 28.3(d), I certify that I am a member of the bar of the United States Court of Appeals for the Third Circuit.

Dated: November 25, 2019
Washington, DC

/s/ R. Blake Chisam
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/EMF system on November 25, 2019. 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: November 25, 2019 /s/ R. Blake Chisam
 Washington, DC *Counsel for Amicus Curiae*

R. Blake Chisam (NY No. 2679975)
Fragomen, Del Rey, Bernsen & Loewy, LLP
1101 15th Street, NW,
Suite 700
Washington, DC 20005
(202) 223 5515
bchisam@fragomen.com

Counsel for Amicus Curiae