

No. 18-1816

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

O.L.B.D.,
Petitioner,

v.

WILLIAM P. BARR, ATTORNEY GENERAL OF THE UNITED STATES
Respondent.

ON PETITION FOR REVIEW OF AN ORDER OF THE BOARD OF
IMMIGRATION APPEALS

**BRIEF OF *AMICI CURIAE* THE CATHOLIC LEGAL IMMIGRATION
NETWORK, INC., HEBREW IMMIGRANT AID SOCIETY, LEADERSHIP
CONFERENCE OF WOMEN RELIGIOUS, NATIONAL COUNCIL OF
JEWISH WOMEN, UNITARIAN UNIVERSALIST SERVICE
COMMITTEE AND WORLD RELIEF**

IN SUPPORT OF PETITIONER REQUESTING REVERSAL

SHEILA I. VELEZ MARTINEZ No. 71030
Admitted to practice before the 1st Circuit
LINDA HAMILTON PA 326452
NAHLA KAMALUDDIN PA 323151
UNIVERSITY OF PITTSBURGH SCHOOL OF LAW
IMMIGRATION LAW CLINIC
PO Box 7226
PITTSBURGH, PA 15213
412-383-9897

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Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the undersigned counsel of record certifies that *Amici Curiae* Catholic Legal Immigration Network, Inc., Hebrew Immigrant Aid Society, National Council of Jewish Women, Unitarian Universalist Service Committee and World Relief are non-profit entities operating under § 501(c)(3) of the Internal Revenue Code and do not issue stock or have a parent corporation.

The Leadership Conference of Women Religious is a tax-exempt religious organization.

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INTRODUCTION

America's tradition of protecting victims of religious persecution is deeply embedded in its values. Indeed, victims of religious persecution were essential to the founding of colonial America. Moreover, "[a]bhorrence of religious persecution and intolerance is a basic part of our heritage." *Braunfeld v. Brown*, 366 U.S. 599, 606 (1961). Survivors of religious persecution were essential to the founding of colonial America, as many of our nation's Founders arrived here only after fleeing religious persecution abroad. See James H. Hutson, *Religion and the Founding of the American Republic* 3 (1998). It is thus unsurprising that our country's Founders felt the need to forever enshrine the right to religious liberty in our nation's Constitution. See U.S. Const. amend. I.

Granting refuge to victims of religious persecution has remained an American tradition since colonial times. In more recent years, the United States reaffirmed America's traditional role as a religious safe haven, enacting the Refugee Act of 1980 ("Refugee Act"). Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended in scattered sections of 8 U.S.C.). Similarly, Congress enacted the International Religious Freedom Act of 1998 ("IRFA") to counteract an upsurge of assaults on religious freedom throughout the world. As an integral part of that policy, Congress reformed domestic asylum law regarding claims based on religious persecution.

The recently-decided case of *Matter of A-B*, 27 I&N Dec. 316 (A.G. 2018) critically threatens America's tradition of protecting victims of religious persecution. In *Matter of A-B*, then-Attorney General Sessions issued a narrow opinion overruling a prior decision in *Matter of A-R-C-G*, 26 I&N Dec. 338 (BIA 2014). In dicta, the Attorney General casts doubt regarding the viability of asylum claims involving harm by non-state actors. *Matter of A-B*, 27 I&N Dec. at 320 (“[g]enerally, claims . . . pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum.”). If the First Circuit determines that harm by private actors cannot constitute persecution, or if it greatly narrows the context in which such claims can succeed, the decision will have a far-reaching effect on the jurisprudence of religious asylum cases, as such claims often involve non-governmental, private persecutors. Such an outcome would run contrary to the very liberties our nation is founded upon.

The Catholic Legal Immigration Network, Inc. (CLINIC) affiliates have represented hundreds of survivors of religious persecution seeking asylum in the United States. Over the years it has become clear to CLINIC that private actors have played a crucial role in the persecution of religious minorities, not only at the direction of a government, but also with impunity from the governments that are unable or unwilling to intervene. This was true during the persecution of the Jewish people in Nazi-occupied Europe and continues to be true for thousands of persecuted religious minorities around the world. The United States has expressed its commitment to

protect persecuted religious minorities, and the decision of the Board of Immigration Appeals in this case is contrary to that commitment.

STATEMENTS OF INTEREST OF *AMICI CURIAE*

*Amici curiae*¹ are community groups, immigrant rights organizations and legal service providers whose members and clients are directly affected by the erroneous and overly broad interpretation in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018).

CLINIC is the largest nationwide network of nonprofit immigration programs, with approximately 330 affiliates in 47 states and the District of Columbia that collectively serve hundreds of thousands of low-income immigrants each year. CLINIC's activities include providing training and support for immigration legal services agencies, advocating for humane immigration policies, and working to build the capacity of local immigration programs. CLINIC also is a partner in providing pro bono representation to low-income immigrants through various projects, including the BIA Pro Bono Project. CLINIC's staff has developed numerous resources for immigrants and immigration law practitioners, including a practice advisory on the asylum one-year filing deadline for DACA recipients, a practice advisory on safeguarding unaccompanied minor designations and protections, and a guide to

¹ Petitioner has consented to the filing of this brief. Pursuant to Fed. R. App. P. 29(c)(5), *amici curiae* state that no party nor any counsel for the party authored this brief in whole or in part, and no person or entity made a monetary contribution to the preparation or submission of this brief. This brief is submitted *pro bono*.

assisting asylum seekers to reopen in absentia removal orders. CLINIC's work derives from Catholic social teaching to promote the dignity and protect the rights of immigrants in partnership with its network.

The **Hebrew Immigrant Aid Society** (HIAS), founded in 1881, is the world's oldest refugee resettlement agency and the only Jewish refugee resettlement agency. In addition to refugee resettlement, HIAS also provides legal services to those fleeing violence, persecution and torture, defending them against deportation by securing humanitarian legal status and keeping families united through reunification.

The **Leadership Conference of Women Religious** (LCWR) is an association of leaders of congregations of Catholic women religious in the United States. LCWR has nearly 1300 members, who represent approximately 38,800 women religious. Catholic sisters began coming to these shores almost 300 years ago as immigrants to serve immigrant populations and continue to this day to minister to those seeking safety from persecution and refuge from harm. Founded in 1956, LCWR assists its members to collaboratively carry out their service of leadership to further the mission of the Gospel in today's world. Any attempt to exclude private criminal activity as a basis for asylum would severely threaten those facing persecution in their homelands and would also make it difficult for Catholic sisters to fulfill our religious obligation to heed God's call to welcome the stranger (Mt. 25:35) and to care for those most in need (Mt. 25:40). LCWR is particularly concerned about changes in the asylum rules and practices that

would deny access to those persecuted because of their religion, race, gender or nationality. Such action would be a violation of our deeply held faith beliefs.

The **National Council of Jewish Women** (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for “[c]omprehensive, humane, and equitable immigration, refugee, asylum, and naturalization laws, policies, and practices that facilitate and expedite legal status and a path to citizenship for more individuals.” Consistent with our principles and resolutions, NCJW joins this brief.

The **Unitarian Universalist Service Committee** (UUSC) is a non-sectarian human-rights organization powered by grassroots collaboration that began its work in 1939 when Rev. Waitstill and Martha Sharp took the extraordinary risk of traveling to Europe to help refugees escape Nazi persecution. A moral commitment to the rights and dignity of persons seeking refuge from violence, discrimination, persecution, and natural disasters has been at the center of our organization’s mission for nearly 80 years. That history, coupled with our mission to advance human rights and dismantle systems of oppression, calls us to ensure that the United States’ immigration system upholds the rights of all migrants and the integrity of our asylum processes. Today, a significant body of UUSC’s work focuses on addressing the ongoing humanitarian crisis in Central America, where persecution by non-state actors is a key driver of forced migration. The

human rights of these, and other individuals UUSC works closely with, urgently depend on the continued recognition of non-state persecution as legitimate legal grounds for seeking asylum.

World Relief is the international relief and development arm of the National Association of Evangelicals. Based in Baltimore, Maryland, World Relief stands with the vulnerable and partners with local churches to end the cycle of suffering, transform lives and build sustainable communities. With over 70 years of experience, World Relief works in 20 countries worldwide through disaster response, health and child development, economic development and peacebuilding and has 23 offices in the United States that specialize in refugee and immigration services. In 16 offices across the country, World Relief provides immigration legal services, including representation to asylum seekers and technical legal support to more than 40 churches recognized by the Department of Justice.

ARGUMENT

As discussed more extensively below, persecution has always included actions taken by non-state actors. Excluding victims who have existing relationships with their persecutors would create a devastating impact on asylum seekers—perhaps nowhere as pronounced as in the realm of religious persecution. Such an outcome would contradict the very purpose the Refugee Act and subsequent legislation were designed to accomplish.

Background

The Refugee Act of 1980

Congress's purpose in enacting the Refugee Act was no secret. Throughout the drafting process, Congress repeatedly pointed to America's traditional role as a refuge for those fleeing religious persecution. Congress also had as reference the Immigration Act of 1917, which had articulated special concerns regarding the protection of religious refugees.² This emphasized the importance America has historically placed on the protection of religious refugees. It demonstrated that even during a period in which the United States was enacting rigid immigration restrictions, the country was still willing to carve out these special exceptions for religious refugees.

Congress continued to allow exceptions for immigrants fleeing religious persecution through the Lautenberg Amendment of the Foreign Operations Appropriations Act, which relaxed the standard for certain religious minorities to obtain refugee status. *See* Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990 (granting exceptions for Soviet Jews, Evangelical Christians, Ukrainian Catholic and Orthodox Church members). The Act required that these minorities demonstrate a "credible basis for concern" of religious persecution rather than a "well-founded fear," further affirming the United States' commitment to protect immigrants fleeing religious persecution.

² Immigration Act of 1917. ch. 29, 39 Stat. 874 (1917)

The International Religious Freedom Act of 1998

By enacting the International Religious Freedom Act (“IRFA”), Congress reinforced the American tradition of protecting religious refugees. Section (1) of the IRFA provides that:

The right to freedom of religion undergirds the very origin and existence of the United States. Many of our nation’s founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established in law, as a fundamental right and as a pillar of our nation, the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution.

22 U.S.C. § 6401(a) (2000).

The IRFA called upon the United States to challenge countries engaging in religious persecution to live up to international protections of religion.³ As an integral part of that policy, Congress also reformed domestic asylum law regarding adjudication of asylum claims in the United States based on foreign persecution on account of religion. In addition to pointing to international instruments as the norms for evaluating asylum claims based on the protected ground of religion, Congress required new guidelines for the use of government interpreters to avoid potential bias and discrimination, established a new ground of inadmissibility barring foreign government

³ 22 U.S.C. § 6441(a)(1)(A) (2000) states:

It shall be the policy of the United States—

- (i) to oppose violations of religious freedom that are or have been engaged in or tolerated by the governments of foreign countries; and
- (ii) to promote the right to freedom of religion in those countries

officials who have engaged in violations of religious freedom, called for training of Foreign Service Officials who make determinations regarding overseas refugee processing, and mandated new training for asylum adjudicators, immigration judges, and any immigration officers assigned to the expedited removal process. 22 U.S.C. § 6473 (2000).

A. A rule that domestic violence victims generally cannot establish eligibility for asylum in large part because the persecutor is a private actor would contradict decades of established asylum case law and, in turn, jeopardize the viability of religious persecution claims.

The absence of state protection is fundamental to the concept of persecution, but the state need not be the persecuting agent in order for a person to be considered a refugee.⁴ Recognition of state responsibility for human rights violations by private actors is grounded in the principles and basic instruments of international human rights law.⁵ Similarly, refugee law has long recognized a state's duty to protect against

⁴ The United Nations High Commissioner for Refugees (“UNHCR”) has emphasized 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.” UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status ¶ 65 (1979, rev. 1992).

⁵ Under international law, a state fails in its duty “to ensure” rights “when the State allows private persons or groups to act freely and with impunity to the detriment of [recognized human] rights ...” *Velasquez-Rodriguez v. Honduras*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 176 (July 29, 1988). “An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it . . .” *Id.* at ¶ 172.

persecutory harm inflicted by private actors. Such harm in the context of asylum is longstanding, pre-dating the 1980 incorporation of the international refugee definition into the U.S. statute. *See Rosa v. INS*, 440 F.2d 100, 102 (1st Cir. 1971) (“Nothing in the ordinary definition of persecution suggests that the term applies only to the acts of formally established governments. ... [W]e see no basis for thinking that Congress intended that the availability of relief ... turn on legal niceties concerning who has de jure power ...”).

The Board of Immigration Appeals (“BIA”) and the federal circuit courts of appeals universally acknowledge that “persecution” for purposes of asylum does not require that persecutors be state actors, but rather, may involve a “government’s unwillingness or inability to control *private* conduct.”⁶ *Aldana-Ramos v. Holder*, 757 F.3d 9, 17 (1st Cir. 2014) (emphasis added) (citation omitted); *see also Pan v. Holder*, 762 F.3d 191, 195 (2d Cir. 2014); *R.R.D. v. Holder* 746 F.3d 807, 809 (7th Cir. 2014); *Constanza-Martinez v. Holder*, 739 F.3d 1100, 1102 (8th Cir. 2014); *Doe v. Holder*, 736 F.3d 871, 877-78 (9th Cir. 2013); *Karki v. Holder*, 715 F.3d 792, 801 (10th Cir. 2013); *Garcia v. Att’y Gen. of U.S.*, 665 F.3d 496, 503 (3d Cir. 2011); *Kante v. Holder*, 632 F.3d 117, 128 (4th Cir. 2011); *Bi Xia Qu v. Holder*, 618 F.3d 602, 608 (6th Cir. 2010); *Tesfamichael v. Gonzales*, 469 F.3d 109, 113 (5th Cir. 2006); *Matter of Pierre*, 15 I&N Dec. 461, 462 (BIA 1975).

⁶ Persecution may also be established by showing that the government is unwilling or unable to *protect* the applicant from private persecution. The circuits use the phrases “unable or unwilling to *control*” and “unable or unwilling” to *protect* interchangeably. *See, e.g., Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005).

Although the decision in *Matter of A-B-* employs and cites the correct “unable or unwilling” standard, the Attorney General, contrary to precedent, also states that government inaction alone is insufficient to satisfy this element. 27 I&N Dec. at 320. Instead, the Attorney General asserts that the “applicant must show that the government *condoned* the private actions or at least demonstrated a complete helplessness to protect the victims.” *Id.* at 337 (citation omitted) (emphasis added). The standard of the government’s “complete helplessness” is legally incorrect based on well-established Supreme Court and circuit precedent interpreting “unable and unwilling” more broadly. *See generally INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *see also Thomas v. Ashcroft*, 359 F.3d 1169, 1179 (9th Cir. 2004), vacated on other grounds by *Gonzales v. Thomas*, 547 U.S. 183 (2006) (noting that when a non-state actor is the persecutor, an applicant need not establish that the government “is sponsoring or promoting or condoning the violence”) (internal quotation marks and brackets omitted).

As the Second Circuit has emphasized, “we have never held that direct governmental action is required to make out a claim of persecution.” *Pavlova v. INS*, 441 F.3d 82, 87 (2d Cir. 2006). As a result of such long-standing precedent, America’s asylum laws have provided vital protection to religious victims suffering at the hands of private actors. In *Ivanov v. Holder*, for example, the lead petitioner, a Pentecostal Christian from Russia, established eligibility for asylum based on persecution he suffered at the hands of non-governmental actors. 736 F.3d 5 (1st Cir. 2013). Though the Russian Constitution provides for freedom of religion, petitioner recalled various

instances of mistreatment by Russian skinheads because of his religious beliefs, such as the violent interruption of his baptism ceremony, and, on another occasion, being attacked and kidnapped by the group as he left the church-run drug rehabilitation center where he volunteered. *Id.* at 8-9. Although petitioner later came to realize that the rehabilitation center’s work interfered with the skinheads’ lucrative drug trade, the First Circuit made clear that petitioner was not required to show that an “impermissible motivation was the sole motivation for his persecution.” *Id.* at 14. Despite the Russian Constitution providing for freedom of religion and the skinheads’ mixed-motive attack, the Court found that the persecution petitioner suffered was on account of his Pentecostal faith, notably, at the hands of private actors. *Id.* at 16.

Similarly, *Rizal v. Gonzalez* involved a native and citizen of Indonesia who was verbally harassed and discriminated against by his friends and relatives after converting to Christianity, leading up to his aunt, with whom he had been living, ordering him to leave her home. 442 F.3d 84, 87 (2d Cir. 2006). He was threatened with bodily harm and physically attacked while being called “Dirty Christian,” also having his church later burned down by Muslims. *Id.* The Court explained that, “persecution can certainly be found when the government, although not itself conducting the persecution, is unable or unwilling to control it, just as [petitioner] had alleged here.” *Id.* at 92. *See also Marouf v. Lynch*, 811 F.3d 174 (6th Cir. 2016) (Christian family attacked and beaten by group of Muslim men); *Afriyie v. Holder*, 613 F.3d 924 (9th Cir. 2010) (Ghanaian Baptist violently attacked by Muslim villagers); *Paul v. Gonzalez*, 444 F.3d 148 (2d Cir. 2006) (Pakistani

Christian targeted and attacked after leaving church by Muslim fundamentalists); *Pavlova v. INS*, 441 F.3d 82 (2d Cir. 2006) (Russian Baptist assaulted and raped by members of a nationalist group after distributing religious literature); *Krotova v. Gonzalez*, 416 F.3d 1080 (9th Cir. 2005) (Russian Jew sexually harassed and economically discriminated against and whose synagogue was vandalized by skinheads); *Poradisova v. Gonzales*, 420 F.3d 70 (2d Cir. 2005) (Jewish Belarusian family who were verbally harassed and violently attacked by anti-Semitic group); *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998) (Ukrainian Jewish father and son physically attacked and harassed on multiple occasions by members of anti-Semitic group).

Requiring applicants with non-state persecutors to meet a heightened and unlawful standard would have a devastating effect for asylum seekers fleeing religious persecution. Such a ruling would not only reverse decades of established case law protecting victims persecuted by non-state actors for their religious beliefs, but would also require turning away otherwise eligible asylum seekers, exposing such victims targeted for their religious beliefs to more violence.

B. The First Circuit must reject the position taken in *Matter of A-B-* that a personal relationship with the persecutor should defeat the nexus requirement, as this approach would impermissibly exclude victims of gender-based religious persecution under U.S. asylum law.

The Attorney General mischaracterizes domestic violence as “private” and related to a “personal relationship” throughout the decision in *Matter of A-B-*, making it difficult for domestic violence survivors to prove the nexus requirement. 27 I&N Dec.

at 337-39. Not only does this blatantly ignore the guidelines set forth by the United Nations High Commissioner for Refugees (“UNHCR”), but it also runs contrary to well-established circuit precedent. *See, e.g., Sarhan v. Holder*, 658 F.3d 649, 656 (7th Cir. 2011) (rejecting the immigration judge’s assertion that a threatened honor killing was due to a “personal dispute” and determining instead that the threat was due to a “widely-held social norm in Jordan” that makes such honor killings permissible). To deem asylum claims from victims of domestic violence to fail the nexus requirement simply because applicants have a personal relationship with their persecutors would strip countless women fleeing religious persecution by their family members of protection.

The UNHCR was founded in 1950 to protect and support refugees.⁷ In deciding matters concerning refugee status, the UNHCR continues to be the leading authority relied upon by the Supreme Court and federal appellate courts, particularly for the guidance provided in the Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (Geneva 2011 ed.) (“Handbook”). *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 439 (1987) (relying on the Handbook’s analysis for the interpretation of the definition of “refugee”); *see also Rodriguez-Roman v. INS*, 98 F.3d 416, 425 (9th Cir. 1996) (“[The court] is also bound . . . to consider the principles established by the Handbook.”). In ruling on refugee matters, U.S. courts have

⁷ UNHCR: The UN Refugee Agency, *History of UNHCR*, <https://www.unhcr.org/history-of-unhcr.html> (last visited Mar. 6, 2019).

continually consulted the UNHCR interpretations and Handbook, recognizing that the “UNHCR’s analysis provides significant guidance for issues of refugee law.” *INS v. Cardoza-Fonseca*, 480 U.S. at n. 22. “The Department of Justice, too, has noted the likelihood that Congress intended the standards within the UN Handbook to serve as an interpretive guide to the 1980 Refugee Act.” *M.A. A26851062 v. INS*, 858 F.2d 210, 214-15 n.3 (4th Cir. 1988) (citing Memorandum from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, to David Crossland, General Counsel, Immigration and Naturalization Service). Not only do the courts look to the UNHCR for guidance, but U.S. law also obligates the courts to construe U.S. statutes in a manner consistent with U.S. international obligations whenever possible. *Murray v. The Charming Betsy*, 6 US 64, 80 (1804) (“[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.”). See also *INS v. Cardoza-Fonseca*, 480 U.S. at 432-33 (finding “abundant evidence of an intent to conform the definition of ‘refugee’ and our asylum law to the United Nation’s Protocol to which the United States has been bound since 1968”).

The UNHCR offers clarity on gender-based persecution claims that are brought under religious grounds. UNHCR, Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees ¶ 25, U.N. Doc. HCR/GIP/02/01 (2002) (“UNHCR Gender Guidelines”). It explains that women who transgress social mores may be viewed in some societies as having made a religious statement. *Id.*

Specifically, the UNHCR Gender Guidelines note that “religion assigns particular roles or behavioral codes to women and men respectively” and should a woman fail to “fulfill her assigned role or refuse to abide by the codes, and is punished as a consequence, she may have a well-founded fear of being persecuted for reasons of religion.” *Id.* This further affirms that a woman often faces serious harm for “her particular religious beliefs or practices, or those attributed to her, including her refusal to hold particular beliefs, to practise a prescribed religion or to conform her behaviour in accordance with the teachings of a prescribed religion.” *Id.* Nowhere do the UNHCR Gender Guidelines exclude women who have a personal relationship with their persecutors from entitlement to protection under the religion ground.

The holding in *In re S-A-*, 22 I&N Dec. 1328 (BIA 2000) confirms that even if a woman has a private relationship with an individual who persecutes her based on religious beliefs, the United States must offer protection if her government is unable or unwilling to protect her. There, the BIA addressed the plight of a Moroccan woman, granting her asylum based on the persecution she suffered at the hands of her orthodox Muslim father on account of her more liberal Muslim beliefs. *Id.* at 1329-30. The respondent recounted tales of her father beating her at least once a week, and on one occasion, burning her thighs with a heated razor after wearing a skirt he considered to be improper. *Id.* at 1329. He forbade her to attend school or participate in activities outside the home. *Id.* The BIA concluded that the abuse respondent had suffered at the hands of her father amounted to persecution, and, if returned to Morocco, she would

likely be subject to more persecution. *Id.* at 1335. The BIA found that the persecution was on account of her religious beliefs, specifically because they differed from those held by her father. *Id.* at 1336. Significantly, the BIA found that she met the standard for asylum even though the harm she suffered was by a private actor with whom she shared a personal, familial relationship.

If the First Circuit were to accept the position in *Matter of A-B-*, that a personal relationship with the persecutor undercuts the nexus requirement, it would jeopardize the claims of women who, like the respondent in *S-A-*, are fleeing some of the most egregious forms of domestic violence on account of their religious views. Under a rule adopting *Matter of A-B-*, women like *S-A-* would no longer be able to meet the nexus requirement and establish eligibility for asylum because they have a personal relationship with their persecutors. As a result, they would be turned away and forced to return to the very violence they sought to escape. When a policy categorically rejects asylum claims from victims of domestic and gender-based abuse, it runs counter to the UNHCR and subsequently-established U.S. jurisprudence. The First Circuit should rule in a manner consistent with decades of established circuit precedent and the guidelines set forth by the UNHCR to avoid such abhorrent consequences.

CONCLUSION

Depriving asylum seekers of protection because they endured non-governmental harm is not what Congress intended, nor could it ever be. The United States is a nation

of freedom, and that includes freedom from persecution by the government and private actors whom the government is unwilling or unable to control, even if the actor is someone the victim personally knows. Indeed, the United States has, for hundreds of years offered protection to those fleeing religious persecution regardless of whether the persecutor was a governmental or non-governmental actor. Religious-based refuge has been one of our most fundamental values as a nation. The First Circuit must decide this case in line with the Refugee Act, federal precedent, and the UNHCR.

s/Sheila I. Vélez Martínez

SHEILA I. VELEZ MARTINEZ NO. 71030
Admitted to practice before the 1st Circuit
LINDA HAMILTON PA 326452
NAHLA KAMALUDDIN PA 323151
UNIVERSITY OF PITTSBURGH SCHOOL OF LAW
IMMIGRATION LAW CLINIC
PO BOX 7226
PITTSBURGH, PA 15213
412-383-9897

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the brief contains 4,871 words, excluding the parts exempted by Fed. R. App. P. 32(f).

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s/Sheila I. Vélez Martínez

SHEILA I. VELEZ MARTINEZ No. 71030
UNIVERSITY OF PITTSBURGH SCHOOL OF
LAW

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I hereby certify that on March 11, 2019 I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that all parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system on March 11, 2019.

s/Sheila I. Vélez Martínez

SHEILA I. VELEZ MARTINEZ No. 71030
UNIVERSITY OF PITTSBURGH SCHOOL OF
LAW