A[REDACTED]

United States Department of Justice
Office of the Attorney General

MATTER OF L-E-A-,

Respondent

BRIEF BY *AMICI CURIAE*
NON-PROFIT ORGANIZATIONS AND
LAW SCHOOL CLINICS

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INTRODUCTION

Amici are non-profit organizations and law school clinics that represent and otherwise provide assistance to asylum seekers and other immigrants, including individuals who fear persecution in their countries of origin on the basis of their family membership.[1] *Amici* include authors of scholarly publications regarding asylum and country conditions at the root of refugee flight, practicing attorneys who represent asylum seekers, and experts who assist other attorneys representing the same. *Amici* include recognized experts in the field with a long-standing focus on the development of U.S. jurisprudence that accords with domestic and international refugee and human rights law. *Amici* have an interest in the questions under consideration in this appeal as they implicate fundamental principles of jurisprudence and statutory construction related to the definition of a "refugee," a subject of *amici*'s research and practice and a matter of great consequence for those served by *amici*. The issues involved have broad implications for the equitable and just administration of refugee law.

Amici have a direct interest in the resolution of the following issue posed by the former acting Attorney General of the U.S. ("AG") Matthew Whitaker:

> Whether, and under what circumstances, an alien may establish persecution on account of membership in a "particular social group" under 8 U.S.C. § 1101(a)(42)(A) based on the alien's membership in a family unit.

This issue involves interpretation of the refugee definition codified in section 101(a)(42) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(42). The proper interpretation of this definition, including its application to asylum seekers whose claims for relief are based on membership in their family groups, is critically important to *amici* and their clients and other beneficiaries. Accordingly, *amici* submit this brief regarding family group membership as a basis

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[1] A full list of *amici* and their statements of interest appear in the Appendix.

for asylum. *Amici* respectfully argue that family ties may meet the prevailing test for social group membership and that nexus to the group can be established when the applicant shows that those family ties were at least one central reason for the persecution.

SUMMARY OF ARGUMENT

The AG's invitation asks whether an asylum seeker may establish persecution on account of membership in a "particular social group" based on the asylum seeker's membership in a family unit and under what circumstances. Board of Immigration Appeals ("BIA" or "Board") and circuit court precedent has long recognized the family as the prototypical "particular social group." This line of precedent dates back to 1985, when immutability was the only condition for cognizability of a "particular social group" and family ties the quintessential understanding of the term. Despite the additional cognizability requirements of "social distinction" and "particularity" introduced in the intervening years, the family remains the archetypal example of a "particular social group." Particular social group is a complex area of the law that has confounded many, but there has been total consensus on this point. Undoubtedly, therefore, an asylum seeker may establish persecution on account of membership in a "particular social group" based on the asylum seeker's membership in a family unit where she establishes family ties were at least one central reason for her persecution.

The AG should follow the weight of U.S. jurisprudence and issue a precedential decision reaffirming that a family may be a particular social group, holding that where an asylum applicant has demonstrated persecution on account of his or her membership in a particular social group comprised of the applicant's family that applicant has satisfied the nexus requirement, and reminding the agency that each claim must be evaluated on a case-by-case basis.

ARGUMENT

The current law governing cognizability of a particular social group for asylum purposes requires an applicant to show that the group's characteristics are immutable, and that the group is defined with particularity and socially distinct within the society in question. *See, e.g.*, *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237–243 (BIA 2014). The Board and federal courts have consistently recognized that family groups can constitute cognizable social groups under these factors. The separate nexus inquiry (*i.e.*, whether persecution was "on account of" an individual's membership in a particular social group or one of the other protected grounds) is also well-established in our law, and examines the intent of persecutors and the reasons they target an individual for persecution. *See INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

In *Matter of L-E-A-*, 27 I. & N. Dec. 40, 45 (BIA 2017) ("*L-E-A-* I"), stayed by the AG, the Board suggests that the inclusion of another protected ground, specifically the nexus to persecution of another group member, would strengthen the nexus argument for the applicant's own family-based claim. Requiring this would be inconsistent with the text of the statute, which asks only whether an applicant suffered persecution "on account of" one of the protected grounds, and does not impose an additional requirement that the applicant demonstrate the reason for the persecution suffered by a different individual. 8 U.S.C. § 1101(a)(42)(A). As a matter of law, the nexus inquiry asks only why an applicant was targeted, and in cases where the persecution is for reasons of the person's membership in a family group, the nexus requirement has been satisfied, even if another persecuted family member was not initially targeted on account of one of the five protected grounds. Concluding that in the family context a particular social group should be defined by reference to the nexus analysis of another group member would upend established principles as to how a social group is defined, and how nexus is analyzed.

The AG should find that members of a family can constitute a cognizable particular social group, and an asylum seeker who demonstrates a nexus between his or her persecution and membership in a family group has met the statutory definition of a refugee.

I. It Is Well-Established That Families Can Constitute a "Particular Social Group"

A. The Board Has Consistently Recognized That Family Ties Alone Can Form the Basis of a Particular Social Group

Although the Board's analysis of "particular social group" claims has evolved since the passage of the INA, the Board has consistently recognized that a family—nuclear or extended, standing alone or in conjunction with other characteristics—can constitute a particular social group cognizable under the statute. In the seminal case defining particular social group, *Matter of Acosta*, the Board noted:

> A purely linguistic analysis of this ground of persecution suggests that it may encompass persecution seeking to punish either people in a certain *relation*, or having a certain degree of similarity, to one another or people of like class or kindred interests, such as shared ethnic, cultural, or linguistic origins, education, *family background*, or perhaps economic activity.

19 I. & N. Dec. 211, 232–33 (BIA 1985) (emphases added), *overruled in part on other grounds by Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987). The Board found that persecution on account of each of the other four protected grounds described persecution "aimed at an immutable characteristic: a characteristic that either is beyond the power of an individual to change or is so fundamental to individual identity or conscience that it ought not be required to be changed." *Id.* at 233. After applying the statutory interpretation maxim *ejusdem generis* (which means "of the same kind"), the Board interpreted the phrase "'persecution on account of membership in a particular social group' to mean persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable

characteristic[, which] might be an innate one such as sex, color, *or kinship ties*." *Id.* (emphasis added).

The Board applied the *Acosta* immutability test in *Matter of H-*, in which an applicant sought relief due to persecution on account of his membership in a particular Somalian subclan, the Marehan subclan. 21 I. & N. Dec. 337 (BIA 1996). The Marehan subclan constituted less than one percent of the population of Somalia, and was "identifiable by kinship ties and vocal inflection or accent." *Id.* at 340. Somalia was ruled by a member of the Marehan subclan for twenty-one years; however, following an uprising by members of other clans, members of the rebel clans sought retaliation against those who had benefited from the prior regime. *Id.* The Board held that family membership in the Marehan subclan constituted a "particular social group" in light of the fact that "clan membership is a highly recognizable, immutable characteristic that is acquired at birth and is *inextricably linked to family ties*." *Id.* at 342–43 (emphasis added).

In recent years, "[i]n response to the evolution of social group claims presented," the Board has announced that certain factors beyond immutability should be examined in determining whether a particular social group exists. *M-E-V-G-*, 26 I. & N. Dec. at 247. However, none of these decisions call into question the Board's consistent recognition that a family group is the prototypical "particular social group." In *Matter of C-A-*, the Board first recognized "particularity" and "social visibility" as factors in the social group analysis. 23 I. & N. Dec. 951, 957, 959–61 (BIA 2006); *see also Matter of S-E-G-*, 24 I. & N. Dec. 579, 582 (BIA 2008); *Matter of E-A-G-*, 24 I. & N. Dec. 591, 593–96 (BIA 2008) (further defining "particularity" and "social visibility"). Yet, in *Matter of C-A-*, the Board noted that "[s]ocial groups based on innate characteristics such as sex *or family relationship* are generally easily

recognizable and understood by others to constitute social groups," reaffirming the family as a well-established example of the type of groups cognizable under the INA. 23 I. & N. Dec. at 959 (emphasis added).

In 2014, the Board sought to clarify the particularity and social visibility factors, holding for example that "literal or 'ocular' visibility is not required," and renaming the "social visibility" element as "social distinction." *M-E-V-G-*, 26 I. & N. Dec. at 228 (internal quotation marks omitted); *see also Matter of W-G-R-*, 26 I. & N. Dec. 208, 211 (BIA 2014). Therefore, under the current factors, an applicant for asylum or withholding of removal seeking relief based on membership in a particular social group must establish that the group is "(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question." *M-E-V-G-*, 26 I. & N. Dec. at 237. Family groups will frequently satisfy these criteria.[2] As the Board has previously recognized, family ties are a classic immutable characteristic. *See, e.g.*, *Acosta*, 19 I. & N. Dec. at 232–33; *H-*, 21 I. & N. Dec. at 343. In addition, family groups defined by blood or marriage ties can be "defined with particularity" because, for example, the terms find definition in many societies and there is objective evidence such as birth or marriage certificates to delineate group membership. Finally, with respect to the "social distinction" factor, the Board has recognized that social groups based on family relationship are "easily recognizable and understood by others to constitute social groups." *C-A-*, 23 I. & N. Dec. at 959. The special protections and benefits afforded families

[2] *Amici* acknowledge that there are varying kinds of family relationships. The present case, which involves a father-son relationship, does not require the AG to explore which groups based on family ties are sufficiently immutable, particular, or socially distinct to qualify as a "particular social group" under these criteria, since a nuclear family clearly qualifies.

under the laws and policies of many countries present one example of how societies perceive the family unit as a distinct group.[3]

Notably, there is no mention in any of this prior precedent that the family's status must be connected to persecution on account of *another* protected ground as a prerequisite to a cognizable family group. Such a requirement does not comport with the Board's current precedent for determining whether a particular social group is cognizable, nor would it make sense to add this requirement for family groups when there is no corollary requirement for particular social groups based on other immutable characteristics, such as gender or sexual orientation. In fact, it would be contrary to the Board's longstanding recognition of family groups as an exemplar "particular social group" to add a separate requirement, applicable only to family groups, that a "defining family member" must suffer persecution on account of another protected ground before that group can be a cognizable "particular social group."[4] Such a

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[3] Although *amici* submit that family-based social groups will often, if not always, meet the social distinction and particularity tests, *amici* maintain that these requirements constitute a significant departure from the *Acosta* analysis and are unreasonable interpretations of the statute. The Board's attempt to clarify these requirements in *M-E-V-G-* and *W-G-R-* does not resolve confusion surrounding the terms, nor does it convincingly establish that the particularity and social distinction requirements are a natural evolution of its case law or were considered or applied in earlier Board precedent. The social distinction and particularity requirements are inconsistent with what is required to prove the other grounds for asylum and so violate the principle of *ejusdem generis*. The Board's focus on the precise definition of a particular social group and the evidence required to prove social distinction and particularity—as well as in the case of family related violence the imposition of yet another requirement of persecution of a "defining family member"—significantly disadvantages *pro se* litigants. *Amici* urge the AG to return to the *Acosta* immutability test.

[4] Adding a separate requirement for family-based claimants is also inconsistent with the longstanding recognition under international human rights law that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State." International Covenant on Civil and Political Rights, Dec. 19, 1966, Art. 23(1), 999 U.N.T.S. 171 (entered into force for the United States Sept. 8, 1992); Universal Declaration of Human Rights, Art. 16(3), U.N.G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

requirement risks conflating the separate nexus inquiry into the question whether a claimed family-based group is a cognizable particular social group.

B. Most Circuit Courts Agree That a Family Can Be a Cognizable Social Group

Most courts of appeals to address this question have recognized that a "particular social group" can consist of members of a family. In fact, courts have often described family groups as the "quintessential" or "prototypical" group to qualify under both the *Acosta* immutability test and the Board's new *Acosta* plus social distinction and particularity test. The Ninth Circuit, for example, has stated that even under the Board's "refined framework, the family remains the quintessential particular social group." *Rios v. Lynch*, 807 F.3d 1123, 1128 (9th Cir. 2015); *see also Parada v. Sessions*, 902 F.3d 901, 910 (9th Cir. 2018) (reaffirming family as the classic example of a social group). The Fourth Circuit recognized that every circuit to consider the question "has held that family ties can provide a basis for asylum," and that "the family provides a prototypical example of a "particular social group." *Crespin-Valladares v. Holder*, 632 F.3d 117, 125 (4th Cir. 2011) (internal quotation marks omitted). The Fourth Circuit further noted that "[t]he family unit . . . possesses boundaries that are at least as 'particular and well-defined' as other groups [that] have qualified for asylum." *Id.* at 125.

In addition to the Fourth and Ninth Circuits, the First, Second, Sixth, and Seventh Circuits have also recognized family groups as cognizable social groups. *See Gebremichael v. INS*, 10 F.3d 28, 36 (1st Cir. 1993) (stating that "[t]here can, in fact, be no plainer example of a social group based on common, identifiable and immutable characteristics than that of the nuclear family"); *Vumi v. Gonzales*, 502 F.3d 150, 154–55 (2d Cir. 2007) (remanding to the Board to consider the applicant's claim of persecution based on membership in her husband's family and noting that "the Board has held unambiguously that membership in a nuclear family

may substantiate a social-group basis of persecution"); *Al-Ghorbani v. Holder*, 585 F.3d 980, 995 (6th Cir. 2009) (acknowledging that "membership in the same family [] is widely recognized by the caselaw"); *Iliev v. INS*, 127 F.3d 638, 642 n.4 (7th Cir. 1997) (noting that "other circuits have found that a family is perhaps the most easily identifiable 'particular social group' that could serve as the basis for persecution").

In its brief to the Attorney General, the Department of Homeland Security ("DHS") claims that applicants unable to show nexus to a family-based social group may be able to find relief under alternative grounds. *See* U.S. Dep't of Homeland Sec. Br. on Referral to the Att'y Gen. (hereinafter "DHS AG Brief") at 36-37. To be sure, membership in a family group may be linked with another protected ground—such as a shared religion, race, nationality, political opinion, or other social group—but there is no indication in the plain language of the INA that these grounds *must* overlap before a family group qualifies as a cognizable particular social group, much less that an applicant must refer to an independent claim to obtain relief. 8 U.S.C. § 1101(a)(42)(A). Accordingly, courts routinely find that family group membership alone is an independent basis for finding a cognizable social group. The Ninth Circuit's decision in *Rios*, for example, made clear that family membership does not have to be "intertwined" with another protected ground before a family can constitute a cognizable social group. 807 F.3d at 1128. The applicant in that case, Felix Flores-Rios, had claimed that he was "a member of a social group made up of his family and that he risk[ed] persecution by the gang because of its vendetta against his family," a claim that the Board did not address. *Id.* at 1126. The Ninth Circuit noted that although persecutors may be "more likely to identify individual family members as part of a particular social group when familial ties are 'linked to race, religion, or political affiliation,'" there was no basis to hold "'that a family can constitute a particular social group only when the

alleged persecution on that ground is intertwined with' another protected ground." *Id.* at 1128 (quoting *Thomas v. Gonzales*, 409 F.3d 1177, 1188 (9th Cir. 2005) (en banc), *vacated per curiam*, 547 U.S. 183 (2006)).[5]

The First Circuit has likewise held that family group membership alone is sufficient to give rise to a cognizable particular social group. In *Aldana-Ramos v. Holder*, the court rejected the Board's apparent conclusion that family membership was insufficient to give rise to a particular social group unless a member of the family or the family itself had suffered persecution for another protected ground, and stated that the "[t]he law in this circuit and others is clear that a family may be a particular social group simply by virtue of its kinship ties, without requiring anything more." 757 F.3d 9, 15 (1st Cir. 2014). In a prior case, *Gebremichael*, the First Circuit had noted that although claims of fear of persecution on account of social group membership may overlap with claims to fear of persecution on other grounds, the court had "followed the language of the statute in recognizing that social group persecution can be an independent basis of refugee status." 10 F.3d at 35 n.20, 36. The *Gebremichael* court described the Ethiopian security forces as using the "time-honored theory of *cherchez la famille* ('look for the family'), the terrorization of one family member to extract information about the location of another family member or to force the missing family member to come forward." *Id.* at 36

[5] In *Thomas v. Gonzales*, the en banc court held that the applicants, a South African family, had "demonstrated that the harm they suffered was solely a result of their common and immutable kinship ties with Boss Ronnie [who had committed racist acts against his employees]." 409 F.3d at 1187–88. The court held that "the reason for the animosity toward Boss Ronnie that led to the harm to the family is not relevant; what is critical is that the harm suffered by the [family] was on account of their membership in a protected group." *Id.* at 1188. The Supreme Court vacated the en banc decision on the grounds that the Ninth Circuit should have remanded for the Board to decide in the first instance whether family could constitute a social group. *Gonzales v. Thomas*, 547 U.S. 183, 186 (2006) (per curiam).

(internal quotation marks omitted). The court's description of family members being subjected to torture based on a "*cherchez la famille*" theory is equally applicable regardless of the underlying reason why the missing family member was persecuted.

Under the Board's existing test for determining cognizable social groups and well-reasoned case law from the courts discussed above, it is clear that a family group can be a cognizable social group.

II. The One Central Reason Standard Applies to Family Claims Like All Other Types of Claim

Over the more than three decades that family membership has been recognized as a social group, the same nexus requirements have been applied to this basis for asylum as all of the other enumerated grounds. To be eligible for asylum, the applicant must show that he or she was persecuted "on account of" his social-group membership. 8 U.S.C. § 1101(a)(42)(A). *See also Gebremichael*, 10 F.3d at 35. In order to show the required nexus between the persecution and the particular social group, the family relationship must be "one central reason" for the persecutor's treatment of the applicant. 8 U.S.C. § 1158(b)(1)(B)(i). *See also Matter of J-B-N- & S-M-*, 24 I. & N. Dec. 208, 212 (BIA 2007)[6]; *Cruz v. Sessions*, 853 F.3d 122, 127 (4th Cir. 2017) ("Persecution occurs 'on account of' membership in an immediate family when that relationship is 'at least one central reason for' the feared persecution.") (internal quotation marks omitted); *Rivas v. Sessions*, 899 F.3d 537, 542 (8th Cir. 2018) (stating that an applicant "will not be eligible for asylum unless she can demonstrate that her membership . . . is at least one central reason for the persecution") (internal quotation marks omitted). Evidence of the reasons for the

[6] In *Matter of J-B-N- & S-M-*, the Board improperly stated that the protected ground "cannot be incidental, tangential, superficial, or subordinate to another reason for harm." 24 I. & N. Dec. at 214. This language, requiring that the central reason not be "subordinate" to another, fails to comport with the plain text of the statute.

persecution may be direct or circumstantial and the applicant's burden of proof can be met by testimonial evidence; further, any supporting documents and corroborative background evidence "must be taken into account." *J-B-N- & S-M-*, 24 I. & N. Dec. at 214 (quoting *Matter of S-P-*, 21 I. & N. Dec. 486, 490 (BIA 1996).

Like the other enumerated grounds—e.g., race or religion—with potentially numerous members, mere membership in a family unit does not make an individual eligible for protection. The existing nexus requirement permits adjudicators to assess the validity of family-based asylum claims, and courts have denied such claims for failure to show a causal link between the persecution suffered and membership in a specific family. *See, e.g.*, *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 950 n.7 (4th Cir. 2015) (stating that "not every threat that references a family member is made on account of family ties"); *Cortez-Mendez v. Whitaker*, 912 F.3d 205, 210 (4th Cir. 2019) (citing same); *Revencu v. Sessions*, 895 F.3d 396, 405 (5th Cir. 2018) (stating that an applicant cannot rely solely on the persecution of his family members to establish nexus); *Perlera-Sola v. Holder*, 699 F.3d 572, 576 (1st Cir. 2012) ("This 'kinship' criterion, it should be stressed, applies only where the *motivation* for persecution is *kinship* . . . ."); *Bernal-Rendon v. Gonzales*, 419 F.3d 877, 881 (8th Cir. 2005) ("While petitioners correctly contend that a nuclear family can constitute a social group, . . . petitioners fail to prove that a specific threat exists to their family as a social group."); *Iliev*, 127 F.3d at 642 ("Mr. Iliev must demonstrate that, as a member of that family, he was, or would be, subject to persecution.").[7]

In the recently-stayed *L-E-A-* I, the Board, though applying a nexus standard nominally consistent with the standard established by statute, implied that there were limited circumstances

[7] *Amici* express no opinion on the accuracy of these particular denials.

in which nexus could be established in family-based cases. The Board stated that nexus is often established "where the family status is connected to another protected ground."[8] *L-E-A-*, 27 I. & N. Dec. at 45. If this suggestion were to be read as a requirement then even if an applicant's family group is a cognizable "particular social group" under the current applicable standard *and* the applicant has demonstrated persecution on account of his or her membership in that family, the applicant will nonetheless be subjected to the additional, unjustified requirement of demonstrating that one of his or her family members has previously suffered persecution on account of a different protected ground. The addition of this requirement would contravene the plain language of the INA. *See Negusie v. Holder*, 555 U.S. 511, 542 (2009) (stating that the construction of the INA's provisions "must begin with the plain language of the statute"). The statute requires an asylum applicant to demonstrate that he or she is "unable or unwilling to return to . . . [his or her] country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, *or* political opinion." 8 U.S.C. § 1101(a)(42)(A) (emphasis added). In other words, the INA, as amended by the REAL ID Act, requires those seeking asylum to demonstrate that at least one of the enumerated protected grounds "was or will be at least one central reason" for the persecution. 8 U.S.C. § 1158(b)(1)(B)(i); *see also Baghdasaryan v. Holder*, 592 F.3d 1018, 1023 (9th Cir.

[8] In its brief to the AG, DHS alleges that most asylum claims based on family group would fail on either the nexus or state protection elements. *See* DHS AG Brief at 36. Read literally, this insists that asylum based on persecution on account of a family-based particular social group is foreclosed. DHS reinforces that conclusion by saying that those asylum seekers with family-based claims will often have recourse by claiming asylum based on having an imputed race, religion, nationality or political opinion by virtue of their family relationship. *Id.* All claims, however, must be evaluated on a case-by-case basis, as DHS also acknowledges. *Id. at* 12-16. The AG should not accept this invitation to create any sort of blanket rule foreclosing all claims, which would be unlawful. In any given case, multiple grounds may be implicated, but that does not undermine the viability of family as one of those potential grounds.

2010) (an applicant must demonstrate "nexus" between their fear of persecution and "*one* or more of the grounds enumerated in [the statute]" (emphasis added)); *Torres v. Mukasey*, 551 F.3d 616, 625 (7th Cir. 2008) (persecution must be "on account of *one* of the five statutorily defined grounds"(emphasis added)); *Castro v. Holder*, 597 F.3d 93, 100 (2d Cir. 2010) (asylum applicant must establish nexus to "*one* of the protected grounds" (emphasis added)). The plain language of the INA accordingly does not permit an interpretation that a refugee must demonstrate persecution on account of membership in a particular social group *as well as* another group member's persecution on account of another protected ground.

Adding a secondary nexus requirement would present significant evidentiary challenges for many family-based claimants, who would be tasked with demonstrating the motivations of a persecutor who targeted their *relative*. Courts have recognized how difficult it can be for asylum seekers to explain and document the reasons their persecutors target them, and the standard allows for circumstantial evidence to give meaning to persecutors' often unexplained actions. *See Elias-Zacarias*, 502 U.S. at 483 (setting forth nexus standard); *see also, e.g.*, *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1073 (9th Cir. 2004) (noting the difficulty of "conclusively prov[ing] motive" (internal quotation marks omitted)); *cf. Espinosa-Cortez v. U.S. Att'y Gen.*, 607 F.3d 101, 109 (3d Cir. 2010) (noting that "it would be patently absurd to expect an applicant to produce documentary evidence of a persecutor's motives, . . . since persecutors are hardly likely to submit declarations explaining exactly what motivated them to act" (alterations and internal quotation marks omitted)). *L-E-A-* I's suggestion could prove to be impossible in situations where a family-based claimant lacks sufficient evidence of the reasons for the persecution suffered by a relative, which would be particularly likely in common situations

where the claimant never personally witnessed or otherwise had any knowledge of the persecution.

The Fourth Circuit has made clear that applicants do not have to prove a nexus between the persecution suffered by a relative and another protected ground, as long as they have shown a sufficient nexus between *their own* persecution and their membership in a family group. In *Hernandez-Avalos*, the Fourth Circuit considered a claim by Maydai Hernandez-Avalos, a native of El Salvador, who experienced threats from members of the Mara 18 gang, a "'particularly violent and aggressive gang' which 'operates openly in El Salvador.'" 784 F.3d at 947 n.3 (quoting *Orellana-Monson v. Holder*, 685 F.3d 511, 515 (5th Cir. 2012) (alteration omitted)). Members of the gang killed Hernandez-Avalos' cousin's husband because he refused to join their ranks, threatened to kill Hernandez-Avalos if she identified the gang members as responsible for the murder, and then twice came to her home, held a gun to her head, and threatened her life if she did not allow her son to join the gang. *Id.* at 947. After the third threat against her life, Hernandez-Avalos fled El Salvador for the United States. *Id.* The Fourth Circuit noted first that the government correctly acknowledged that "membership in a nuclear family qualifies as a protected ground for asylum purposes." *Id.* at 949. The Fourth Circuit then held that "*at least one*" central reason for Hernandez-Avalos' persecution was her membership in her nuclear family. *Id.* at 950. It noted, "Hernandez's relationship to her son is why she, and not another person, was threatened with death if she did not allow him to join Mara 18, and the gang members' demands leveraged her maternal authority to control her son's activities." *Id.*

The Fourth Circuit's holding in *Hernandez-Avalos* is consistent with its prior, well-reasoned case law holding that an individual who has suffered persecution on account of family ties has met the nexus requirement for asylum relief, even if a family member has not separately

suffered persecution on account of another protected ground. In *Cordova v. Holder*, the Fourth Circuit considered the claim of a native of El Salvador, Wilson Manfredo Aquino Cordova, who had been attacked by the violent Mara Salvatrucha ("MS-13") gang on a number of occasions. 759 F.3d 332, 334 (4th Cir. 2014). Mr. Aquino's cousin was a member of Mara 18 (a rival gang to MS-13) and certain attacks occurred after Mr. Aquino was spotted with his cousin. Mr. Aquino argued that MS-13 gang members targeted him in the past and would target him in the future because of his kinship ties to his cousin and uncle, both of whom MS-13 murdered on account of their membership in a rival gang. *Id.* at 338. The Board recognized that family membership can constitute a particular social group, but held that Mr. Aquino's kinship ties did not constitute a central reason for the attacks the applicant suffered, because Mr. Aquino "has not established that a central reason for the attack on his *family* was related to a protected ground." *Id.* at 339 (citation omitted). The Fourth Circuit rejected this reasoning, finding that even though Aquino's cousin and uncle were previously targeted by the gang on account of their membership in a rival gang, that fact did "not provide a basis for concluding that MS-13 did not target [Mr. Aquino] on account of *his* kinship ties to his cousin and uncle." *Id.* In other words, even if Mr. Aquino's family members were not targeted on account of a protected ground, Mr. Aquino himself was targeted on account of the protected ground of his kinship ties to his cousin and uncle. *See also Salgado-Sosa v. Sessions*, 882 F.3d 451, 458–59 (4th Cir. 2018) (finding that the Board improperly focused on whether petitioner's *family* would be persecuted on account of a protected ground, rather than petitioner).

Ninth Circuit precedent accords with the Fourth Circuit's on this issue, finding that the nexus requirement has been met for persecution on account of family membership even where there is no link to a second enumerated ground to link to. *See Rios*, 807 F.3d at 1128 (declining

to hold that the family can constitute a particular social group only when the alleged persecution on account of that ground is intertwined with another protected ground); *Thomas*, 409 F.3d at 1184 (rebuffing the government's argument that another enumerated ground is required to show nexus); *Hernandez-Ramos v. Sessions*, 686 F. App'x 385, 387 (9th Cir. 2017) (explicitly rejecting the requirement of another enumerated ground and finding that the petitioner showed a prima facie case for relief based on family ties with individuals targeted by Los Zetas); *Sanchez-Canizalez v. Holder*, 520 F. App'x 528, 530 (9th Cir. 2013) (holding that the court does not require the petitioner to show that another family member was persecuted on account of a protected ground).

The analysis of the Fourth and Ninth Circuits is consistent with the text of the asylum statute, which equates persecution on account of membership in a particular social group, such as a family, with persecution on account of the other protected grounds. If framed to require connection to another protected ground, a family-based claimant would be required to show (1) that one of her family members suffered persecution on account of a protected ground, and (2) that the claimant herself has experienced "persecution or a well-founded fear of persecution on account of . . . membership in a particular social group," 8 U.S.C. § 1101(a)(42)(A), *i.e.*, her family unit. This would mean that the nexus requirement would be applied differently when the protected ground at issue is a family-based social group, even though the statute itself does not differentiate between the protected grounds with respect to the nexus requirement. *Cf. Clark v. Martinez*, 543 U.S. 371, 378 (2005) (noting that where the statutory phrase "may be detained beyond the removal period" applied "without differentiation to all three categories of aliens that are its subject," giving this phrase a different meaning for each category "would be to invent a statute rather than interpret one" (internal quotation marks omitted)). There is no basis to read

into the statute a secondary nexus requirement for family-group claims that does not apply to any of the other protected grounds. The AG should not depart from the plain language of the statute.

CONCLUSION

For the foregoing reasons, *amici* urge the Attorney General to follow the plain language of the INA and issue a precedential opinion holding that family ties may constitute a cognizable particular social group and, where an asylum applicant has demonstrated persecution on account of his or her family group membership, the applicant has satisfied the nexus requirement.

(Signatures on the following page.)

Respectfully submitted,

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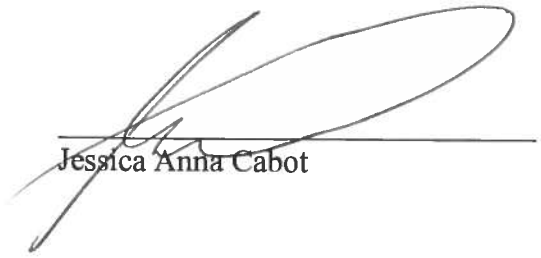
Dated: March 13, 2019

CERTIFICATE OF COMPLIANCE

This brief complies with the instructions in the Attorney General's referral order dated March 1, 2019, because the brief contains 7206 words, excluding the cover page, table of contents, table of authorities, signature block, certificate of compliance, and certificate of service.

Dated: March 13, 2019



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PROOF OF SERVICE

On March 13, 2019, I, Jessica Anna Cabot, delivered the Brief for *Amici Curiae* Non-Profit Organizations and Law School Clinics electronically to AGCertification@usdoj.gov, and delivered three copies by FedEx to the following address:

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On March 13, 2019, I, Jessica Anna Cabot, mailed a copy of the Brief for *Amici Curiae* Non-Profit Organizations and Law School Clinics to the Department of Homeland Security the following address:

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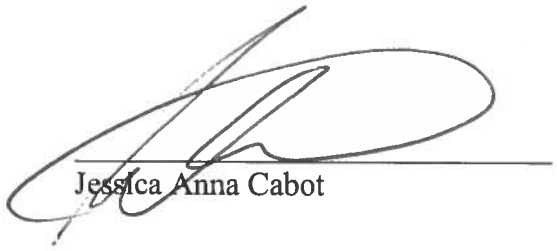

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Appendix I

List of *Amici Curiae*

1. Center for Gender & Refugee Studies
2. The American Immigration Council
3. The American Immigration Lawyers Association
4. The Boston College Law School Immigration Clinic
5. The Columbia Law School Immigrants' Rights Clinic
6. Dolores Street Community Services
7. The East Bay Community Law Center
8. The Immigrant Defenders Law Center
9. The Immigration Law Clinic at the University of Arizona's James E. Rogers College of Law
10. The Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women at Southern Methodist University (SMU), Dedman School of Law
11. National Justice for Our Neighbors
12. The University of Connecticut School of Law Asylum and Human Rights Clinic
13. The Washington and Lee University School of Law Immigrant Rights Clinic

Appendix II

Statements of Interest of *Amici Curiae*

1. The Center for Gender & Refugee Studies ("CGRS"), which has coordinated the preparation of this brief among the *amici*, has played a central role in the development of law and policy related to particular social group-based asylum claims through its litigation, expert consultations, scholarship, and development of policy recommendations. In addition, CGRS has assisted attorneys representing victims of family-related violence—including in-depth research on country conditions in Mexico and Central America and other regions—in hundreds of asylum proceedings across the country. CGRS has filed briefs, both as *amicus* and as counsel of record, regarding asylum claims before the Attorney General, the Board, and in nearly every federal Court of Appeals.

2. The American Immigration Council ("Council") is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. The Council is one of four partners in the CARA Family Detention Pro Bono Project, which provides direct representation and undertakes advocacy and impact litigation on behalf of mothers and children held in the federal family detention centers in Dilley and Karnes City, Texas. The Council also advocated and litigated to protect the due process rights of women and children detained in the now-closed federal family detention center in Artesia, New Mexico.

3. The American Immigration Lawyers Association ("AILA") is a national association with more than 15,000 members throughout the United States and abroad, including

lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to advance the administration of law pertaining to immigration, nationality and naturalization; to cultivate the jurisprudence of the immigration laws; and to facilitate the administration of justice and elevate the standard of integrity, honor, and courtesy of those appearing in a representative capacity in immigration and naturalization matters. Members of AILA practice regularly before the DHS and the Executive Office of Immigration Review, including the Board and immigration courts, as well as before United States District Courts, United States Courts of Appeals, and the United States Supreme Court.

4. The Boston College Law School Immigration Clinic ("Boston Clinic") is a non-profit provider of legal services to indigent clients within the Boston area. As part of the law school, the Boston Clinic provides an opportunity to second and third-year law students to gain experience and develop skills in the field of immigration law. The Boston Clinic represents clients in their applications for asylum and withholding of removal, among other relief from removal. A large number of these asylum seekers are women and youth, including many fleeing family-related violence.

5. The Columbia Law School Immigrants' Rights Clinic ("Immigrants' Rights Clinic") is a nonprofit legal services clinic dedicated to representing indigent immigrants and advocating for the civil and constitutional rights of immigrants. Since its inception, the Immigrants' Rights Clinic has offered *pro bono* legal services to hundreds of mothers and children detained in family detention centers, as well as immigrant families who are not detained.

6. Dolores Street Community Services ("DSCS") provides *pro bono* removal defense to low-income immigrants in San Francisco, California, specializing in representing particularly vulnerable individuals. Many of DSCS' clients fear persecution in their countries of

origin on the basis of their family membership, including long-time San Francisco residents with mental health issues, unaccompanied minors, and recently arrived women with children.

7. The East Bay Community Law Center ("EBCLC"), a non-profit located in Berkeley, California, is a nationally-recognized clinical program of the law school at U.C. Berkeley. Its dual mission is to provide free legal services to low-income individuals and hands-on clinical training to law students. Through its Immigration Clinic, the EBCLC regularly represents asylum seekers. A large number of these asylum seekers are women and youth, including many fleeing family related violence.

8. The Immigrant Defenders Law Center ("ImmDef") is an independent, non-profit law firm dedicated to advancing social justice for Southern California's most marginalized immigrant communities through legal representation and advocacy for adults and children facing deportation proceedings. ImmDef strives to ensure every non-citizen in removal proceedings is guaranteed due process through access to counsel. Through its representation programs, ImmDef provides free deportation defense representation to more than 1200 immigrants annually. ImmDef's present and future clients' ability to access fundamental asylum protections will be profoundly impacted by the decision in this case.

9. The Immigration Law Clinic at the University of Arizona's James E. Rogers College of Law ("Arizona Clinic") provides free direct representation as well as legal advice and assistance, including referrals to *pro-bono* counsel, to low income individuals confronting immigration problems. Many of the Arizona Clinic's clients are asylum seekers. Among those the Arizona Clinic has advised and represented are people who fled violence directed at them because of their kinship ties.

10. The Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women ("Hunter Legal Center") at Southern Methodist University ("SMU"), Dedman School of Law provides direct representation to survivors of gender-based harms in a broad range of legal areas, including humanitarian immigration claims. The Hunter Legal Center includes scholars with expertise on asylum and refugee law, and in particular the intersection of gender and asylum law.

11. National Justice for Our Neighbors ("JFON") was established by the United Methodist Committee On Relief in 1999 to serve its longstanding commitment and ministry to refugees and immigrants in the United States. JFON's goal is to provide hospitality and compassion to low-income immigrants through immigration legal services, advocacy, and education. JFON employs a small staff at its headquarters in Springfield, Virginia, which supports 19 sites nationwide. Those 19 sites collectively operate in 13 states and Washington, D.C., and include over 40 clinics. JFON advocates for interpretations of federal immigration law that protect vulnerable asylum-seekers.

12. The University of Connecticut School of Law Asylum and Human Rights Clinic ("Asylum and Human Rights Clinic") is an intensive law school clinical program dedicated to providing high-quality legal representation to asylum seekers and other forced migrants, and safeguarding the legal rights of persons seeking asylum in the United States. The Asylum and Human Rights Clinic has represented many asylum applicants who have been targeted for persecution because of their family affiliations, including women and children who suffered rape, torture, and other egregious harm simply because they belonged to a particular family. The cases it has litigated include *Vumi v. Gonzales*, 502 F.3d 150, 154–55 (2d Cir. 2007), in which the Second Circuit held that it followed unambiguously from the Board's holdings that "membership in a nuclear family may substantiate a social-group basis of persecution."

13. The Washington and Lee University School of Law Immigrant Rights Clinic ("W&L IRC") is the only *pro bono* legal services provider for immigrants in removal proceedings in the Shenandoah Valley, Virginia. Refugee and asylum law are key to the educational and service missions of the W&L IRC, where at least half of the cases that the clinic handles involve claims for asylum or withholding of removal.